

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
PRAKASH THOMBRE,**

COMPLAINANT,

CASE NO. 20-1348-GA-CSS

v.

COLUMBIA GAS OF OHIO, INC.,

RESPONDENT.

ENTRY ON REHEARING

Entered in the Journal on May 5, 2021

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing and request for oral argument filed by Prakash Thombre.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} On August 4, 2020, Prakash Thombre (Complainant) filed a complaint against Columbia Gas of Ohio, Inc. (Columbia), alleging that, sometime before May 2011, Columbia dug a trench near the west wall of his basement during replacement of the gas meter and riser. Complainant alleges that, upon completion of the work, soil was filled back into the trench, but no additional gravel or soil was included. According to Complainant, over several years, rainfall draining from the roof caused soil to erode into the previously excavated area, resulting in greater amounts of soil pushing against the west wall of the basement. Complainant asserts that pressure exerted against the basement wall caused the above-ground walls of the home to bulge outward by six to eight inches in spring or early summer 2019. Complainant emphasizes that “the house is currently lifted and is supported on four strong pillars,” and contends that, despite his repeated contact with Columbia and its assertions that it would repair the damage, no repairs were made; the only action taken by Columbia was several weeks after Complainant called in January 2020, when Columbia’s

Restoration Coordinator Jeremy Kipplen was sent to examine the damage. Complainant adds that, prior to Columbia's work on the riser and meter, no water was present in his basement, but after the work was completed, water and soil flow into cracks in the west basement wall.

{¶ 3} Complainant further states that, in another incident "a few years ago," he detected a strong odor of gas on his property. Complainant contacted Columbia; Columbia investigated and found a gas line leak approximately 200 feet from his home. Complainant states that Columbia excavated a hole about five feet deep to make the repair and, upon completion of the work, filled in the hole with dirt. According to Complainant, drainage from rainfall into the site resulted in "a whirlpool effect" that sucked soil into drain tiles and created "a big gaping hole" into which a tractor fell during cultivation. Complainant asserts that, despite his frequent requests, Columbia did not correct the problem; eventually, Columbia provided gravel for Complainant to fill in the hole.

{¶ 4} Complainant disagrees with Columbia's assertion that the available time to file a damage claim has expired. Complainant emphasizes that any damage was not observable until summer 2019 and that, furthermore, one year elapsed before Columbia investigated his claim.

{¶ 5} On August 18, 2020, as amended on August 19, 2020, Columbia filed its answer. Columbia denies the allegations in the complaint and contends that Complainant has failed to state reasonable grounds for a complaint.

{¶ 6} The parties participated in settlement conferences on September 16, 2020, and October 7, 2020, but were unable to resolve the matter.

{¶ 7} On December 24, 2020, the parties filed a joint motion to set a procedural schedule, as well as a memorandum in support. In the joint motion, the parties sought Commission approval for the matter to proceed without a formal hearing, as well as approval of a proposed procedural schedule and exhibits attached to the memorandum in

support. In the memorandum in support, the parties noted the issuance of the Governor's Executive Order 2020-01D, which declares a state of emergency because of the COVID-19 pandemic, and the issuance of Stay at Home orders prepared by the Ohio Department of Health on March 22, 2020, and December 10, 2020. The parties further noted *In re the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No. 20-591-AU-UNC, Entry (Mar. 12, 2020), in which the Commission reviewed and modified its policies and practices to avoid risks associated with social contact during the COVID-19 pandemic. In addition, the parties observed that, during the settlement conferences, Complainant could not reliably participate via video conferencing because of internet connection difficulties. In sum, the parties concluded, an in-person hearing was unlikely in the foreseeable future, as was a virtual evidentiary hearing given Complainant's internet connectivity issues. The parties requested to move forward by presenting their arguments in briefs and reply briefs, as well as relying on the exhibits attached to the joint motion. Finally, the parties stated that they had agreed to no additional discovery in this case.

{¶ 8} In a December 30, 2020 Entry, the attorney examiner recognized the COVID-19 concerns emphasized by the parties and Complainant's internet connectivity difficulties. The attorney examiner noted that, under similarly unique circumstances, the Commission has previously considered the merits of a complaint case, filed pursuant to R.C. 4905.26, basing its decision on the parties' submitted exhibits and briefs, in lieu of an in-person evidentiary hearing.¹ The attorney examiner concluded that the joint motion and proposed procedural schedule are reasonable and granted the parties' request. In addition, the parties were directed to file initial and reply briefs by January 13, 2021, and January 27, 2021, respectively. Complainant filed his brief on January 11, 2021; Columbia filed its brief on January 13, 2021. Reply briefs were filed by Complainant on January 28, 2021, and by Columbia on January 27, 2021.

¹ The attorney examiner cited *In re Complaint of Lars St. John v. The Cleveland Elec. Illum. Co.*, Case No. 18-1899-EL-CSS, Finding and Order (May 6, 2020).

{¶ 9} On March 10, 2021, the Commission issued its Opinion and Order in this proceeding (Order), concluding that Complainant has not met his burden to prove that Columbia did not provide reasonable service when filling in an excavation after riser replacement and when filling in an excavation following repair of a leaking gas line. The Commission also concluded that Complainant has not met his burden to prove that the timing and nature of Columbia's responses to his concerns and inquiries constitute unreasonable service.

{¶ 10} R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the Commission's order is journalized.

{¶ 11} On April 7, 2021, Complainant filed an application for rehearing, alleging four assignments of error.

{¶ 12} On April 14, 2021, Columbia filed a memorandum contra the application for rehearing, in which it disputes all of Complainant's alleged grounds for rehearing.

{¶ 13} On April 19, 2021, Complainant filed a supplemental request for rehearing and memorandum in support.

{¶ 14} On April 23, 2021, Columbia filed a second memorandum contra in response to the supplemental request for rehearing.

{¶ 15} On April 26, 2021, Complainant filed a second supplement to the application for rehearing.

{¶ 16} The Commission has reviewed and considered all of the arguments raised in the application for rehearing filed by Complainant on April 7, 2021. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

B. *Consideration of the Application for Rehearing*

1. WHETHER THE COMMISSION FAILED TO INFORM COMPLAINANT THAT AN APPLICATION FOR REHEARING MUST BE FILED WITHIN 30 DAYS AFTER ISSUANCE OF THE COMMISSION ORDER

{¶ 17} Complainant alleges that the Commission's failure to inform him that he could file for rehearing within 30 days after the Order constitutes suppression of his consumer rights (App. for Rehearing at 1).

{¶ 18} Columbia contends, initially, that the application for rehearing does not comply with requirements set forth in R.C. 4903.10 and Ohio Adm.Code 4901-1-35. In explanation, Columbia observes that R.C. 4903.10 requires an application for rehearing to "set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." Columbia asserts that Complainant merely levies unfounded or unsupported allegations against the Commission and makes general expressions of disagreement with the Commission's legal conclusions. (Memo. Contra at 2.)

{¶ 19} Regarding Complainant's first assignment of error, Columbia asserts that this allegation is unrelated to the Commission's Order and should be rejected (Memo. Contra at 2-3).

{¶ 20} The Commission observes that, after Complainant filed his complaint on August 4, 2020, the Commission sent Complainant an August 5, 2020 letter acknowledging receipt of the formal complaint. Included with the letter was a brochure explaining the formal complaint process, including, among other things, a description of how to apply for a rehearing. The Commission's procedural rules, including Ohio Adm.Code 4901-1-35, which addresses the rehearing process, are also made available to the public through the Commission's website. This assignment of error should, therefore, be denied.

2. WHETHER THE COMMISSION ERRED BY CONCLUDING THAT COMPLAINANT FAILED TO MEET HIS BURDEN OF PROOF

{¶ 21} Complainant contends that the Order “rehashes the salient points of the complaint [and is] just a façade to show * * * [the Commission] is understanding the issue” (App. for Rehearing at 1).

{¶ 22} In response, Columbia states that, while this assignment of error disagrees with the Order because it does not find in Complainant’s favor, Complainant does not allege that the Order is unreasonable or unlawful (Memo. Contra at 3).

{¶ 23} As discussed above, in its Order, the Commission concluded that Complainant did not meet his burden of proving that Columbia failed to provide reasonable service when filling in an excavation after riser replacement and when filling in an excavation after repair of a leaking gas line. The Commission also concluded that Complainant did not meet his burden of proving that the timing and nature of Columbia’s responses to his concerns and inquiries constituted unreasonable service. Before stating the Commission’s conclusions, the Order summarizes the parties’ arguments and evidence, not to simply repeat their positions, but rather to indicate factors that the Commission examined thoroughly and based its conclusions upon. Among the significant factors that contributed to the Commission’s conclusions are the findings of the structural inspection report of Complainant’s home, which stated that the lack of vertical reinforcement in the basement wall made it susceptible to displacement and cracking, and that grading of the soil around the perimeter of the home likely resulted in hydrostatic pressure pushing against the foundation wall. Order at ¶ 26. We note that Complainant does not assert that the Order’s summary of the parties’ arguments renders the Order unreasonable or unlawful; rather, Complainant simply disagrees with the Commission’s conclusions. This assignment of error should, therefore, be denied.

3. WHETHER THE COMMISSION WAS INFLUENCED BY COLUMBIA IN DETERMINING ITS FINDINGS

{¶ 24} In this assignment of error, Complainant inquires as to the frequency of a complainant prevailing in a complaint case and questions whether Columbia influenced the outcome in this proceeding (App. for Rehearing at 1).

{¶ 25} Columbia responds by again stating that, while this assignment of error disagrees with the Order because it does not find in Complainant's favor, Complainant does not allege that the Order is unreasonable or unlawful. Columbia contends that this allegation is baseless and should be rejected. (Memo. Contra at 3.)

{¶ 26} While we recognize Complainant's disagreements with the outcome of the Order, such disagreement does not render the Order unreasonable or unlawful. Complainant fails to explain how the Commission's findings, which were based on evidence submitted by Complainant, were improperly influenced toward its ultimate conclusions in the Order. Therefore, this assignment of error should be denied.

4. WHETHER COLUMBIA FAILED TO PRODUCE EVIDENCE THAT COMPLAINANT'S CONTENTIONS AND ALLEGATIONS ARE INCORRECT

{¶ 27} In this assignment of error, Complainant emphasizes that Columbia did not produce evidence that Complainant's claims are false, nor did Columbia document that facts stated by Complainant are incorrect. Complainant asserts that Columbia has only stated that Complainant has not met the burden of proof. Complainant contends that this is a "failure of justice and deceit of public trust." (App. for Rehearing at 1.)

{¶ 28} Columbia states that this assignment of error repeats Complainant's incorrect and misleading allegation that Columbia failed to produce evidence proving that Complainant's claims are false. Columbia notes that the Order relied on evidence submitted jointly by the parties. Further, Columbia contends that Commission precedent demands that the burden of proof in complaint cases lies with the complainant to prove allegations by a preponderance of the evidence. Columbia asserts that Complainant has not satisfied this

burden and that the Commission carefully outlined its reasoning in the Order. In Columbia's opinion, with no additional evidence to be analyzed or any new legal arguments to examine, the application for rehearing should be denied. (Memo. Contra at 3.)

{¶ 29} The Commission observes that Paragraph 9 of the attorney examiner's August 31, 2020 Entry scheduling a settlement conference, as well as Paragraph 8 of the attorney examiner's December 30, 2020 Entry establishing a procedural schedule, state that, "[a]s is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint." *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, it is not Columbia's responsibility, as Complainant contends, to provide evidence that Complainant's claims are false. Although the Commission certainly examined and considered Columbia's assertions, it is Complainant's burden to prove that Columbia is responsible for the problems that led to his filing a formal complaint. Ultimately, the Commission determined that, based upon the parties' arguments and evidence submitted jointly by Complainant and Columbia, Complainant did not prove Columbia's responsibility. Therefore, this assignment of error should be denied.

5. OTHER ISSUES RAISED BY COMPLAINANT

{¶ 30} Complainant requests that the rehearing include opportunity for oral argument, either done in-person or electronically, so that he can "argue the case" (App. for Rehearing at 1).

{¶ 31} Columbia urges the Commission to deny Complainant's request for oral argument. Columbia observes that, although Ohio Adm.Code 4901-1-32 provides the Commission with authority to hear oral arguments from parties at any time during a proceeding, recent history indicates that oral argument at rehearing has only been considered when it would benefit the Commission's review, when such a request is reasonable, when newly raised issues have arisen necessitating oral argument, or when it is necessary to review a complex application. In Columbia's opinion, oral argument would not provide a material benefit to Complainant's case, because the Commission has been

supplied with all of the factual evidence necessary to weigh the parties' arguments. Further, Columbia states that Complainant has not raised any unique or unsettled legal arguments. Columbia further contends that the request is unreasonable, because it is raised after both parties agreed through a joint motion to set a procedural schedule (Joint Motion) to limit the Commission's review to a paper record. Finally, Columbia emphasizes that Complainant has not raised any new relevant issues that make oral argument necessary, nor is the application for rehearing uniquely complex. Columbia notes that, when the Commission has ordered an oral argument over the last decade, it did so to allow the commissioners an opportunity to explore nuanced facets of regulatory law; however, in Complainant's case, the Commission's standard of review (i.e., that a complainant must prove a case by a preponderance of the evidence) is not at issue.

{¶ 32} The Commission initially notes that the parties' Joint Motion indicates that Complainant cannot reliably participate in a hearing using video conferencing because of internet connection issues. The Joint Motion also acknowledges that the continuing COVID-19 emergency makes the possibility of an in-person hearing unlikely. Because of these factors, the parties requested to present arguments in briefs and reply briefs. The attorney examiner recognized these factors in the December 30, 2020 Entry granting the parties' request to proceed to hearing by submitting briefs and reply briefs, along with evidence that they stipulated into the record.

{¶ 33} In considering Complainant's request for oral argument on rehearing, either in-person or electronically, the Commission observes that the Governor's Executive Order 2020-01D, which declares a state of emergency because of the COVID-19 pandemic, and orders issued by the Ohio Department of Health, are still in effect. Therefore, in-person oral arguments are not possible at the Commission offices for the foreseeable future. In addition, Complainant has not indicated that the aforementioned internet connection difficulties have been remedied; thus, the continued presence of that problem still renders questionable Complainant's ability to electronically present oral arguments. Finally, both parties submitted multiple pages of exhibits, briefs, and reply briefs, which provided ample

evidence for the Commission to examine and thoroughly consider prior to reaching its conclusions. With the preceding factors in mind, then, the request for oral argument should be denied.

{¶ 34} Regarding the Complainant's filings on April 19, 2021, and April 26, 2021, to supplement his application for rehearing, we note that R.C. 4903.10 and Ohio Adm.Code 4901-1-35 require that all applications for rehearing be filed within 30 days after issuance of an order by the Commission. Complainant's supplements were not filed within 30 days from the date of the Order, specifically by April 9, 2021. Further, nothing in R.C. 4903.10 or Ohio Adm.Code 4901-1-35 allows for submission of a supplement after filing an application for rehearing. Consequently, the Commission is without jurisdiction to consider the supplements to Complainant's application for rehearing. *See, e.g., In re City of Hamilton and American Municipal Power, Inc., Case No. 10-2439-EL-BSB, et al., Entry on Rehearing (Jan. 23, 2012) at 7.*

{¶ 35} In sum, having found that Complainant's assignments of error are without merit, Complainant's application for rehearing and request for oral argument should be denied.

III. ORDER

{¶ 36} It is, therefore,

{¶ 37} ORDERED, That the application for rehearing and request for oral argument filed by Complainant be denied. It is, therefore,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JML/hac

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Summary: Entry denying the application for rehearing and request for oral argument filed by Prakash Thombre electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio