

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co- )  
lumbia Gas of Ohio, Inc. for Authority )  
to Amend its Filed Tariffs to Increase the ) Case No. 21-637-GA-AIR  
Rates and Charges for Gas Services and )  
Related Matters. )

In the Matter of the Application of Co- )  
lumbia Gas of Ohio, Inc. for Approval of ) Case No. 21-638-GA-ALT  
an Alternative Form of Regulation. )

In the Matter of the Application of Co- )  
lumbia Gas of Ohio, Inc. for Approval of )  
a Demand Side Management Program ) Case No. 21-639-GA-UNC  
for its Residential and Commercial Cus- )  
tomers. )

In the Matter of the Application of Co- )  
lumbia Gas of Ohio, Inc. for Approval to ) Case No. 21-640-GA-AAM  
Change Accounting Methods. )

---

---

**COLUMBIA GAS OF OHIO, INC.'S  
MEMORANDUM CONTRA MOTION OF  
OFFICE OF THE OHIO CONSUMERS' COUNSEL  
FOR A LOCAL PUBLIC HEARING IN TOLEDO, OHIO**

---

---

**1. Introduction**

In May, the Commission scheduled local hearings on Columbia Gas of Ohio, Inc.'s Application in Bowling Green and four other cities. The Office of the Ohio Consumers' Counsel responded by requesting two virtual public hearings, but said nothing about the public hearing locations. Now, more than three months later, OCC asserts that R.C. 4903.083 requires a *sixth* public hearing in Toledo, 20 miles from Bowling Green. The time for requesting such a hearing was in May, not after the Bowling Green hearing was noticed and held. By waiting this long, OCC has forfeited its rights under statute. The Commission should deny OCC's motion.

## 2. Law and Argument

On May 11, the Commission issued an Entry setting public hearings on Columbia Gas of Ohio's application for an increase in rates and for approval of an alternative rate plan. The Entry announced that the hearings would be held in Athens, Bowling Green, Canton, and Columbus, and ordered Columbia to publish notice of those hearings in newspapers of general circulation for two consecutive weeks.<sup>1</sup> The following week, the Commission scheduled an additional hearing in Zanesville and ordered Columbia to publish notice of that hearing as well.<sup>2</sup> Both Entries cited the requirement in R.C. 4903.083 "that the Commission hold at least one public hearing within Columbia's service territory and \* \* \* at least one such hearing \* \* \* after 5:00 p.m."<sup>3</sup> Columbia published the required notices – in 64 newspapers throughout their service area<sup>4</sup> – and attended the noticed hearings.

On May 20, the Office of the Ohio Consumers' Counsel filed a motion asking the Commission to schedule two virtual public hearings. Like the Commission, OCC's motion cited the requirement in R.C. 4903.083 that "consumers \* \* \* be invited to participate in the PUCO's rate increase process by having local public hearings[,]” and asserted that the statute's intent "is for the PUCO to provide a legal process for consumers to be heard on important utility issues."<sup>5</sup> OCC did not assert, however, that the PUCO had erred by failing to schedule a public hearing in any location other than the five cities chosen.

More than three months later, however, OCC has returned, requesting a *sixth* local hearing in Toledo and citing the same statute cited in the Commission's scheduling entries and OCC's prior motion.<sup>6</sup> OCC's motion does not explain why it failed to request a Toledo hearing *before* Columbia published two weeks of notices in the *Toledo Blade* and other newspapers, and before Attorney Examiner St. John, Commissioner Trombold, Columbia's counsel, and others made the two-hour trip to Bowling Green on June 2. Nor does OCC explain why a hearing in Bowling Green – approximately 20 miles south of Toledo – failed to satisfy the statute's intent.

---

<sup>1</sup> May 11, 2022 Entry at ¶¶ 11-12.

<sup>2</sup> May 19, 2022 Entry at ¶¶ 12-13.

<sup>3</sup> May 11, 2022 Entry at ¶ 11; May 19, 2022 Entry at ¶ 13.

<sup>4</sup> See Columbia Proof of Publication, Affidavit of Walt Dozier (June 22, 2022).

<sup>5</sup> OCC Motion to Allow Columbia's Consumers to Participate Virtually in the PUCO's Local Public Hearings on Columbia's Proposed Rate Increase at 1-2 (May 20, 2022).

<sup>6</sup> OCC Motion for a Local Public Hearing at 1-2.

By waiting until now to file its motion, OCC has forfeited its right to request a Toledo hearing, even if such a hearing were required by statute. *See, e.g., Liberty Hwy. Co. v. Pub. Util. Com.*, 128 Ohio St. 586, 589-590, 193 N.E. 407 (1934) (holding that two companies waived their objections to a competitor's certificates of public convenience and necessity by waiting almost three years to challenge the certificates, where the companies were aware of the competitor's operation throughout the period, even though the Commission had violated a statutory requirement to provide public notice of the hearing).

The Supreme Court of Ohio has repeatedly held that a party to Commission or Ohio Power Siting Board proceedings forfeits its statutory arguments if it fails to raise those arguments at a time when the Commission or Board can act on them. In *In re Buckeye Wind, L.L.C.*, 148 Ohio St. 3d 69, 2016-Ohio-5664, 68 N.E.3d 786, for example, the Court held that a county had forfeited its objections to the scope of a hearing on amendments to a wind farm siting application by not raising the issue until the county filed an application for rehearing. The availability of the rehearing process, the Court held,

does not mean that a party may sit idly and withhold all objections before and during a board hearing and then belatedly raise them in a rehearing application. \* \* \* [P]arties have the obligation to alert the board of an alleged error at a time when it could reasonably have been avoided or corrected.

*Id.* ¶ 18. Similarly, in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 2010-Ohio-6239, 941 N.E.2d 757, the Court held that OCC had forfeited any objections regarding Vectren's compliance with the public-notice requirements for ratemaking proceedings by waiting until six months after the Commission approved the proposed public notice, and more than five months after the notice was published, to challenge it. "OCC's failure to challenge Vectren's public notice at an earlier juncture," the Court held, "constitutes a forfeiture of the objection because it deprived the commission of an opportunity to cure any error when it reasonably could have." *Id.* ¶ 18. "OCC should have challenged Vectren's public notice before it was published in local newspapers," the Court continued, "and its decision to wait five months after publication before raising an objection is fatal to OCC's claim." *Id.* *See also Parma v. Pub. Util. Comm.*, 86 Ohio St.3d 144, 148, 1999-Ohio-141, 712 N.E.2d 724 (holding the City of Parma waived any objection to a hearing notice by waiting until the rehearing stage to raise its objections)

For the same reason, OCC's decision to wait more than three months to challenge the locations of the local public hearings is fatal to OCC's claim here. If the Commission erred by scheduling a public hearing 20 miles south of Toledo, rather than in Toledo, OCC had ample time to alert the Commission. The Commission issued its entry scheduling the Bowling Green hearing on May 11. Columbia began publishing the required hearing notices on or around May 19.<sup>7</sup> The hearing was not held until June 2. OCC could have alerted the Commission of the need to hold a public hearing in Toledo *before* Columbia paid to publish legal notices of the Bowling Green hearing in multiple newspapers. At the very least, OCC could have said something in its May 20 motion – before most of Columbia's legal notices were published, and well before the Commission, the parties, and others took the time and incurred the expense to travel to Bowling Green. By waiting, instead, until *September* to bring this issue to the Commission's attention, the OCC has forfeited any rights it had under statute to a hearing in Toledo.

This does not mean, of course, that Columbia's customers in Toledo will be deprived of any opportunity to offer their opinions on Columbia's Application. In its earlier filing requesting virtual public hearings, OCC acknowledged "consumers have other ways [than local public hearings] to express their opinions regarding the case. They can call the PUCO, write the PUCO by mail, or submit comments on the PUCO's website."<sup>8</sup> As of early September, almost 600 Ohioans have taken advantage of the opportunity to file comments in the Commission docket for this proceeding. Indeed, perhaps coincidentally, the most recent comment is from an attorney in the Toledo office of Advocates for Basic Legal Equality, Inc. (ABLE), OCC's ally in numerous Commission proceedings.<sup>9</sup>

---

<sup>7</sup> See Proof of Publication, Affidavit of Walt Dozier (June 22, 2022).

<sup>8</sup> OCC's Motion to Allow Columbia's Consumers to Participate Virtually in the PUCO's Local Public Hearings on Columbia's Proposed Rate Increase at 2.

<sup>9</sup> See, e.g., *In the Matter of the Application of The Dayton Power and Light Company d/b/a AES Ohio for a Limited Waiver of Rule 4901:1-18-06(A)(2), Ohio Administrative Code*, Case No. 12-1234-EL-WVR, Motions to Intervene by Advocates for Basic Legal Equality, Inc., Office of the Ohio Consumers' Counsel, and Ohio Poverty Law Center (Dec. 23, 2021); *In the Matter of the Annual Report Required by R.C. 4933.123 Regarding Service Disconnections for Nonpayment*, Case No. 21-548-GE-UNC, Motion to Investigate AEP Ohio's Practices for Consumer Disconnections by Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, and Pro Seniors, Inc. (July 30, 2021).

### 3. Conclusion

For the reasons provided above, Columbia Gas of Ohio, Inc. respectfully requests that the Commission find that the Office of the Ohio Consumers' Counsel has forfeited its right to challenge the Commission's May 2022 entries scheduling local public hearings in these proceedings, and deny the Motion for Local Public Hearing in Toledo, Ohio.

Respectfully submitted,

/s/ Joseph M. Clark

Joseph M. Clark, Asst. Gen. Counsel  
(0080711) (Counsel of Record)

John R. Ryan, Sr. Counsel (0090607)

P.O. Box 117

290 W. Nationwide Blvd.

Columbus, Ohio 43216-0117

Telephone: (614) 813-8685

(614) 285-2220

E-mail: josephclark@nisource.com

johnryan@nisource.com

Eric B. Gallon (0071465)

Mark S. Stemm (0023146)

L. Bradfield Hughes (0070997)

Devan K. Flahive (0097457)

Porter, Wright, Morris & Arthur LLP

41 South High Street

Columbus, Ohio 43215-6194

Telephone: (614) 227-2000

Email: egallon@porterwright.com

mstemm@porterwright.com

bhughes@porterwright.com

dflahive@porterwright.com

(Willing to accept service by e-mail)

Attorneys for

**COLUMBIA GAS OF OHIO, INC.**

## 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 hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 2nd day of September, 2022, upon the parties listed below.

<b>Citizens' Utility Board of Ohio</b>	Trent Dougherty <a href="mailto:trent@hubaydougherty.com">trent@hubaydougherty.com</a>
<b>Environmental Law &amp; Policy Center</b>	Janean R. Weber <a href="mailto:jweber@elpc.org">jweber@elpc.org</a>
<b>Industrial Energy Users-Ohio</b>	Matthew R. Pritchard Bryce A. McKenney McNees Wallace & Nurick LLC <a href="mailto:mpritchard@mcneeslaw.com">mpritchard@mcneeslaw.com</a> <a href="mailto:bmckenney@mcneeslaw.com">bmckenney@mcneeslaw.com</a>
<b>Interstate Gas Supply, Inc.</b>	Michael Nugent Evan Betterton Stacie Cathcart <a href="mailto:michael.nugent@igs.com">michael.nugent@igs.com</a> <a href="mailto:evan.betterton@igs.com">evan.betterton@igs.com</a> <a href="mailto:stacie.cathcart@igs.com">stacie.cathcart@igs.com</a>
<b>The Kroger Company</b>	Angela Paul Whitfield Carpenter Lipps & Leland LLP <a href="mailto:paul@carpenterlipps.com">paul@carpenterlipps.com</a>
<b>Northeast Ohio Public Energy Council</b>	Devin D. Parram BRICKER & ECKLER LLP <a href="mailto:dparram@bricker.com">dparram@bricker.com</a>  Glenn S. Krassen <a href="mailto:gkrassen@nopec.org">gkrassen@nopec.org</a>

<p><b>Office of the Ohio Consumers' Counsel</b></p>	<p>Angela D. O'Brien  William J. Michael  Connor D. Semple  Assistant Consumers' Counsel  <a href="mailto:angela.obrien@occ.ohio.gov">angela.obrien@occ.ohio.gov</a>  <a href="mailto:william.michael@occ.ohio.gov">william.michael@occ.ohio.gov</a>  <a href="mailto:connor.semple@occ.ohio.gov">connor.semple@occ.ohio.gov</a></p> <p>Brian M. Zets  <a href="mailto:bzets@isaacwiles.com">bzets@isaacwiles.com</a></p>
<p><b>Ohio Energy Group (OEG)</b></p>	<p>Michael L. Kurtz, Esq.  Kurt J. Boehm, Esq.  Jody Kyler Cohn, Esq.  BOEHM, KURTZ &amp; LOWRY  <a href="mailto:mkurtz@BKLawfirm.com">mkurtz@BKLawfirm.com</a>  <a href="mailto:kboehm@BKLawfirm.com">kboehm@BKLawfirm.com</a>  <a href="mailto:jkylercohn@BKLawfirm.com">jkylercohn@BKLawfirm.com</a></p>
<p><b>Ohio Manufacturers' Association Energy Group</b></p>	<p>Kimberly W. Bojko  Jonathan Wygonski  Carpenter Lipps &amp; Leland LLP  <a href="mailto:Bojko@carpenterlipps.com">Bojko@carpenterlipps.com</a>  <a href="mailto:Wygonski@carpenterlipps.com">Wygonski@carpenterlipps.com</a></p>
<p><b>Ohio Partners for Affordable Energy</b></p>	<p>Robert Dove  Kegler Brown Hill + Ritter Co., L.P.A.  <a href="mailto:rdove@keglerbrown.com">rdove@keglerbrown.com</a></p>
<p><b>Ohio School Council</b></p>	<p>Glenn S. Krassen  BRICKER &amp; ECKLER LLP  <a href="mailto:gkrassen@bricker.com">gkrassen@bricker.com</a></p> <p>Dane Stinson  Rachel Mains  BRICKER &amp; ECKLER LLP  <a href="mailto:dstinson@bricker.com">dstinson@bricker.com</a>  <a href="mailto:rmains@bricker.com">rmains@bricker.com</a></p>

<b>Retail Energy Supply Association</b>	Michael J. Settineri Gretchen L. Petrucci Vorys, Sater, Seymour and Pease LLP <a href="mailto:mjsettineri@vorys.com">mjsettineri@vorys.com</a> <a href="mailto:glpetrucci@vorys.com">glpetrucci@vorys.com</a>
---	---

*/s/ Joseph M. Clark* \_\_\_\_\_

Joseph M. Clark

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



**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**9/2/2022 4:39:33 PM**

**in**

**Case No(s). 21-0637-GA-AIR, 21-0638-GA-ALT, 21-0639-GA-UNC, 21-0640-GA-  
AAM**

Summary: Memorandum Contra Motion of Office of the Ohio Consumers' Counsel  
for a Local Public Hearing in Toledo, Ohio electronically filed by Mr. Eric B. Gallon  
on behalf of Columbia Gas of Ohio, Inc.