

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of )	
Harris Design Services, )	
Complainant, )	
v. )	Case No. 15-0405-GA-CSS
	)
Columbia Gas of Ohio, Inc., )	
Respondent. )	

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**INITIAL BRIEF OF COLUMBIA GAS OF OHIO, INC.**

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**1. INTRODUCTION**

In September and November 2013, Columbia Gas of Ohio (“Columbia”) responded to two natural gas emergencies, remediated the emergencies, and continued to provide safe and reliable natural gas service. Harris Design Services (“HDS” or “Complainant”) challenges this premise, complaining that Columbia failed to provide any notice of a service disconnection. Contrary to HDS’s bare assertions, Columbia provided two tag notices at the Complainant’s property in response to two emergency facility damages. First, Columbia hung a yellow tag on September 16, 2013, after it completed its repairs in response to a third-party dig-in on the customer’s service line.<sup>1</sup> Second, Columbia hung an additional orange tag on November 15, 2013, after a separate dig-in on the customer’s service line.

In addition to these notices left at the property, Columbia continued sending billing statements to Complainant, providing additional notice to HDS that it was not consuming natural gas at the premises, even after Mr. Harris alleges he traveled to the property in late December 2013.<sup>2</sup> In so doing, Columbia acted consistently with its Tariff, its Gas Safety Standards, and applicable regulations and Commission orders.

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<sup>1</sup> Columbia Exh. 1 at 2.

<sup>2</sup> Complaint at 2.

Complainant simply failed to meet its burden of proof. Further, Columbia also affirmatively proved it twice left actual notice to Complainant and provided timely billing statements, providing actual and sufficient notice of the service interruption and the need to enter the premise to re-establish service. Complainant's claim should be dismissed.

## **2. LAW AND ARGUMENT**

In complaint cases before the Commission, the burden of proof lies with the Complainant.<sup>3</sup> In order to prevail, the Complainant must prove the allegations in a complaint by a preponderance of the evidence. A preponderance of the evidence means "the greater weight of evidence," that is, evidence of one side outweighs that of the other.<sup>4</sup> Additionally, when a natural gas company demonstrates compliance with the relevant service or performance standard of Chapter 13 of the Commission's rules, "a rebuttable presumption is created that the gas or natural gas company is providing adequate service regarding that standard."<sup>5</sup> Ohio Admin. Code 4901:1-13-02(G) indicates that natural gas companies are also bound by the rules in Chapter 4901:1-16.

The Commission should dismiss the Complaint because HDS failed to meet its burden of proof. HDS also failed to provide a specific rule or standard Columbia allegedly violated. Importantly, HDS failed to demonstrate by a preponderance of the evidence that Columbia did not leave notice, and failed to overcome Columbia's uncontroverted evidence that it twice left notice at the property and sent billing statements that also gave HDS notice that gas was not flowing to the property. The Commission should dismiss the Complaint and find Columbia, in compliance with the Commission's rules and Columbia's Gas Standard, provided adequate and reasonable service by leaving actual and sufficient notice to HDS that its gas service had been interrupted.

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<sup>3</sup> *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 190 (1966); *see also* PUCO Case No. 12-2877-GA-CSS, Opinion and Order (Jan. 14, 2015).

<sup>4</sup> 44 Ohio Jur. 3d Evidence and Witnesses § 951 (2003); *see also In the Matter of the Complaint of Michael Hahn v. United Telephone Company of Ohio*, Case No. 93-1248-TP-CSS, Opinion and Order (Feb. 8, 1995).

<sup>5</sup> Ohio Admin. Code 4901:1-13-02(F).

**A. Columbia Followed Its Gas Standard And Twice Left Tags At The Property.**

Columbia is required, by federal law, to abide by its internal Gas Standards. Pursuant to federal regulation, Columbia must “prepare and follow ... a manual of written procedures for conducting operations and maintenance activities and for emergency response.”<sup>6</sup> Likewise, in Ohio, the Commission adopted the same gas pipeline safety regulations as those “of the United States department of transportation contained in 49 C.F.R. 40, 49 C.F.R. 191, 49 C.F.R. 192, and 49 C.F.R. 199.”<sup>7</sup> In order to satisfy that requirement, Columbia’s Gas Standard 6500.130(OH) provides in part, “[i]n the event the customer is not at home when the gas service is available, the gas shall be left off with the meter valve locked and the meter sealed, or if unable to gain access to the meter, the curb valve shall be turned off. [T]ag will be left advising the customer to call the Gas Company to have service restored.”<sup>8</sup>

Columbia affirmatively demonstrated, in accordance with Gas Standard 6500.130, and subsequently federal and state law, that it twice left notice with the Complainant. Columbia witness Long testified a tag was left at the premise both on September 16, 2013, when Columbia repaired the first dig-in and on November 15, 2013, when it repaired a second dig-in at the same address.<sup>9</sup>

Mr. Long testified that on September 16, 2013, he received an emergency repair order located at the Complainant’s address after it had been hit by a cable company.<sup>10</sup> After the repair, he “left the meter valve off with a pin lock on the meter and also inserted a disc into the meter.”<sup>11</sup> Before leaving, Mr. Long “went to hang a tag on the door, but the service technician had already left one on the door.”<sup>12</sup> Mr. Long also knocked on the door before leaving in case someone had showed up after the tag was left by the service technician, but the premise was still empty.<sup>13</sup>

Two months later, on November 15, 2013, Mr. Long repaired a second dig-in at the Complainant’s property.<sup>14</sup> After the repair, he checked to see if anyone

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<sup>6</sup> See 49 C.F.R. 192.605.

<sup>7</sup> Ohio Admin. Code 4901:1-16-03(A).

<sup>8</sup> Columbia Exh. 2 at Attachment B

<sup>9</sup> Columbia Exh. 1 at 2.

<sup>10</sup> Columbia Exh. 1 at 2; Tr. at 100.

<sup>11</sup> Columbia Exh. 1 at 2; Tr. at 104.

<sup>12</sup> Columbia Exh. 1 at 2; Tr. at 104.

<sup>13</sup> Tr. at 105, 109-110, 117-118.

<sup>14</sup> Columbia Exh. 1 at 2; Tr. at 112.

was at the premise, but to no avail so he left an orange door tag on top of the yellow tag that was left in September 2013.<sup>15</sup>

The evidence demonstrates Columbia twice left actual notice to HDS that gas service had been interrupted. Moreover, this method of notifying the customer of an interruption of gas service has been used by Columbia under its Gas Standard for decades.<sup>16</sup> Therefore, the Commission should find Columbia complied with its Gas Standard 6500.130 and provided adequate and reasonable service.

**B. Columbia's Door Tags Provide Notice In A Method Approved for Other Commission Notifications.**

Notwithstanding its gas standard, Columbia's method of notification, posting door tags, is a type of notification that meets Commission standards for notifying customers. Posting tags in a conspicuous place (i.e., door tags) to notify a customer of information is an accepted method of notice under the Commission's rules. For example, pursuant to Ohio Admin. Code 4901:1-13-09(B)(2), the Commission requires for gas utilities, when disconnecting service for tampering or unauthorized reconnection, when "neither the customer nor an adult consumer is present" to "attach a prominent written notice to a conspicuous place on the premises."<sup>17</sup> Likewise, when disconnecting customers for nonpayment, all utilities must provide notification to the customer. The rule further explains:

(2) On the day of disconnection of service, the utility company shall provide the customer with personal notice. If the customer is not at home, the utility company shall provide personal notice to an adult consumer. If neither the customer nor an adult consumer is at home, the utility company shall attach written notice to the premises in a *conspicuous location* prior to disconnecting service.<sup>18</sup>

Columbia and other Ohio gas utilities fulfill the conspicuous place notice requirements in these rules by putting a tag on the customer's door.

As noted in its case in chief, Columbia is permitted to discontinue gas service pursuant to its tariff "whenever deemed necessary by the Company for safety reasons."<sup>19</sup> Likewise, the Commission's rules permit a disconnection of service when supplying gas creates a safety hazard to consumers or their premises or

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<sup>15</sup> Columbia Exh. 1 at 2; Tr. 113-115.

<sup>16</sup> Columbia Exh. 2 at 2.

<sup>17</sup> Ohio Admin. Code 4901:1-13-09(B)(2); See also Ohio Admin Code 4901:1-13-09(C)(3).

<sup>18</sup> Ohio Admin. Code 4901:1-18-06(A)(2) (emphasis added).

<sup>19</sup> Columbia Exhibit 3 at 3 (citing Section I, Part 16, Third Revised Sheet No. 4).

when disconnection is reasonably necessary.<sup>20</sup> The Commission's rules further require Columbia to conduct a pressure test when reestablishing natural gas service.<sup>21</sup> When Columbia cannot reconnect services because it cannot obtain access, relying on both its Gas Standard and standard Commission notification procedures, it leaves a door tag in a conspicuous place to indicate it cannot obtain access to reestablish gas service. This type of notification is appropriate and provides customers with adequate and sufficient notification.

### **C. Columbia Also Provided Notification To HDS By Sending Billing Statements Showing Zero Consumption.**

Columbia's notification to HDS did not cease with the notices left at the premise. Columbia further provided notification to the Complainant by continuing to send, on a monthly basis, the Complainant billing statements.<sup>22</sup> These billing statements, as is noted by the testimony of Ms. Thompson, show that the Complainant's consumption, beginning with the June 25, 2013 billing statement, was zero.<sup>23</sup> The consumption remained at zero throughout the fall of 2013 and into early 2014 when the alleged damage occurred.<sup>24</sup>

The Complainant alleged that Mr. Harris went to the property in late 2013 and that the "furnace was running."<sup>25</sup> In the event the furnace was running, the consumption tied to that usage should have been evident through a consumption increase on the billing statements in the fall of 2013 or, at the latest, the January 6, 2014 billing statement. Complainant's consumption did not increase, and such a lack of increase should have prompted the Complainant to investigate the property. Instead, the Complainant did not investigate the property until it received "an extremely high water bill for the Property on or about February 7, 2014."<sup>26</sup> Therefore, Columbia provided notice to the customers of the property both with the door tags left in September and November of 2013, as well as the billing statements sent to the Complainant showing zero consumption.<sup>27</sup>

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<sup>20</sup> See Ohio Admin. Code 4901:1-18-03(D).

<sup>21</sup> See Ohio Admin. Code 4901:1-13-05(A)(3).

<sup>22</sup> Tr. at 136, 140-141.

<sup>23</sup> Columbia Exhibit 3 at 2.

<sup>24</sup> *Id.*

<sup>25</sup> See Complaint at 2.

<sup>26</sup> *Id.*

<sup>27</sup> Tr. at 136.

#### D. Columbia's Routine Practice and Habit to Leave Notice

Columbia also demonstrated it twice left actual notice at the property through the habit testimony of Rose Pusecker. Ms. Pusecker, a Columbia employee of roughly twenty-seven years, currently works as a technical trainer with Columbia.<sup>28</sup> Ms. Pusecker trains service technicians to carry out their duties under many different scenarios in the field, from disconnections to relights.<sup>29</sup> This training also includes a review of Columbia's gas standards, including Columbia's Gas Standard 6500.130(OH).<sup>30</sup> As noted above, this Gas Standard requires technicians to leave a tag when the customer is not available to provide Columbia access to reestablish service to a premises after a main line has been shut off.<sup>31</sup>

In all her years as a trainer and her eleven years as a technician, Ms. Pusecker has "*never* seen a technician fail to leave a tag when it was called for in a gas standard."<sup>32</sup> Leaving notice in the form of tags is a "routine practice" for a Columbia technician.<sup>33</sup> And this practice is not new. Columbia has used tags as a form of notice for at least as long as Ms. Pusecker has worked with Columbia (twenty-seven years).<sup>34</sup> In fact, from January 2015 through September 2015, Columbia technicians were not been able to get access to a property roughly 8.63% of all Ohio service calls.<sup>35</sup> This equates to 24,313 times when a Columbia technician left a tag on the door of a customer to tell them to call Columbia to reestablish service.<sup>36</sup> Ms. Pusecker testified the same procedure to leave a tag would have been followed as it relates to the service interruptions at HDS.<sup>37</sup>

The Commission should find Ms. Pusecker demonstrated through habit evidence that Columbia twice left tags at HDS under Gas Standard 6500.130.<sup>38</sup> Columbia followed its Gas Standard to twice provide actual notice to HDS that gas service had been interrupted to the premise.

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<sup>28</sup> Columbia Exhibit 2 at 2.

<sup>29</sup> Columbia Exhibit 2 at Attachment A.

<sup>30</sup> Columbia Exhibit 2 at 2.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* (emphasis added).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Columbia witness Thompson also testified Columbia would have left tags at the premise and that Columbia historically leaves door tags when disconnecting gas service or when Columbia employees cannot get needed access to a premise. Columbia Exhibit 3 at 3.

**E. Notwithstanding The Adequacy Of Columbia's Actual Notice, Columbia Is Further Implementing Additional Notifications To Customers.**

The crux of HDS's argument is HDS believes Columbia should have done more to notify HDS that gas service was interrupted.<sup>39</sup> As explained above, Columbia twice properly followed its long-standing practice and Gas Standard, in compliance with federal law and the Commission's rules, to leave tags when gas service was interrupted and when Columbia needed access to the premise to reestablish service. Columbia further sent billing statements showing the lack of consumption throughout the fall and winter of 2013 and 2014, respectively. All of these points of communication were intended to inform the Complainants of the status of gas service at the property.

Nonetheless, Columbia proactively began reviewing this notification process to find areas in which it could implement changes to make the procedure more robust.<sup>40</sup> Columbia is currently finalizing a process by which an additional call to the phone number on record to the account will be made if Columbia could not get access to the property.<sup>41</sup> If this call is not successful, then Columbia will be mailing "cannot get access" notifications to the account mailing address and service address.<sup>42</sup> These changes are meant solely to provide an additional method of notification in addition to the Columbia Gas Standard-required notification left *via* door tag.<sup>43</sup>

While the current process of leaving tags is sufficient notice to a customer of a service interruption, Columbia is always working to improve its processes to better serve customers.

**F. The Complainant Fails To Provide Sufficient Evidence To Meet Its Burden Of Proof That Columbia Did Not Leave Notice.**

The only evidence the Complainants provide to support their assertion that Columbia never left notice is that HDS never received it.<sup>44</sup> HDS cannot prove Columbia did not leave notice; HDS simply alleges it did not receive notice at the property.<sup>45</sup> Moreover, throughout its case in chief, HDS failed to disprove Colum-

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<sup>39</sup> Tr. at 148-154.

<sup>40</sup> Columbia Exhibit 3 at 3; Tr. at 134.

<sup>41</sup> Columbia Exhibit 3 at 3.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Complaint at 3; Complainant's Exhibit 45 at 16 (Janet Harris Testimony); Tr. at 16, 68.

<sup>45</sup> *Id.*

bia's testimony that Columbia twice left actual notice to the property and Columbia sent monthly billing statements regularly showing zero consumption at the property.

Ms. Harris testified she only went to the property "at least once a month, at times more" through drive-by observations of the premise.<sup>46</sup> Ms. Harris fails to provide any dates in which she drove by the property.<sup>47</sup> Ms. Harris also states there was occasional entry into the premise but never provides any exact dates or frequency of entry.<sup>48</sup> Ms. Harris also makes other statements about how the premise was maintained, none of which have any bearing on the notice issue in this case.<sup>49</sup> Such cursory observations and unrelated facts fail to show a prudent investigation of the premise, both with the notices left at the door and with the zero consumption within the premises.

Mr. Harris, likewise, did not visit or inspect the property, leaving such matters to Ms. Harris, except for once in December 2013.<sup>50</sup> Rather than relying upon their own inspections of the property, Mr. Harris and Ms. Harris produced their lawn service to testify as to the external inspections of the property, Mr. Ricciardi. While Mr. Ricciardi did not remember seeing tags at the door, he was neither tasked with looking for tags, nor did he have any expectation to see a tag on the door.<sup>51</sup> He was not receiving the billing statements showing zero consumption.<sup>52</sup> He also did not enter the premises, but only worked outside the facility. Further, he would not have been at the property to see the second tag left as it was after the mowing season.<sup>53</sup>

Complainant repeatedly admits it did not occupy or regularly enter the property during the September 2013 to February 2014 time period at issue. Further, every billing statement HDS received during the time period at issue showed zero (0) consumption.<sup>54</sup> Ms. Harris admits she knew there was no consumption at the property.<sup>55</sup> This is even more drastic with the cold weather experienced by the Co-

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<sup>46</sup> Complainant's Exhibit 45 at 7.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Complainant's Exhibit 44 at 7-8.

<sup>51</sup> Tr. at 68, 85.

<sup>52</sup> HDS and Janet Harris are the customers of record. *See* Columbia Exhibit 3 at Attachment A.

<sup>53</sup> Tr. at 66-67, 82.

<sup>54</sup> Columbia Exhibit 3 at 4; Tr. at 141-142.

<sup>55</sup> Complainants Exh. 45 at 12 (Ms. Harris alleged that she spoke with a Columbia customer service representative and mentioned "our recent [monthly] bills were showing no gas usage.").



lumbus area during the fall and winter months of September 2013 through February 2014.<sup>56</sup> Columbia Witness Long's testimony that he left a second tag on top of the first tag almost three (3) months later shows the extent to which HDS failed to pay attention to its property or its billing statements. These facts demonstrate HDS failed to pay sufficient attention to the property to receive the tags Columbia twice left for HDS.<sup>57</sup> HDS' failure to sufficiently monitor its property or its billing statements undermines any assertion that Columbia failed to leave notice.

The evidence HDS provided is insufficient to meet HDS's burden of proof.<sup>58</sup> There simply is not a preponderance of evidence from Complainant that Columbia did not leave notice. Rather, the Commission should dismiss the Complaint and find Columbia, in compliance with the Commission's rules and Columbia's Gas Standard, left actual and sufficient notice to HDS that its gas service had been interrupted.<sup>59</sup>

### III. CONCLUSION

Columbia demonstrated it left actual notice twice, once on September 16, 2013, again on November 15, 2013, and sent monthly billing statements showing zero consumption to the Complainants. Columbia also demonstrated it habitually leaves door tags as a form of notice. Columbia left two door tags pursuant to its approved Gas Standard—a standard that has been in place for over 25 years and its compliance is federal- and state-mandated by rule. The Complainant failed to meet its burden of proof in this case.

The Commission should dismiss the Complaint and find Columbia provided reasonable and adequate service by leaving actual and sufficient notice to HDS that its gas service had been interrupted in compliance with the Commission's rules and Columbia's Gas Standard.

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<sup>56</sup> See Complainant's Exh. 1 at 1 (showing that there were 16 days in December alone where average temperatures were below freezing).

<sup>57</sup> At least one Ohio court recognizes that home owners have a duty to monitor their homes. See *Ohio Fair Plan Underwriting Assn. v. Arcara*, 65 Ohio App.2d 169, 171.

<sup>58</sup> Ohio courts have recognized that failure to receive notice is an insufficient argument. See *Wells Fargo Bank v. Murphy*, 2014-Ohio-2937 at ¶¶ 32-37 (7th Dist. Mahoning County) (an appellant's statement that he did not receive notice does not create genuine issue precluding summary judgment when the bank stated that the notice was mailed); *LSF6 Mercury REO Invests. Trust Series 2008-1 c/o Vericrest Fin., Inc. v. Locke*, 2012-Ohio-4499, ¶¶ 14-16 (10th Dist. Franklin County) (judgment appropriate when mortgage provided that notice of default was complete upon mailing despite defendant's averment that he did not receive the notice.). If simply declaring notice was never received is insufficient to survive a motion for summary judgment, it surely is insufficient to meet the Complainants' burden of proof in this case.

<sup>59</sup> Tr. at 136.

Respectfully submitted by,

**COLUMBIA GAS OF OHIO, INC.**

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### **CERTIFICATE OF SERVICE**

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/s/ Joseph M. Clark  
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