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2008 DEC -9 PM 12: 03

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PUCO

*Via Federal Express
and Facsimile (614-466-0313)*

December 8, 2008

Ms. Renee J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

Dear Ms. Jenkins:

Re: *Motion to Dismiss*
Diana Williams v. Ohio Edison Company
Case No. 08-1230-EL-CSS

Enclosed for filing, please find the original and twelve (12) copies of the *Motion to Dismiss* regarding the above-referenced case. Please file the enclosed *Motion to Dismiss*, time-stamping the two extras and returning them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,



MAH/kli
Enclosures
cc: Parties of Record

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

DIANA WILLIAMS,

Complainant,

vs.

OHIO EDISON COMPANY,

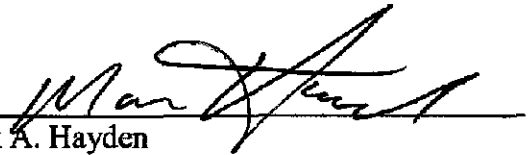
Respondent.

CASE NO. 08-1230-EL-CSS.

MOTION TO DISMISS

Pursuant to Ohio Administrative Code § 4901-9-01(B), Ohio Edison Company ("Company") respectfully requests that the Commission dismiss the Complaint in the above-captioned proceeding. Arguments in support of this Motion are set forth in the attached Memorandum in Support.

Respectfully submitted,


Mark A. Hayden

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Akron, Ohio 44308
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ATTORNEY FOR RESPONDENT, OHIO
EDISON COMPANY

MEMORANDUM IN SUPPORT

I. ARGUMENT

A. The Complaint does not state reasonable grounds and should be dismissed.

The Ohio General Assembly pursuant to Title 49 requires that “reasonable grounds for complaint are stated” in a complaint case before a hearing may go forward. R.C. § 4905.26. Thus, to avoid dismissal, complaints must set forth such grounds. *See* Ohio Admin. Code § 4901-9-01(C)(3) (permitting companies to seek dismissal for “[f]ailure to set forth reasonable grounds for complaint”).

The Commission “view[s] ‘reasonable grounds’ as necessarily containing allegations of the receipt of inadequate service.” *In the Matter of the Petition of J. Earl McCormick, et al. v. The Ohio Bell Tel. Co., et al.*, Case No. 90-1256-TP-PEX, Entry ¶ 3 (Sept. 27, 1990). A complaint that “fails to allege any facts which would support a finding of inadequate service” does “not state[] reasonable grounds” and therefore “should be dismissed.” *Id.* To state reasonable grounds, a complaint must allege “specific incidents of inadequate service” or “that a customer or group of customers has/have been provided inadequate service as a result of particular actions/inactions on the part of a public utility.” *In the Matter of the Complaint of Ohio CARES v. FirstEnergy Corp.*, Case No. 98-1616-EL-CSS, Entry ¶ 7 (May 19, 1999). Similarly, complaints containing “no allegation of a violation of any statute, Commission rule, or order” are also subject to dismissal. *Id.*

1. The Commission does not have jurisdiction over matters that are not related to service or reliability

Ohio Revised Code § 4905.04 provides the Commission “the power and jurisdiction to supervise and regulate public utilities ... to require all public utilities to furnish their products and render all services exacted by the commission or by law...” This power is appropriately

limited to “all complaints that any consumer may make against utility touching adequacy of service and justness of charges made by utility.” *Dayton Street Transit Co. v. Dayton Power & Light Co.* 57 Ohio App. 299. There is no indication that Complainant suffered the types of harm the Commission is suited to hear. The Complainant does not raise service or reliability issues in the one-paragraph complaint.

It appears the Complainant is challenging a garnishment of wages due to the enforcement of a judgment or some related matter surrounding a subpoena. In either case, the matter is not properly before the Commission. The Commission is not a court of general jurisdiction, and it therefore has no power to determine legal rights and liabilities with regard to contract rights ... even though a public utility is involved. *Marketing Research Services, Inc. v. Public Utilities Com’n of Ohio* 34 Ohio St.3d 52. In the absence of express statutory authority, the public utilities commission is without power to authorize a public utility to levy monetary penalties against its consumers. *Ohio Mfrs. Ass’n v. Public Utilities Commission*, 46 Ohio St. 2d, 214. Even the underlying subject of the case which resulted in a judgment and garnishment is not properly before the Commission.

2. The Complaint does not adequately explain what happened, much less allege facts supporting a finding of inadequate service.

Under these authorities, the Complaint in this case must be dismissed. To begin with, it is unclear from reading the Complaint *what happened*, much less whether what happened constituted inadequate service. Apparently, this case involves “garnishing ... wages illegally” and an alleged refusal to produce records.

Complainant’s pleading does not rise to the minimum level of clarity required as a matter of procedure by Rule 4901-9-01(B), which states that complaints “*shall* contain . . . a statement which clearly explains the facts which constitute the basis of the complaint.” (Emphasis added.)

A complaint that cannot be understood cannot, *a fortiori*, set forth reasonable grounds for complaint. While there are some facts set forth in this pleading, they are vague, incoherent and disconnected. The Complaint further provides little to no information that has anything to do with the Company's provision of electric service. A "clear explanation of the facts which constitute the basis of the complaint" should not require an imaginative exercise. A complaint must do more than foreshadow reasonable grounds—it must "state" them. *See* R.C. § 4905.26.

3. The Complaint does not contain any sensible allegation that the Company violated any statute, rule, or Commission order.

The Complaint does not contain a viable allegation that the Company violated any statute, rule, or order. *See Ohio CARES*, Entry ¶ 7 (May 19, 1999). As in *McCormick*, the Complaint does not allege "any facts that would support a finding of inadequate service." Entry ¶ 3 (Sept. 27, 1990). As in *Ohio CARES*, the Complainant has "not alleged any specific incidents of inadequate service" or "particular actions/inactions on the part of a public utility." Entry ¶ 7 (May 19, 1999). And as in that case, the Complaint "contain[s] no allegation of a violation of any statute, Commission rule, or order." *Id.* This Complaint, like those, should be dismissed.

4. The Complaint's ambiguity does not provide facts necessary to evaluate the applicable statute of limitations

Any complaint validly before the Commission would presumably refer to factual matters underlying the garnishment referenced in the Complaint. The suit which resulted in garnished wages was adjudicated in the Summit County Courts and concerns a contract dispute between Ohio Edison and Complainant. The factual basis for that suit concerns matters as they stood in 1998. The statute of limitations on allegations arising from occurrences in 1998 has presumably run. Without specific allegations, Ohio Edison cannot properly evaluate the availability of this defense.

5. A case on presumably the same facts was adjudicated in Summit County Court of Common Pleas.

Aside from Complainant's failure to state a claim, the scant facts alleged in the instant Complaint are presumably the same facts at issue in a matter adjudicated before the Summit County Courts. On October 6, 1998, Ohio Edison Company filed suit in the Summit County Court of Common Pleas to collect on a balance owed by Complainant. That case, CV-1998-10-3882, provided Complainant with ample opportunities for discovery and litigation over the facts at issue. As recently as November 6, 2008 the judgment against Complainant was affirmed in the Summit County Courts. Complainant is unwilling to accept this result and has taken action in the Cuyahoga County Courts and the instant matter on presumably the same facts.

The Summit County Court adopted the Magistrate's Decision and affirmed the judgment against Complainant. Judge Hunter also denied William's motion for Contempt of Court and Monetary Sanctions against Ohio Edison. A copy of the decision is attached. There is no basis for the instant action to move forward at the Commission as Ohio Edison cannot be expected to defend the same suit in a different forum.

B. The Complaint does not contain a clear statement of the relief sought.

Nor does the Complaint clearly state what relief is sought. This is also one of the minimal procedural requirements for complaints, *see* Ohio Admin. Code § 4901-9-01(B) (requiring complaints to contain "a statement of the relief sought"), and is an independent ground for dismissal. What is requested cannot be granted. The Complaint notes "I want a hearing." The hearing itself cannot *be* the relief granted.

This failure to clearly state the relief sought is an independent ground for rejecting this Complaint. Complaints “*shall*” contain such statements, according to the rules, *before* they should even be docketed and served. See Ohio Admin. Code § 4901-9-01(B) (emphasis added).

And even if these statements did seek relief, they seek a form of relief beyond the jurisdiction of the Commission. The Commission, of course, is without power to award damages. See *In the Matter of the Complaint of Bart’s Cleaners, Inc. v. Cinergy Communications Co.*, Case No. 04-127-TP-CSS, Entry ¶ 9 (July 22, 2004) (holding that “a request for damages . . . is beyond the jurisdiction of this Commission”). To ask only for something the Commission cannot do is, quite literally, to state a claim for which relief cannot be granted.

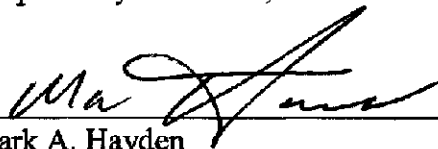
Because the Complaint does not explain what the issue is or what the Commission or the Company could do about whatever the issue is, it does not set forth reasonable grounds. The Company therefore respectfully requests that the Commission dismiss the Complaint.

II. CONCLUSION

Complainant was subject to a valid judgment in the Summit County Courts and any resulting execution of that judgment. The refusal to accept the Summit County Courts result is no basis for a legitimate complaint.

For the reasons set forth above, the Company respectfully requests that the Commission dismiss the above-captioned Complaint.

Respectfully submitted,

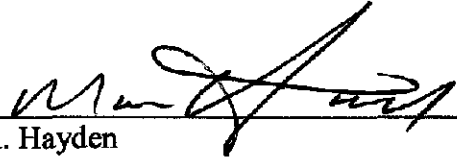


Mark A. Hayden

ATTORNEY FOR RESPONDENT, OHIO
EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss and Memorandum in Support was sent by U.S. mail to Diana Williams, 933 Hartford Ave. Akron, Ohio 44320, this 8th day of December, 2008.



Mark A. Hayden

DANIEL M. HORRIGAN

2008 NOV -6 AM 9: 50

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

OHIO EDISON COMPANY

Plaintiff

-vs-

DIANA B. WILLIAMS

Defendant

CASE NO.: CV 1998-10-3882

JUDGE HUNTER

JUDGMENT ENTRY

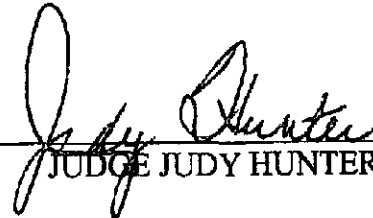
This matter came on for the Court's review and analysis of the Magistrate's Decision filed in this case pursuant to Civ.R. 53(E) on September 9, 2008. The Court finds that the parties in this case have not caused to be filed any Objections to the Magistrate's Decision.

Upon consideration of this Magistrate's Decision, the Court determines that there is no error of law or defect on the face of the Magistrate's Decision. The Court further finds that the Magistrate's Decision contains sufficient findings of fact and conclusions of law to allow this Court to make its own independent analysis of the issues and to apply the appropriate rules of law in making its final judgment entry in this matter.

Upon review, the Court independently adopts the Magistrate's Decision with its conclusions and findings. Wherefore, this Court denies Defendant's two Civ. R. 60(B) Motions for Relief from Judgment and Stay. The Court affirms the judgment rendered against the Defendant Diana B. Williams, aka Diana McDonald, rendered on August 20, 1999 in favor of the Plaintiff Ohio Edison Company in the sum of \$5968.21, together with interest at 10%

from date of judgment. **The Summit County Clerk of Court is ordered to release any previously escrowed garnishment payments to the Plaintiff forthwith.** The Court further finds Defendant's Motion for Contempt of Court and Monetary Sanctions against Plaintiff not well taken and it is denied. There is no just reason for delay.

It is so ordered.


JUDGE JUDY HUNTER

cc: Attorney Donald Mauser
Defendant Diana B. Williams, pro se at 933 Hartford Avenue, Akron, Ohio 44305
Magistrate John Shoemaker
Clerk of Court