

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

ROBERT C. TARRY, SR.,

Complainant,

v.

OHIO EDISON COMPANY,

Respondent.

Case No. 09-1086-EL-CSS

MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

Respondent Ohio Edison Company ("Ohio Edison") hereby respectfully moves to dismiss the Complaint of Complainant Robert C. Tarry, Sr. ("Complainant"). For the reasons set forth below, this motion should be granted.

I. INTRODUCTION

The sole allegation of the Complaint is that Complainant does not like the Commission-approved rate he is being charged. Complainant does not argue that he is being charged the wrong rate. Nor does he allege that Ohio Edison has violated any statute, tariff provision, or any rule, regulation, or order of the Commission.

Under well-established Commission precedent, a complaint alleging that approved rates should not be charged fails to set forth reasonable grounds required under R.C. Section 4905.26, and must be dismissed. *See, e.g., Gannis v. The Cleveland Electric Illuminating Co.*, PUCO Case No. 94-154-EL-CSS (May 14, 1994 Entry); *Hughes v. The Cleveland Electric Illuminating Company*, PUCO Case No. 94-969-EL-CSS (September 1, 1994 Entry); *Seketa v. The East Ohio Gas Co.*, PUCO Case No. 06-549-GA-CSS (August 9, 2006 Entry). Therefore, Ohio Edison's Motion to Dismiss the Complaint with prejudice should be granted.

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II. ARGUMENT

A complaint under R.C. Section 4905.26 that fails to set forth reasonable grounds must be dismissed. *See* R.C. 4905.26. Filing a complaint does not automatically trigger a hearing under the statute. “Reasonable grounds for complaint must exist before the Public Utilities Commission, either upon its own initiative or upon the complaint of another party, can order a hearing, pursuant to R.C. 4905.26” *Ohio Util. Co. v. Pub. Util. Comm’n* (1979), 58 Ohio St.2d 153, syl. ¶ 2, 389 N.E.2d 483. If the facts alleged, even assuming they are true, do not set forth a cognizable claim, the complaint must be dismissed. *See, e.g., Lucas Cty. Comm’ns v. Pub. Util. Comm’n* (1997), 80 Ohio St.3d 344, 347, 686 N.E.2d 501.

Complainant’s only claim is that he is dissatisfied with the rate he is being charged under Ohio Edison’s tariff approved by the Commission in Ohio Edison’s recent rate case.¹ Complainant argues that his bills are too high given the minimal electricity being used, notwithstanding the fact that under the Commission-approved tariff, customers under the General Service tariff incur certain fixed distribution charges regardless of usage. (*See* Attachment to Complaint (noting monthly bills in range of \$25 to \$32).) Complainant also asks that the Ohio legislature “reexamine this situation.”

The Commission repeatedly has held that a complaint alleging that a Commission-approved rate should not be charged fails to state reasonable grounds and should be dismissed. *Gannis*, PUCO Case No. 94-154-EL-CSS (May 14, 1994 Entry); *Hughes*, PUCO Case No. 94-969-EL-CSS (September 1, 1994 Entry); *Avery Dennison Co. v. Dominion East Ohio*, PUCO Case No. 00-989-GA-CSS (December 14, 2000 Entry); *Seketa*, PUCO Case No. 06-549-GA-CSS (August 9, 2006 Entry); *In the Matter of the Complaints of Young, et al. v. The Ohio*

¹ *See* PUCO Case Nos. 07-551-EL-AIR, 07-552-EL-ATA, 07-553-EL-AAM, 07-554-EL-UNC.

American Water Co., PUCO Case Nos. 05-1170-WW-CSS, 05-1181-WW-CSS, 05-1182-WW-CSS, 05-1187-WW-CSS, 05-1188-WWCSS, 05-1199-WW-CSS, 05-1251-WW-CSS, 05-1263-WW-CSS, 05-1317-WW-CSS, 05-1349-WW-CSS, 05-1335-WW-CSS (November 1, 2006 Entry).

For example, in *Seketa*, PUCO Case No. 06-549-GA-CSS (August 9, 2006 Entry), the Commission dismissed for failure to state reasonable grounds a complaint alleging that an approved rate should not be charged. The complainant in that case did not allege that the utility charged him the wrong rate; rather, he argued that he should not be charged one of the components of the approved rate. As a result, he argued that the tariff rates were excessive, unjust, and unreasonable. In holding that the complaint lacked reasonable grounds, the Commission stated that it had approved an increase to the rate in question in the utility's recent rate case. The Commission further stated:

There is no allegation that Dominion charged Mr. Seketa something other than the approved rate. Instead, Mr. Seketa wishes the Commission to reverse its decision to collect PIPP arrearages from the non-PIPP distribution customer base. The Commission does not believe that the complaint sets forth reasonable grounds. We have similarly dismissed other complaints that allege that approved rates should not be charged . . . We believe that this complaint, likewise, does not meet the reasonable grounds standard required in Section 4905.26, Revised Code, and should be dismissed with prejudice.

Id. (internal citations omitted).

The Complaint here suffers from the same defects as the complaint in *Seketa*. Complainant is being served at a rate approved by the Commission in Ohio Edison's recent rate case. (Answer of Ohio Edison, ¶ 4.) He is paying the same rates as similarly-situated customers. There are no unlawful charges or subsidies. There is no claim that

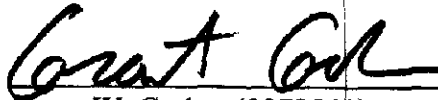
Complainant is being charged a rate other than the lawful, approved rate, and hence no reasonable grounds for a complaint.

III. CONCLUSION

For the foregoing reasons, Ohio Edison respectfully request that the Complaint be dismissed with prejudice.

DATED: November 30, 2009

Respectfully submitted,



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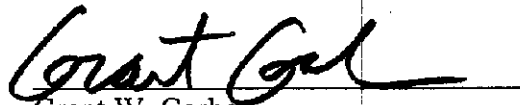
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ATTORNEYS FOR RESPONDENT
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss and Memorandum in Support was sent by first class U.S. mail, postage prepaid, to the following person this 30th day of November, 2009:

Robert C. Tarry, Sr.
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Grant W. Garber
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