

The German Village Society, Inc.,

Complainant,

v.

Columbia Gas of Ohio, Inc.

Respondent.

**THE GERMAN VILLAGE SOCIETY’S MEMORANDUM CONTRA
to
THE MOTION TO DISMISS THIS COMPLAINT BY COLUMBIA GAS OF OHIO,
INC.**

The German Village Society, by and through counsel, now respectfully submits this *Memorandum Contra* to the utility motion to dismiss. The German Village Society maintains and reiterates its original concerns for the safety of German Village residents, businesses, visitors and infrastructure. The German Village Society has demonstrated a legitimate need for Commission assistance to investigate the meter relocation activities of Columbia Gas of Ohio, being performed within the confines of this historic City of Columbus neighborhood. The German Village Society again repeats its call for the Public Utilities Commission of Ohio to immediately halt the haphazard work currently being performed by the Company

at the potential expense of individuals' safety, decades worth of careful, consistent and hard work to complete historic infrastructure improvements, and in order to maintain precious outdoor space so vital to this community.

In its motion to dismiss, Columbia Gas of Ohio, Inc. ("Columbia" or "Company") serves notice to this Commission and to its customers that its activities, even when demonstrated as potentially unsafe by data obtained from federal authorities, *must not be questioned*. Further, the motion simultaneously presents pertinent federal authority that underscores and provides a firm foundation for the stated safety concerns and assertions of the German Village Society ("GVS"), while at the same time attempting to distract and bedazzle the Commission with several paragraphs of irrelevant information in order to assert its "primacy."

Finally, in an attempt to intimidate and squash individual GVS members' interests in and support of this case, Columbia calls for each individual customer, despite their correspondent GVS membership, shared neighborhood residency in the German Village and stated common interests in community safety and history, to come up with their own case and their own representation, so that each may be individually subject to Columbia's legal machinations in dozens of cases (which would be funded by these same customers). Ohio utility customers should not be treated this way by their regulated natural gas utility. There is safety (and judicial economy) in numbers. The GVS appropriately and collectively represents these interests on behalf of its board, its members and its community. The German Village Society now respectfully requests that the Commission reject the unsubstantiated motion to dismiss, immediately enjoin the utility from relocating meters for the pendency of this case, and provide an appropriate procedural schedule to address the important, public safety and cultural heritage issues presented.

II. Law and Argument – German Village Society’s Memorandum Contra to the Motion to Dismiss.

A. The German Village Society has Reasonable Grounds for its Complaint, Based not only on the Obtained Federal Data, but also on Actual, Recent Installations that Violate Columbia’s Own Standards.

Columbia first states that, according to R.C. 4905.26, the Complainant has the burden of proof and must state reasonable grounds for a complaint.¹ GVS agrees. The GVS has done just that, and has already provided *prima facie* evidence that provides a firm foundation for its complaint. GVS provided data collected by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, along with a previous report demonstrating the potentially catastrophic issues with outdoor meters subject to vehicular traffic, lawnmowers, vandalism, extreme weather, etc.² Further, GVS has noted that the unique configuration of German Village, with its narrow streets, and sidewalks and structures in close proximity to vehicle traffic, exacerbates the danger documented by GVS exhibits.

Columbia then states that the meter placement with regard to the implementation of its AMRP is “reasonable and lawful.”³ This may be theoretically correct, but in reality, Columbia has already relocated a few meters outside without any protection from vehicular traffic⁴ or vandalism.⁵ In addition, GVS already offered a photo of four meters placed outside that violate *three*⁶ of Columbia’s own plumbing installation standards. Thus, while Columbia attempts to assert the reasonableness of its actions, in fact, it is not paying attention to federal regulations or its own standards, increasing the

¹ Motion to Dismiss at 4.

² Please see the GVS Complaint at pp. 32-40, accompanying Attachments D and E.

³ *Id.*, at 4.

⁴ Please see Attachment A.

⁵ Please see Attachment B.

⁶ Please see Complaint Attachment H.

potential of the damage issues presented by GVS. For this reason alone, the Commission should exercise its authority to issue an Entry or Order protecting public safety,⁷ and immediately halt any further relocations until Columbia explains why it is not meeting the federal regulations it holds up in part in its motion to dismiss, but does not follow. GVS reiterates its motion for a temporary injunction by the Commission to halt any further relocation of meters by Columbia and seeks approval of its request for the Commission to prevent any shutoffs of service by Columbia to customers refusing relocation.

B. Federal Standards Underscore the German Village Society's Concerns that Columbia's Actions are Dangerous.

Columbia claims that federal regulations support its meter relocation efforts.⁸ The federal regulations cited support GVS' position that the meters may (and should) remain indoors. On page five of the motion, three items (a, b and c) which are part of 49 CFR 192.353, are listed. Columbia sites these **"...as the most pertinent rules at issue in this case."**⁹ GVS agrees. Each item from 192.353 is satisfied by the *current, existing location and position of all indoor meters* in German Village. This must be true, because these meters have been in their present location for many years. It is logical to assume that these meters have been inspected *several times* over the years by Columbia technicians. Therefore, the required placement inside, the service regulator locations, and the ventilated space requirements have all likely been reviewed and affirmed for several years by Columbia's own employees. By Columbia's own assertion, if this is the most "pertinent rule at issue," this only underscores the fact that *the meters are safe in their current locations*. Moving these meters outdoors,

⁷ R.C. 4905.06: The public utilities commission [...] includes the power to prescribe any rule or order that the commission finds necessary for protection of the public safety.

⁸ Motion to Dismiss at 5.

⁹ Motion at 5.

especially in configurations and locations already shown to be unsafe, serves only to increase the safety risks and potential harm. Again, GVS has stated and demonstrated reasonable grounds for its complaint. Columbia agrees that the most pertinent rules are currently satisfied. Moving safely installed indoor meters outside to face traffic, vandalism and extreme weather only serves to increase risk. Thus, the motion to dismiss should be rejected.

Columbia asserts that its judgments about meter relocations should be given “primacy over other considerations.”¹⁰ Following the regulations should be given “primacy” over Columbia’s demonstrated inability to follow established rules. Federal regulations, promulgated by the PHMSA, adopted by the PUCO, should now be enforced by this Commission. Columbia’s problems with the few relocations already performed demonstrate that there is little room outside given the unique configuration of German Village. The placement of safe, indoor meters to outside locations where there is little room and several hazards is not a good idea. In this light, Columbia’s judgment must be questioned.

Columbia’s actions are not motivated by safety, but rather by the ability to capitalize its infrastructure investments and create a return, as noted in the original complaint. The Commission should not be intimidated by a last-minute safety argument that doesn’t bear out when viewed in light of Columbia’s actions to put outside meters in harm’s way. The real safety concern is the placement of meters in a densely-populated, urban setting. The GVS reiterates its request for a Commission investigation of this practice before any additional meters are place outside.

¹⁰ Id.

C. Federal Reports and Statistics, Along with Industry Practice, Support GVS' Position.

As established, the current location of indoor meters in German Village is safe and meets federal requirements. Columbia vainly tries to minimize and indeed waive off the significant, catastrophic data and reports that show outdoor meter placement has potential safety risks.¹¹ In fact, Columbia chose to label this section “Exterior Meters Are Not **Unduly** Dangerous.”¹² Meaning, even Columbia admits there is danger in outdoor placement that does not occur with the same frequency as indoor locations. The Company then goes on to supply an explanation that the chance is small. But that small chance is still greater by several times than such an event occurring with an indoor meter.

Further, Columbia states that it is supported by “industry practice.” Columbia cites to an industry guide.¹³ Yet, the guide again supports the assertions made by the GVS in their original complaint. The guide speaks to accessibility to the meter and to the shutoff valve. The current, indoor meters are accessible and the curb stops provide sufficient access to a shut off valve. The guide then speaks to the protection that is required if the meter is located where “vehicular damage is reasonably anticipated.”¹⁴ This describes most of Columbia’s desired relocation points in German Village. The addition of “posts, parking bumpers, or barricades” as recommended will only further hamper the safety of foot and vehicular traffic, due to the small amount of space available. It is ironic that Columbia cites these portions of the guide, as the Company isn’t currently providing any protection to the few relocations that it has completed.

¹¹ Id., at 11-12.

¹² (Emphasis Added) Id.

¹³ Motion at 10.

¹⁴ Id.

D. The GVS is an Appropriate Organization to Represent the Common Issues facing German Village due to Columbia's Proposed Relocations.

Columbia states that the Society's representation should be limited, or that individuals should each bring their own cases before the Commission. The GVS has already explained why it is the appropriate vehicle for this case. The GVS represents the German Village Community as stated in the original Complaint. The permission forms are meant to emphasize the strong, individual commitments of residents supporting this action. But the GVS representative board voted on behalf of *all of its 994 members* to support this action. In addition, Columbia seeks to minimize the number of relocations in this project, thereby attempting to diminish the number of folks supporting this action. But Columbia can't have it both ways. In their public meeting, the Columbia representative noted that all customers in German Village would eventually have their meters moved outside. Every individual in German Village, beyond the initial, stated project, has received information about meter relocation. Thus, the representation is not diminished by Columbia's unsubstantiated assertions.

Many industry groups, associations and other representative groups constantly appear in collection fashion before the Commission. Yet, Columbia wants to divide and conquer individual residents. But individual meter placement is not at issue. The collective decision to place ALL meters outside is the issue. Overall safety is at issue. Historic preservation is at issue. Space considerations are at issue. These are issues common to all German Village residents. For reasons already stated in the Complaint, the most appropriate representation of this issue is the collective representation of the GVS. Columbia should not be allowed to undermine the judicial economy of the current arrangement. Columbia should instead seek to work with the GVS to seek a resolution.

III. CONCLUSION

The German Village Society has demonstrated that there is an issue for which this Complaint must proceed. The GVS is the appropriate, collective representative. For the reasons stated above, the Commission should reject this motion to dismiss the Complaint of the German Village Society.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum Contra was delivered via electronic mail on this 27th day of June, 2017 to the following parties:

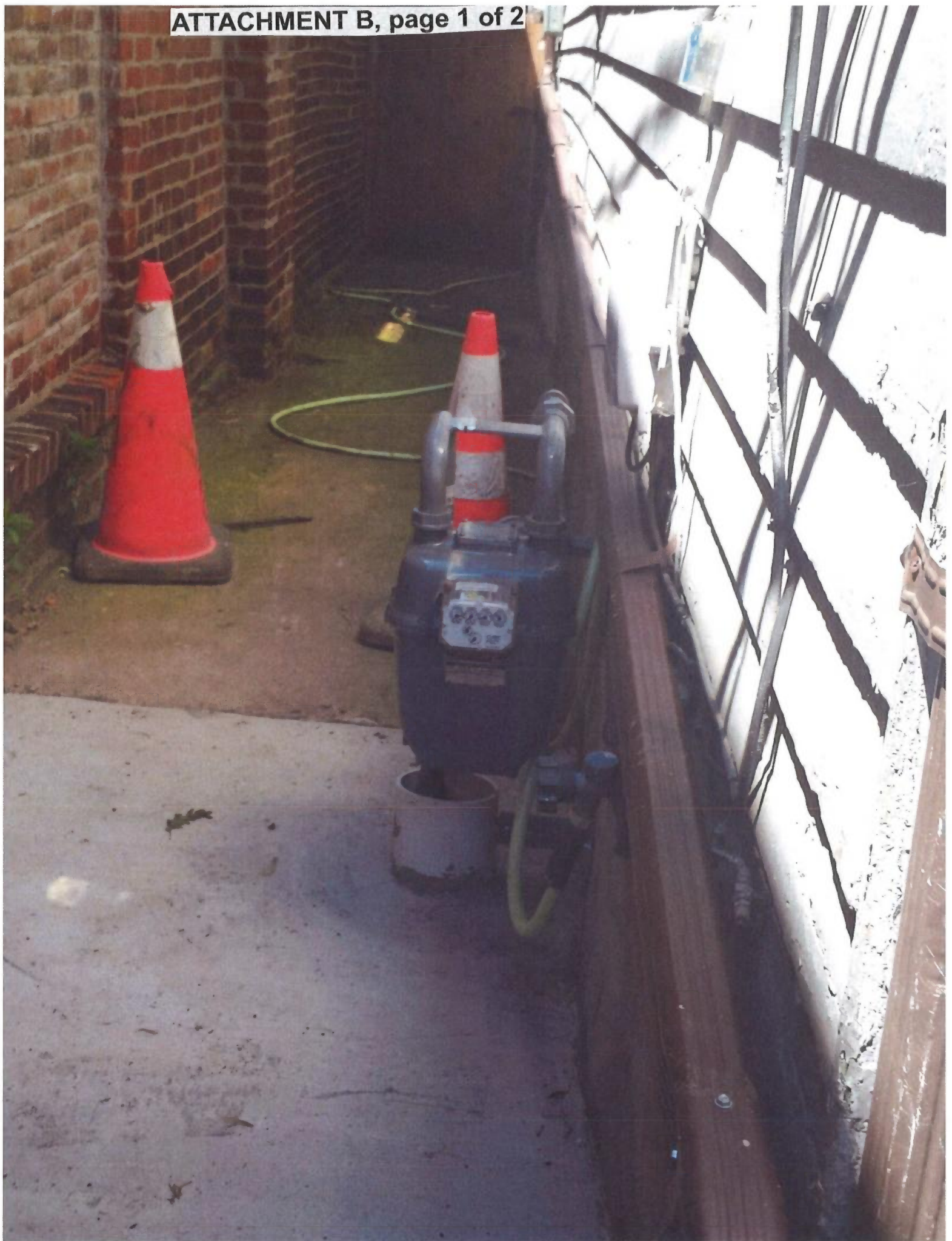
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