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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RANDY COLEMAN,

Complainant,

v.

DOMINION EAST OHIO et. al.,

Respondents.

Case No. 09-828-GA-CSS

PUCO

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MOTION TO DISMISS

Pursuant to Rule 4901-1-12 of the Ohio Administrative Code ("O.A.C."), Respondent
The East Ohio Gas Company d/b/a Dominion East Ohio respectfully requests an Order
dismissing the Complaint in this action. This Motion should be granted for the reasons set forth
in the accompanying Memorandum in Support.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

The Complainant in this action, Randy Coleman ("Complainant"), alleges that his gas supply was "slammed," i.e., switched from Respondent The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") to Interstate Gas Supply ("IGS") without his consent. The Complaint, however, does not allege a single fact which could establish any claim against, or entitlement to relief from, DEO. Accordingly, the Complaint should be dismissed.

I. INTRODUCTION

Complainant has an account with DEO for service at 5333 Saint Andrews Street NW, Canton, Ohio 44708. (See Complaint, p. 2.) On or about October 9, 2008, IGS sent an electronic enrollment request to DEO informing DEO that Complainant had chosen to enroll with IGS. (See Answer, ¶ 3.) On October 10, 2008, in response to IGS' electronic enrollment request, DEO sent Complainant a written "Energy Choice Program Confirmation of Supplier" (the "Confirmation"). (Id.) A copy of the Confirmation is attached as Exhibit A to DEO's Answer. (Id.) The Confirmation instructed Complainant to contact DEO by October 23, 2008 if he wished to cancel his IGS enrollment. (Id.) Complainant did not contact DEO on or before the October 23, 2008 deadline. (Id.)

Thereafter, beginning in December 2008, DEO included the IGS gas supply charges on Complainants' monthly bills. (See Complaint, p. 3.) Complainant does not allege or otherwise dispute that DEO fully disclosed the IGS charges on his monthly bills. (Id.) After receiving his December 2008 bill, Complainant alleges that he contacted IGS to cancel his enrollment, but that IGS refused. (Id., p. 2-3.)

As is clear from the pleadings in this case, DEO sent Complainant the required confirmation of enrollment and provided Complainant more than the legally required time to cancel. Because Complainant did not cancel his enrollment, DEO properly billed him for gas supplied by IGS. Thus, there is no reasonable grounds for complaint against DEO. The Complaint should be dismissed.

II. ARGUMENT

A. DEO Complied With Its Obligation To Confirm Complainant's Enrollment With IGS.

The procedures under which Ohio consumers may choose their own natural gas supplier are found in Chapter 4901:1-29, O.A.C. In particular, Rule 4901:1-29-06(B) provides, "[r]etail natural gas suppliers...are prohibited from enrolling potential customers without their consent and proof of consent as delineated in paragraphs (D), (E) and (F) of this rule."¹ To ensure that customers are not enrolled in gas supply programs without their consent, natural gas companies (such as DEO) are required to "provide a written notice to customers that allows customers to rescind their enrollment with a retail natural gas supplier or governmental aggregator within seven business days from the postmark date of the notice." Rule 4901:1-29-06(C), O.A.C.

¹ "Retail natural gas supplier" is defined as "any person...engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of a competitive retail natural gas service to consumers in this state that are not mercantile customers." See R.C. 4929.01(N) and O.A.C. 4901:1-29-01(AA).

Here, the pleadings establish that DEO provided Complainant with the written notice required by Rule 4901:1-29-06(C) on October 10, 2008, and gave Complainant until October 23, 2008 to rescind his enrollment. (See Answer, ¶ 3 & Exhibit A.) DEO thus provided Complainant 13 days to rescind his enrollment, nearly double the seven days required by Ohio law. (Id.) Complainant has not, as a matter of law, set forth any viable claim against DEO.

B. DEO Complied With Its Billing Obligations To Complainant.

As Complainant's natural gas distribution company, DEO is required to include in Complainant's bills the information set forth in Rule 4901:1-13-11, O.A.C. This information includes charges from a retail natural gas supplier. Complainant cannot dispute that DEO included all required information in the bills provided to Complainant, including the IGS supply charges. (See Complaint, p. 2-3.) Complainant simply contends that, after failing to rescind his IGS enrollment by the October 23, 2008 deadline, he requested IGS cancel his enrollment and IGS refused. (Id.)

Whether IGS should have canceled the enrollment is a matter for IGS to address. But, these allegations do not support a claim against DEO. DEO merely included the IGS charges on Complainant's bills, as it was required by law to do. There is no reasonable grounds for complaint against DEO.

III. CONCLUSION

DEO complied with its obligation to give Complainant an opportunity to rescind his enrollment with IGS. In response, Complainant did nothing. DEO also complied with its obligation to include all required information on Complainant's bills, including the IGS supply charges. There are no grounds for complaint against DEO, let alone reasonable grounds. DEO's motion to dismiss should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss, and Memorandum in Support, was served by ordinary U.S. mail, postage prepaid, to the following persons on this 14th day of October, 2009:

Randy Coleman, Sr.
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Canton, Ohio 44708



One of the Attorneys for Respondent The
East Ohio Gas Company d/b/a Dominion East Ohio

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