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.	)	

COLUMBIA GAS OF OHIO, INC.
MEMORANDUM CONTRA TO
THE APPLICATION FOR REHEARING
OF HARRIS DESIGN SERVICES

INTRODUCTION

Columbia Gas of Ohio, Inc. ("Columbia") adequately notified its customer, Harris Design Services ("HDS" or "Complainant"), that gas service had been interrupted in September and November 2013 due to dig-ins on their property. The Application for Rehearing filed by HDS fails to raise any new legal theories or highlight record evidence that contravene this finding by the Public Utilities Commission of Ohio ("Commission"). The Commission properly found that HDS failed to carry its burden of proof. The Commission should once again reject HDS' wrong and incomplete assertions about the door tag notices Columbia left for HDS to notify them of a gas service interruption. Even if the Commission reaches HDS' substantive arguments, the Commission already rejected the arguments raised by HDS and should once again find that Columbia provided reasonable and adequate service to HDS consistent with Ohio law, federal and state administrative rules, and Columbia's Gas Standards.

LAW AND ARGUMENT

A. HDS provides nothing new for the Commission's consideration and the Commission should deny the Application for Rehearing on this basis alone.

The HDS Application for Rehearing cites no legal arguments that the Commission ignored, no new factual assertions the Commission overlooked, or any other new issues that the Commission did not consider. The Application for Rehearing is littered with references to statutes and rules as well as record evidence already cited by the Commission in its decision.[1] HDS improperly asks the Commission to reevaluate the decision it already made without providing anything new for the Commission to consider.

This Commission's precedent is clear that Applications for Rehearing that set forth nothing new for the Commission's consideration will be denied.[2] The Commission should follow its precedent and deny the Application for Rehearing in its entirety on this basis alone.

B. Even if the Commission reaches HDS' substantive arguments, the Commission should continue to reject those arguments as they remain unsupported and unpersuasive.

While Columbia encourages the Commission to reject HDS' Application for Rehearing in its entirety on the basis that HDS raises nothing new for the Commission's consideration, if the Commission reaches those arguments then the Commission should continue to reject those arguments for the reasons found in its Opinion and Order and in the record. The Commission's decision properly found that Columbia provided adequate, just, and reasonable service to HDS in compliance with its gas standards, federal and state administrative agency rules, and Ohio law. HDS provides no reason to deviate from the Commission's correct decision in this case.

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[1] *See, e.g.*, Opinion and Order at 3-4 for partial recitation of HDS' arguments considered by the Commission.

[2] *See, e.g., In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2013 Smart Grid Costs*, Case No. 14-1051-GE-RDR, Second Entry on Rehearing at 5 (July 1, 2015).

1. The Commission properly found that Columbia complied with Revised Code §§ R.C. 4905.26 and 4905.22.

In its Application for Rehearing, HDS faults the Commission for finding that Columbia did not violate R.C. §§ 4905.26 and 4905.22.[3] HDS baldly asserts "Complainant submits that it has met its burden in this case" with only a cursory reference to its initial brief to support its assertion.[4]

The Commission's Opinion and Order thoroughly discusses the evidence put forth by HDS as applied to R.C. § 4905.26 and 4905.22. In paragraph 14 of the Opinion and Order, the Commission thoroughly explained why HDS failed to meet its burden of proof and the adequacy of Columbia's notice. Specifically, the Commission found that Columbia complied with own gas standard, pursuant to Ohio Admin. Code 4901:1-16-03(A).[5] The Commission further noted that posting a written notice of disconnection in a conspicuous place is a required form of notification when gas is disconnected and the customer is not present.[6] The Commission further noted that the property, as presented in HDS' testimony, was never abandoned as HDS averred it regularly cared for the property. Finally, the Commission noted that HDS continued to receive billing statements from Columbia that showed zero consumption.[7]

Based on this evidence, the Commission ultimately found that "HDS did not meet its burden of proof to show that CGO violated its tariff, its internal gas standards, the Ohio Administrative Code, the Ohio Revised Code, or any of the rules and regulations of the Commission."[8] HDS provides no precedent or any reasonable application of these statutes that would provide the Commission a reason to reverse its original decision.

The Commission should reaffirm its finding that Columbia provided adequate and reasonable notice, pursuant to R.C. 4905.22, and that HDS failed to meet its burden of proof, as is required by R.C. 4905.26.

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[3] Application for Rehearing at 2. Columbia notes HDS' Application for Rehearing does not contain page numbers, thus Columbia cites the HDS Application for Rehearing using the page after the cover page as page 2 and accordingly thereafter.

[4] *Id*.

[5] Opinion and Order at 6.

[6] *Id*.

[7] *Id*. at 7.

[8] *Id*. at 8.

2. Columbia's fact witnesses more than adequately supported Columbia's case and rebutted the factual assertions put forth by HDS.

HDS objects to the Commission's acceptance of Columbia witness Long's testimony to demonstrate that Columbia did in fact follow its gas standards and left reasonable and adequate notice of the service interruption to HDS.[9] Specifically, HDS again attempts to poke the same holes in the testimony of Columbia witness Long that it did on the record and on brief. HDS concludes that Columbia witness Long's testimony is insufficient to demonstrate that door tags were hung on HDS' property.

The Commission's Opinion and Order on its own succinctly and correctly lays out why the Commission accepted Columbia witness Long's testimony over HDS' witnesses.[10] Columbia cannot restate it any better. Despite the time lapse, Columbia witness Long specifically recalled HDS' property for several distinct reasons.[11] Infirmities that HDS cites in the testimony of Columbia witness Long apply even more directly to the HDS witnesses.[12] The Commission itself cited those infirmities in its Opinion and Order as another reason it accepted the testimony of Columbia witness Long.[13] The Commission noted: Mrs. Harris only visited the premises on indeterminate dates, only driving by the premises; Mr. Ricciardi only worked outside of the property, never approaching the door, and stopped going to the premises in mid-November 2013; and it was never determined which door Mr. Harris entered the home in December 2013.[14] The vague, disjointed, and incomplete testimonies put forth by HDS are not "compelling enough to controvert Mr. Long's specific recollection."[15]

The Commission should deny HDS' Application for Rehearing in its entirety.

3. Columbia's door tags provided reasonable and adequate notice to HDS.

HDS next argues the placing of door tags on HDS' door was not adequate notice of a service interruption.[16] HDS, it appears, points to an alleged lack of evidence that Columbia left door tags and that regardless door tags alone were not sufficient to provide notice to HDS of the service disruption. HDS also attempts to

[9] Application for Rehearing at 3.
[10] Opinion and Order at 6.
[11] *Id*. at 6; Columbia Exhibit 1 at 2.
[12] Columbia Reply Brief at 9-11.
[13] Opinion and Order at 6.
[14] *Id*.
[15] *Id*.
[16] Application for Rehearing at 4-5.

foist an additional, undefined obligation on Columbia to notify customers of vacant homes of a service interruption.[17]

The arguments put forth by HDS are easily distinguished. While HDS faults Columbia for a lack of evidence that it left door tags for HDS, the Commission found that Columbia's witness Long overcame any doubts that Columbia left the door tags.[18] Columbia also produced two (2) other witnesses that provided additional proof that Columbia leaves door tags as a matter of habit in its regular course of business and would have left the tags for HDS.[19] Further, Columbia is required by Commission rules (e.g., 10-day disconnections)[20] to send separate written notices in the instances where HDS cites situations in which Columbia provides additional notice to customers. No such additional requirement or practice exists in the circumstances of this case. Finally, the Commission explicitly found that whether the property was vacant "does not alter that CGO provided reasonable notice that the gas was turned off."[21]

The Commission correctly found that "placing a notice on the door is adequate notice of a disconnection after an emergency repair and that CGO complied will all standards and regulations."[22] The Commission aptly noted that leaving door tags has been Columbia's standard practice in this manner for decades.[23] Additionally, the Commission correctly found that door tags qualify as placing notice in a "conspicuous" place and that Columbia service was adequate, just, and reasonable in compliance with Columbia's gas standards and R.C. 4905.22.[24]

The Commission should deny HDS' inadequate arguments, and reaffirm its finding that Columbia provided adequate and reasonable notice.

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[17] Application for Rehearing at 4-5.
[18] Opinion and Order at 6.
[19] Columbia Exhibit 2 at 2; Columbia Exhibit 3 at 3.
[20] *See* Ohio Admin. Code 4901:1-18-06(B)(1).
[21] Opinion and Order at 7.
[22] *Id*. at 6.
[23] *Id*. at 6.
[24] *Id*. at 7.

4. Columbia's compliance with Chapter 13 of the Commission's rules demonstrates and creates a rebuttable presumption that Columbia provided reasonable and adequate notice under Ohio law.

HDS takes issue with Columbia's assertion that it demonstrated compliance with the relevant performance standard in Chapter 13 of the Commission's rules created a presumption that Columbia provided reasonable and adequate service.[25] HDS' argument, however, ignores the fact that Commission did not need to address the possibility of Columbia meeting the Chapter 13 rebuttable standard. Because HDS failed to carry its burden of proof and Columbia demonstrated it provided reasonable and adequate service, regardless of the presumption, there was and continues to be no reason for the Commission to address this argument in its Entry on Rehearing.

However, should the Commission address HDS' argument, the Commission should affirm that compliance with an individual service or performance standard by a natural gas company does in fact create the rebuttable presumption the rule prescribes. This presumption is important to ensure that natural gas companies who are complying with the rules know the service they are providing is considered adequate by the Commission under its rules. In this specific instance, the Commission should find that Columbia's compliance with the Commission's rules (by following its Gas Standard) created the rebuttable presumption that Columbia was providing adequate service and that HDS also failed to overcome this presumption.[26]

5. Gas bills showing zero consumption are a form of notice to the customer that service has been disconnected.

HDS continues to contest that bills showing zero consumption are not a form of notice to customers of a gas service interruption.[27] This argument, however, is another attempt by HDS to relitigate its assertion that Columbia failed to provide adequate notice of service disconnection.

Whether or not a gas bill is a form of notice, the Commission found that Columbia's door tags *were* adequate notice.[28] The Commission found that "placing a notice on the door is adequate notice of a disconnection after an emergency repair and that [Columbia] complied with all standards and regulations."[29] The Commission went on to explain that the door tags were adequate and reasonable

[25] Application for Rehearing at 5-6.
[26] Columbia Initial Brief at 2.
[27] Application for Rehearing at 6-7.
[28] Opinion and Order at 6-7.
[29] *Id*. at 6.

notice, as is evidenced by similar disconnection notices provided by Commission rules.[30] The Commission also observed that "HDS also continued to receive regular billing statements from CGO, which demonstrated zero gas consumption after the repairs."[31] The Commission need not address this argument to uphold its correct findings and conclusions in its Opinion and Order and deny the Application for Rehearing.

However, should the Commission address this argument, the Commission should find that zero consumption on a customer's bill is another form of notice to the customer that a problem exists (possibly a service disconnection) and should prompt the customer to investigate, regardless of whether the customer is on budget billing.[32] Such a finding would place very little burden on the customer as the information is already printed directly on the bill they receive on a monthly basis. Even here, HDS admits it knew there was no consumption at the property based on reviewing its gas bills.[33] Billing statements are an important method for utilities to communicate to its customers, as the Commission's rules require a significant amount of notices and information to be provided to customers on a billing statements.[34] To hold that billing statements would not constitute a proper notice ignores the importance of billing statements to Columbia as a means to communicate to customers, as well as the Commission.

Notwithstanding the vital importance of billing statements as a form of communication and notice to customers, the Commission need not address HDS' argument because it found that Columbia's *door tags* provided the customers adequate and reasonable notice of the disconnection of service.

6. The Attorney Examiner properly excluded the evidence that HDS' counsel improperly tried to insert into the record in this case and no rehearing is warranted.

Finally, HDS complains that certain testimony and other evidence were improperly kept out of the record at the hearing in this case.[35] HDS is wrong and the Commission should reject HDS' assertions.

As a threshold matter, HDS' counsel should be familiar with the Commission's local rules of practice. As stated in *Cavalry Ins. v. Dzilinski*, 2007-Ohio-3767,

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[30] *Id*. at 6 -7 (citing Ohio Admin. Code 4901:1-13-09(B)(2) and Ohio Admin. Code 4901:1-18-06(A)(2)).

[31] Opinion and Order at 7.

[32] Columbia Initial Brief at 5.

[33] Complainant 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.").

[34] *See* Ohio Admin. Code 4901:1-13-11.

[35] Application for Rehearing at 7-8.

2007 Ohio App. LEXIS 3435, "[l]ocal rules are created with the purpose of promoting the fair administration of justice and eliminating undue delay. The local rules also assist practicing attorneys by providing guidelines for orderly case administration." As such, HDS' counsel should have become familiar with the Commission's rules of practice contained in Ohio Admin. Code 4901-1. Otherwise, the Commission "would be authorizing attorneys to ignore local rules and, hence, defeat their purpose."[36]

Here, HDS failed to preserve the procedural arguments it makes in its Application for Rehearing. Under Ohio Admin Code. 4901-1-15, HDS could have either filed an interlocutory appeal or it could have simply raised its evidentiary hearing concerns as a distinct issue in its briefs prior to the Commission issuing its Opinion and Order. HDS did neither of these things. HDS waived these arguments and they should be rejected on these bases alone.

Additionally, a review of the transcript in this case demonstrates the Attorney Examiner properly excluded the evidence that HDS complains about in its Application for Rehearing. Columbia made appropriate objections that the Attorney Examiner sustained.

For example, HDS complains about denying a motion to admit responses to Complainant's request for production of documents, including that the Attorney Examiner failed to permit HDS to call Columbia witnesses as upon cross examination to authenticate the documents.[37] Counsel for HDS simply claimed the documents were impliedly authenticated because they were produced by Columbia.[38] The Attorney Examiner properly excluded those documents as counsel for HDS failed to lay any foundation or authenticate the documents with any Columbia witness (or otherwise) as to what those documents were or what they contained. Further, counsel for HDS failed to remedy this defect with Columbia witnesses when they appeared on the stand (after the motion had originally been denied). A proper foundation or authentication was never performed by counsel for HDS even though the opportunity existed when Columbia witnesses took the stand at the proper time. The Attorney Examiner made the correct ruling and HDS' incorrect arguments should be denied.

Additionally, HDS claims the Attorney Examiner erred when rebuttal testimony from HDS was not permitted.[39] HDS cites no rule or other requirement that

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[36] *Moon v. Northwest Airlines, Inc.* (June 13, 2000), Franklin App. No. 99AP-1104, 2000 Ohio App. LEXIS 2503.

[37] Application for Rehearing at 8.

[38] Tr. at 96-97.

[39] Application for Rehearing at 8.

rebuttal testimony be permitted at hearing. The Attorney Examiner correctly found that rebuttal testimony in this instance, from a fact witness, was unnecessary as HDS had ample opportunity to present its case and the proposed rebuttal testimony would have been unnecessarily cumulative.[40] The Attorney Examiner's ruling was also correct as it prevented Columbia from being prejudiced by HDS' failure to put all of its testimony into its pre-filed testimony and therefore defeat the purpose of pre-filed testimony.[41] Finally, the Attorney Examiner did not explicitly say rebuttal testimony would be permitted. HDS failed to establish it needed rebuttal testimony to rebut anything a Columbia witness testified about in this case and therefore HDS did not meet the criteria the Attorney Examiner was looking for to allow rebuttal testimony.[42] The Commission should similarly reject HDS' arguments about rebuttal testimony in this case.

The Attorney Examiner's rulings ensured a fair process and a hearing consistent with Commission practice that did not prejudice HDS or Columbia. The Commission should deny the Application for Rehearing.

CONCLUSION

For the reasons described herein, the Commission should deny the Application for Rehearing in its entirety.

[40] Tr. at 162; see also Ohio Admin. Code 4901-1-27(B)(7)(b) and (c).

[41] Tr. at 15-16.

[42] Tr. at 16. ("If you want to be able to rebut what another witness says after Mr. Clark has put on his case, you can bring a witness forward for rebuttal testimony.")

Respectfully submitted by,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 1st day of July, 2016 upon the parties listed below.

/s/ Joseph M. Clark
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Summary: Memorandum Contra to the Application for Rehearing of Harris Design Services electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.