BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

The German Village Society, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 17-1298-GA-CSS
	)	
Columbia Gas of Ohio, Inc.,	)	
	)	
Respondent.	)	

MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC. TO MOTION TO ENJOIN THE RESPONDENT OF THE GERMAN VILLAGE SOCIETY

1. INTRODUCTION

This complaint case relates to a natural gas line replacement project in Columbus' German Village neighborhood that began on May 18, 2017 and is expected to be completed in August.[1] The current phase of the project will replace main lines on S. High St., S. Pearl St., City Park Ave., W. Livingston St., E. Blenkner St., E. Hoster St., E. Beck St., and E. Willow St.[2] The gas pressure in the replaced mains "will increase from low to medium * * *, requiring the installation of regulators to decrease the medium pressure back down to low prior to entering [each] home or business * * * ."[3] And, where structures with service lines connected to the replaced mains have inside natural gas meters, Columbia in-

[1] *See, e.g.*, Complaint Attachment F.

[2] *See id.* The High Street part of the project is outside the boundaries of German Village and, therefore, is (presumably) unaffected by the German Village Society's request for injunctive relief. *See* Complaint ¶ 13 (describing Pearl Street as the western boundary of German Village).

[3] German Village Society, Stop Exterior Placement of Gas Meters on Historic Properties, Update 4/10/2017, https://germanvillage.com/stop-exterior-placement-gas-meters-historic-properties/. *See also* Affidavit of Michael Schwieterman ("Schwieterman Affidavit") ¶ 2 (Exhibit A).

tends to move those meters to the safest location in accordance with Columbia's gas standards and tariff.[4]

Moving the meters outside does not require the approval of the City of Columbus Historic Preservation Office, as the German Village Society concedes.[5] But the German Village Society ("the Society"), a non-profit civic association and educational and advocacy organization,[6] asserts that the meter move-outs should not move forward without its approval. On behalf of itself and the small fraction (82) of German Village residents that it claims to represent,[7] the Society seeks, among other relief, a preliminary injunction preventing Columbia from continuing the gas meter move-out "during the pendency of this proceeding,"[8] however many months or years that may take. In the long run, the Society also seeks a Commission order instructing Columbia to "move as many existing outdoor meters to the inside of as many structures as possible."[9]

Columbia respectfully requests that the Commission deny the Society's motion for an indefinite preliminary injunction. The Ohio General Assembly did not give the Commission the authority to grant a preliminary injunction like the one the Society has requested. Instead, Ohio statute requires the Commission to file a civil action if it wishes to obtain injunctive relief. The Commission has not chosen to do so here.

Nor has the Society shown, with clear and convincing evidence, that it is entitled to the extraordinary remedy it seeks. Outside meter sets are not the hazards that the Society portray. Indeed, the U.S. Department of Transportation and the American Gas Association both recommend placing meters and regulators outside where possible. Although the Society appears particularly concerned about cars striking outside meter sets, there are (on average) only about 11 re-

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[4] *See* Schwieterman Affidavit ¶ 2.

[5] *See* German Village Society, Information and Talking Points: Exterior Placement of Gas Meters, https://germanvillage.com/information-talking-points-exterior-placement-gas-meters/. *See also Columbia Gas of Ohio, Inc. v. City of Columbus*, No. 2:09-cv-299, Opinion and Order, at 15 (S.D. Ohio Nov. 5, 2009) (holding that the Natural Gas Pipeline Safety Act "preempts the City's Building Code as applied to Columbia's meter relocation activities.").

[6] *See* Complaint ¶¶ 1-2.

[7] Complaint at 1 n.1, and Attachment A.

[8] *See* Complaint at 2 and ¶ 50.

[9] Complaint ¶ 55 (emphasis omitted).

portable "incidents" each year (based on 2010 to 2017 PHMSA data), across the entire United States, involving damage by a motorized vehicle not engaged in excavation and a service riser or outside meter / regulator set. Where vehicular damage to a meter set may be possible at a particular customer's residence, Columbia will work to either move the meter set further away from traffic or will install posts or barricades to protect the meter, as federal law requires.

Columbia understands the Society's aesthetic concerns about outside meter sets. Columbia has worked, and will continue to work, with homeowners to find unobtrusive outside locations for those sets, so long as the locations meet Columbia's safety standards and the meter sets remain immediately accessible to emergency first responders. Columbia is also willing to paint meter sets to make them less obtrusive, as individual customers may request. Columbia is also willing to plant bushes or shrubs to alleviate customer concerns about aesthetics. And if home- or business owners believe a meter setting is not being installed with the proper protections from vehicular traffic or the elements, or that an outside meter setting can be installed in a less obtrusive location or with less visual impact, Columbia is happy to address any such concerns.[10] But those concerns are best addressed on a customer-by-customer basis, not through the blunt instrument of a neighborhood-wide injunction sought by the Society.

For all of these reasons, as further explained below, Columbia Gas of Ohio, Inc., respectfully requests that the Commission deny the Society's motion for an unlawful, indefinite, Village-wide injunction against Columbia's safety-motivated meter move-outs, and allow Columbia, instead, to continue addressing any concerns about particular meter sets with the affected customers and property owners.

2. LAW AND ARGUMENT

2.1. The Commission is not authorized to grant injunctive relief prior to hearing, except for stays of disconnection.

As a preliminary matter, the Society's Motion assumes, without citation to any statute, regulation, Commission decision, or court opinion, that the Commission has the authority to grant preliminary injunctive relief in a complaint case. The Society is fundamentally mistaken.

[10] *See* Schwieterman Affidavit ¶ 8.

In a complaint case, the Commission may order a public utility to change its practices, improve or add to its facilities, or correct an alleged violation of the pipeline safety rules *only* after notice and a hearing. If a complaint filed under R.C. 4905.26 appears to set forth "reasonable grounds for complaint * * *, the commission shall fix a time for hearing * * * ."[11] After the hearing, if the Commission concludes that the public utility's "practices * * * are unjust or unreasonable, * * * the commission shall determine the regulations, practices, and service to be * * * observed * * * and shall fix and prescribe them by order * * *."[12] The Commission may also, after the hearing, order the public utility to make "repairs, improvements, or additions to [its] plant or equipment * * * to promote the convenience or welfare of the public * * * ."[13] Similarly, if the Commission believes an "operator" is violating the pipeline safety code, it must "provide reasonable notice [of the alleged violations] and the opportunity for a hearing."[14] "[A]fter the hearing[,]" the Commission may order the operator to "undertake corrective action necessary to protect the public safety * * * ."[15]

The Commission may not, however, issue an injunction before those required hearings take place. "Injunction is an extraordinary remedy equitable in nature,"[16] and the Commission lacks authority to award equitable relief.[17] The Commission specifically lacks authority to award injunctive relief. In an opinion reversing a Commission order that instructed a railroad to clear brush and weeds from its right-of-way, the Supreme Court of Ohio held that "[t]he General Assembly has granted the power of injunctive relief solely to the courts of Ohio. It has conferred no such right upon the Public Utilities Commission, and the com-

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[11] R.C. 4905.26.

[12] R.C. 4905.37.

[13] R.C. 4905.38.

[14] R.C. 4905.95(A).

[15] R.C. 4905.95(B).

[16] *Perkins v. Quaker City*, 165 Ohio St. 120, 133 N.E.2d 595 (1956), paragraph one of the syllabus. *See also Cementech, Inc. v. City of Fairlawn*, 109 Ohio St.3d 475, 2006-Ohio-2991, 849 N.E.2d 24, ¶ 10 ("An injunction is an extraordinary remedy in equity where there is no adequate remedy at law.").

[17] *Compare In the Matter of the Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Approval of a New Rider and Revision of Existing Rider*, Case No. 10-176-EL-ATA, Fifth Entry on Rehearing, ¶13 (Nov. 10, 2010) ("the Commission will reiterate that we lack jurisdiction to hear 'pure contract' claims, including * * * claims seeking equitable remedies.").

mission, in exercising such power, has exceeded its statutory jurisdiction."[18] The Commission has subsequently acknowledged that it "lacks jurisdiction to grant injunctive * * * relief * * *."[19]

If the Commission believes a public utility "is permitting anything or about to permit anything contrary to or in violation of law," statute authorizes it to ask the Ohio Attorney General to file a civil action seeking an injunction against the public utility.[20] And the Commission has similar options where a natural gas company is alleged to have violated the pipeline safety rules. If "the commission finds that an emergency exists due to a condition on an intrastate pipe-line transportation facility posing a clear and immediate danger to life or health or threatening a significant loss of property and requiring immediate corrective action to protect the public safety," statute authorizes the Commission to "direct the attorney general" to file a civil action seeking "a temporary restraining order or a preliminary or permanent injunction."[21] In neither circumstance, however, has the Ohio Legislature authorized the Commission to grant an injunction itself, without going through the Ohio Attorney General's office.

For these reasons alone, the Commission should deny the unlawful preliminary injunction that the Society requests. Only the courts, by action of the Commission, may grant the preliminary injunction the Society seeks here, and then only if the Ohio Attorney General files a civil action seeking that relief.

2.2. Regardless, the German Village Society has not justified a preliminary injunction in this matter.

The Society also has not demonstrated that the circumstances presented here would justify the extraordinary relief it requests. The purpose of a preliminary injunction "'is to preserve the status quo pending final determination of the matter.'"[22] However, enjoining Columbia from moving any natural gas meter outside, anywhere in German Village, would not preserve the status quo. Co-

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[18] *Penn Cent. Transp. Co. v. Pub. Utils. Com.*, 35 Ohio St. 2d 97, 101, 298 N.E.2d 587 (1973).

[19] *Dworkin v. East Ohio Gas Co.*, Case No. 88-1716-GA-CSS, Opinion and Order, 1990 Ohio PUC LEXIS 124, *2 (Jan. 30, 1990).

[20] R.C. 4905.60.

[21] R.C. 4905.95(C), R.C. 4905.96(A).

[22] *Thomson v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-782, 2010-Ohio-416, ¶ 24, quoting *Ohio Urology, Inc. v. Poll*, 72 Ohio App.3d 446, 454, 594 N.E.2d 1027 (1991).

lumbia has had outside meters in German Village for more than a decade.[23] And although the Society has known about the German Village infrastructure replacement project since at least last September,[24] it waited to file its Complaint and request an injunction until Columbia had already begun work on the current German Village project.[25] Thus, a preliminary injunction in this case would change the status quo, not preserve it.

The Society's Motion also does not meet the criteria for a preliminary injunction. "In determining whether a preliminary injunction is warranted, a trial court generally looks to four factors: (1) whether the evidence presents a substantial likelihood that plaintiff will prevail on the merits, (2) whether denying the injunction will cause plaintiff to suffer irreparable injury, (3) whether granting the injunction will cause third parties to suffer unjustifiable harm, and (4) whether the injunction will serve the public interest."[26] The party seeking the preliminary injunction must "show[ ] clear and convincing evidence of each element of the claim."[27] The Society has not met this heavy burden.

2.2.1. The German Village Society is unlikely to succeed on the merits.

Generally speaking, Columbia measures its customers' natural gas usage "by a meter installed by the Company, which * * * remain[s] the property of the Company."[28] Columbia chooses the "size and type" of meter that the Company "determine[s] will adequately serve the customer's requirements * * * ."[29] "Where service is provided from intermediate or medium pressure distribution lines," as it will be in German Village after the main replacement, "the Company [will]

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[23] *See Hamilton v. Columbia Gas of Ohio, Inc.*, Case No. 05-1399-GA-CSS, Opinion and Order at 5 (Sept. 6, 2006).

[24] German Village Society, Gas Meter Relocation Advocacy Action, Transcript: April 25, 2017 public meeting, https://germanvillage.com/gvs-public-meeting-april-25-2017-transcript/ ("We first learned of this project in September of last year.").

[25] Complaint ¶ 50.

[26] *Cuyahoga Re-Entry Agency v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-740, 2012-Ohio-2034, ¶ 31, citing *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen. Commodities Div.*, 109 Ohio App.3d 786, 790, 673 N.E.2d 182 (10th Dist.1996).

[27] *Hydrofarm, Inc. v. Orendorff*, 180 Ohio App.3d 339, 2008-Ohio-6819, 905 N.E.2d 658, ¶ 18 (10th Dist.), quoting *Vanguard Transp. Sys.*, 109 Ohio App.3d at 790.

[28] Columbia Tariff, 3rd Revised Sheet No. 5, Section II, Part 1.

[29] Columbia Tariff, 4th Revised Sheet No. 7, Section III, Part 3.

furnish the necessary regulator or regulators, which * * * [will] remain the property of the Company" as well.[30]

As stated in Columbia's approved tariff, Columbia "determine[s] the location of the meter."[31] In April, the Society acknowledged that "Columbia has the right to place them [the meters] wherever they wish. The Tariff agreement between Columbia and PUCO * * * states that it is up to Columbia where they choose to locate meters."[32]

The Society suggests Columbia's tariff only permits it to relocate a meter setting in limited circumstances not present here.[33] While Columbia's tariff says Columbia may "require the customer, at the *customer's* expense, to relocate the meter" when "changes in a building or arrangements therein render the meter inaccessible or exposed to hazards,"[34] the tariff does not limit Columbia's ability to relocate a meter for other reasons. The Commission, moreover, has specifically authorized Columbia to capitalize and recover through Rider IRP "[t]he cost of moving inside meters to outside locations" where: (1) the meter is connected to a service line replaced as part of Columbia's Accelerated Mains Replacement Program ("AMRP") and (2) Columbia increases the pressure in "the replacement mains and associated service lines" to "greater than 1 pound per square inch * * *."[35]

In addition to Columbia's tariff provisions, federal pipeline safety rules permit installation of natural gas meters and service regulators either "inside or outside a building," so long as it is "installed in a readily accessible location and * * * protected from corrosion and other damage * * *."[36] The Society points to the

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[30] Columbia Tariff, 4th Revised Sheet No. 7, Section III, Part 2.

[31] Columbia Tariff, 4th Revised Sheet No. 7, Section III, Part 4.

[32] German Village Society, Stop Exterior Placement of Gas Meters on Historic Properties, Update 4/10/2017, https://germanvillage.com/stop-exterior-placement-gas-meters-historic-properties/. *See also* German Village Society, Information and Talking Points: Exterior Placement of Gas Meters, https://germanvillage.com/information-talking-points-exterior-placement-gas-meters/ ("It is our understanding that Columbia Gas may locate gas meters on interiors or exteriors at their discretion.").

[33] *See* Complaint at 21-22.

[34] Columbia Tariff, 4th Revised Sheet No. 7, Section III, Part 4 (emphasis added).

[35] *See In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of an Alternative Form of Regulation*, Case No. 11-5515-GA-ALT, Opinion and Order, at 6-7 (Nov. 28, 2012).

[36] 49 C.F.R. § 192.353(a).

fact that the rules "prescribe[ ] additional safety measures for outdoor meters" – namely, that outdoor meter sets be "protected from * * * vehicular damage that may be anticipated" – as evidence that "outdoor meters pose a greater danger" than indoor meters.[37] But the Society ignores that the rules also prescribe additional safety measures for *indoor* meters – specifically, that an indoor meter "be located in a ventilated place and not less than 3 feet (914 millimeters) from any source of ignition or any source of heat which might damage the meter."[38] Neither set of requirements, by itself, indicates that indoor meters are either more or less safe than outdoor meters.

Federal guidance on pipeline safety, on the other hand, recommends installing natural gas meters and regulators outside whenever possible. The Society points to data from the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") that the Society interprets as proof that outdoor meter sets are dangerous.[39] But PHMSA's *Guidance Manual for Operators of Small Natural Gas Systems* (2017), which "was developed to provide an overview of pipeline compliance responsibilities under the federal pipeline safety regulations[,]"[40] expressly recommends that meters and service regulators be installed "outside if possible" and "in a readily accessible location."[41] The *Guidance Manual* adds that, "[i]f a meter set must be located where a vehicle would damage the meter set, a suitable barricade must be installed[,]" and that "[a]dditional protection for outside meters may be necessary where ice or snow falling from roofs may damage the meter or block the regulator vent."[42] Rather than indicating that outdoor meter sets are uniquely dangerous, this guidance demonstrates that Columbia can mitigate potential damage of these sorts by installing appropriate protections – not by moving the meter indoors. When the U.S. Department of Transportation adopted the amendments to its pipeline safety regulations that specifically referenced damage from motor vehi-

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[37] Complaint ¶ 43.

[38] 49 C.F.R. § 192.353(b).

[39] *See* Complaint ¶ 40.

[40] US Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety, *Guidance Manual for Operators of Small Natural Gas Systems* (Jan. 2017), *available at* https://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Small_Natural_Gas_Operator_Guide_(January_2017).pdf.

[41] *Id.* at VII-1.

[42] *Id.*

cles, it commented that "operators have discretion to provide whatever type and degree of protection is reasonable under the circumstances."[43]

Industry guidance makes the same recommendations as PHMSA's *Guidance Manual*. The American Gas Association Gas Piping Technology Committee's *Guide for Gas Transmission, Distribution, and Gathering Piping Systems* agrees that "[a]n outside, aboveground meter location is desirable when weather conditions, availability of space, and other conditions permit."[44] The *Guide* adds that "each meter and service regulator [must] be installed in a readily accessible location" that "should accommodate access for reading, inspection, repairs, testing, changing, and operation of the gas shut-off valve."[45] If the outside meter is installed at a "location[ ] where vehicular damage is reasonably anticipated," the operator should consider "some means of providing protection to the meter set assembly," such as moving it back from "roadways or driveways" or installing "posts, parking bumpers, or barricades."[46] And inside meter locations may be considered, the Guide says, if "[a]n acceptable outside location is not available or practical."[47]

Given this guidance, it is not surprising that incident statistics show outside meter sets are not unduly dangerous. To the contrary, incidents involving motor vehicles hitting outdoor meter sets are exceedingly rare. The report from Allegro Energy Consulting that the Society attached to its Complaint shows that, between 1999 and 2003, there were only 44 reported safety incidents involving vehicles damaging meter set assemblies – fewer than 9 per year nationwide.[48] A review of more recent natural gas distribution incident data from the U.S. Department of Transportation reveals only approximately 79 reportable "incidents" since 2010 involving damage to an outside meter/regulator by a motor vehicle not engaged in excavation – approximately 11 per year nationwide.[49] For context,

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[43] 68 Fed. Reg. 53,895, 53,897 (Sept. 15, 2003).

[44] American Gas Association, Gas Piping Technology Committee, ANSI/GPTC Z380.1, *Guide for Gas Transmission, Distribution, and Gathering Piping Systems*, § 192.353, General Recommendations at 161 (excerpt attached as Exhibit B).

[45] *Id.*

[46] *Id.*, Outside Meter or Service Regulator Locations at 162.

[47] *Id.*, Inside Meter or Service Regulator Locations at 163.

[48] *See* Complaint, Attachment D at 23.

[49] *See* U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Natural Gas Distribution Incident Data - January 2010 to present (ZIP), https://phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Pipeline/data/incident_gas_

the American Gas Association estimates there are 73,000,000 natural gas customers nationwide.[50] More people are killed or injured by lightning strikes in an average year (31, based on 2006-2015 data)[51] than have their outdoor meters sets hit by a motor vehicle in a reportable "incident." Given this evidence, the Society is unlikely to demonstrate that moving out additional German Village gas meters creates unreasonable or unmanageable risks.

The Society also is unlikely to show that moving additional natural gas meters outside will "irreparably damage[ ]" the "historically accurate, aesthetic quality of the neighborhood."[52] The neighborhood's numerous other, past accommodations to modern technology (including numerous existing outside natural gas meters, electric meters and overhead wires, and cable boxes) did not prevent its current success as a historical district. As the Society's Historic Preservation Advocate recently commented:

> Those who came before us had to face the onset of indoor plumbing, a technological development that required altering our interiors to accommodate it[.] They had to adapt to the invention of the automobile, requiring significant infrastructure alterations. They had to adapt to the installation of sewers. This required the digging up of roadways, sidewalks and yards, all in the name of added comfort and convenience. They had to adapt to the introduction of electricity and all the physical changes that required. And, yes, they had to accommodate gas pipelines.[53]

To this list, one could add outdoor air conditioning units, which are larger and more obtrusive than any meter set could be. The Society even permits satellite dishes, though it recommends they be "the smallest and least obtrusive device

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distribution_jan2010_present.zip, filtered by System_Part_Involved (Column BQ) = Outside Meter/Regulator Set or Service Riser (plus three additional incidents involving service lines or inside meter / regulator sets), and Outside_Force_Type (Column IO) = Damage By Car, Truck, or Other Motorized Vehicle/Equipment Not Engaged In Excavation.

[50] *See* American Gas Association, https://www.aga.org/fact-sheets.

[51] National Weather Service, How Dangerous is Lightning?, http://www.lightningsafety.noaa.gov/odds.shtml.

[52] Complaint ¶ 57.

[53] German Village Society, The Advocate's Blog, https://germanvillage.com/the-advocates-blog/.

necessary and available" and situated "where the device is functional with the least visibility from the street."[54]

Moving natural gas meters outside as well does not inherently conflict with the historical character of German Village. Other historic areas, such as Washington, D.C., have recognized that "utility meters * * * often must be located at or close to the front of the property where service is provided * * * ."[55] They have also recognized that, "[b]ecause individual gas meters are small (relative to electric meters) and installed close to the ground, they are usually not difficult to incorporate on the front of historic properties in a compatible manner."[56] The D.C. Historic Preservation Review Board still recommends that "property owners should consider the location when a new or replacement gas meter is being installed to ensure that it will not be visually obtrusive[,]"[57] and Columbia intends to work with German Village homeowners to accomplish the same goals. For this reason, too, the Society is unlikely to succeed on its claims.

2.2.2. Denying the injunction will not cause the German Village Society to suffer irreparable injury.

The Society also cannot demonstrate that allowing Columbia to continue with its meter move-outs would cause the Society or its members irreparable injury. "Irreparable harm is 'an injury for which there is no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete.'"[58]

As a preliminary matter, the Society has not demonstrated that Columbia's meter move-out would injure the Society's interests, or the interests of most of the property owners it claims it represents in this action. This project will not affect the street (South Third Street) where the Society[59] is located or where most

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[54] The German Village Commission and The German Village Society, *German Village Guidelines: Preserving Historic Architecture* at 130 (1989), *available at* http://www.germanvillage.com/pdf/guidelines.pdf.

[55] D.C. Historic Preservation Review Board, *Design Guidelines for Utility Meters*, at 5 (2013), *available at* https://planning.dc.gov/publication/design-guidelines-utility-meters.

[56] *Id.*

[57] *Id.*

[58] *Franks v. Rankin*, 10th Dist. Franklin No. 11AP-962, 2012-Ohio-1920, ¶ 36, quoting *1st Natl. Bank v. Mountain Agency, LLC*, 12th Dist. No. CA2008-05-056, 2009 Ohio 2202, ¶ 47.

[59] *See* Complaint Attachment F.

of the purportedly represented Village residents own property. Columbia has demonstrated above that the placement of gas meters outside is standard industry practice and recommended by the U.S. Department of Transportation. And the Society has not explained why the installation of outside meters at other properties, on other streets, would be likely to endanger the health or reduce the property values of the represented Society members.

Moreover, if the Commission were to conclude that relocating meters in German Village to the outside would endanger the Society or reduce its property values to an extent that would outweigh any safety benefits, the move-outs could be reversed. If Society prevails, in other words, Columbia can move the meters back inside.

Lastly, a preliminary injunction is unnecessary to address the Society's safety and aesthetic concerns. Columbia commits to continuing to work with each customer affected by the project to place each meter in the outside location the customer prefers, taking into consideration the aesthetics of the building, so long as the meter will be immediately accessible to emergency responders and otherwise meet Columbia's safety standards.[60] In particular, Columbia is working to avoid placing meters on the front of buildings in the sidewalk, wherever possible.[61] Where meters must be installed in locations where they can be more easily seen, Columbia is willing to paint the meters to match customer preference.[62] Moreover, per Columbia policy, Columbia will install "[m]eter protection * * * if the meter location is near vehicular traffic"[63] and will work to "steer[ ] clear of eaves and areas where snow accumulates."[64] Columbia is also willing to provide shrubs and bushes to alleviate customer concerns with aesthetics. For all of these reasons, denying the Society's motion for a preliminary injunction will not cause the Society or its represented members irreparable harm.

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[60] Schwieterman Affidavit ¶ 8.

[61] *Id*.

[62] *Id*.

[63] Columbia Gas of Ohio, General Information, https://www.columbiagasohio.com/docs/email-documents/oh_gen_info_no_meter_guide_ref_v7.pdf.

[64] Columbia Gas of Ohio, Natural Gas Meter Placement Guide, https://www.columbiagasohio.com/docs/default-source/new-business-services/coh---meter-placement-guide-100311.pdf.

2.2.3. Granting the injunction will cause third parties to suffer unjustifiable harm.

The Society suggests that Columbia "proceed with other aspects of its infrastructure improvement plan," specifically including "the main and service line replacements * * * in German Village," while the Commission hears the Society's Complaint.[65] However, Columbia cannot lay new service lines until it knows where the meters will be placed, because the service lines must be laid in a location that leads directly to the meter setting.[66]

Importantly, replacing the mains without also performing the service conversions would lead to significant inconveniences for German Village residents and delays in restoring streets and sidewalks to their original conditions.[67] Columbia's current plans for the project are designed to allow Columbia to replace approximately one block of main lines each week, with the associated service conversions (including meter move-outs) and hard- and soft-surface restorations, thereby minimizing inconvenience to German Village visitors and residents.[68]

Requiring Columbia to hold off on *all* service conversions in German Village, while continuing with the main line replacements in the Village, would require Columbia to keep two sets of main lines in operation on the affected streets indefinitely – the older lines, for those customers who have not already had service conversions, and the new lines, for those customers who have already received their new service lines and meters.[69] Columbia will need to fully restore the affected streets and sidewalks after the main line replacement and then return, after this proceeding is resolved and the injunction dissolves, to perform the service conversions and, again, fully restore the streets and sidewalks.[70] This will significantly increase Columbia's restoration expenses for this project.[71] Lastly, the qualified contractor labor needed to complete the service restorations may not be readily available once the Commission resolves the Society's Complaint,

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[65] Complaint at 24.

[66] Schwieterman Affidavit ¶ 4.

[67] *Id.* ¶ 5.

[68] *See id.* ¶¶ 6-7.

[69] *Id.* ¶ 10.

[70] *See id*. ¶ 9.

[71] *See id.*

creating further expense and delay.[72] All of this will increase the ultimate cost to Columbia's customers and the inconvenience to German Village's residents.

2.2.4. The injunction will not serve the public interest.

Lastly, the Society has not demonstrated that the injunction will serve the public interest. The Society states that it has 994 members and serves an area containing "approximately 1600 structures * * * ." [73] Yet the Society only claims to represent the interests of approximately 80 German Village residents, most of whom will not have their meters moved out as a result of the current project. Despite significant media coverage of this dispute[74] and considerable efforts by the Society to publicize its views, including the distribution of yard signs,[75] the vast majority of the residents and business owners in German Village have chosen not to support the Society's complaint. Staying meter move-outs that are recommended by federal and industry guidance, and not opposed by most German Village customers, would not serve the public interest. Instead, as the main lines in German Village are replaced with medium-pressure lines, the public interest is best served by relocating the meters outside for safer service.

3. CONCLUSION

Columbia's primary focus is the safety of its customers. Columbia is working with each customer to identify the safest location for their meter. Moving meters to outside locations enhances the safety of Columbia's system and is in compliance with state and federal regulations and guidance. Columbia also acknowledges the aesthetic concerns of the Society and will work to minimize the visual impact of any outside meter sets where possible. However, aesthetics cannot be allowed to compromise safety. And an indefinite, Village-wide injunction against meter move-outs is neither a lawful nor an appropriate way to address the Society's concerns about the location of outside meter sets.

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[72] *Id.* at ¶ 11.

[73] Complaint ¶¶ 9 and 15.

[74] *See, e.g.*, Ted Hart, *Opposition to outdoor gas meters organizing in German Village*, WCMH (Apr. 25, 2017), *available at* http://nbc4i.com/2017/04/25/opposition-to-outdoor-gas-meters-organizing-in-german-village/.

[75] *See generally* German Village Society, Stop Exterior Placement of Gas Meters on Historic Properties, https://germanvillage.com/stop-exterior-placement-gas-meters-historic-properties/.

For the reasons provided above, Columbia Gas of Ohio, Inc. respectfully requests that the Commission deny the German Village Society's request for a preliminary injunction that the Commission's authorizing statutes do not permit, the circumstances do not warrant, and the vast majority of German Village customers have not requested and do not seem to support.

Respectfully submitted by

COLUMBIA GAS OF OHIO, INC.

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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 certifies that a copy of this document is also being served via electronic mail on the 30th day of May, 2017, upon the party listed below:

German Village Society, Inc. callwein@keglerbrown.com

/s/ Stephen B. Seiple
Stephen B. Seiple

Attorney for
COLUMBIA GAS OF OHIO, INC.

EXHIBIT A

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

The German Village Society, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 17-1298-GA-CSS
	)	
Columbia Gas of Ohio, Inc.,	)	
	)	
Respondent.	)	

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

AFFIDAVIT OF MICHAEL SCHWIETERMAN

Michael Schwieterman, being first duly cautioned and sworn, deposes and states based on personal knowledge as follows:

1. I am employed by Columbia Gas of Ohio, Inc. "(Columbia") as Project Management Leader. I have held this position for about ten years.

2. I have personal knowledge of Columbia's natural gas line replacement project in German Village which began on May 18, 2017. The project is part of Columbia's Commission-approved Accelerated Mains Replacement Program. As part of that project, Columbia will increase the gas pressure in the replaced mains to medium pressure. This will require installing regulators at each home or business to reduce the pressure to that required for house piping systems and appliances. Where structures with service lines connected to the replaced mains have inside natural gas meters, Columbia intends to move those meters to the safest location.

3. I understand that the German Village Society has asked the Commission to indefinitely suspend a part of Columbia's project, namely the service conversions where we move indoor natural gas meters to outside locations. The Society has suggested that Columbia proceed with other aspects of

its infrastructure improvement plan, specifically including "the main and service line replacements," while the Commission hears the Society's Complaint.

4. Columbia cannot lay new service lines until it knows where the meters will be placed, because the service lines must be laid in a location that leads directly to the meter setting.

5. Replacing the mains without also performing the service conversions would lead to significant inconveniences for German Village residents and delays in restoring streets and sidewalks to their original conditions.

6. Columbia specially designed its construction plan and customer interaction protocols for German Village with an objective of completing replacements and restorations on a block by block weekly basis. The intent is to minimize inconvenience to visitors and residents in a city scape of narrow brick-paved streets and sidewalks, small yards, and limited parking.

7. To accomplish this, Columbia is shortening installation runs of the mains with its directional boring equipment to complete the main installation on each neighborhood block during the first half of a week and then use the balance of the week to complete the associated service conversions (including meter move-outs) and hard- and soft-surface restorations. The plan is to avoid having multiple blocks disrupted at the same time. Implementing permanent restorations on a weekly basis for each block also reduces the greater safety risks inherent in temporary repairs to sidewalks and streets.

8. Another objective of Columbia's plan is to address customer concerns for aesthetics to the greatest extent possible in this historic neighborhood. Columbia is working with each customer affected by the project to place each meter in the outside location the customer prefers that takes into consideration the aesthetics of the building while making sure the meter is immediately accessible to emergency responders and meets Columbia's safety standards. Columbia is working to avoid placing meters on the front of buildings in the sidewalk, wherever possible. Additionally, Columbia can paint the meters almost any color or scheme a customer wants to improve the aesthetics.

9. Requiring Columbia to cease all service conversions in German Village, while continuing with the main line replacements, will significantly increase Columbia's project expenses, which in turn will increase the total cost

paid by customers. Columbia will need to fully restore the affected streets and sidewalks this spring and summer and then return, once this case is resolved, to perform the service conversions and, again, fully restore the streets and sidewalks.

10. Columbia also will be forced to significantly delay the scheduled abandonment of the existing old line. Columbia will have to keep it in service for those customers who did not have the service conversion while, at the same time, operating the new line to serve those who already received their service conversion.

11. Suspension of the service conversions also will likely add further delay and expense later when the program is allowed to re-start. This is because there is no guarantee that the necessary qualified contractor labor to complete the service restorations will be readily available when this proceeding is ultimately resolved.

Further affiant sayeth naught.

Michael Schwieterman

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this 30th day of May, 2017, by Michael Schwieterman.

NOTARIAL SEAL STATE OF OHIO

CHERYL A. MacDONALD
Notary Public, State of Ohio
My Commission Expires 3/26/2022

Notary Public

EXHIBIT B

§192.353 Customer meters and regulators: Location.

(a) Each meter and *service regulator* , whether inside or outside a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated. However, the upstream regulator in a series may be buried.

(b) Each service regulator installed within a building must be located as near as practical to the point of *service line* entrance.

(c) Each meter installed within a building must be located in a ventilated place and not less than 3 feet (914 millimeters) from any source of ignition or any source of heat which might damage the meter.

(d) Where feasible, the upstream regulator in a series must be located outside the building, unless it is located in a separate metering or regulating building.

[Part - 192 - Org, Aug. 19, 1970, as amended by Amdt. 192-85 , 63 FR 37500, July 13, 1998; Amdt. 192-93, 68 FR 53895, Sept. 15, 2003]

EXHIBIT B

Guide material 192.353 Customer meters and regulators: location

View Code

1 GENERAL RECOMMENDATIONS

(a) Where practical, no building should have more than one service line.

(b) Meters should normally be installed at the service regulator. When more than one meter is set on a particular premises, they should typically be set at one location. If meters are installed at multiple locations on the premises, the operator should consider providing a tag or other means to indicate that there are multiple meter locations.

(c) An outside, aboveground meter location is desirable when weather conditions, availability of space, and other conditions permit.

(d) When selecting a meter or service regulator location, consideration should be given to the potential damage by outside forces, such as those from vehicles, construction equipment, tools, materials that might be placed on the meter, and falling objects (e.g., packed snow or ice from a roof). Where such potential is evident, the meter or service regulator should be protected or an alternate location selected. See 2 below and Guide Material Appendix G-192-13.

(e) Meters and service regulators should not be installed in contact with the soil or other potentially corrosive materials. The potential for shorting out the insulating fitting should also be considered.

(f) See guide material under §192.479 for the following relative to atmospheric corrosion.

(1) General considerations.

(2) Specific considerations regarding the meter and service regulator location and the regulator vent lines and tubing.

(g) Section 192.353(a) requires that each meter and service regulator be installed in a readily accessible location. Each location should accommodate access for reading, inspection, repairs, testing, changing, and operation of the gas shut-off valve.

(h) The meter location should normally permit the installation of the service line in a straight line perpendicular to the main.

(i) Meters and service regulators should not be installed in the following locations.

(1) Under or in front of windows or other building openings which may be used as emergency fire exits or under interior or exterior stairways.

(2) A crawl space with limited clearance.

(3) Near building air intakes.

2 OUTSIDE METER OR SERVICE REGULATOR LOCATIONS

EXHIBIT B

(a) Outside meters or service regulators should be installed in the following locations.

(1) Preferably, above ground in a protected location, adjacent to the building served.

(2) In a properly designed buried vault or meter box.

(i) The vault or meter box should be located on the customer's property, either adjacent to the building served or near the gas main.

(ii) Vaults may be located in a public right-of-way. Consent of local jurisdictions may be required.

(iii) Proper design and location considerations should include ventilation, vehicular traffic (see §192.355(c)), potential for soil accumulation, surface water runoff, high water table, and proximity to building air intakes or openings.

(iv) Piping installed through vault walls should be properly coated to protect from corrosion.

(v) Note §192.189(b) that states:

A vault containing gas piping may not be connected by means of a drain connection to any other underground structure.

(vi) When outside a paved surface, consideration should be given to the potential for fill, topsoil, or sod being placed over the vault.

(vii) See guide material under §192.355 for considerations involving service regulator and relief vents in vaults.

(b) At locations where vehicular damage is reasonably anticipated, some means of providing protection to the meter set assembly include the following.

(1) Distance from roadways or driveways.

(2) Installation of posts, parking bumpers, or barricades.

(3) Location behind existing protective structures.

(4) Installation in a buried vault or meter box.

3 INSIDE METER OR SERVICE REGULATOR LOCATIONS

(a) Inside meter locations should be considered under the following conditions.

(1) An acceptable outside location is not available or practical.

(2) Protection from ambient temperatures is necessary to avoid meter freeze-ups. (This condition is most often encountered in low-pressure systems that pick up moisture from water-sealed gas holders or other sources.)

(b) Where practical, meters and service regulators should not be located in confined engine, boiler, heater, or electrical equipment rooms, nor should they be located in living quarters, closets, restrooms, bathrooms, or similar locations.

(c) Each service regulator installed within a building should be located as near as practical to the service line entry point. When selecting the service regulator location, venting requirements and the vent piping location and length should be considered. See §§192.355 and 192.357.

EXHIBIT B

(d) Where a meter or service regulator is located inside a building, §192.365 requires a readily accessible shut-off valve that, if feasible, is located outside the building.

(e) Meters and service regulators in certain inside locations (e.g., parking garages) may require protection from vehicular damage. See 2(b) above.

(f) For additional considerations regarding plastic service lines, see guide material under §192.375.

4 OTHER METER OR SERVICE REGULATOR LOCATIONS

An alternate consideration is a specially constructed cabinet recessed in the building wall, sealed from inside the building and vented to and accessible from outside the building.

Summary: Memorandum Contra to Motion to Enjoin the Respondent of The German Village Society and Exhibits A and B electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.