

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

ALLISON ADAMS,)	
)	
Complainant,)	
)	
v.)	Case No. 16-921-GA-CSS
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION EAST OHIO,)	
)	
Respondent.)	

**MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

In accordance with Ohio Adm. Code 4901-1-12, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or the Company), respectfully requests that the Commission dismiss the complaint in this case with prejudice for lack of standing. Good cause exists to grant the Company's motion to dismiss with prejudice, which is set forth in the attached memorandum in support.

Respectfully submitted,

/s/ Andrew J. Campbell

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ATTORNEYS FOR THE EAST OHIO GAS
COMPANY D/B/A DOMINION EAST OHIO

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On April 29, 2016, Allison Adams filed a complaint against DEO regarding the installation of an Automated Meter Reading (AMR) device on the gas meter located in her home. (Complaint at 2.) Ms. Adams alleges that the device has caused her to suffer from a variety of physical ailments. (*Id.*) Although DEO does provide gas service to the residence in question, Ms. Adams is not the customer of record. The customer of record is William Adams, but Mr. Adams is not a named complainant. Nowhere does the complaint reference Mr. Adams or address the fact that the account is in his name, not hers.

The complainant accordingly lacks standing to file this complaint. Successful or unsuccessful, her complaint could affect the terms and conditions of service, and such a complaint should not be permitted to proceed without the customer of record's participation.

Because the account holder is not a party, the complaint should be dismissed if Ms. Adams is unable to cure the standing problem.

II. ARGUMENT

A. To have standing to complain regarding the terms of service, a complainant must be the customer of record on the account.

Under R.C. 4905.26, "any person" may bring a complaint against "any public utility" claiming unreasonable or inadequate service. The Commission has previously stated, however, that "it is a basic legal principle that every action must be prosecuted in the name of the real party in interest." *In re Industrial Energy Users-Ohio v. Northeast Ohio Public Energy Council*, Case No. 04-1129-EL-CSS, Entry at 2 (Oct. 26, 2004), citing *Ariel Engineering v. Jebcom, Inc.*, Case No. 90-270-RC-CSS, Opin. & Order at 3 (Mar. 28, 1991). For cases challenging the terms of service on a particular account, the "party in interest" is the customer of record. *Id.*

Thus, when there is a question as to whether the customer of record has been named as a party, the Commission has required the issue to be clarified before proceeding. For example, in *Cunningham v. Duke Energy Ohio, Inc.*, Case No. 11-5584-GE-CSS, a mother signed a complaint regarding unreasonable billing practices on an account held in her daughter's name. (Complaint at 1 (Nov. 1, 2011).) Duke moved to dismiss due to lack of standing. In setting the case for hearing, the Commission made clear that "only the customer of record for the account at issue may prosecute the complaint." (*Id.* at 3.) The case was ultimately dismissed for failure to prosecute. *See* 11-5584 Entry (Apr. 25, 2012).

Likewise, in *Johnson v. Ohio Edison Company*, Case No. 04-1528-EL-CSS, the utility moved to dismiss for lack of standing, because the customer of record for the account during the period in question was not the complainant. Entry at 1 (Nov. 16, 2004). Before scheduling a settlement conference, the attorney examiner required the complainant to explain the basis for standing; failure to do so would result in dismissal. *Id.* at 2–3.

One of the reasons for the standing requirement is that the real party in interest may *not* desire the remedy sought by the third party. *Utility Service Partners v. PUC*, 2009-Ohio-6764, ¶ 51, 124 Ohio St.3d 284. As the Court cited approvingly in that case, a tribunal "must hesitate before resolving a controversy on the basis of the rights of third persons not parties to the litigation because it may be that in fact the holders of those rights do not wish to assert them." *Id.* (internal quotations, ellipses, and brackets omitted).

B. The Commission should dismiss the complaint if Ms. Adams cannot cure the lack of standing.

Based on these authorities, the complaint cannot reasonably move forward in the present posture. Ms. Adams is not the customer of record. She is not the authorized decision maker on the account. And the account holder, Mr. Adams, is neither named as a complainant nor

mentioned in the complaint. Yet the outcome of this case could be a change in the terms and conditions of service and in fact could be detrimental to the account holder's interests. For instance, the account holder may not want the remedy requested in the complaint—given the many benefits of AMR devices, he may not wish for the device to be removed. There is no point in going even a single step forward with a complaint that may be contrary to the wishes of the real party in interest.

Because Ms. Adams does not have standing, the complaint cannot move forward. The Commission should require Ms. Adams to cure the lack of standing before taking any additional action in this case—including the scheduling of a settlement conference, as it would be unreasonable and unproductive to discuss settlement terms in the absence of the real party in interest. If Ms. Adams is unable to cure the standing problem, the case should be dismissed.

III. CONCLUSION

For these reasons, DEO respectfully requests that the Commission grant its motion and dismiss this complaint with prejudice if the complainant cannot cure the lack of standing.

Dated: May 20, 2016

Respectfully submitted,

/s/ Andrew J. Campbell

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(All counsel are willing to accept service by email)

ATTORNEYS FOR THE EAST OHIO GAS
COMPANY D/B/A DOMINION EAST OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss and Memorandum in Support was served by mail to the following person this 20th day of May, 2016:

Allison Adams
13514 Theeland Avenue N.W.
Uniontown, Ohio 44685

/s/ Rebekah J. Glover
One of the Attorneys for The East Ohio Gas
Company d/b/a Dominion East Ohio

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Summary: Motion to Dismiss and Memorandum in Support electronically filed by Ms. Rebekah J. Glover on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio