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14

February 8, 2018

The Public Utilities Commission of Ohio  
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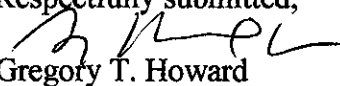
**Re: Gregory T. Howard v. The Public Commission of Ohio**  
**Appeal from the Public Utilities of Ohio**  
**Case No. 15-873-GA-CSS**

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PUCO

To All Parties who have entered an Appearance in the Proceeding:

Please be advised that in accordance with the attached R.C. §4903.11, that I inadvertently failed to serve the Second Entry on Rehearing denying the Application for Rehearing listed as Plaintiff's Exhibit 1 forthwith the Notice of Appeal by regular mail upon all parties who have entered an appearance in the proceeding. Enclosed please find the Second Entry on Rehearing (Dec. 20, 2017) that I inadvertently omitted and I request that the Commission allow the Exhibit to be deemed served as of February 1, 2018 due to excusable neglect on my part. Thus, this proceeding is deemed timely commenced pursuant to R.C. §4903.11.

Thank-you for your much-anticipated cooperation in this matter.

Respectfully submitted,  
  
Gregory T. Howard  
381 S. Detroit Avenue  
Toledo, Ohio 43609-2068  
[hwrdrgrv@yahoo.com](mailto:hwrdrgrv@yahoo.com)

Enclosures

cc: Claim files

Via regular U.S. Mail Service and email to: [Docketing@puc.state.oh.us](mailto:Docketing@puc.state.oh.us) ✓ Faxed  
Via regular U.S. Mail Service and email to: [cmacdonald@nisource.com](mailto:cmacdonald@nisource.com) ✓  
Via regular U.S. Mail Service and email to: [egallon@porterwright.com](mailto:egallon@porterwright.com) ✓

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Date Processed FEB 12 2018

Subject: **Re: Gregory T. Howard v. The Public Utilities Commission of Ohio Appeal from the Public Utilities of Ohio Case No. 15-873-GA-CSS**

From: hwrldgrgry@yahoo.com

To: Docketing@puc.state.oh.us

Cc: cmacdonald@nisource.com

Bcc: egallon@porterwright.com

Date: Thursday, February 8, 2018, 8:26:28 AM EST

To All Parties who have entered an appearance in the Proceeding:

Please find attached hereto an Omitted Entry and Notice of Appeal (Feb. 1, 2018).

Very truly yours,

/s/

Gregory T. Howard  
381 S. Detroit Avenue  
Toledo, Ohio 43609-2068  
[hwrldgrgry@yahoo.com](mailto:hwrldgrgry@yahoo.com)

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Subject: RE: Gregory T. Howard v. PUCO, on appeal No. 15-873-GA-CSS

From: hwrldgrgry@yahoo.com

To: docketing@puc.state.oh.us

Cc: cmacdonald@nisource.com

Bcc: egallon@porterwright.com

Date: Thursday, February 8, 2018, 8:42:33 AM EST

Here they are somehow they did not attached to the first document. thanks.



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**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
GREGORY T. HOWARD,**

**COMPLAINANT,**

**CASE NO. 15-873-GA-CSS**

**V.**

**COLUMBIA GAS OF OHIO, INC.,**

**RESPONDENT.**

**SECOND ENTRY ON REHEARING**

Entered in the Journal on December 20, 2017

**I. SUMMARY**

{¶ 1} The Commission denies the Complainant's application for rehearing of the August 30, 2017 Opinion and Order.

**II. DISCUSSION**

**A. Applicable Law**

{¶ 2} R.C. 4905.22 provides that every public utility shall furnish service and facilities that are adequate, just, and reasonable and that all charges made or demanded for any service be just, reasonable, and not more than allowed by law or by order of the Commission.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider a written complaint 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.

{¶ 4} Columbia Gas of Ohio, Inc. (Columbia or Respondent) 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 the Commission.

{¶ 5} 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.

***B. Procedural History***

{¶ 6} On May 4, 2015, as amended on May 29, 2015, Brenda Palmer (Ms. Palmer) filed a complaint against Columbia. On June 2, 2015, as verified by Ms. Palmer on July 1, 2015, Gregory T. Howard (Mr. Howard or Complainant) filed a notice substituting himself as the complainant in this matter in lieu of Ms. Palmer. Mr. Howard is the spouse of Ms. Palmer. Based on the representations of both Ms. Palmer and Mr. Howard, it was determined that Mr. Howard would proceed as the complainant in this case and pursue the claims set forth in the complaint.

{¶ 7} Among other things, the complaint sets forth allegations that Columbia improperly disconnected gas service for nonpayment without first providing written notice at the premises and refused to restore service at the premises or agree to an extended payment plan once medical certification was provided. The complaint also sets forth allegations that Respondent refused to forgive the past due amount of \$11,178.15. Complainant requests \$11,178.15 in damages associated with Respondent's alleged failure to accept the medical certification of April 22, 2015. Additionally, Complainant alleges that Respondent improperly utilized heavy equipment in replacing a service line, resulting in damage to the driveway at the premises. According to Complainant, Columbia refused to make the necessary repairs to the driveway.

{¶ 8} On August 30, 2017, the Commission issued an Opinion and Order in this matter finding that Complainant met his burden of proof relative to the allegations regarding Columbia's failure to provide a disconnection notice in a conspicuous location at the premises on the date of disconnection. In regard to all other allegations of the complaint, the Commission determined that Complainant had failed to meet his burden of proof.

{¶ 9} On August 31, 2017, Complainant filed an application for rehearing in this case. Thereafter, on September 11, 2017, Respondent filed a memorandum contra the application for rehearing.

{¶ 10} On September 27, 2017, the Commission issued its Entry on Rehearing granting rehearing for the limited purpose of further consideration of the matters raised in the application for rehearing.

{¶ 11} The Commission has reviewed and considered all of the arguments raised in the Complainant's August 31, 2017, application for rehearing. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

#### C. *Assignments of Error*

{¶ 12} In his first assignment of error, Mr. Howard asserts that he sustained his burden of proof with respect to his claim that Columbia failed to comply with the disconnection requirements of Ohio Adm.Code 4901:1-18-06(A)(2). Therefore, he believes that the Commission should have granted his request for the payment of damages related to Columbia's failure to comply with the disconnection rules. Further, Mr. Howard requests that the Commission conduct a comprehensive review of Columbia's disconnection policies and procedures. (Application for Rehearing at 1.)

{¶ 13} Columbia responds that the Commission has no jurisdiction to award damages requested by Mr. Howard (Memorandum Contra at 3-4).

{¶ 14} With respect to Complainant's first assignment of error, the Commission finds that the application for rehearing should be denied inasmuch as Complainant fails to raise any new arguments for the Commission's consideration. As noted in its Opinion and Order at 12-13, the Commission in its Entry of August 18, 2015, recognized that "this proceeding is limited to consideration of whether Columbia has violated any rule, regulation, or tariff and does not extend to the actual issuance of monetary damages. \* \* \* [T]hose portions of the complaint

pertaining to the award of either compensatory or punitive damages are beyond the scope of this Commission's jurisdiction and, therefore, will not be further addressed in the context of this complaint proceeding." August 18, 2015 Entry at 4. Again, we note that the Commission has no authority to award monetary damages, which, in accordance with R.C. 4905.61, is a matter to be decided by a court of common pleas. *See, e.g., Milligan v. Ohio Bell Tel. Co.*, 56 Ohio St.2d 191, 383 N.E.2d 575 (1978).

{¶ 15} In his second assignment of error, Mr. Howard contends that he has sustained his burden of proof relative to his claim that, on September 30, 2011, Columbia was at the premises working on the installation of a service line and caused damage to his driveway. He also references a June 26, 2015 filing in this matter, which he contends includes a photograph that supports his contention that the damage consists of uneven cement. Further, he contends that, pursuant to his lease, he is responsible for damage to his driveway. He opines that the Commission has exclusive jurisdiction over the asserted driveway damage claim. Therefore, according to Mr. Howard, the *Corrigan* test referenced in the Commission's Order is not applicable to this case. (Application for Rehearing at 1-2.)

{¶ 16} Columbia states that the allegations stated in this assignment of error are not supported by the evidence. In support of its position, Columbia references the Commission's determination that Mr. Howard failed to introduce any photographic evidence of the purported damage to his driveway. Although, in his application for rehearing, Mr. Howard references a photographic exhibit which supports the assertion that the alleged damage consists of uneven cement, Columbia notes that the photograph was not introduced at the time of hearing but, instead, was attached to a letter to Columbia's counsel that was filed in this docket three months prior to the hearing. (Memorandum Contra at 4.)

{¶ 17} Additionally, Columbia states that, although the Commission lacks jurisdiction to determine the obligations under Complainant's lease, pursuant to the terms of the lease, Mr. Howard's responsibility for damages to his premises only arises in the case of damages

caused by his own misuse, neglect, or failure to observe any of the provisions of the lease (Memorandum Contra at 4).

{¶ 18} Further, Columbia avers that Mr. Howard fails to address the Commission's reliance on *Corrigan v. The Illum. Co.*, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, ¶¶ 11-12, as the primary reason for why it dismissed the driveway claim for lack of jurisdiction (Memorandum Contra at 4-5).

{¶ 19} With respect to Complainant's second assignment of error, the Commission finds that the application for rehearing should be denied inasmuch as Complainant fails to raise any new arguments for the Commission's consideration. As discussed in the Commission's Opinion and Order at ¶¶ 68-71, the allegations regarding damage to the driveway set forth in the complaint failed to satisfy the two-part jurisdictional test established in *Corrigan*. *Corrigan* at ¶¶ 11-12. Further, although Complainant references a photograph attached to a June 26, 2015 filing, as noted by Columbia, this document was not marked as an exhibit or admitted as part of the evidentiary record. The Commission must base its decision on the evidence of record. *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 706 N.E.2d 1255 (1999).

{¶ 20} In his third assignment of error, Complainant states that he sustained his burden of proof with respect to his reconnection claims. While recognizing that the Commission did not allow for consideration of a proffered document attached to his post-hearing brief in this case, he asserts that the Commission, on its own motion, should have waived Ohio Adm.Code 4901-1-34 and granted his request to consider the late-filed exhibit inasmuch as it satisfied the spirit of the rule. According to Complainant, the document in question supports his argument that following his \$175 payment on February 4, 2015, he was in the process of reverifying his Percentage of Income Payment Plan (PIPP) Plus eligibility and that no payment had been determined during the winter reconnect season, which ended on April 15, 2015. (Application for Rehearing at 2.)



{¶ 21} Columbia states that the Commission was correct in its determination in the Opinion and Order that Mr. Howard's attempt to offer new post-hearing evidence violated the Commission's prior directive regarding the presenting of additional arguments. Further, Columbia agrees with the Commission that Mr. Howard did not meet the criteria set forth in Ohio Adm.Code 4901-1-34 for the reopening of a proceeding. (Memorandum Contra at 6-7.)

{¶ 22} With respect to Complainant's third assignment of error, the Commission finds that the application for rehearing should be denied. In reaching this determination, the Commission relies on the record in this proceeding in which the parties were duly informed that the briefs filed in this case were to be limited to the facts that were actually admitted as part of the record (Tr. at 144). As noted in the Opinion and Order at ¶ 96, while Complainant contends that the specific proposed exhibit was inadvertently left in his car on the day of the hearing, Mr. Howard did not seek at the time of the hearing to submit the document as a late exhibit. Rather, he waited almost a month and a half after the hearing to seek admission of the alleged company record of April 14, 2015. Further, Complainant's motion of November 16, 2015, to reopen this proceeding in order to present additional evidence in this matter failed to comply with the requirement of Ohio Adm.Code 4901-1-34(B), which requires a demonstration of why such evidence could not, with reasonable diligence, have been presented earlier in this proceeding.

{¶ 23} In his fourth assignment of error, Mr. Howard states that, consistent with the Commission's decision in *In re Complaint of Brenda and Gerard Fitzgerald v. Duke Energy Ohio, Inc.*, Case No. 10-791-EL-CSS, Opinion and Order (Sept. 14, 2011) at 7-8, a customer electing to invoke special winter maintenance or reconnection of service procedures must inform the utility company of this intent and, if eligible, must apply for the regular Home Energy Assistance Program and enroll in the PIPP or a standard extended payment plan. Specific to this case, Mr. Howard submits that he made a payment of \$175 on February 4, 2015, and that he was in the process of reverifying PIPP Plus eligibility at the time of disconnection on April 2, 2015, and that no payment amount had been determined as of April 14, 2015. He further states

that, because Columbia completed the disconnection on April 2, 2015, the terms of the Winter Reconnect Order<sup>1</sup> and the requirements of Ohio Adm.Code 4901:1-18-06(B) applied and, therefore, no disconnection should have occurred. (Application for Rehearing at 2.)

{¶ 24} Further, Mr. Howard submits that, during the next five-year review of Ohio Adm.Code Chapter 4901:1-18, the Commission should consider whether the current rules properly balance the interests of the utility companies and their customers with respect to the timing of disconnections for nonpayment, particularly during the winter heating season, and any other related disconnection procedures (Application for Rehearing at 2-3).

{¶ 25} Columbia argues that the Complainant's attempt to introduce supplemental evidence after the hearing does not support Mr. Howard's complaint but, instead, demonstrates that Complainant failed to comply with the requirements of the Winter Reconnect Order inasmuch as he had not re-enrolled or maintained active status in PIPP Plus or otherwise entered into a payment plan. As further support for its position, Columbia points out that the record reflects that Complainant failed to pay his March 2015 bill, which was subsequent to the \$175 payment of February 4, 2015. (Memorandum Contra at 7.)

{¶ 26} With respect to Complainant's fourth assignment of error, the Commission finds that the application for rehearing should be denied. In reaching this determination, the Commission agrees with Columbia that Complainant failed to comply with the requirements of the Winter Reconnect Order inasmuch as there is no evidence that he had re-enrolled or maintained active status in PIPP Plus or otherwise entered into a payment plan. Further, as pointed out by Columbia, the record reflects that Complainant failed to pay his March 2015 bill, which was subsequent to his \$175 payment on February 4, 2015 (Columbia Ex. 1 at 2).

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<sup>1</sup> In re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for 2014-2015 Winter Heating Season, Case No. 14-1371-GE-UNC, Finding and Order (Sept. 10, 2014) (Winter Reconnect Order).

{¶ 27} In response to Complainant's discussion regarding the focus of the Commission's next five-year review of Ohio Adm.Code Chapter 4901:1-18, the Commission will examine the scope of each of the applicable rules at the appropriate time.

{¶ 28} In his fifth assignment of error, Complainant states that he has sustained his burden of proof with respect to the identification of the appropriate outstanding balance owed. Specifically, Mr. Howard contends that the Commission's expertise is required to consider the issue of the faulty meter. According to Complainant, Columbia has provided no evidence regarding the meter, the size of Complainant's home, or his usage history. Therefore, Complainant believes that he should not be responsible for the unpaid balance on the bill. (Application for Rehearing at 3.)

{¶ 29} Columbia responds that Complainant had the burden of proving the allegations of the complaint and that he failed to meet this burden. Therefore, Columbia believes that the Commission appropriately concluded that Mr. Howard failed to demonstrate that the overdue balance on his account was incorrect. Further, Columbia points out that the Commission has already determined that, based on Columbia's testimony, Complainant will not be responsible for the prior arrearages. (Memorandum Contra at 8.)

{¶ 30} With respect to Complainant's fifth assignment of error, the Commission finds that the application for rehearing should be denied inasmuch as Complainant fails to raise any new arguments for the Commission's consideration. As set forth in the Entry of August 18, 2017, Complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). As noted in the Opinion and Order, Mr. Howard acknowledged that, other than the allegation itself, there is nothing in his prefiled testimony to support his claim that the outstanding balance owed is incorrect (Opinion and Order at 18, citing Tr. at 74-75).

**D. Procedural Issues**

{¶ 31} Following the filing of Complainant's application for rehearing on August 31, 2017, Complainant also submitted various other supplemental filings in this case. To the extent that Mr. Howard seeks to supplement his application for rehearing, the Commission notes that nothing in R.C. 4903.10 or the Commission's rules allows for the submission of a supplement following the filing of an application for rehearing. Further, Ohio Adm.Code 4901-1-35(D) provides that a party may only file one application for rehearing in response to an order of the Commission.

{¶ 32} The Commission points out that at the hearing, the parties were duly informed that following the filing of the briefs, no party would be allowed to file any further documents and the Commission would not consider any further documents in this case. Further, the respective parties would not be required to respond to any further filings prior to the Commission's issuance of its decision. The parties were also informed that following the issuance of the Commission's decision, they would each be permitted to file a single application for rehearing. (Tr. at 7-8.)

{¶ 33} Consistent with these directives, the Commission has not considered any of Complainant's filings subsequent to the filing of his brief and, therefore, they are denied. To the extent that Mr. Howard has new allegations stemming from events occurring subsequent to the filing of this complaint in May 2015, they should be raised in the context of a new complaint case.

**III. ORDER**

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That the application for rehearing filed by Mr. Howard be denied. It is, further,

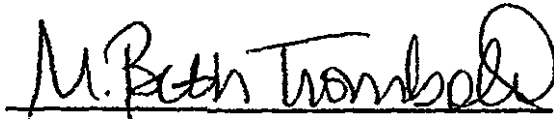
{¶ 36} ORDERED, That all of Complainant's filings subsequent to the filing of his brief be denied. It is, further,

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

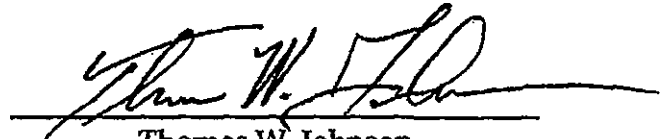
THE PUBLIC UTILITIES COMMISSION OF OHIO



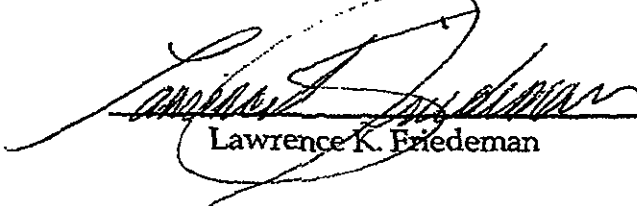
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson

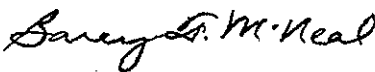


Lawrence K. Friedeman

Daniel R. Conway

JSA/sc

Entered in the Journal  
DEC 20 2017



Barcy F. McNeal  
Secretary

## **4903.11 Proceeding deemed commenced.**

No proceeding to reverse, vacate, or modify a final order of the public utilities commission is commenced unless the notice of appeal is filed within sixty days after the date of denial of the application for rehearing by operation of law or of the entry upon the journal of the commission of the order denying an application for rehearing or, if a rehearing is had, of the order made after such rehearing. An order denying an application for rehearing or an order made after a rehearing shall be served forthwith by regular mail upon all parties who have entered an appearance in the proceeding.

Effective Date: 09-29-1997 .