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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

Antuan Burress - El,	)	Case No. 21-298-GA-CSS
	)	
Complainant/ Proposals'	)	
	)	
v.	)	PROPOSALS' MOTION
	)	FOR RECONSIDERATION /
DUKE ENERGY OHIO, Inc.	)	REHEARING
	)	
Defendant.	)	

Now comes Antuan Burress - El to request a motion for reconsideration of the PUCO courts for the courts findings. On September 7, 2022 Granting Duke Energy (Duke) and KS Energy (KSE) motion to Dismiss. Complainant motions for **Title 4903.10 (B) Application for rehearing. Supported by House Bill 215 - 122nd General Assembly Effective September 29, 1997. Also 4901-1-35 (A)(B)(C)(D) Applications for Rehearing. Also 4901-9-01 | Complaint proceedings.** If discrimination is alleged, the facts that allegedly constitute discrimination must be stated with particularity. **R.C. 4913.25 (Effective Application for reconsideration (A) If either the person that requested the inquiry or the person responsible for the compliance failure disagrees with either a finding or a no-enforcement determination made by the underground technical committee (B)(C)(D). R.C. 4913.251 Reconsideration order; appeal A reconsideration order issued under section 4913.25 130th General Assembly File No. TBD, SB 378, §1, Eff. 3/23/2015.**

**Synopsis Ohio Law:**

[1] The Commission request for Grounds for which complainant would constitute discrimination, and consider commission orders to be unjust, unreasonable and unlawful are designed to prevent miscarriages of justice. Complainant has outlined PUCO website, Constitutions of U.S.A. and Ohio, Ohio laws of legislation, H.R. Bills, Public laws, Ohio Administration Codes, Ohio Revised Codes, United States Codes, Codes of Federal Rules and Regulations, and Public Safety Codes Also filed within the proceedings are Ohio Supreme Court case that are being submitted into Public Record for Clarification and Particularity. In the interest of justice.

“[2] The commission has stated, under II. Discussion- Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints 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. For the record, The Commission Rules of Practice are authorized by, Proposals’

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[cites: **Senate Bill 378 - 130th General Assembly. Title 4905.26 Complaints as to service**].

Upon complaint in writing against any public utility . . . that any rate, fare, charge, toll, rental, schedule, classification, or service, rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, . . . and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. The notice shall be served not less than fifteen days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time. The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

[3] The commissions has stated, Duke Energy Ohio, Inc. is a natural gas company subject to the jurisdiction of the Public Utilities Commission of Ohio (Commission) under **Title 49 of the Ohio Revised Code (R.C.) and rules adopted by the Commission in the Ohio Administrative Code (Ohio Adm. Code). R.C. 4905.95 and a public utility a defined in R.C. 4905.55**, and as such, is subject to the jurisdiction of this Commission.

The Commission's rules adopt the federal gas pipeline safety regulations contained at **49 C.F.R. 40, 49 C.F.R. 191, 49 C.F.R. 192, and 49 C.F.R. 199 (Pipeline Safety Regulations)**. The Pipeline Safety Regulations require gas pipeline operators to provide notice of any malfunction or operating error that causes gas pressure inside a line to exceed the pipeline's maximum allowable operating pressure. Therefore, this case is to being requested to be initiated by the Commission's Gas Pipeline Safety Staff (Staff).

"[4] The commission has ordered unreasonable decision, "Proposals' filed a complaint against Duke alleging negligence and compensation **R.C. 4913.23** Property/ facility was never restored during procedure conducted by Duke through its Contractor KSE in order to complete its admitted servicing and scheduling **R.C. 4905.26** township repair project. Complainant alleges that, during the process, commission admits that complainant said it was irreparably damaged done and that insurance companies representing operators committed compliance failure for claimed damages. Commission admits both for alleged damage to his property and for alleged damages consequent to his being left without use of facility.

[5] On April 20, 2021, Commission admits Duke filed its answer resulting in noncompliance to complaint's allegations, Duke asserts its own allegations of noncompliance issue, identifying the apparent violations and their facts to direct the operator to not comply to compliance laws. KSE- insurance **Claim Number: 009224-001618-GD-01** On January 20, 2021 admits to operator not complying to pipeline safety codes and not undertake corrective action necessary to protect the public safety **O.A.C. Rule 4901:1-16-01**. Operator admits to noncompliance of reporting incident and not estimating cost of repairing and/or replacing the physical damage to the pipeline facility or cost of material, labor, and equipment to repair the leak, including meter turn-off, meter turn-on, and light up, and the estimated cost of repairing and/or replacing other damaged property of the operator or others, or both. Operator has violated sections **4905.90 to 4905.96 of the R.C. and the pipe-line safety code**

[6] The commission has admitted, On May 14, 2021, a settlement teleconference for June. 2, 2021 and a 2nd teleconference August 23, 2021, . On neither occasion did the party of Duke comply to any rules, regulations or codes that all operators subject to those proceedings and orders **R.C. 4905.95**. The operator

of the facility did not take corrective action to remove the hazard. Such corrective action may have include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action. at a settlement of the case. **Title 49 CFR, Part 191, Section 191.5; O.A.C. 4901:1-16-05(A)**

[7] The commission admits that On May 18, 2021, Duke filed a motion to dismiss stating the Commission lacks subject matter jurisdiction, lacks personal jurisdiction, although the complainant's language was discriminated on within this claims process and proceedings. The Pipeline Safety Regulations required Operator to comply. Fraudulent practice lead Duke to intentional misrepresentation or concealment of a material fact that the gas or natural gas company relies on to its detriment to make complaint about a old out dated furnace **4901:1-13-01 Definitions. (I).** The complainant did not fail to state a claim upon which relief can be granted. The public utility failed to comply to the pipeline safety rules. And the Commission failed at Monitoring and enforcing compliance with rules and statutory protections against deceptive, unfair, unsafe, utility practices. 4905.26 confers exclusive jurisdiction on PUCO to adjudicate complaints filed against a public utility and states.

[8] The commission's order constitutes discrimination and is unlawful. The commission's misinterpretation of the facts are biased. " Complainant did not, within the time parameters established in Ohio Adm.Code 4901-1-12, file a memorandum contra Respondent's motion to dismiss. on January 26, 2022, Commission admits that Complainant filed a motion for extension of time to respond. According to **OAC 4901-1-12 (B)(1)** Any party may file a memorandum contra within fifteen days after the service of a motion. Complainant filed a Response to Duke Energy Motion to Dismiss. 15 days after extension was filed. which Commission granted extension and gave until March 3, 2022, to file memorandum contra, in response to motion to dismiss. Clarification: Complainant Motion to Respond to Duke Energy motion to Dismiss was filed On February 10, 2020, Demand Burden of Proof for Verification of Receipts of Claims made by Duke Energy and it's Contractor was the title for Discovery. **R.C. 4903.082 Right of discovery.**

[9] The commission also misinforms that, Complainant has never filed a pleading addressing arguments to Duke's motion to dismiss. Even after March 14, 2022 extension expired, Complainant filed for oral arguments, yet to file to March 14, 2022. Complainant mentions and addresses "motion to dismiss, and memorandum arguments raised several times. On Pg. 1, pg. 3, pg. 12.

[10] The commission admits, "on February 17, 2022, Duke filed pleadings which reiterated their arguments in its motion to dismiss for their compliance failure.

[11] The commission omission are unjust and unlawful,, Duke points out certain causes of action over which the Commission lacks subject matter jurisdiction, "insurance fraud," "negligence and immoral acts," "defamation of character," "intentional [infliction of] emotional distress," and violation of both U.S. and Ohio constitutional law. Proposals' [cites: **OAC 4901:1-2-01, R.C. 4913.01, OAC 4901:1-13-01 Definitions R.C. 4913.22** Payment of fine; compliance with penalty A person subject to a fine imposed under section **4913.171, 4913.19, or 4913.21 of the Revised Code or division, Pipeline and Hazardous Materials Safety Administration 49 CFR 191.5, OAC 4901:1-16-05(A)**]

- **5th Amendment:** United States Constitution of North America, "no one can be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation".

- **\*The Ohio Constitution: Eminent domain Article I §19 Private property shall ever be held inviolate..... a compensation shall be made to the owner, in money; and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.**
- **(2) Ohio Constitution: Municipal Corporations Article 18 § 4 Acquisition of public utility; contract for service; condemnation. § 5 Acquisition by Ordinance; Procedure; Referendum; Submission. § 6 Sale of Surplus. § 12 Bonds for public utilities**

[12] The commission admits, Duke submitted, a noncompliance to pipeline safety incident, a significant threat to public safety. The commission states, to determine whether the Commission has subject matter jurisdiction, the Commission decided to apply a two-part test *Allstate Ins. V. Cleveland Electric Illuminating Co.*.....

[13] The Commission's order constitutes unreasonable grounds to interpret jurisdictions, Dukes noncompliance arguments that the Commission should reach the same holding as it did in *In re Anthony W. Garrabrant*, The Commission, citing *Allstate* test determined that it lacked subject matter jurisdiction over a complaint alleging negligence by a utility's contractor. Proposals' experience is that the public utility decided to minimizing the quality-of-life impact of utilities. Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act was an immediate response to Incident reporting. Incidents must be reported to the State of Ohio within 30 minutes of discovery, unless notification within that time is impracticable under the circumstances. (*Ohio Administrative Code (OAC) 4901:1-16-05 (A)*).

Although: Exclusive jurisdiction is giving to PUCO also through case law: **\*In Re: Ohio Supreme Court decision in DiFranco, et al. v. FirstEnergy Corporation, et al. (2012), 134 Ohio St. 3d 144**, common-law tort claims fall within the exclusive jurisdiction of the Public Utilities Commission of Ohio ("PUCO"). In holding that the fraud claims alleged in *DiFranco* were within the exclusive jurisdiction of PUCO, the Ohio Supreme Court applied the two-part test adopted as a result of *Allstate Ins. Co. v. Cleveland Elec. illum. Co. (2008), 119 Ohio St. 3d 301*

[14] The commissions discriminations in particularity are against complainant and the commission's jurisdiction powers and duties. The commission states, that Duke says the Complainant failed to present jurisdictional questions concerning provision of utility service and restoration of utility service to service address.... Proposals' states, While Duke and the Operator were scheming to avoid the serious nature of life threatening incident. Complainant contacted Pipeline and Hazardous Materials Safety Administration's (PHMSA) September 1, 2021 PHMSA call was transferred to the National Response Center (NRC) who made the one-call. **REPORT # 1315346**, which found Duke and their contractor liable for operator error. On September 13<sup>th</sup> complainant made a Request for Freedom of Information Act (FOIA), a request was entered into the Department of Homeland Security PAL (dhs.gov). On September 20, 2021 **FOIA #2021-CG-02270** found the public service provider at fault and filed a report into the U.S.Coast Guards and Home Land Securities public records.

Duke Energy contractor and Deer Park Fire Dept. and Columbia Township Sheriff responded to the NRC one call. EPA contacted complainant and stayed in communication with complainant throughout the incident report process. They evacuated complainant's service address and found high levels of gas leaking in the basement from indoor and outdoor gas pipes and hot water heater as well. Of address previously serviced by Dukes contractor KSE. Who were told not to inspect or investigate the compliance failure during the service provided by Duke's contractor. No report was filed by the Duke's contractor, the Commission was provided notice by email a copy of the report made by PHMSA, NRC, and EPA.

Duke's contractor shut off gas and pipeline to the facility and tagged both pipelines to furnace and hot water heater. Property has not been repaired or replaced since April 1, 2020 date of incident or turned back on since September 1, 2021 date incident was reported to PHMSA, NRC, and EPA. Which the hot water heater was the homeowners responsibility but not the damage committed by Duke's contractor KSE. In which Duke admitted in correspondence with the PUCO that their contractor KSE did touch and try to fix the property that they said prior in the insurance claim that, that they never physically touched it. The bureaucracy of arguing back and forth over **Anthony W. Garrabrant, Case No. 15-401-EL-CSS, Entry July 20, 2016) at 4, citing State ex rel. illum Co. Pleas, 97 OhioSt.3d 60, 2002-Ohio-5312, 776 N.E.2d., Allstate Ins. Co. v. Cleveland Elec. illum. Co. (2008) test, and job performance is a cover up for their compliance failure. Proposals' [cite: Cf., e.g., COLUMBIA GAS OF OHIO, INC.**

**RELATIVE TO ITS COMPLIANCE WITH THE NATURAL GAS PIPELINE SAFETY STANDARDS AND RELATED MATTERS. CASE NO. 20-1759-GA-GPS. Decided, February 24, 2021]** In closing, the Commission emphasizes our commitment to ensuring consumer safety and requiring operators of gas pipelines to take all reasonable steps to provide necessary safeguards. The Commission expects that Columbia, in addition to undertaking the actions required by the Joint Stipulation, will continually review its management and training practices related to GPS requirements and immediately correct any issues of concern.

I refer to the PUCO website: <https://puco.ohio.gov/about-us/resources/mission-and-commitments>. PUCO Mission and Commitments Our mission for all residential and business consumers.

Our mission is to assure all residential and business consumers access to adequate, safe and reliable utility services at fair prices, while facilitating an environment that provides competitive choices.

The mission is accomplished by

- Mandating the availability of adequate, safe and reliable utility service to all business, industrial and residential consumers.
- Monitoring and enforcing compliance with rules and statutory protections against deceptive, unfair, unsafe, and anti-competitive utility practices.
- Resolving through mediation, arbitration, and adjudication disputes between utilities and residential, commercial and industrial customers, as well as between competing utilities.
- Utilizing advanced technology for monitoring and enforcing utility compliance, facilitating the provision of information to stakeholders, and sharing information between state and federal agencies.

<https://puco.ohio.gov/utilities/gas/resources/natural-gas-pipeline-safety-compliance-actions>  
Natural gas pipeline safety compliance actions

- The PUCO is committed to ensuring the safe, reliable and environmentally sound operation of Ohio's natural gas pipeline system.....When violations are detected, the PUCO orders corrective action and may assess fines and other penalties to ensure that Ohio's natural gas pipeline systems continue to deliver natural gas safely and reliably.
- The PUCO employs field inspectors who perform compliance inspections of gas pipeline operators to ensure they are following design, construction, operation and maintenance safety regulations.

#### Compliance actions.

- When PUCO inspectors discover apparent violations of state or federal pipeline safety standards, a letter of probable noncompliance is issued.... A summary of compliance actions is available on the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration's (PHMSA) website.  
Occasionally, violations require formal investigations by the Commission. In recent years the PUCO has enforced compliance actions by issuing fines and ordering operational changes.

[15] The commission discriminates against its on laws, Duke's motion to dismiss, presents arguments to show the Commission lacks personal jurisdiction over utility contractors and insurers. Proposals' [cites: **Rule 4901:1-16-03 | Adoption of United States department of transportation gas pipeline safety regulations.**]

(A) The commission hereby adopts the gas pipeline safety regulations of the United States department of transportation contained in 49 C.F.R. 40, 191, 192 and 199 as effective on the date referenced in paragraph (D) of rule 4901:1-16-02 of the OAC. The soul purpose of the Pipeline Enforcement PHMSA's Office of Pipeline Safety monitors operator compliance through field inspections of pipeline facilities and construction projects; inspections of operator management systems, procedures, and processes; and incident investigations. Identified non-compliances and unsafe conditions are addressed through a variety of means including an assortment of enforcement tools such as Corrective Action Orders, Safety Orders, Notices of Probable Violation, Warning Letters, and Notices of Amendment (see Title 49, Part 190, Subpart B "Enforcement" in the Code of Federal Regulations).

[16] The commission orders are in violation of OAC 4901:1-16-03, the Commission finds that Duke's motion to dismiss should be granted. ....Commission says they have no subject matter jurisdiction. Case law cited by Duke articulates the Commission's jurisdiction. It is by the standard found in the case law whether to allow this case to proceed. Discrimination in particularity. Proposals' [cites: R.C. 4905.041 (A)]: The public utilities commission has exclusive jurisdiction to enforce, in accordance with Chapter 4913. of the Revised Code, section 153.64, division (A) and (B) of section 378.26, Section 3781.27 and 3781.28 to 3781.32, and Chapter 4913. of the Revised Code. If you are an aggrieved person as defined in ORC 4913.01(A) and wish to file a complaint of a compliance failure of one of the sections of the Ohio Revised Code defined in 4913.01(A)

**Rule 4901:1-16-02 | Purpose and scope. Gas Pipeline Safety**

(A) The rules contained in this chapter prescribe:

(1) Gas pipeline safety and drug and alcohol testing requirements to protect the public safety.

(2) Procedures for the staff to administer and enforce the pipeline safety code.

(B) This chapter also governs gas pipeline safety proceedings to:

(1) Investigate and determine an operator's or a gas gathering/processing plant pipeline operator's compliance with applicable sections of the pipeline safety code.

(2) Investigate and determine whether intrastate gas pipeline facilities are hazardous to human life or property, as provided in 49 U.S.C. 60112, as effective on the date referenced in paragraph

(D) of this rule. (1)(2)(3)(4)(5)(6)(7)(C)(D)(E)

**Rule 4901:1-16-01 | Definitions. Gas Pipeline Safety**

(A) "Chief" means the chief of the gas pipeline safety section of the commission or his/her designee.

(B) "Commission" means the public utilities commission of Ohio. (C)(D)(E)(F)(G)(H)(I)(J)

(K) "Incident" means an event that involves a release of gas from an intrastate gas pipeline facility and results in any of the following:

(1) A death.

(2) Personal injury requiring inpatient hospitalization.

(3) Unintentional estimated gas loss of three million cubic feet or more.

(4) Estimated property damage of fifty thousand dollars or more, excluding the cost of gas lost, which is the sum of:

(a) The estimated cost of repairing and/or replacing the physical damage to the pipeline facility.

(b) The cost of material, labor, and equipment to repair the leak, including meter turn-off, meter turn-on, and light up.

(c) The estimated cost of repairing and/or replacing other damaged property of the operator or others, or both. (L)(M)(N)(O)

(P) "Operator" means:

(1) A gas company as defined by division (D) of section 4905.03 of the Revised Code.

(2) A natural gas company, including a producer of gas which does business as a natural gas company pursuant to division (E) of section 4905.03 of the Revised Code.

(3) A pipeline company, when engaged in the business of transporting gas by pipeline as defined by division (F) of section 4905.03 of the Revised Code.

(4) A public utility that is excepted from the definition of "public utility" under division (A)(2) or (A)(3) of section 4905.02 of the Revised Code, when engaged in supplying or transporting gas by pipeline within this state.

(5) Any person who owns, operates, manages, controls, leases, or maintains an intrastate gas pipeline facility or who engages in the transportation of gas. This includes, but is not limited to, a person who owns, operates, manages, controls, leases, or maintains a master meter system within this state.

"Operator" does not include an ultimate consumer who owns a service line on the real property of that ultimate consumer and does not include a gas gathering/processing plant pipeline operator as defined in paragraph (F) of this rule or any person that owns, operates, manages, controls, or leases a gas gathering pipeline as defined in paragraph (E) of this rule. (Q)(R)(S)(T)(U)(V)(W)

(X) "Safety inspection" includes the following inspections, surveys, and testing of a master meter system which are authorized by the pipeline safety code, and includes mapping, if accurate maps are not available from the operator, and pipe locating, if the operator could not locate pipelines in its system.

- (1) Testing of cathodic protection of metallic pipelines.
  - (2) Sampling of combustible gas to determine the proper concentration of odorant in distribution pipelines, unless records of the natural gas company performing the safety inspection show that the concentration of odorant in the gas transported to or near the master meter system conforms with the pipeline safety code.
  - (3) Gas leak surveys.
  - (4) Inspection and servicing of pressure regulating devices.
  - (5) Testing or calculation of required capacity of pressure relief devices.
  - (6) Inspection and servicing of critical valves.
  - (7) Inspection of underground vaults housing pressure regulating/limiting equipment and ventilating equipment.
- (Y)(Z)(AA)

[17] The Commission reiterates for several's time, In Allstate, the court adopted a two-part test whether the Commission, has jurisdiction over claims of negligence. The first part of the test, *The second part of the test. If the response is negative to either, the matter is not within the Commission's subject matter jurisdiction. Proposals' [cites: OAC 4901:1-16-02 ]Governs and gives Exclusive Jurisdiction to Gas Pipeline Safety. Which responds to emergency situations, it Investigates and determines whether intrastate gas pipeline facilities are hazardous to human life or property, as provided in 49 U.S.C. 60112.*

[18] The commission discrimination are determined by law, the commission admits R.C. 4905.26, the Commission has exclusive jurisdiction over utility service-related matters. Nothing in complaint raises utility service issues, example, the reasonableness of utility customer rates, services, or claims relating to utility conduct covered by Commission rules and/ or by tariffs which a utility files with the Commission. Proposals' states, The Commission admitted, that Duke scheduled and provided service to complainant's service address during pipeline excavation project. In which R.C. § 4905.26 confers exclusive jurisdiction on PUCO to adjudicate complaints filed against a public utility and states: Upon complaint in writing against any public utility . . . , schedule, service, . . . is in any respect unjust, unreasonable, unjustly discriminatory, unjustly *preferential*, or in violation of law. Also, R.C. § 4905.91 confers **exclusive** jurisdiction on PUCO to protecting the public safety with respect to intrastate pipe-lines used by any operator: including rules concerning pipe-line safety, drug testing, and enforcement procedures. The commission shall adopt these rules only after notice and opportunity for public comment. The rules adopted under this division and any orders issued under sections 4905.90 to 4905.96 of the R.C. constitute the pipe-line safety code. The commission shall administer and enforce that code.

[19] The Commission discriminations are in particularity unlawful, PUCO expertise is whether the utility's contractor is responsible for gas service shut off to customer's premises, acted reasonably to restore after shut-off.....That issue is not presented in this case, Complainant admissions that Duke successfully restored gas service to his premises and contractor left his



premises on the day of shut-off, and "the gas was back on," the furnace's pilot light reportedly "came on," and "my hot water heater was working" Proposals' states, The Commission admits that they had previous knowledge of gas leak at service address because the complainant stated gas was flowing to the water heater but not to the furnace. But In the cruel nature of Public Utility there are protections and regulations put in place for public safety. Discrimination in particularity. Proposals' [cites: 4901:1-13-01 (I) **Fraudulent practice, 49 C.F.R. 40, 191, 192 and 199**

- **Aging pipelines**

Pipeline transportation is one of the safest and most cost-effective ways to transport natural gas and hazardous liquid products. As the United States continues to develop and place more demands on energy transportation, it becomes necessary to invest in upgrading its infrastructure, including aging pipelines. In 2011, following major natural gas pipeline incidents, DOT and PHMSA issued a Call to Action to accelerate the repair, rehabilitation, and replacement of the highest-risk pipeline infrastructure. Among other factors, pipeline age and material are significant risk indicators. Pipelines constructed of cast and wrought iron, as well as bare steel, are among those pipelines that pose the highest-risk. To illustrate the progress pipeline operators are making in the replacement of aging gas pipelines, PHMSA provides an annually-updated online inventory of high-risk pipeline infrastructure by state. Specifically, the dynamic inventory highlights efforts to replace iron and bare steel gas distribution pipelines and shows trends in pipeline miles by decade of installation.

[20] The Commission has admitted to having knowledge of life threatening gas leak. The Commission states, that Complainant identifies whether Duke, in its capacity as a Commission-regulated public utility - once natural gas service was restored to premises shut-off - bears liability for the inability of its contractor, "to get my furnace to work." The matter of whether a reasonable and appropriate standard of care has been exercised by a person undertaking to work on a furnace is a matter over which the Commission has no expertise. Discrimination in particularity -Proposals' [cites: **R.C. 4905.55 Liability for act of agent. Public Utilities Commission General Powers. The act, omission, or failure of any officer, agent, or other person, acting for or employed by a public utility or railroad, while acting within the scope of his employment, is the act or failure of the public utility or railroad. Effective: October 1, 1953 Legislation: House Bill 1 - 100th General Assembly**]. My concerns from the beginning of this claims process was always about the availability of adequate, safe and reliable utility service that the PUCO is committed to ensuring the safe, reliable and environmentally sound operation of Ohio's natural gas pipeline system:

[21] The Commission's orders are unlawful and are omissions of noncompliance to the laws from which it draws its powers to governs. The Commission states, it is not a court of law. Consequently, it does not have the power, and the Commission's expertise is not required, to determine whether a utility, or its contractor, having demonstrably achieved utility service restoration to a premises, has exercised a reasonable and appropriate standard of care in attempting to get "one particular" piece of customer-owned equipment over which the utility exercises neither control nor responsibility "to work" correctly or at all, following the service restoration. **Garrabrant**, Entry July 20, 2016). Proposals' states, The Complainant suffered nearly 3 years from what was initially to be treated as public safety issue, noncompliance is

throughout this entire claims process. But this pipeline construction project which was to suppose be safety first according to all the laws, rules, and codes. Complainant made reference to hot water working to report that I had a gas leak somewhere. The operator and the commission blatantly discriminated against complainant, posing a clear and immediate danger to life and health and threatening of a significant loss of property. Creating unreasonable, unjust, and unlawful environment. Starting from April 1, 2020 - September 1, 2021. No incident report was ever reported by the operator or public utility precisely for clear and transparent reasons of discrimination in particularity. Poisonous gas leak threatened my family, friends and neighbors for over a year from their compliance failure. The Complainant, would like to take this moment to demonstrate the legislation powers enacted by government for exclusive jurisdiction to the the Public Utility Commission.

**Proposals' [cites: Senate Bill 315 - 129th General Assembly  
R.C. 4905.95 | Notices, hearings and orders of commission.]**

(A) (1) The public utilities commission, regarding any proceeding under this section, shall provide reasonable notice and the opportunity for a hearing in accordance with rules adopted under section 4901.13 of the Revised Code.

(2) Sections 4903.02 to 4903.082, 4903.09 to 4903.16, and 4903.20 to 4903.23 of the Revised Code apply to all proceedings and orders of the commission under this section and to all operators subject to those proceedings and orders.

(B) (1) An operator has violated or failed to comply with, or is violating or failing to comply with, sections 4905.90 to 4905.96 of the Revised Code or the pipe-line safety code, the commission by order:

(a) Shall require the operator to comply and to undertake corrective action necessary to protect the public safety;

(b) May assess upon the operator forfeitures of not more than one hundred thousand dollars for each day of each violation or noncompliance, except that the aggregate of such forfeitures shall not exceed one million dollars for any related series of violations or noncompliances. In determining the amount of any such forfeiture, the commission shall consider all of the following:

(i) The gravity of the violation or noncompliance;

(ii) The operator's history of prior violations or noncompliances;

(iii) The operator's good faith efforts to comply and undertake corrective action;

(iv) The operator's ability to pay the forfeiture;

(v) The effect of the forfeiture on the operator's ability to continue as an operator;

(vi) Such other matters as justice may require.

All forfeitures collected under this division or section 4905.96 of the Revised Code shall be deposited in the state treasury to the credit of the general revenue fund.

(c) May direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code.

(2) An intrastate pipe-line transportation facility is hazardous to life or property, the commission by order:

(a) Shall require the operator of the facility to take corrective action to remove the hazard. Such corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action.

(b) May direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code.

(C) If, pursuant to a proceeding it specially initiates or to any other proceeding, the commission finds that an emergency exists due to a condition on an intrastate pipe-line transportation facility posing a clear and immediate danger to life or health or threatening a significant loss of property and requiring immediate corrective action to protect the public safety, the commission may issue, without notice or prior hearing, an order reciting its finding and may direct the attorney general to seek the remedies provided in section 4905.96 of the Revised Code. The order shall remain in effect for not more than forty days after the date of its issuance. The order shall provide for a hearing as soon as possible, but not later than thirty days after the date of its issuance. After the hearing the commission shall continue, revoke, or modify the order and may make findings under and seek appropriate remedies as provided in division (B) of this section

[22] The Commission's orders have constituted and displayed unjust, unreasonable, unlawful actions throughout this prolonged process and proceedings. The commission admits, Having decided that the first part of the Allstate subject matter jurisdictional test must be answered in the negative, we do not reach to apply the second part of test. Nor do we need to address the other arguments Duke has made in support of its motion to dismiss.

Proposals' states, that the commission shows its unwillingness to enforce its rules and regulations on the Operator who's in violation of the governing laws of pipeline hazardous material safety act. The Commission states, It suffices, and we conclude, that the Commission does not have jurisdiction over the subject matter of the complaint because the Commission expertise is not needed to adjudicate the standard of care which must be exercised by persons trying to repair a furnace, even if that furnace exists within a premises where utility gas service restoration has been achieved following upon a planned temporary utility service shut-off.

Proposals' states, First, the commission's administrative expertise is required to resolve this dispute. Proposals' claims in the Natural gas pipeline safety actions involve Duke Energy's contractors from the beginning were to investigate the problem and repair or replace the property damage. Compliance to the servicing of natural gas pipeline construction project. Where the commission ensures that Ohioans have access to adequate, safe, and reliable public utilities, protects consumers by enforcing relevant rules and laws, assures the availability of safe and reliable service to all customers.

Duke's core duties are to the provision of gas and electricity to its Cincinnati area property and the threatened actions of noncompliance to Investigate and determine whether gas pipeline construction was hazardous to human life and or property, as provided in 49 U.S.C. 60112. Commission did not Protect by monitoring and enforcing Commission rules and state laws against unfair, inadequate and unsafe public utility and transportation services at proposals Columbia Township property which is being disputed for noncompliance to safety and public hazardous pipeline incident. These claims are manifestly safety- and service-related complaints, which are within the exclusive jurisdiction of the commission. **Henson, 102 Ohio St.3d 349, 2004-Ohio-3208, 810 N.E.2d 953; illum. Co., 97 Ohio St.3d 69, 2002-Ohio-5312, 776 N.E.2d 92; and 'Milligan, 56 Ohio St.2d 191, 10 O.O.3d 352, 383 N.E.2d 575.**

In fact, in its heightened nature of discrimination where within this complaint only the Commission can order relief and corrective action. The Commission's commitment to resolve disputes between utilities and residential, Proposals alleges that Duke Energy violated R.C. 4905.90, R.C. 4905.95, R.C. 4913.01, 49 CFR 191.5, 49 C.F.R. 192.614 **Damage Prevention Program**, which specifies the procedures for public utilities to compliance failures, incident report, Natural gas pipeline safety standards and practice service. Cf., n e.g., **Natural Gas Pipeline Safety Act of 1968**," 82 Stat. 720, 49 U.S.C.A. App. 1671 et seq., as amended. (alleged violations of R.C. 4905.90 are within the exclusive jurisdiction of the commission).

[23] Second, the acts complained of—Duke Energy's threatened noncompliance of utility service to Proposals' property and charge of high gas and electric bill to Proposals for utility service previously provided to its customer- constitute practices normally authorized by the utility, i.e., the noncompliance of utility service for incident caused by operator error. Resulted in restricted use of the facility. OAC 4901:1-16-02 specifies the procedures for a utility company to "for the staff to administer and enforce the pipeline safety code. Investigate and determine an operator's or a gas gathering/processing plant pipeline operator's compliance with applicable sections of the pipeline safety code (i.e., Issue and enforce compliance orders) for which an Issue of emergency orders without notice or prior hearing when immediate action is needed to protect the public safety. All operators and gas gathering/processing plant pipeline operators shall comply with the applicable rules of this chapter."

[23] It is, therefore, respectfully submitted,

[24] Reconsideration of Commission's orders is necessary to apply corrective action, and compensation for unreasonable and unlawful actions. The motion to dismiss filed by Duke should be reversed and complainant should allowed an emergency hearing for compliance failure. Duke Energy was forced to shut- off the pipeline after failed attempts of complainant's claims being met with noncompliance for over a year. Complainant has shown the discriminations in particularity without a doubt of the commission's exclusive jurisdictions and unlawful orders. Noncompliance of operator and failing to comply in making a incident report. Which created a snowball effect of violation to public safety and cause harm to complainant's family. The threat posed a clear and immediate danger to life, health and threatened significant loss of property. The complainant was denied of proper process for the requiring of immediate corrective action for the protection of human life and the public safety. The Pipeline at property is still restricted for use of the facility, no physical inspection, testing, repair, replacement, or other action was ever done. The Attorney General should be informed of the operator error reported by **Pipeline and Hazardous Materials Safety Administration (PHMSA), National Response Center (NRC), Environmental Protection Agency (EPA) incident REPORT # 1315346** without any more delay or denial of the serious nature of noncompliance.

[25] , That a copy of this Entry be served upon all parties of record.

**COMMISSIONERS:**

Jenifer French, Chair

M. Beth Trombold


Lawrence K. Friedeman

Daniel R. Conway  
Dennis P. Deters

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been served vis UPS delivery, this 4<sup>th</sup> day of October 2022, upon the following:

Rocco O. D'Asenzo  
Deputy General Counsel  
Bob McMahon (Counsel)  
Larissa M. Vaysman (Counsel)  
Senior Counsel  
Duke Energy Business Services LLC  
139 East Fourth Street, 1303-Main  
Cincinnati, Ohio 45202  
Attorneys for Respondent Duke Energy Ohio, Inc.



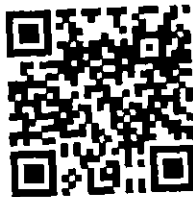
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