

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

Ron Mosley,  
900 Willow Brook Court  
Riverside, Ohio 45424

Complainant

v.

The Dayton Power and Light Company,

Respondent

Case No. 14-1191-EL-CSS

---

THE DAYTON POWER AND LIGHT COMPANY'S REPLY MEMORANDM  
TO COMPLAINANT'S CORRESPONDENCE REGARDING  
MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

---

Pursuant to Ohio Admin. Code 4901-1-12(C)(2), Respondent The Dayton Power and Light Company respectfully submits its Reply Memorandum to the correspondence filed in this Case on October 30, 2014. Although the October 30 letter is not denominated as a Memorandum Contra, it was clearly submitted by Complainant in response to the Attorney Examiner's Entry on October 17 directing him to respond to the Motion to Dismiss which he claimed he had not received.

Respondent's Motion to Dismiss was based on the failure of the Complaint to set forth reasonable grounds for complaint; and for the reason that it seeks relief that the Commission cannot grant; and that it is barred by res judicata and collateral estoppel and is in essence an untimely application for rehearing of the Opinion and Order and Supplemental Opinion and Order entered by the Commission in Case No. 11-1494-EL-CSS, *In the Matter of the Complaint*

of *Ron Mosley v. The Dayton Power and Light Company (Mosley I)*. Those Opinions and Orders dismissed on the merits the same claims Mr. Mosley seeks to re-litigate in this case.<sup>1</sup>

- I. The Correspondence filed by Complainant on October 30, 2014 explicitly acknowledges that he is resurrecting in this case issues which have already been adjudicated adversely to him, and which consequently are barred from re-litigation by the doctrines of *res judicata* and collateral estoppel.

Mr. Mosley has already had his “day in court”. He is engaging in repetitive, frivolous and vexatious re-litigation of claims that the Commission found he had not proven in Case No. 11-1494-EL-CSS. The Commission held in its Opinion and Order and Supplemental Opinion and Order in that case that the Complainant had failed to meet his burden of proving that Respondent had either billed him incorrectly or that it had improperly estimated his utility bills<sup>2</sup>, or that it had wrongfully disconnected his electric service.<sup>3</sup> The Complainant in a proceeding pursuant to Ohio Rev. Code § 4905.26 has the burden of proof, see *Grossman v Public Utilities Commission*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

Complainant’s October 30 2014 correspondence baldly states “I met my burden and proved DP&L estimated my utility bills”; that “I also proved to Mr. Kerry K. Sheets that DP&L was doing illegal things.” Most clear proof of the rehash is the following statement:

“I also proved DP&L lied about their bills. Also it’s a public record that showed DP&L brought lies into the hearing and they new [sic] it so that why I wanted to ask question to Ms. Brown that the lawyer for DP&L said Ms. Lisa Brown went back to school to get her R.N. degree. It was very convented [sic; convenient?] that I had to cross-examine Ms. Brown.”

---

<sup>1</sup> Opinion and Order entered on July 10, 2013; Supplemental Opinion and Order entered on April 2, 2014.

<sup>2</sup> *Mosley I*, (Opinion and Order, ¶16).

<sup>3</sup> *Id.*, (Supplemental Opinion and Order, ¶13).

Lisa Brown was Respondent's witness who provided direct testimony in the evidentiary hearing of Case No. 11-1494-EL-CSS on October 7, 2011 and on February 12, 2013. It is true that she was no longer employed by Respondent when the hearing resumed on November 21, 2013. Clearly, these were issues in the case already decided on the merits.

This is quite consistent with Mr. Mosley's statement of his intention to re-litigate those issues which he made on the record during the last day of hearings in Case No. 11-1494-EL-CSS on November 21, 2013.

He announced that regardless of the outcome of that complaint, he would continue to pursue his claims in that case: "...So, your Honor, even if you go and give it to DP&L, I'm going to file again. But only this time, I'm going to bring a little bit more help to these proceedings, as is my right."<sup>4</sup> His intention, which he fulfilled in filing this case and acknowledged again in his October 30, 2014 correspondence filed in this proceeding, could not be more transparent. Regardless of the Commission's final order in that case, Complainant declared he would ignore it and refile a complaint aimed at the same perceived grievances which the Commission has already dismissed for failure of proof.

Finally, although the complaint in this case requested over \$1.5 million be granted as damages, in the October 30 correspondence Mr. Mosley states he doesn't request damages from the Commission; rather, he requests that the Commission transfer this proceeding to a civil court. In either alternative, Complainant clearly is seeking relief that the Commission lacks jurisdiction to grant.

Respondent will not repeat the cited authorities presented in its Memorandum in Support of its Motion to Dismiss. Mr. Mosley clearly seeks to prolong litigation to avoid the consequences of his chronic nonpayment of utility bills. His claims relating to

---

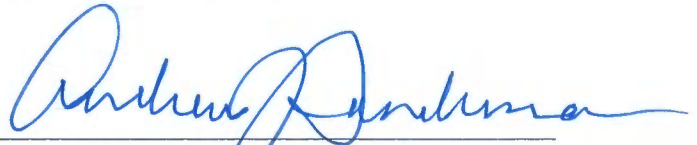
<sup>4</sup> *Mosley I*, Tr., November 21, 2013, p. 55, l. 19 – 22.

estimation of bills, disconnection of service and assessment of late payment charges have been, or could have been, litigated in *Mosley I*. Under this Commission's proper application of the doctrines of *res judicata* and collateral estoppel to the utterly transparent restatement of his previously adjudicated claims in this repackaged filing, the complaint should be dismissed forthwith.

II. Conclusion

Complainant, admits in his October 30, 2014 correspondence that he wants to re-litigate claims he failed to prove in Case No. 11-1494-EL-CSS. The Commission should not permit such a frivolous and vexatious repetitive complaint to go forward, in light of the clearly applicable judicial precedents guiding the Commission's analysis and conclusion with respect to this Motion to Dismiss. Respondent submits that there could not be a clearer or more compelling justification for the dismissal of the complaint in this case.

Respectfully Submitted

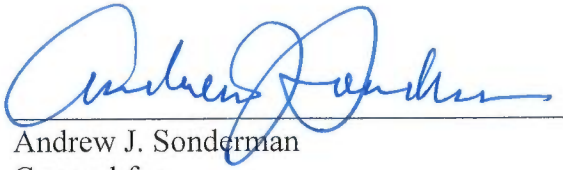


Andrew J. Sonderman (0008610)  
Kegler Brown Hill & Ritter Co., LPA  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215  
614.462.5496 (voice)  
614.464.2634 (fax)  
[asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
Counsel for  
The Dayton Power and Light Company

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Memorandum was served by mail on the following Complainant on this 5<sup>th</sup> day of November 2014:

Ron Mosley  
900 Willow Brook Court  
Dayton, Ohio 45424-8022



Andrew J. Sonderman  
Counsel for  
The Dayton Power and Light Company

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/5/2014 9:37:57 AM**

**in**

**Case No(s). 14-1191-EL-CSS**

Summary: Reply Reply Memorandum to Complainant's Correspondence Regarding Motion to Dismiss and Memorandum in Support electronically filed by Mr. Andrew J Sonderman on behalf of Dayton Power and Light Company