

- (2) On May 17, 2011, DEO filed an answer to the complaint. In its answer, DEO admits that it charged a monthly fee of \$19.63 in December 2010, and January, February, and March 2011, as authorized by the Commission, and that the billing excerpts attached to the complaint are portions of billing statements sent to complainant for those months. DEO also asserts that it reads complainant's meter at least once every other month in accordance with Rule 4901:1-13-04(G)(1), Ohio Administrative Code (O.A.C.). DEO generally denies all of the remaining allegations contained in the complaint. DEO contends that complainant has failed to set forth reasonable grounds for complaint, as required by Section 4905.26, Revised Code, and that DEO has complied with all applicable rules, regulations, and tariffs. Finally, DEO states that complainant has been billed by DEO for valid and authorized charges and that all meter readings are correct.
- (3) On May 17, 2011, DEO also filed a motion to dismiss the complaint. In the motion, DEO argues that the Commission cannot order a refund of charges that it has approved and, therefore, the complaint should be dismissed for failure to state reasonable grounds pursuant to Section 4905.26, Revised Code. DEO notes that its basic monthly charge is assessed to all of its customers, including complainant, and that the concept of the basic monthly charge was approved by the Commission in DEO's last rate case, in *In the Matter of the Application of The East Ohio Gas Company d/b/a/ Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, *et al.* (DEO Rate Case). Subsequently, the Commission's decision was affirmed by the Ohio Supreme Court.¹ DEO explains that its current basic monthly charge of \$17.58 was approved by the Commission in *In the Matter of the Consideration of The East Ohio Gas Company d/b/a Dominion East Ohio's Cost-of-Service Study for the General Sales Service and Energy Choice Transportation Service Rate Schedules*, Case No. 09-654-GA-UNC, *et al.* (DEO Cost-of-Service Study Case) and is reflected in its tariffs. DEO notes

¹ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57 (2010).

that the basic monthly charge that appears on customers' bills also includes the automated meter reading (AMR) cost recovery charge of \$0.47 and the pipeline infrastructure replacement (PIR) cost recovery charge of \$1.58, which are also reflected in its tariffs. According to DEO, the billing excerpts attached to the complaint correctly reflect the sum of these three charges, or \$19.63. DEO concludes that, because the Commission has approved all of these charges, they are the only lawful rates that DEO may charge its customers; thus, DEO submits that its motion should be granted.

- (4) In accordance with Rule 4901-1-12, O.A.C., complainant was permitted to file a memorandum contra DEO's motion to dismiss the complaint within 15 days after service of the motion to dismiss. No memorandum contra or other pleading responding to the motion to dismiss was filed in this case.
- (5) Upon consideration of the pleadings, the Commission finds that DEO's motion to dismiss the complaint should be granted, as complainant has not stated reasonable grounds for complaint. From the pleadings, it appears that complainant has been billed the tariffed rates for the services that he receives from DEO. Complainant does not allege that DEO charged him the wrong rate. Rather, complainant contends that he simply should not be billed the monthly charge. Consequently, complainant argues, in effect, that DEO's tariffed rates are excessive, unjust, and unreasonable.

By opinion and order issued October 15, 2008, in the *DEO Rate Case*, the Commission, *inter alia*, approved the adoption of the first two years of DEO's modified straight fixed variable or levelized rate design, which recovers most fixed costs in a flat monthly charge and reflects the fixed cost nature of delivering natural gas for services such as meter reading, billing, customer service, and installing, maintaining, and repairing DEO's pipeline system. In addition, in the *DEO Rate Case* order, the Commission authorized DEO to implement the PIR and AMR programs,

and the PIR and AMR cost recovery charge mechanisms. Subsequently, by entry issued July 29, 2010, in the *DEO Cost-of-Service Study Case*, the Commission approved DEO's tariffs for year three and beyond.

Thus, after affording all stakeholders due process and an opportunity to be heard, the Commission approved DEO's current tariffed rates, including the monthly charge, less than a year prior to the filing of this complaint. Further, there is no allegation that DEO charged complainant any rate other than the rate approved by the Commission. Instead, complainant essentially seeks to have the Commission reverse its decisions in the prior cases approving DEO's monthly charge. However, as DEO notes, the rates approved by the Commission are the only lawful rates that DEO may charge pursuant to Section 4905.32, Revised Code.

Finally, the Commission finds that we have similarly dismissed other complaints alleging only that Commission-approved rates should not be charged, or otherwise questioning the reasonableness of such rates, as those complaints did not state reasonable grounds for complaint.² In the present case, we likewise find that the complaint does not state reasonable grounds for complaint pursuant to Section 4905.26, Revised Code, and should, therefore, be dismissed.

It is, therefore,

ORDERED, That DEO's motion to dismiss the complaint be granted. It is, further,

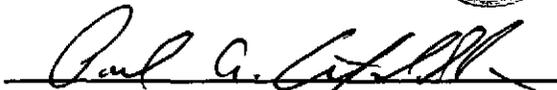
ORDERED, That Case No. 11-2700-GA-CSS be dismissed. It is, further,

² See, e.g., *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 Company*, Case No. 94-969-EL-CSS, Entry (September 1, 1994); *Avery Dennison Company v. Dominion East Ohio*, Case No. 00-989-GA-CSS, Entry (December 14, 2000); *Emil Seketa v. The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 06-549-GA-CSS, Entry (August 9, 2006); *Mary E. Young v. Ohio American Water Company*, Case No. 05-1170-WW-CSS, Entry (November 1, 2006).

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

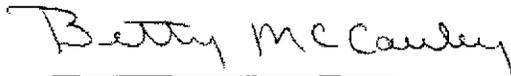

Andre T. Porter


Cheryl L. Roberto

SJP/sc

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Betty McCauley
Secretary