

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RUTH INSCO)	
JOHN INSCO)	
)	
Complainants,)	Case No. 13-706-EL-CSS
)	
v.)	
)	
THE TOLEDO EDISON COMPANY)	
)	
Respondent.)	

MOTION TO DISMISS OF THE TOLEDO EDISON COMPANY

Pursuant to Rule 4901-1-09, Ohio Administrative Code, The Toledo Edison Company (“Toledo Edison” or “Company”) hereby moves to dismiss Complainants Ruth and John Insko’s (“Complainant”) Complaint. As an initial matter, Complainants’ request for relief is moot because their rebate application has been approved, a check has been sent and Complainants have cashed the check. Thus, regardless of the allegations in their complaint, they have no damages for which relief can be granted. Second, Complainants do not allege reasonable grounds for their complaint. For all of those reasons, the Commission should dismiss this Complaint with prejudice.

I. FACTS

Under Toledo Edison’s approved Energy Efficiency and Peak Demand Reduction portfolio program, the Company has a rebate program for HVAC units. (Answer at Exhibit A.) The terms and conditions for the rebate clearly state:

FirstEnergy and/or its designees including program administrators and evaluation contractors reserve the right to review installations to verify completion and measure energy savings to ensure compliance with all program requirements. Such reviews will be made at a time convenient to the **applicant**. Misrepresentation of installation location or measure

eligibility may result in forfeiture of the rebate.” (Term and Conditions, Paragraph 8.)

Moreover, the terms and conditions state that “program procedures, requirements and rebate levels are subject to change or cancellation without notice and are subject to available program funds.” (Term and Conditions, Paragraph 9.)

On December 17, 2012, Toledo Edison’s contractor received a rebate application from Complainants. (Complaint.) During the review process of the application, it was determined that the serial number and model number were missing from the receipt received from the Complainants that accompanies the application. Because the receipt was missing information an “exception” was created and a letter was sent to the Complainants advising them of the missing information and what needed to be accomplished in order for the process to move forward. In February 2013, Toledo Edison’s contractor received updated information. Consistent with the terms and conditions of the program, the contractor selected this application for an on-site inspection, which was standard procedure. On February 19, 2013, Toledo Edison’s contractor performed the inspection. (Complaint at number 6.) As Complainants admit, they received the rebate check in March, which was cashed. (Complaint at number 8; Answer at ¶10.) Complainants received their check on March 5, 2013 within 90 days of application consistent with the terms and conditions of the rebate form. (Terms and Conditions, Paragraph 11.)

II. ARGUMENT

Under Section 4905.26, Revised Code a complaint that fails to set forth reasonable grounds must be dismissed. The mere act of filing a complaint does not automatically trigger a hearing before the Commission. Rather, “[r]easonable grounds for the

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. v. Pub. Util. Com’n* (1979), 58 Ohio St.2d, 153, paragraph 2 of the syllabus. Moreover, the Commission may exercise only the jurisdiction conferred upon it by statute. *Lucas County Com’rs. v. Pub. Util. Com’n of Ohio* (1997), 80 Ohio St.3d 344, 347.

A. The Commission Should Dismiss This Complaint As Moot.

The crux of Complainants’ Complaint against Toledo Edison is that they are unhappy because, consistent with the terms and conditions of the rebate they were seeking, an inspection was required prior to receiving the rebate. As discussed above, the terms and conditions of the rebate clearly stated that the Companies had the right to review installations to verify completion and measure energy savings to ensure compliance with all program requirements. (Terms and Conditions, paragraph 8.) Moreover, the terms and conditions clearly stated that it could take up to 90 days to receive the rebate. Complainants’ application was received on December 17, 2012 and they received their rebate check on March 5, 2013, and it was cashed on March 12, 2013. Complainants have received the rebate they sought in a manner consistent with both the terms and conditions and timeframe under Toledo Edison’s approved EE/PDR Portfolio Plan. Complainants have not, and cannot, allege any damages for which relief can be granted by the Commission or any other judicial body. Therefore, this Complaint is moot and should be dismissed.

B. The Commission Should Dismiss Complainants’ Complaint Because It Fails to Allege Reasonable Grounds.

In addition, Complainants fail to state reasonable grounds for relief because their Complaint neither alleges any facts which would support a finding of inadequate service nor alleges that Toledo Edison has violated any statute, tariff provision, or any rule, regulation, or order of the Commission. “Reasonable grounds” under this standard necessarily requires that the complaint contain sufficient allegations of facts which could support a finding of inadequate service. *In the Matter of Petition of J. Earl McCormick, et al. v. The Ohio Bell Tel. Co., et. al.* (Sept. 27, 1990), PUCO Case No. 90-1256-TP-PEX, Entry ¶3; *In the Matter of Complaint of Ohio CARES v. FirstEnergy Corp.* (May 19, 1999), PUCO Case No. 98-1616-EL-CSS, Entry ¶7. A complaint that does not allege specific incidents of inadequate service must be dismissed. *Id.* Additionally, a complaint that fails to allege a violation of any statute, Commission rule, or order fails to state reasonable grounds and should be dismissed. *In the Matter of Complaint of Ohio CARES v. FirstEnergy Corp.* (May 19, 1999), PUCO Case No. 98-1616-EL-CSS, Entry ¶¶6-7. The Commission routinely dismisses such cases. *See, e.g., Ohio Consumer Alliance for Responsible Elec. Sys. v. FirstEnergy Corp., et al.*, No. 98-1616-EL-CSS, Entry dated May 19, 1999, ¶¶ 6-7; *Lentz v. The East Ohio Gas Co.*, No. 96-25-GA-CSS, Entry dated Apr. 18, 1996, ¶ 7; *Allison v. Columbia Gas of Ohio, Inc.*, No. 92-37-GA-CSS, Entry dated Apr. 9, 1992, ¶ 4.

That is the case here. First, Complainants make a claim that Toledo Edison violated Rule 109:4-3-02, Ohio Administrative Code. This rule, enacted as part of the Ohio Consumer Sales Practices Act, Section 1345.01, Revised Code *et seq.* does not apply to Toledo Edison. Section 1345.01(A), Revised Code states that a “ ‘consumer transaction’ does not include transactions between persons, defined in sections 4905.03

and 5725.01 of the Revised Code, and their customers, except for transactions involving a loan made pursuant to sections 1321.35 to 1321.48 of the Revised Code.” Section 4905.03, Revised Code, defines a public utility, which Toledo Edison clearly is. Therefore, Rule 109:4-3-02 Ohio Administrative Code does not apply to this case.

Next, Complainants’ request for treble damages under Section 4903.24, Revised Code does not support a claim for a violation of statute or authority. Rather, this statute merely permits the Commission to collect its costs of an investigation under certain defined circumstances. It has no applicability to the Complainant’s allegations or treble damages.

Third, Complainants’ generic allegation that they have been unfairly discriminated against for “asking to do something different that all the rest of the homeowners have done” is completely belied by the terms and conditions of the rebate application as discussed above. Further, the Complaint does not allege facts necessary to support a claim for inadequate service or a violation of a statute, Commission rule or order. To the extent the Complaint could be construed as attempting to allege a claim for discrimination, the Complaint fails to satisfy Rule 4901-9-01(B), Ohio Administrative Code. Rule 4901-9-01(B) requires that claims for discrimination are stated with particularity. Complainant’s allegation of discrimination falls well below this requirement and does not allege how this alleged discrimination caused them damage.

Last, Complainants’ generic claim that “[e]mployees are entering homes without any regard for personal verification” and that Toledo Edison “failed to follow its own procedures” is not sufficient to support their Complaint. Complainants merely allege that Toledo Edison’s bill states that its employees wear name badges, but the inspector was

not Toledo Edison's employee and Complainants do not allege so. Nevertheless, Complainants do not demonstrate how this caused them any damage. Therefore, Complainant fails to allege a violation of a statute or Commission rule or order. As a result, the Complaint fails to state reasonable grounds for a complaint against Toledo Edison and should be dismissed.

CONCLUSION

For all of the foregoing reasons, this Complaint should be dismissed with prejudice.

Respectfully submitted,

/s/ Carrie M. Dunn
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On behalf of The Toledo Edison
Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was served by U.S. mail to the following person on this 8th day of April 2013.

Ruth and John Insco
2045 Oakside Road
Toledo, Ohio 43615

/s/ Carrie M. Dunn
Attorney for The Toledo Edison
Company

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Summary: Motion to Dismiss electronically filed by Ms. Carrie M Dunn on behalf of The Toledo Edison Company