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JONES DAY

RECEIVED-DOCKETING DIV

325 JOHN H. MCCONNELL BOULEVARD, SUITE 600
COLUMBUS, OHIO 43215-2673
TELEPHONE: 614.469.3939 • FACSIMILE: 614.461.4198

MAILING ADDRESS:
P.O. BOX 165017
COLUMBUS, OHIO 43216-5017

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Direct Number: (614) 281-3658
gwggarber@jonesday.com

JP007123 PUCO

November 12, 2009

VIA HAND DELIVERY

Public Utilities Commission of Ohio
Docketing Division
180 E. Broad St., 13th Floor
Columbus, Ohio 43215

Re: Case No. 09-990-EL-CSS

Dear Sir/Madam:

I am enclosing to be filed in the above-captioned matter the original and 10 copies of each of the following:

1. Ohio Edison's Answer and Affirmative Defenses;
2. Ohio Edison's Motion to Dismiss with Prejudice; and
- ✓ 3. ~~Memorandum in Support of Ohio Edison's Motion to Dismiss with Prejudice.~~

Thank you for your attention to these filings. Please contact me if you have any questions.

Very truly yours,



Grant W. Garber

Enclosures

cc: Meggan A. Rawlin, Esq.

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COI-1431521v1
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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PUCO

Mark and Sheri Lamoncha,)	
)	
Complainants,)	
)	Case No. 09-990-EL-CSS
v.)	
)	
Ohio Edison Company,)	
)	
Respondent.)	

**MEMORANDUM IN SUPPORT OF OHIO EDISON'S
MOTION TO DISMISS WITH PREJUDICE**

I. INTRODUCTION

The sole allegation of the complaint filed by Mark and Sheri Lamoncha ("Complainants") against Ohio Edison Company ("Ohio Edison") is that Complainants do not like the Commission-approved rate that they are being charged. Complainants do not argue that they are being charged the wrong rate. Nor do they allege that Ohio Edison has violated any statute, tariff provision, or any rule, regulation, or order of the Commission.

Under well-established Commission precedent, a complaint that alleges that approved rates should not be charged fails to set forth reasonable grounds required under R.C. Section 4905.26, and must be dismissed. *See, e.g., Gannis v. The Cleveland Electric Illuminating Co.*, PUCO Case No. 94-154-EL-CSS (May 14, 1994 Entry); *Hughes v. The Cleveland Electric Illuminating Company*, PUCO Case No. 94-969-EL-CSS (September 1, 1994 Entry); *Seketa v. The East Ohio Gas Co.*, PUCO Case No. 06-549-GA-CSS (August 9, 2006 Entry). Therefore, Ohio Edison's Motion to Dismiss the complaint with prejudice must be granted.

II. STANDARD OF REVIEW

A complaint under R.C. Section 4905.26 that fails to set forth reasonable grounds must be dismissed. R.C. § 4905.26. Filing a complaint does not automatically trigger a hearing under the statute. “Reasonable grounds for complaint must exist before the Public Utilities Commission, either upon its own initiative or upon the complaint of another party, can order a hearing, pursuant to R.C. 4905.26 . . .” *Ohio Util. Co. v. Pub. Util. Comm’n* (1979), 58 Ohio St.2d 153, syl. ¶ 2, 389 N.E.2d 483. If the facts alleged, even assuming they are true, do not set forth a cognizable claim, the complaint must be dismissed. *E.g., Lucas Cty. Comm’ns v. Pub. Util. Comm’n* (1997), 80 Ohio St.3d 344, 347, 686 N.E.2d 501.

III. ARGUMENT

Complainants’ only claim is that they are dissatisfied with the rate that they are being charged under Ohio Edison’s tariff approved by the Commission in Ohio Edison’s recent rate case.¹ Complainants argue that their current rate is “unfair and unjust” because their electric bills allegedly are higher than under their former, so-called “demand controller rate,” and the current rate purportedly is inconsistent with the “green movement.” Complainants ask the Commission to “reenact” their previous rate, which is no longer available under Ohio Edison’s Commission-approved tariff. (Ohio Edison’s Answer and Affirmative Defenses (“Answer”), ¶ 3.)

The Commission repeatedly has held that a complaint that alleges that Commission-approved rate should not be charged fails to state reasonable grounds and should be dismissed. *Gannis*, PUCO Case No. 94-154-EL-CSS (May 14, 1994 Entry); *Hughes*, PUCO Case No. 94-969-EL-CSS (September 1, 1994 Entry); *Avery Dennison Co. v. Dominion East Ohio*, PUCO Case No. 00-989-GA-CSS (December 14, 2000 Entry); *Seketa*, PUCO Case No. 06-549-GA-

¹ See PUCO Case Nos. 07-551-EL-AIR, 07-552-EL-ATA, 07-553-EL-AAM, 07-554-EL-UNC.

CSS (August 9, 2006 Entry); *In the Matter of the Complaints of Young, et al. v. The Ohio American Water Co.*, PUCO Case Nos. 05-1170-WW-CSS, 05-1181-WW-CSS, 05-1182-WW-CSS, 05-1187-WW-CSS, 05-1188-WWCSS, 05-1199-WW-CSS, 05-1251-WW-CSS, 05-1263-WW-CSS, 05-1317-WW-CSS, 05-1349-WW-CSS, 05-1335-WW-CSS (November 1, 2006 Entry).

For example, in *Seketa*, PUCO Case No. 06-549-GA-CSS (August 9, 2006 Entry), the Commission dismissed for failure to state reasonable grounds a complaint alleging that an approved rate should not be charged. The complainant in that case did not allege that the utility charged him the wrong rate; rather, he argued that he should not be charged one of the components of the approved rate. As a result, he argued that the tariff rates were excessive, unjust, and unreasonable. In holding that the complaint lacked reasonable grounds, the Commission stated that it had approved an increase to the rate in question in the utility's recent rate case. The Commission further stated:

There is no allegation that Dominion charged Mr. Seketa something other than the approved rate. Instead, Mr. Seketa wishes the Commission to reverse its decision to collect PIPP arrearages from the non-PIPP distribution customer base. The Commission does not believe that the complaint sets forth reasonable grounds. We have similarly dismissed other complaints that allege that approved rates should not be charged . . . We believe that this complaint, likewise, does not meet the reasonable grounds standard required in Section 4905.26, Revised Code, and should be dismissed with prejudice.

Id. (internal citations omitted).

The complaint here suffers from the same defects as the complaint in *Seketa*. Complainants are being served at a rate approved by the Commission in Ohio Edison's recent rate case. (Answer, ¶ 2.) They are paying the same rates as similarly-situated customers. (*Id.*) There are no unlawful charges or subsidies. (*Id.*) There is no claim that

Complainants are being charged a rate other than the lawful, approved rate, and hence no reasonable grounds for a complaint.

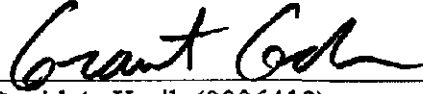
Further, the complaint should be dismissed because the relief that Complainants seek is not available. Complainants ask the Commission to reverse its decision in Ohio Edison's rate case and reinstate a rate that is no longer exists under Ohio Edison's approved tariff.² (Id., ¶ 3.) A complaint that asks for such a remedy fails to state reasonable grounds, and must be dismissed. *Seketa*, PUCO Case No. 06-549-GA-CSS (August 9, 2006 Entry).

IV. CONCLUSION

For all of the foregoing reasons, Ohio Edison's Motion to Dismiss with Prejudice should be granted.

² Complainants' claim that they did not receive notice of the rate case does not save their complaint. Complainants do not argue that the notice given by Ohio Edison pursuant to R.C. Sections 4909.18(E) and 4909.19 violated any statute or any Commission rule or order. Instead, Complainants allegedly were not aware of the rate proceedings because they did not subscribe to a newspaper.

Respectfully submitted,



David A. Kutik (0006418)
dakutik@jonesday.com
Meggan A. Rawlin (0074215)
(Counsel of Record)
mrawlin@jonesday.com
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212

Grant W. Garber (0079541)
gwggarber@jonesday.com
JONES DAY
Mailing Address:
P.O. Box 165017
Columbus, OH 43216-5017
Street Address:
325 John H. McConnell Boulevard, Suite 600
Columbus, OH 43215-2673
Telephone: (614) 469-3939
Facsimile: (614) 461-4198

Mark A. Hayden (0081077)
haydenm@firstenergycorp.com
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 761-7735
Facsimile: (330) 384-3875

ATTORNEYS FOR RESPONDENT
OHIO EDISON COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Ohio Edison's Memorandum in Support of Motion to Dismiss With Prejudice was sent by first class U.S. mail, postage prepaid, to the following this 12th day of November, 2009.

Mark and Sheri Lamoncha
42318 Applesway
Leetonia, OH 44431



An Attorney for Respondent
OHIO EDISON COMPANY