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**ELIZABETH MILENKOVICH,** )  
 )  
 **Complainant,** )  
 ) **Case No. 10-195-EL-CSS**  
 **v.** )  
 )  
 **THE CLEVELAND ELECTRIC** )  
 **ILLUMINATING COMPANY** )  
 )  
 **Respondent.** )

**MEMORANDUM IN SUPPORT OF  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S  
MOTION TO DISMISS**

## I. INTRODUCTION

The sole allegation of the complaint filed by Elizabeth Milenkovich (“Complainant”) against The Cleveland Electric Illuminating Company (“CEI”) is that Complainant does not like the Commission-approved rate that she is being charged. Complainant does not argue that she is being charged the wrong rate. Nor does she allege that CEI has violated any statute, tariff provision, or any rule, regulation, or order of the Commission. The grounds for such complaint are patently insufficient, and the Commission should dismiss this case.

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., Seketa v. The East Ohio Gas Co.*, PUCO Case No. 06-549-GA-CSS (Aug. 9, 2006 Entry); *Hughes v. The Cleveland Electric Illuminating Company*, PUCO Case No. 94-969-EL-CSS (Sept. 1, 1994 Entry); *Gannis v. The Cleveland*

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*Electric Illuminating Co.*, PUCO Case No. 94-154-EL-CSS (May 14, 1994 Entry). Therefore, CEI'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. 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'rs v. Pub. Util. Comm'n* (1997), 80 Ohio St.3d 344, 347.

## III. ARGUMENT

Complainant's only claim is that she is dissatisfied with the rate that she is being charged under CEI's tariff approved by the Commission.<sup>1</sup> In fact, Complainant titles her complaint "Complaint for unjust and unreasonable increase in rates." (Compl., p. 1.) This title is apt, as her entire Complaint is a criticism of the Commission's approval of the elimination of all-electric discounted rates. (*See id.* at 2 ("This complaint is based on the Public Utilities Commission of Ohio's (PUCO) determination of the rates to be charged by a public utility.")). Complainant requests that the Commission cap the increase in her monthly bills versus last year's bills to 10%. (*Id.*)

The Commission repeatedly has held that a complaint alleging that a Commission-approved rate should not be charged fails to state reasonable grounds and should be dismissed.

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<sup>1</sup> See PUCO Case Nos. 07-551-EL-AIR, *et al.* (Op. and Order, Jan. 21, 2009), 08-935-EL-SSO, *et al.* (Second Op. and Order, Mar. 25, 2009).

*Seketa*, PUCO Case No. 06-549-GA-CSS (Aug. 9, 2006 Entry); *Avery Dennison Co. v. Dominion East Ohio*, PUCO Case No. 00-989-GA-CSS (December 14, 2000 Entry); *Hughes*, PUCO Case No. 94-969-EL-CSS (Sept. 1, 1994 Entry); *Gannis*, PUCO Case No. 94-154-EL-CSS (May 14, 1994 Entry).

For example, in *Seketa*, PUCO Case No. 06-549-GA-CSS (Aug. 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. Complainant is being served at a rate approved by the Commission in CEI's recent rate case. (Answer, ¶ 6.) She is paying the same rates as similarly-situated customers. (*See id.*) There is no claim that Complainant is 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 Complainant seeks is not available. Complainant asks the Commission to reverse its decision in CEI's rate case and reinstate a rate that is no longer exists under its approved tariff. (*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 (Aug. 9, 2006 Entry).

This is especially true because the Commission already has begun exercising comprehensive jurisdiction over the complaints of all-electric customers like Complainant. On March 3, 2010, the Commission ordered CEI and its sister companies to temporarily reinstitute all-electric rates as they existed in December 2008. *See In re Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, No. 10-176-EL-ATA (Finding and Order, Mar. 3, 2010, p. 3.) The Commission will continue to exercise jurisdiction over the long-term solution to this issue, as well as complaints seeking refunds of alleged excess payments made since May 2009. *See id.* at 4. All-electric disputes like the one here should be addressed in that proceeding, not in a piecemeal, case-by-case fashion, as requested by Complainant.

#### IV. CONCLUSION

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

Dated: March 8, 2010

Respectfully submitted,



Grant W. Garber (0079541)

(Counsel of Record)

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

gwggarber@jonesday.com

David A. Kutik (0006418)

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, OH 44114

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

dakutik@jonesday.com

Ebony L. Miller (0077063)

FirstEnergy Service Company

76 South Main Street

Akron, OH 44308

Telephone: (330) 384-5969

Facsimile: (330) 384-3875

elmiller@firstenergycorp.com

ATTORNEYS FOR RESPONDENT  
THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Motion to Dismiss With Prejudice was sent by first class U.S. mail, postage prepaid, to the following this 8th day of March, 2010.

Elizabeth Milenkovich  
7986 Wright Road  
Broadview Heights, Ohio 44147

  
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An Attorney for Respondent