

Respectfully submitted,

A handwritten signature in blue ink that reads "Elizabeth Watts/mra". The signature is written in a cursive style and is positioned above a horizontal line.

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Memorandum in Support

I. Substantive Grounds for Dismissal

A careful review of the Complaint confirms that, as a matter of law: (a) the Complaint does not set forth reasonable grounds for a complaint; and (b) the Commission lacks subject matter jurisdiction.

At no point in its Complaint does Complainant allege that any rate or charge by Respondent “is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law.” See, O.R.C. § 4905.26. More specifically, Complainant has not alleged that Respondent failed to apply its tariffs on file with Commission to any matter that can be gleaned from the meager complaint provided. Respondent merely notes that the complaint involves a question of “encroachment” with respect to a transmission line on Complainant’s property. Respondent certainly disagrees with Complainant’s characterization or claim of encroachment, but more importantly, that dispute is not relevant because the allegations, even if true, do not support a claim as a matter of law.

As the Commission well knows, simply because a customer files a complaint does not mean that the complaint should go forward or be scheduled for hearing. Here, allegations of property encroachment are not within the Commission’s jurisdictions. However, the statement provided likewise fails to allege any violation of any Commission rule or statute. Accordingly, the Commission should dismiss the Complaint with prejudice. See, *Lane v. Columbia Gas of Ohio, Inc.* (May 9, 2012), Case No. 12-744-GA-CSS, 2012 Ohio PUC LEXIS 451 (copy attached); *Seketa v. The East Ohio Gas Co.* (Aug. 9, 2006), Case No. 06-549-GA-CSS, 2006 Ohio PUC LEXIS 447 (copy attached).¹

¹ In *Seketa*, the Commission identified several other cases in which it dismissed complaints alleging that approved rates should not be charged, including *Steve Gannis v. The Cleveland Electric Illuminating Company*, Case No. 94-154-EL-CSS, Entry (May 14, 1994); *David Hughes v. The Cleveland Electric Illuminating*

II. Procedural Grounds for Dismissal

The Commission also should dismiss the Complaint on procedural grounds because the Commission lacks subject matter jurisdiction over this matter because it involves questions related to property rights granted by an easement. See *Corrigan v. Illuminating Co.*, 2009-Ohio-2524, Para.9,17, 122 Ohio St.3d 265 (2009) (holding that legal issues relating to the proper interpretation and enforcement of an easement are matters within the jurisdiction of the court of common pleas). As the Ohio Supreme Court has held, the Commission's jurisdiction under R.C. 4905.26 extends only to service-related complaints that challenge whether a particular "rate, fare, charge, toll, rental, schedule, classification or service, or any joint rate, fare, charge, tool, rental, schedule, classification or service rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement or practice affecting or related to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, or unjustly discriminatory, or unjustly preferential." *Id.* at Para.8 (citing R.C. 4905.26). this jurisdiction, however, does not extend to claims involving the proper interpretation and enforcement of an easement. *Id.* at Para.9, 17. Rather, such claims are properly filed in the court of common pleas.


Here, the Jackson complaint merely alleges that it is "about encroachment with a 69 kilovolt transmission lines onto my property." This claim improperly requests that the Commission determine rights related to the maintenance and operation of transmission lines within an easement. Accordingly, the Commission should dismiss the complaint for lack of subject matter jurisdiction.

Company, Case No. 94-969-EL-CSS, Entry (September 1, 1994); and *Avery Dennison Company v. Dominion East Ohio*, Case No. 00-989-GA-CSS, Entry (December 14, 2000).

III. Conclusion

WHEREFORE, Respondent Duke Energy Ohio, Inc., moves that the Commission dismiss the Complaint in these proceedings with prejudice, pursuant to Rule 4901-9-01(F).

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on the following Complainant on this 14th day of September, 2015:

Ron Jackson
6053 Cleves Warsaw Pike
Cincinnati, Ohio 45233

Elizabeth Watts/mra
Elizabeth H. Watts

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Case No(s). 15-1517-EL-CSS

Summary: Motion Respondent Duke Energy Ohio, Inc.'s Motion to Dismiss electronically filed by Ms. E Minna Rolfes on behalf of Elizabeth H. Watts and Duke Energy Ohio, Inc.