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IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE COMPLAINT OF HARRIS DESIGN SERVICES,	:	
Appellant,	:	Case No. 17-0436
v.	:	Appeal from the Public Utilities Commission of Ohio,
PUBLIC UTILITIES COMMISSION OF OHIO,	:	Case No. 15-405-GA-CSS
And	:	
COLUMBIA GAS OF OHIO, INC.,	:	
Appellees.	:	

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NOTICE OF APPEAL BY HARRIS DESIGN SERVICES

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NOTICE OF APPEAL

Pursuant to ORC Sections 4903.11 and 4903.13, Harris Design Services (HDS) hereby gives notice that it is appealing the Public Utilities Commission of Ohio's (PUCO) Opinion and Order, and Second Entry on Rehearing, in *In the Matter of the Complaint of Harris Design Services v. Columbia Gas of Ohio, Inc.,* Case No. 15-405-GA-CSS. Copies of the Opinion and Order, entered May 25, 2016, and the Second Entry on Rehearing, entered February 1, 2017, are attached hereto and incorporated by reference herein.

The foregoing findings, conclusions and orders of the PUCO, reflect the following errors:

1. The PUCO's failure or refusal to give and/or provide a notice of rehearing to HDS, after having granted HDS a rehearing in its Entry on Rehearing, entered on July 20, 2016, was unreasonable, unlawful, in violation of ORC Section 4903.10, and in violation of HDS' due process rights under the Ohio and United States constitutions. *See, e.g,. Diso v. Dept. of Commerce,* 2012-Ohio-4672, 985 N.E.2d 517 (Ct. App., 5th Dist., 2012)
2. The PUCO's failure or refusal to hold and/or conduct a rehearing pursuant to ORC Section 4903.10, at any time from the date of its Entry on Rehearing, entered on July 20, 2016 (which granted HDS a rehearing), up to and including the date of its Second Entry on Rehearing, entered on February 1, 2017, was unreasonable, unlawful, in violation of ORC Section 4903.10, in violation of OAC 4901-1-27, and in violation of HDS' due process rights under the Ohio and United States constitutions. *Cf. State ex rel. Consumers' Counsel v. Pub. Util. Comm.,* 102 Ohio St.3d 301, 303 (2004).

3. The PUCO's finding, conclusion and order that HDS failed to carry its burden of proof to show that Columbia Gas of Ohio, Inc. ("CGO") violated and/or failed to comply with Ohio Revised Code Sections 4905.26 and/or 4905.22 was unreasonable and/or unlawful.
4. The PUCO's finding, conclusion and order that CGO provided adequate and reasonable notice to HDS that gas service to its property had been disconnected is unlawful and/or unreasonable, because:

A. The PUCO placed undue and erroneous reliance on the testimony of CGO employee Ryder Long and erroneously disregarded or improperly discounted the testimony of HDS' witnesses.

B. CGO's alleged placing of a paper tag notice of a gas shut-off on the outside front door of HDS' property is legally insufficient and not adequate notice of a disconnection after an emergency repair, especially where, as in this case, CGO was fully aware at the time of the gas shut-off that HDS' property was vacant.

C. CGO's claim that it complied with state and federal regulations regarding the type and manner of notice to be provided to a property owner in the event of a gas shut-off is not dispositive of whether the paper tag notice allegedly given to HDS in this case is unlawful and/or unreasonable under Ohio Revised Code Sections 4905.26 and/or 4905.22.

D. The use of a certain type of gas shut-off notice by CGO over a lengthy period of time is not dispositive of, or even relevant to, the question of whether the

paper tag notice allegedly given to HDS in this case was legally sufficient given the facts and circumstances of this case.

E. Gas bills sent to customers showing zero consumption of natural gas in the case of vacant property is not legally sufficient notice of a gas shut-off to a property owner, as there are many unrelated reasons for a zero consumption level, and especially where, as in this case, CGO was fully aware at the time of the gas shut-off that HDS' property was vacant, and the billing statements sent to HDS continued to bill HDS a fixed monthly amount.

5. The PUCO's finding, conclusion and order to exclude certain testimonial and documentary evidence offered by Appellant Complainant at the hearing of this case was unlawful and/or unreasonable.

For each of the foregoing reasons, Appellant, Harris Design Services, respectfully requests that the Court reverse the PUCO's orders and remand this case for further proceedings as required and/or mandated by law.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing Notice of Appeal was served upon the following individuals this 29th day of March, 2017, via ordinary mail and/or electronic service:

Brooke E. Leslie
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The undersigned hereby further certifies that a copy of the foregoing Notice of Appeal was served upon the Chairman of the Public Utilities Commission of Ohio, Asim Z. Haque, at 180 East Broad Street, Columbus, Ohio 43215, on this 29th day of March, 2017 via ordinary US mail.

Grant A. Wolfe (0015309)
Attorney for Appellant

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal was filed with the Public Utilities Commission of Ohio's Docketing Division on this 29th day of March, 2017.

Grant A. Wolfe (0015309)
Attorney for Appellant

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF HARRIS DESIGN SERVICES,

COMPLAINANT,

v.

CASE NO. 15-405-GA-CSS

COLUMBIA GAS OF OHIO, INC.,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on May 25, 2016

I. SUMMARY

{¶ 1} The Commission, having considered the complaint filed by Harris Design Services and the evidence admitted at the hearing, hereby issues its Opinion and Order, finding that this matter should be decided in favor of Columbia Gas of Ohio, Inc. for failure of Harris Design Services to sustain the burden of proof.

II. PROCEDURAL HISTORY

{¶ 2} On February 25, 2015, Harris Design Services (HDS) filed a complaint against Columbia Gas of Ohio, Inc. (CGO or Company). HDS states property it owns was damaged when CGO turned off gas service to the property without notice. HDS asserts its property was vacant in August 2013 when CGO began construction work on adjacent property. According to HDS, in December 2013, the property did not have any issues and the furnace was running. HDS says it checked on the property again in February 2014 after receiving an unusually high water bill and found significant water damage due to frozen pipes that burst. According to HDS, a technician from CGO investigated the property in April 2014, and informed HDS that the gas line was struck during construction at the adjacent property and CGO interrupted the gas service at that time. HDS avers it received

no notice of any interruption of service and that, when it contacted CGO, the Company denied interrupting the gas service.

{¶ 3} CGO filed its answer to the complaint on March 17, 2015. CGO denies the allegations and states that the Commission is not authorized to award the damages sought by HDS. CGO avers service was physically disconnected on September 16, 2013, to repair facility damage and it was unable to gain access inside to reconnect the property in September and November 2013. CGO states HDS has maintained an active natural gas account, has received regular billing statements, and has been registering zero consumption since the June 25, 2013 billing statement. CGO denies that its construction caused the damage and also denies that HDS received no notice of the interruption of service.

{¶ 4} A settlement conference was held on April 17, 2015; however, the parties were unable to resolve this matter. A hearing was held on October 30, 2015. Both parties filed initial briefs on January 13, 2016, and reply briefs on February 3, 2016.

III. APPLICABLE LAW

{¶ 5} CGO is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in 4905.02 and, as such, is subject to the jurisdiction of this Commission. Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory. In addition, R.C. 4905.22 requires, in part, that a public utility furnish necessary and adequate service and facilities.

{¶ 6} In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

IV. SUMMARY OF THE EVIDENCE AND ARGUMENTS

{¶ 7} HDS, an architectural firm, leased property on Stelzer Road in Columbus, Ohio from December 1997 to February 2014. Since November 2007, the property was vacant. In September and November of 2013, CGO completed emergency repairs to service lines near the property, which required CGO technicians to shut off service to HDS's property. CGO would need to enter the premises to restore service safely. In February 2014, HDS encountered property damage on the premises due to pipes that burst from freezing temperatures.

A. *Argument of HDS*

{¶ 8} HDS asserts that CGO failed to give sufficient notification that gas service to the premises was disconnected. In doing so, HDS contends CGO violated R.C. 4905.22, which requires utilities to provide adequate, just, and reasonable service.

{¶ 9} Bruce Harris, president and chief executive officer of HDS, testified that on February 7, 2014, he entered the back door of the HDS property and found the water pipes had burst due to freezing temperatures, causing extensive property damage (HDS Ex. 44 at 6-10). Mr. Harris and his wife, Janet Harris, both testified that they were unaware gas service was shut off to the property at the time. Although the property was vacant since 2007, Mr. and Mrs. Harris stated they regularly inspected and kept up the property. (HDS Ex. 44 at 6-8; HDS Ex. 45 at 7.) HDS notes that CGO technician Ryder Long testified he repaired the gas line to the property on September 16, 2013, and November 15, 2013, which required him to shut off gas service to the property (CGO Ex. 1 at 2). While Mr. Long said tags were placed on the door after both repairs, Mrs. Harris said she completed regular checks of the property, driving by the premises at least monthly, and did not notice any door tags (HDS Ex. 45 at 16). Further, Mr. Harris averred that he was inside the property in December 2013 and he did not notice any door tags nor whether the property was not being heated, although the weather that day was mild (HDS Ex. 44 at 8-9). HDS's landscaper, Michael Ricciardi, testified that, through mid-November 2013, he was at the

property weekly to bi-weekly to mow the lawn and did not recall seeing any tags on the door (Tr. at 68-69).

{¶ 10} According to HDS, leaving door tags is not a reasonable method to signal to property owners that gas service is disconnected. HDS asserts CGO sends more effective and reasonable notice when it mails warnings to customers prior to a disconnection for nonpayment and when CGO mails a follow-up notice after it shuts off a defective appliance in a home (Tr. at 148-149, 152-153). HDS also notes that CGO is changing its *notification system to include both follow-up calls and mailings when a customer does not* immediately respond to door tags (CGO Ex. 3 at 3). Door tags are especially inadequate, argues HDS, when a utility is aware a property is vacant. Here, HDS avers CGO's technician, Mr. Long, knew the premises were vacant when he placed the tag from the November 2013 repair on top of the September 2013 repair tag. HDS also downplays CGO's assertion that the billing notice functions as a reasonable and adequate notice that service was disconnected. HDS states that a billing notice showing zero consumption is neither indicative that gas service was shut off nor reasonable notice of a shut-off.

B. Argument of CGO

{¶ 11} CGO asserts that, when it disconnected gas service to the HDS property, it provided adequate and reasonable notice that complies with all regulations and standards. Mr. Long, a CGO technician, testified that, after he completed emergency repairs on the gas line on September 16, 2013, he knocked on the door to attempt to inform the property owners in person that, for safety reasons, gas service was disconnected. When that was unsuccessful, he stated he was going to place a tag on the door, but noticed another CGO technician, who arrived before him that day, had already placed a tag. Mr. Long stated he repeated the same process when he did another emergency repair on November 15, 2013. As before, no one answered the door and, this time, he said he placed a new door tag on top of the old door tag. (CGO Ex. 1 at 2.) CGO avers this is standard practice for the utility and that it has been providing notification in such fashion for decades (CGO Ex. 2 at 2).

CGO contends it complied with its internal gas standards, which require a tag to be left on the property if the customer is unavailable (CGO Ex. 2, Attach. B). According to CGO, it is required by federal law to abide by its internal gas standards; further, the Commission has adopted this federal requirement, pursuant to Ohio Adm.Code 4901:1-16-03(A). Additionally, CGO asserts that Commission rules approve of door tags as appropriate notice of a gas disconnection. CGO points to Ohio Adm.Code 4901:1-13-09(B)(2) and 4901:1-19-06(A)(2) which require written notice to be posted in a conspicuous place when gas is disconnected because of tampering or nonpayment, respectively. (CGO Ex. 2 at 2.) CGO contends that, by placing a notice on the door, it fulfilled the conspicuous placement requirement.

{¶ 12} CGO further states HDS failed to show that the notice was not conspicuous or did not occur. Although Mrs. Harris testified to regular inspections, CGO remarks that the inspections were often cursory drive-by inspections at unspecified times (HDS Ex. 45 at 7). Regarding the observations of the landscaper, Mr. Ricciardi, CGO notes he was only tasked with working on the outside of the property and that his work concluded by mid-November 2013 (Tr. at 80-81). Further, CGO points out Mr. Harris only had one visit to the property during the relevant timeframe (HDS Ex. 44 at 7). CGO also avers that the monthly billing statements sent to HDS from September 2013 to February 2014 showing zero gas consumption should have indicated to HDS that the gas was disconnected (CGO Ex. 3 at 2; Tr. at 136-137). According to CGO, the utility did provide adequate notice of the disconnection, but HDS did not sufficiently monitor its property or its billing statements.

V. COMMISSION CONCLUSION

{¶ 13} The Commission finds that CGO provided adequate and reasonable notice that gas service was disconnected to the HDS property. HDS argues two issues: first, that CGO failed to provide any notice that the gas was disconnected; second, even if CGO placed tags on the door of the property, such notice is inadequate and unreasonable. Regarding the first issue, we find HDS failed to sustain its burden of proof to show that

CGO did not provide notice of the disconnection. In his testimony, Mr. Long specifically recalled both the September and November 2013 emergency repairs and specifically recalled disconnection tags being placed on the door on both occasions. Although HDS argues it is improbable Mr. Long remembers a particular repair job from over two years ago, we note Mr. Long recalled explicit details from both instances. Of particular note, he recalled that, at the September 2013 repair, a yellow tag was already placed on the door by another technician, and that, in November 2013, the same tag was still on the door. (CGO Ex. 1 at 2; Tr. at 103-114.) The Commission does not find the testimonies of the three HDS witnesses compelling enough to controvert Mr. Long's specific recollection. Mrs. Harris testified she only observed the property on indeterminate dates, primarily just by driving past the premises (HDS Ex. 45 at 7). Mr. Ricciardi only worked outside of the property, never approaching the door, and stopped going to the premises in mid-November 2013 (Tr. at 80-81). While Mr. Harris entered the property in December 2013, it is unknown whether he came in through the front or rear door, and when he entered in February 2014, it was through the rear door (HDS Ex. 44 ay 8-9). Thus, we find that CGO did place disconnection notices on the property in September and November 2013.

{¶ 14} We also find placing a notice on the door is adequate notice of a disconnection after an emergency repair and that CGO complied with all standards and regulations. Ohio Adm.Code 4901:1-16-03(A), in adopting the federal gas pipeline safety regulations, requires a utility to comply with its own internal gas standards. CGO's Gas Standard 6500.130(OH) requires a technician to leave a notification tag at the premises when the customer is not at home and the gas service must be shut off (CGO Ex. 2, Attach. B). By placing a tag on the door after both emergency repairs, CGO complied with its standards. As CGO stated, it has been notifying customers in this manner for decades (CGO Ex. 2 at 2). We further note that posting written notice of a disconnection in a conspicuous place is the required form of notification when gas is disconnected for other reasons when the consumer is not present. When gas is disconnected because of tampering, Ohio Adm.Code 4901:1-13-09(B)(2) requires a utility to "attach a prominent

written notice to a conspicuous place on the premises." Similarly, when there is a disconnection due to nonpayment, Ohio Adm.Code 4901:1-18-06(A)(2) states a utility must "attach written notice to premises in a conspicuous location." Here, CGO placed colored tags on the door handle of the front entrance to the property, a conspicuous place. Whether CGO knew or should have known the premises were vacant, as HDS argues, does not alter that CGO provided reasonable notice that the gas was turned off. Additionally, as HDS points out, though vacant, the property was never abandoned or neglected and HDS avers it took regular care to monitor the property (HDS Br. at 6; HDS Ex. 45 at 7). HDS also continued to receive regular billing statements from CGO, which demonstrated zero gas consumption after the repairs (CGO Ex. 3 at 2). Thus, we find CGO's service was adequate, just, and reasonable, and in compliance with its internal gas standards and R.C. 4905.22. Accordingly, we find the complaint of HDS should be denied.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 15} CGO is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 16} HDS filed a complaint against CGO on February 25, 2015, alleging that CGO failed to provide adequate notification that gas service was turned off.

{¶ 17} CGO filed its answer to the complaint on March 17, 2015, denying the allegations contained in the complaint.

{¶ 18} A settlement conference was held on April 17, 2015; however, the parties were unable to resolve this matter.

{¶ 19} A hearing was held on October 30, 2015.

{¶ 20} Initial briefs were filed on January 13, 2016, and reply briefs were filed on February 3, 2016.

{¶ 21} The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 22} The Commission finds 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 or regulations of the Commission.

VII. ORDER

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That this matter be decided in favor of CGO for failure of HDS to sustain the burden of proof. It is, further,

{¶ 25} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

Commissioners Voting: Asim Z. Haque, Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.

NW/vrm

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
HARRIS DESIGN SERVICES,

COMPLAINANT,

V. CASE NO. 15-405-GA-CSS

COLUMBIA GAS OF OHIO, INC.,

RESPONDENT.

ENTRY ON REHEARING

Entered in the Journal on July 20, 2016

I. SUMMARY

{¶ 1} In this Entry on Rehearing, the Commission grants the application for rehearing filed by Harris Design Services for the limited purpose of further consideration of the matters specified in the application for rehearing.

II. DISCUSSION

{¶ 2} Columbia Gas of Ohio, Inc. (CGO) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in 4905.02 and, as such, is subject to the jurisdiction of this Commission. Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 3} On February 25, 2015, Harris Design Services (HDS) filed a complaint against CGO. HDS stated property it owns was damaged when CGO turned off gas service to the property without proper notice.

{¶ 4} CGO filed its answer to the complaint on March 17, 2015, denying the allegations in the complaint.

{¶ 5} A hearing was held on October 30, 2015.

{¶ 6} On May 25, 2016, the Commission issued an Opinion and Order finding in favor of CGO for failure of HDS to meet its burden of proof.

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 8} On June 24, 2016, HDS filed an application for rehearing in this case. Thereafter, on July 1, 2016, CGO filed a memorandum contra the application for rehearing.

{¶ 9} The Commission finds that the application for rehearing filed by HDS should be granted for the limited purpose of further consideration of the matters specified in the application for rehearing. We find that sufficient reason has been set forth by HDS to warrant further consideration of the matters raised in the application.

III. ORDER

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the application for rehearing filed by HDS be granted for further consideration of the matters specified in the application. It is, further,

{¶ 12} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

NW/vrm

Entered in the Journal

JUL 20 2016

Barcy F. McNeal

Barcy F. McNeal
Secretary

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
HARRIS DESIGN SERVICES,

COMPLAINANT,

V. CASE NO. 15-405-GA-CSS

COLUMBIA GAS OF OHIO, INC.,

RESPONDENT.

SECOND ENTRY ON REHEARING

Entered in the Journal on February 1, 2017

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Harris Design Services.

II. APPLICABLE LAW

{¶ 2} Columbia Gas of Ohio, Inc. (CGO) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in 4905.02 and, as such, is subject to the jurisdiction of this Commission. Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 3} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

III. PROCEDURAL HISTORY

{¶ 4} On February 25, 2015, Harris Design Services (HDS) filed a complaint against CGO. HDS stated property it owns was damaged when CGO turned off gas service to the property without proper notice. CGO filed its answer to the complaint on March 17, 2015, denying the allegations in the complaint. A hearing was held on October 30, 2015. Initial briefs were filed on January 13, 2016, and reply briefs were filed on February 3, 2016.

{¶ 5} On May 25, 2016, the Commission issued an Opinion and Order (Order) finding in favor of CGO for failure of HDS to meet its burden of proof.

{¶ 6} On June 24, 2016, HDS filed an application for rehearing in this case. Thereafter, on July 1, 2016, CGO filed a memorandum contra the application for rehearing. On July 20, 2016, the Commission granted the application for rehearing for the limited purpose of further consideration of the matters specified in the application.

IV. DISCUSSION

{¶ 7} In its application for rehearing, HDS argues several assignments of error with respect to the Commission's Order. We have reviewed and considered all of the arguments raised in HDS's application and address them below. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

A. Reliability of Witnesses

{¶ 8} HDS argues that the Commission erred in finding that CGO provided adequate and reasonable notice to HDS that its gas service was disconnected. In doing so, HDS contends the Commission improperly relied on the testimony of CGO witness Ryder Long over the testimony of HDS's witnesses. At the hearing, Mr. Long testified to making two separate service calls to the HDS property and that tags were left on the door after both visits. HDS argues his testimony is not credible, as Mr. Long could not recall certain details such as the exact time of day he was on the premises or other service jobs he completed on

the same road. Further, HDS states it is unreasonable to believe that Mr. Long could remember details of specific service calls from two years prior. Conversely, HDS avers it submitted three credible witnesses that did not recall seeing tags on the door during regular visits to the property.

{¶ 9} In its memorandum contra, CGO states that HDS's application for rehearing on this issue should be denied. CGO states Mr. Long was a credible witness who was able to recall precise details about both service calls and demonstrated that CGO provided appropriate notice to HDS. Regarding the testimonies of HDS's witnesses, CGO states their recollections were vague, incomplete, and lacked specificity. Thus, CGO contends the Commission gave the witnesses' testimonies the appropriate weight.

{¶ 10} HDS's application for rehearing on this issue has no merit and should be denied. In its application, HDS does not raise a new argument and the Commission has consistently found that applications for rehearing that rely upon previously raised arguments should be denied. *In re Karl Friederich Jentgen, et al.*, Case No. 15-245-EL-CSS, Entry on Rehearing (Dec. 7, 2016) at ¶8; *In re Buckeye Energy Brokers*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at 12; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 09-872-EL-FAC, et al., Fourth Entry on Rehearing (July 2, 2012) at 5-6. The credibility of the witnesses was brought up by HDS in hearing and in brief and it was thoroughly addressed by the Commission in its Order. In the Order, we stated that we "[do] not find the testimonies of the three HDS witnesses compelling enough to controvert Mr. Long's specific recollection." In doing so, we noted the explicit details that Mr. Long remembered from both events that gave his testimony credibility. We found this outweighed the passive recollections of HDS's witnesses, which, as described in the Order, lacked specificity. (Order at ¶13.) Therefore, although HDS does not raise a new argument, we find the Order appropriately considered the testimonies of all witnesses.

B. Adequate Notice of Gas Service Shut-off

{¶ 11} HDS next submits that the Commission unreasonably found that CGO's placement of a door tag was adequate notice that gas service was being shut off. HDS asserts that, in other circumstances surrounding a gas shut-off, CGO provides separate written notices to customers. Further, as CGO is changing its notice procedure, HDS avers that this is an acknowledgment by CGO that it knows its current notification system is ineffective. Additionally, HDS argues that CGO should have known the property was vacant and this should have alerted CGO to provide additional notice. HDS contends that, when Mr. Long placed the tag from the November 2013 repair on top of the September 2013 repair tag, it should have indicated to him that the property was vacant and CGO should have taken additional steps to provide notification. Because of this, HDS submits that the Commission erred in finding that CGO provided sufficient notice to HDS regarding its gas service.

{¶ 12} In reply, CGO disagrees with HDS and states the Commission was correct in finding that it provided reasonable notice. CGO states that providing notification via door tags has been its standard practice for decades and is compliant with its gas standards. Further, in the instances where CGO provides additional written notification, CGO states it is required to do so by Commission rules.

{¶ 13} The Commission denies HDS's application for rehearing on this issue. Again, HDS does not raise an argument that was not already addressed in the Order. In the Order, we found that placing a notice on the door is adequate notice of a disconnection after an emergency repair. In doing so, we also found that CGO complied with its internal gas standards and all regulations. Additionally, we noted that placing written notice in a conspicuous place, as CGO did here, is the required form of notice for gas companies in other, similar situations. Ohio Adm.Code 4901:1-13-09(B)(2) and 4901:1-18-06(A)(2). Thus, because this argument was already addressed and because we properly found that CGO provided reasonable notice, our Order is affirmed. (Order at ¶14.)

C. Rebuttable Presumption and Ohio Adm.Code 4901:1-13-02(F)

{¶ 14} HDS further contends that CGO wrongly asserted its compliance with state and federal regulations demonstrates that CGO provided adequate notice. HDS states that CGO, relying on Ohio Adm.Code 4901:1-13-02(F), alleges that, because CGO complied with its service standards, there is a rebuttable presumption that it provided adequate notice. According to HDS, the rebuttable presumption, in this situation, does not apply. HDS argues that, in complaints regarding adequacy of service to individual customers, the rebuttable presumption does not apply.

{¶ 15} CGO counters that HDS's argument should be denied as the Commission did not need to address the rebuttable presumption standard in Ohio Adm.Code 4901:1-13-02(F). CGO submits that HDS did not meet its burden of proof and the Commission found CGO provided reasonable and adequate notice; thus, there is no reason for the Commission to address the rebuttable presumption. CGO further states, however, that its compliance with standards does create a rebuttable presumption and the presumption is important for gas companies in order for companies to know the Commission considers their standards adequate.

{¶ 16} HDS's application for rehearing on this issue is denied. We first note that HDS does not allege an error in the Commission's Order, but instead solely focuses on CGO's argument in brief. In the Order, we did not address whether there was a rebuttable presumption; rather, we found that CGO did provide adequate notice and that HDS did not meet its burden of proof to demonstrate otherwise. Specifically, we found that CGO placed written notices on the front door of the premises on two separate occasions and, in doing so, provided adequate and reasonable notice that gas service was shut off. In supplying such notice, we found CGO furnished adequate service, as required by R.C. 4905.22. Additionally, we also found CGO was compliant with its own internal gas standards and, thus, was compliant with Ohio Adm.Code 4901:1-16-03(A).

D. Ability of Gas Bill to Serve as Notice

{¶ 17} In its next argument, HDS avers gas bills showing zero consumption are not sufficient notice that gas service was shut off. HDS states CGO incorrectly argued that HDS's gas bill showing it did not consume any gas served as sufficient notice that service was shut off. According to HDS, there is no language on the bill stating that a zero consumption level may indicate that service was shut off. HDS contends its standard monthly billing charge makes it less likely that it would notice the consumption level. Further, HDS argues there are multiple reasons why a customer could register zero consumption.

{¶ 18} In its memorandum contra, CGO asserts that it is irrelevant whether the bill served as notice because the Commission found that adequate service was provided by the door tags. However, CGO states its billing statements are a key communication tool with its customers, and there should be an expectation that customers review their bills.

{¶ 19} The Commission finds no merit in HDS's argument. Again, HDS does not allege error in the Commission's Order, but instead asserts CGO's argument was flawed. In the Order, we specifically stated "placing a notice on the door is adequate notice of a disconnection after an emergency repair." Thus, while we noted that HDS did receive bills demonstrating that its property was not consuming any gas, it was not our reason for finding that HDS received adequate and reasonable notice. (Order at ¶14.)

E. Procedural Issues

{¶ 20} In its next assignment of error, HDS states the attorney examiner wrongfully excluded testimony and evidence from the record. According to HDS, the attorney examiner unreasonably excluded documents from evidence, ruling that they had not been properly authenticated. HDS further asserts the attorney examiner refused to allow HDS to call CGO's witnesses as upon cross-examination during HDS's case-in-chief. HDS avers

those witnesses could have authenticated the documents. Additionally, HDS contends the attorney examiner erred in not permitting HDS to recall its witnesses for rebuttal testimony.

{¶ 21} CGO requests that HDS's application on this issue be denied. CGO first submits that HDS's argument is moot, as procedural issues are to be raised either via an interlocutory appeal or in a post-hearing brief. Thus, because HDS did not file an interlocutory appeal or argue the issue in its post-hearing brief, CGO states HDS has waived its argument on these issues. CGO further argues that the attorney examiner's rulings were correct. Regarding the documents denied from evidence, CGO asserts that HDS did not lay any foundation and they were properly excluded. CGO also affirms that HDS still had an opportunity to cross-examine CGO's witnesses and could have attempted to lay a foundation at that time. Additionally, CGO contends the attorney examiner correctly did not permit HDS to present rebuttal testimony. First, CGO argues the ability to present rebuttal testimony is discretionary and not required. Moreover, CGO affirms it would have been prejudiced if HDS presented evidence that should have been introduced in the prefiled direct testimony. Therefore, CGO concludes the attorney examiner's ruling was proper and should be affirmed.

{¶ 22} The Commission finds that HDS's request for rehearing on this issue is improper and should be denied. Pursuant to Ohio Adm.Code 4901-1-15, a party who is adversely affected by an oral ruling in a hearing must either file an interlocutory appeal within five days or raise the issue on brief prior to the issuance of the Commission's opinion and order. Here, HDS did neither.

{¶ 23} Notwithstanding, HDS's argument otherwise lacks merit. First, we find the attorney examiner's decision to exclude certain documents was within his discretion and proper. We note that HDS did not attempt to introduce the documents until the conclusion of its case-in-chief and did so without laying any foundation (Tr. at 96-97). HDS's argument that it was harmed by its inability to call CGO witnesses as if on cross-examination is unpersuasive. The attorney examiner, pursuant to Ohio Adm.Code 4901-1-27, may, without

limitation, determine the order in which parties shall present testimony and the order in which witnesses shall be examined. Additionally, the attorney examiner may take actions to avoid delay, prevent the presentation of cumulative evidence, prevent repetitious cross-examination, and assure the hearing proceeds in an orderly and expeditious manner. Here, HDS intended to call CGO's witnesses in its case-in-chief, as if on cross-examination, even though the direct testimony of the witnesses was already prefiled. While the attorney examiner rightfully did not permit HDS to question the witnesses at that time, HDS was still able to cross-examine the same witnesses during CGO's defense and, appropriately, after their direct testimonies were introduced into the record. (Tr. at 9-10.) Additionally, HDS could have used that opportunity to introduce the excluded documents and lay a proper foundation or have the witnesses authenticate the documents. Similarly, we also find the attorney examiner's decision to deny rebuttal testimony was appropriate and within his discretion. Initially, we note the attorney examiner's July 13, 2015 Entry required all direct testimony to be prefiled seven days in advance of the hearing. At the hearing, the attorney examiner appropriately denied HDS's attempt to expand its witnesses' direct testimony. While the attorney examiner noted that HDS could later bring forward a rebuttal witness, no formal request or determination was made at that time. (Tr. at 16.) The attorney examiner's decision to deny the rebuttal witness was appropriate, as the testimony was likely to be unnecessarily cumulative. Thus, HDS's application for hearing on this issue should be denied.

F. Burden of Proof

{¶ 24} Finally, HDS argues the Commission erred in finding that HDS failed to meet its burden of proof. Referring back to its arguments in brief, HDS asserts the Commission's findings were erroneous, unreasonable, unlawful, and/or unjust.

{¶ 25} CGO requests the Commission reaffirm its finding that CGO provided adequate and reasonable notice and that HDS failed to meet its burden of proof. According to CGO, the Commission correctly weighed the evidence and found that CGO complied

with all regulations and service standards. CGO further avers that the Commission properly found that CGO provided adequate and reasonable notice to HDS that its gas service was shut off. Thus, CGO states the Commission should deny HDS's application for rehearing on this issue.

{¶ 26} The Commission's finding that HDS failed to meet its burden of proof is affirmed and HDS's application for rehearing is denied. As previously stated, the Commission has consistently found that applications for rehearing that rely upon previously raised arguments should be denied. Here, HDS attempts to reiterate all of its previous arguments by incorporating by reference its post-hearing brief. As described above, in ruling that CGO did provide written notice to HDS, on two separate occasions, we explained why we found the testimony of CGO witness Mr. Long more compelling than the testimonies of the HDS witnesses (Order at ¶13). In the Order, we also thoroughly examined why placing written notice in a conspicuous place constitutes reasonable and adequate notice and, thus, complies with R.C. 4905.22 (Order at ¶14). Upon a rereading of HDS's post-hearing brief, we continue to find it unpersuasive. Accordingly, HDS's application for rehearing is denied.

V. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the application for rehearing filed by HDS be denied. It is, further,

{¶ 29} ORDERED, That a copy of this Second Entry on Rehearing be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

NW/vrm

Entered in the Journal

FEB 01 2017

Barcy F. McNeal
Secretary