

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Gregory T. Howard,)	
Complainant,)	
)	
v.)	Case No. 15-0873-GA-CSS
)	
Columbia Gas of Ohio, Inc.,)	
Respondent.)	

**MEMORANDUM CONTRA
COMPLAINANT'S APPLICATION FOR THIRD ENTRY ON REHEARING
OF COLUMBIA GAS OF OHIO, INC.**

Last December, the Commission issued a Second Entry on Rehearing denying Mr. Howard's application for rehearing of the Commission's Opinion and Order. Mr. Howard has now filed an Application for Third Entry on Rehearing ("Application for Third Rehearing") raising two arguments, neither of which warrants rehearing of the Commission's prior rulings.

First, Mr. Howard asserts, "the Commission made no finding on the Complainant's reliance [in his sixth assignment of error] on *Mathews v. Mathews*, 5 Ohio App. 3d 140, 450 N.E. 2d 278 (10th Dist. 1981), paragraph two of the syllabus, as [a] primary reason why his application for rehearing should have been granted * * *."¹ To the contrary – the Commission stated it "reviewed and considered all of [Mr. Howard's] arguments" and that "[a]ny argument * * * not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied."² If Mr. Howard is simply asking the Commission to reconsider its denial of his sixth assignment of error, R.C. 4903.10 "does not allow persons * * * to file rehearing upon rehearing of the same issue."³

¹ Application for Third Rehearing at 5.

² Second Entry on Rehearing ¶ 11 (Dec. 20, 2017).

³ *In re Application of Ohio Power Company for Approval of a Special Contract Arrangement with Ormet Primary Aluminum Corp.*, Case No. 96-999-EL-AEC, Second Entry on Reh'g, ¶ 10 (Sept. 13, 2006).

The Commission's rules allow a party to file "only * * * one application for rehearing to a commission order * * * ." ⁴ The Commission, moreover, was correct to deny Mr. Howard's sixth assignment of error. *Mathews* is inapplicable to Commission proceedings – it discusses motions for reconsideration in state courts of appeal. ⁵ The case's syllabus makes clear that it construes App.R. 26, not R.C. 4903.10 or Ohio Admin. Code 4901-1-35. ⁶ And the remainder of Mr. Howard's sixth assignment of error, after the irrelevant case citation, simply reiterates the same arguments Mr. Howard unsuccessfully made in his second, third, fourth, and fifth assignments of error. ⁷

Second, Mr. Howard asserts that the filings in his *new* complaint case, Case No. 17-2356-GA-CSS, belatedly "provide[] evidence to support his claims" from *this* case. ⁸ Mr. Howard points to "Exhibit A to his new second complaint" and the Updated Affidavit he filed in Case No. 17-2356-GA-CSS, in particular, and asserts that he is "incorporat[ing]" those filings "into the evidentiary record in this matter * * * ." ⁹ Mr. Howard's attempt to re-open the proceedings in this case, to introduce evidence not properly introduced before, is improper. Under the Commission's rules, the Commission may re-open a proceeding "to permit the presentation of additional evidence" only "prior to the issuance of a final order." The Commission's Opinion and Order and Second Entry on Rehearing are final orders, and any motion to re-open these proceedings to introduce new evidence now would be untimely. ¹⁰

Mr. Howard has offered no basis for abrogating or modifying any portion of the Commission's Opinion and Order or Second Entry on Rehearing in this case. For the reasons provided above, Columbia respectfully requests that the Commission deny the Complainant's Application for Third Rehearing and affirm its prior holdings in this case.

⁴ Ohio Admin. Code 4901-1-35(D).

⁵ See *Mathews*, 5 Ohio App.3d at 140.

⁶ See *id.* at paragraph two of the syllabus.

⁷ See *id.* at 1-3.

⁸ Application for Third Rehearing at 6.

⁹ *Id.* at 6-7.

¹⁰ See, e.g., *In re Application of Verizon North Inc. for Approval of an Alternative Form of Regulation*, Case No. 08-989-TP-BLS, Entry on Rehearing, at 19 (June 3, 2009) (finding "untimely" a motion to reopen a proceeding after the Commission issued a finding and order).

Columbia also respectfully requests that the Commission adopt a procedure in this docket like the one adopted in *In the Matter of the Complaint of Gwendolyn Tandy v. The East Ohio Gas Company d.b.a. Dominion East Ohio*, Case No. 15-396-GA-CSS, Entry (May 6, 2015), to protect Columbia from the needless expense of responding to any additional improper filings from Mr. Howard. The docket in this case is clogged with confusing, duplicative, and inappropriate filings, including:

- two motions for default judgment (and two follow-up letters requesting an entry of default judgment);¹¹
- three requests that the Commission “stipulate” to what Mr. Howard considered “undisputed facts”;¹²
- three letters to the Attorney Examiner (in eight days), asking the Commission to grant judgment in Mr. Howard’s favor in advance of a scheduled settlement conference;¹³
- three motions asking the Commission to rule on Mr. Howard’s pending filings before the scheduled hearing;¹⁴
- two filings *after* Mr. Howard’s original application for rehearing and *before* his latest application for rehearing -- an “Amended Application for Reconsideration”¹⁵ and a “Civil Rule 60(B) Motion” to vacate the Commission’s initial Entry on Rehearing¹⁶ – seeking to provide additional arguments.

¹¹ See Motion for Default Judgment (June 17, 2015), Motion for Default Judgment (June 19, 2015), Letter to Attorney Examiner Jay Agranoff (June 26, 2015), and Letter to Attorney Examiner Jay Agranoff (June 29, 2015).

¹² See Letter to Attorney Examiner Jay Agranoff (June 26, 2015); Letter to Stephen B. Seiple (June 26, 2015); Motion to Set Aside the Attorney Examiner’s Entry (July 1, 2015).

¹³ See Letter to Attorney Examiner Jay Agranoff (July 8, 2015); Letter to Attorney Examiner Jay Agranoff (July 9, 2015); Letter to Attorney Examiner Jay Agranoff (July 15, 2015).

¹⁴ See Motion Requesting a Ruling on All Pending Procedural Motions or Applications for Rehearing (July 16, 2015); Motion Requesting a Ruling on Objections, Procedural Motions, and Other Procedural Matters (Sep. 2, 2015); 2nd Motion Requesting a Ruling on Objections, Procedural Motions, and Other Procedural Matters Prior to the September 30, 2015, Hearing (Sep. 18, 2015).

¹⁵ Amended Application for Reconsideration (Sep. 26, 2017).

¹⁶ Civil Rule 60(B) Motion (Sep. 28, 2017).

That pattern has continued since the Commission issued its Second Entry on Rehearing. Mr. Howard has filed a Motion for Stay of Disconnection of Gas Services and an Application for Third Entry on Rehearing in this docket, and filed an entire new complaint case (Case No. 17-2356-GA-CSS), for the admitted purpose of “provid[ing] evidence regarding [the] allegations of the complaint [for which] the Commission determined that Complainant had failed to meet his burden of proof in [this case].”¹⁷ And Columbia has no doubt that Mr. Howard will continue to submit additional motions and filings in this docket for as long as he can.

Consequently, Columbia respectfully requests that the Commission clarify that Columbia is not required to respond to any future filing of Mr. Howard in this docket unless and until the Commission or an attorney examiner directs Columbia to do so.

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

/s/ Eric B. Gallon

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¹⁷ *In re Howard v. Columbia Gas of Ohio, Inc.*, Case No. 17-2536-GA-CSS, Complainant’s Motion for Expedited Ruling, at 2 (Dec. 27, 2017).

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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 following party:

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The undersigned will also serve a copy of this document on Mr. Howard on January 26, 2018, via U.S. and electronic mail, at the address above.

/s/ Eric B. Gallon
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Summary: Memorandum Contra Complainant's Application for Third Entry on Rehearing electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.