

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|---------------------------------|---|------------------------|
| JAMES HUMPHREY, et al., |) | |
| |) | |
| Complainants, |) | |
| |) | |
| v. |) | Case No. 16-765-GA-CSS |
| |) | |
| THE EAST OHIO GAS COMPANY D/B/A |) | |
| DOMINION EAST OHIO, |) | |
| |) | |
| Respondent. |) | |

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

In accordance with Ohio Adm. Code 4901-1-12(B)(2), The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or the Company) hereby submits its reply to Complainants' August 23 response to DEO's renewed motion to dismiss. For the reasons set forth below, the Commission should grant DEO's motion and dismiss the case with prejudice for lack of jurisdiction.

I. ARGUMENT

In support of both its original and renewed Motions to Dismiss, DEO explained that regardless of whether Complainants' claim requesting the replacement of their entire driveway has merit, the dispute does not belong at the Commission. The claim has nothing to do with the regulated services provided by DEO, and the Complainants' response does not show otherwise.

A. The claims raised in the Complaint fall outside the Commission's jurisdiction.

In its original Motion to Dismiss filed on May 2, 2016, DEO argued that this dispute does not belong before the Commission. Claims unrelated to utility service but alleging damage to personal property, where the connection to a utility company is merely incidental, fall outside the Commission's jurisdiction.

The *Corrigan* test, discussed in DEO’s Renewed Motion to Dismiss, determines whether a claim is within or outside its jurisdiction. *Corrigan v. The Illum. Co.*, 122 Ohio St.3d 265, 2009-Ohio-2564 (citing *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917). The Commission asserts jurisdiction in cases where, for instance, the transportation of natural gas and the appropriateness of rates charged for such service are in question, *Orwell Natural Gas Co. v. Orwell-Trumbull Pipeline Co.*, Case No. 14-1654-GA-CSS, Opin. & Order at 16-18 (June 15, 2016); when the question of fixed rates versus variable rates arises, *Bd. of Commissioners of Lucas Cty. v. FirstEnergy Solutions Corp.*, Case No. 15-896-EL-CSS, Entry at 8-11 (Feb. 3, 2016); or when the decision rests on evaluating a utility’s distribution system and policies and practices associated with the operation of that system, *Pro Se Commercial Properties v. Cleveland Elec. Illum. Co.*, Case No. 07-1306-EL-CSS, Opin. & Order at 8 (Sept. 10, 2008)(citing *Allstate*).

But the Commission does not have jurisdiction when claims bear at best an incidental relationship to utility service. For example, the Commission lacks jurisdiction over property damage issues occurring during a meter change-out, *Garrabrant v. Ohio Power Co.*, Case No. 15-401-EL-CSS, Entry at ¶ 12 (July 20, 2016); during “excavat[ion] . . . to install a gas line for a residential block,” *Anne Eishen v. Columbia Gas of Ohio*, Case No. 01-885-GA-CSS, 2001 Ohio PUC LEXIS 841, Entry at *7 (Nov. 20, 2001); or during “the installation of houseline piping at Complainant’s rental property,” *Mervyn Berger v. The East Ohio Gas Co.*, Case No. 88-958-GA-CSS, 1988 Ohio PUC LEXIS 722, Entry at *3 (Aug. 2, 1988).

Applying these authorities here, as explained in DEO’s motions to dismiss, the case must be dismissed. Contrary to the Complainants’ response, the connection to DEO (and hence to the Commission) is purely incidental. *Any* company or entity that excavated or repaired a driveway,

not just a public utility, could be subject to precisely the same kind of claim being presented here. Any person could bring precisely such a claim, even non-customers like the Complainants. The complaint simply has nothing to do with regulated natural gas service of any kind.

B. The Complainants’ response confirms that this case does not belong before the Commission.

Complainants’ response states that they do “not see how the connection between the damage and substandard repair of [his] driveway is ‘incidental.’” (Response at 1.) And they repeat the request from their Complaint that DEO “be held to the same standards that the Ohio Department of Insurance would apply to an insurance claim” and be made to replace the entire driveway. (*Id.*)

The response misapprehends DEO’s motion. It is *not* the connection between the driveway and damage that is incidental; it is the connection between *the claim and the utility*. Any other person or entity could be subject to precisely the same claim, which confirms that the claim is not for the Commission to resolve. Again, the Commission regulates neither driveway repair nor compliance with Department of Insurance standards; neither sort of claim falls within the Commission’s expertise.

Ohio’s court system provides a forum for these kinds of issues. The complaint does not belong before the Commission.

II. CONCLUSION

For the reasons set forth above, and as explained in both of DEO’s Motions to Dismiss in case, the Commission should dismiss this case with prejudice.

Dated: August 30, 2016

Respectfully submitted,

/s/ Andrew J. Campbell

Mark A. Whitt (0067996)

Andrew J. Campbell (0081485)

Rebekah J. Glover (0088798)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

glover@whitt-sturtevant.com

(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 Reply was served by mail to the following persons this 30th day of August, 2016:

James and Heidi Humphrey
116 Meadow Lane
Marietta, Ohio 45750

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