

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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RICHARD COLLINS,

Complainant,

v.

THE EAST OHIO GAS COMPANY D/B/A
DOMINION EAST OHIO,

Respondent.

Case No. 11-4368-GA-CSS

**MOTION TO DISMISS AND
MOTION TO CONTINUE HEARING**

Pursuant to Ohio Adm. Code 4901-9-01(C)(4) and (F), the Respondent The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") respectfully requests issuance of an Entry dismissing the Complaint, with prejudice. The Complaint alleges that DEO wrongfully billed Complainant for unauthorized usage. Because DEO has withdrawn all disputed charges, the Complaint has been satisfied and must therefore be dismissed.

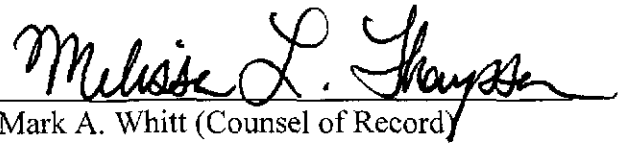
Pursuant to Ohio Adm. Code 4901-1-13(A), DEO also requests a continuance of the evidentiary hearing, currently scheduled for January 5, 2012. A continuance is necessary to provide Complainant 20 days to respond to this Motion, agreeing or disagreeing that the Complaint has been satisfied. If no response is filed, the Commission may presume that satisfaction or settlement has occurred and dismiss the Complaint. Absent a continuance, the parties would need to file expert testimony by December 29, 2011. No such testimony is necessary here because no dispute remains for the Commission to adjudicate.

For these reasons, further explained in the attached Memorandum in Support, the Commission should grant this Motion.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Date Processed 12/9/2011

Dated: December 9, 2011

Respectfully submitted,

A handwritten signature in black ink, reading "Melissa L. Thompson". The signature is written in a cursive style with a horizontal line extending from the end.

Mark A. Whitt (Counsel of Record)
Melissa L. Thompson
CARPENTER LIPPS & LELAND LLP
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280 North High Street
Columbus, Ohio 43215
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ATTORNEYS FOR THE RESPONDENT
THE EAST OHIO GAS COMPANY D/B/A
DOMINION EAST OHIO

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RICHARD COLLINS,)	
)	
Complainant,)	
)	Case No. 11-4368-GA-CSS
v.)	
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION EAST OHIO,)	
)	
Respondent.)	

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AND MOTION TO CONTINUE HEARING**

I. INTRODUCTION

Complainant, a landlord, alleges that DEO improperly billed him for his former tenants' gas usage. DEO believes that it properly billed Complainant, but nonetheless elected to remove the disputed charges from Complainants' account. Complainant, however, refuses to dismiss the Complaint, apparently because DEO will not agree to pay his attorneys' fees. The Complaint does not request the Commission to award attorneys' fees, and the Commission lacks authority to do so in any event. Complainant has received the relief requested: removal of the disputed charges from his gas bill. The Complaint has therefore been satisfied and should be dismissed.

II. BACKGROUND

On July 18, 2011, the Complainant filed his Complaint alleging that "DEO improperly billed him for his tenants' unpaid gas bills" totaling \$3,171.58. Entry (Nov. 1, 2011) at Finding (1); *see also* Compl. ¶¶17-18. The Complainant alleges that "he is not responsible for the tenants' unpaid gas bills," and requests that "DEO be ordered to remove the tenants' gas bills from his personal residence account." Entry (Nov. 1, 2011) at Finding (1); *see also* Compl. ¶19.

In its Answer, DEO acknowledges placing the disputed charges on Complainant's residential account, but goes on to explain that these charges were removed from this account on July 19, 2011 (the day after the Complaint was filed) and transferred to a different accounts in Complainant's name and billed to the rental property address where the charges were incurred. (See Answer at ¶17.)

The Parties held unsuccessful settlement discussions in September and October. A November 1, 2011 Entry scheduled a hearing for January 5, 2012.

On November 8, 2011, DEO mailed billing statements to the rental property showing removal of the disputed charges. The final bill statements' amount due is now \$0. See Exhibit A. The Affidavit accompanying Exhibit A confirms that DEO will not seek to collect in the future any portion of the disputed amount. See Exhibit B.

III. ARGUMENT

A. The Complaint should be dismissed because it has been satisfied.

Rule 4901-9-01(C), O.A.C., provides that "satisfaction of the complaint or settlement of the case" is an affirmative defense that may be raised by motion. The rule does not proscribe a time limitation for filing such a motion. In addition, subdivision (F) of Rule 4901-9-01 allows a public utility to file a motion representing that a complaint has been satisfied or the case settled. The complainant then has 20 days to file a response "indicating whether the complainant agrees or disagrees with the utility's assertions, and whether he or she wishes to pursue the complaint." If no response is filed, the Commission may presume that the complaint has been satisfied and dismiss the case. *Id.* Where a utility files a motion indicating that it has removed disputed charges from a bill or otherwise taken action requested in a complaint, and no response is filed,

the Commission typically grants the motion as a matter of course.¹

Here, the Complaint alleges that "Dominion is attempting to burden Collins with the total bill for all four units" and "has added the gas usage bills from the four units at the Rental Property to the gas bill for Collins' personal residence." Compl. ¶¶17-18. The remedies requested of the Commission are a determination that Complainant is not responsible for these charges and that they be removed from his bill. Compl. ¶19. The Commission need not provide this relief because DEO has already done so. As DEO's Ms. Edwards explains, DEO has removed the disputed charges from Complainant's bill and issued final bills with a \$0 balance. DEO will not seek to collect any portion of the disputed charges in the future. Thus, Complainant has received everything he asked for. The Complaint has been satisfied.

Based on discussions with Complainant's counsel, it appears that Complainant will not dismiss this case voluntarily because DEO has not agreed to pay his attorneys' fees. Disagreement over attorneys' fees may impede "settlement," but it does not impede "satisfaction" of the Complaint. The Complaint does not request an award of attorneys' fees, and even if it did, the Commission is without authority to grant this relief. *Industrial Energy Users-Ohio v. Northeast Ohio Public Energy Council*, Case No. 04-1129-EL-CSS, Entry (Feb. 2, 2005) at Finding (6) (citing *Ohio Public Interest Action Group, Inc. v. Pub. Util. Comm.* (1975), 43 Ohio St.2d 175, 185.). This case cannot proceed to hearing to litigate over relief that the Commission cannot grant.

There are no remaining allegations to dispute or redress to be awarded.

¹ See, e.g., *Smith v. Spring Communications Company L.P.*, Case No. 06-1275-TP-CSS, Entry (July 25, 2007); *Middletown Preparatory and Fitness Academy v. Choice One Communications of Ohio, Inc.*, Case No. 06-134-TP-CSS, Entry (Mar. 29, 2006); *Shuco, Inc. d/b/a PIP Printing v. Directory America, Inc.*, Case No. 02-1214-TP-CSS, Entry (Oct. 3, 2002); *Harrison v. AT&T*, Case No. 02-574-TP-CSS, Entry (Sept. 12, 2002); *Act I Optics & Engineering, Inc. v. Ameritech Ohio*, Case No. 00-1919-TP-CSS, Entry (Jan. 4, 2001); *Markko v. Matrix Telecom*, Case No. 94-44-TP-CSS, 1994 Ohio PUC LEXIS 145, Entry (Feb. 24, 1994); *Roper v. The East Ohio Gas Company*, Case No. 85-818-GA-CSS, 1985 Ohio PUC LEXIS 1675, Entry (Sept. 10, 1985).

B. Good cause exists to continue the hearing currently scheduled for January 5, 2012.

Rule 4901-1-13(A), O.A.C., permits continuances of public hearings "upon motion of any party for good cause shown...." Good cause exists to continue the hearing scheduled in this matter.

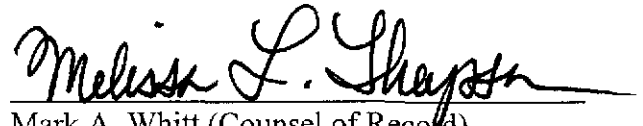
Under Rule 4901-1-29(A)(1)(h), O.A.C., written testimony must be filed seven days prior to hearing, which in this case makes testimony due on December 29, 2011. This happens to be the same day Complainant's response to this motion is due, per the 20-day response period allowed under Rule 4901-9-01(F). Neither party should have to file testimony if it can be avoided, and it can certainly be avoided since there is no longer a need for a hearing. Therefore, the Commission should continue the hearing while this Motion is pending. If it turns out that a hearing is necessary (DEO cannot fathom a scenario where this would be the case), one can be scheduled in an entry ruling on this Motion.

IV. CONCLUSION

Because DEO has removed the disputed charges from Complainant's bill, there are no claims to adjudicate and no relief to grant. The Complaint should be dismissed and the hearing continued, pending issuance of an Entry disposing of this proceeding.

Dated: December 9, 2011

Respectfully submitted,



Mark A. Whitt (Counsel of Record)
Melissa L. Thompson
CARPENTER LIPPS & LELAND LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100 (Telephone)
(614) 365-9145 (Facsimile)
whitt@carpenterlipps.com
thompson@carpenterlipps.com

ATTORNEYS FOR THE RESPONDENT
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 Motion to Continue Hearing was served by electronic mail to the following persons on this 9th day of December, 2011:

Michael K. Webster, Esq.
800 Standard Building
1370 Ontario Street
Cleveland, Ohio 44113
webstermk@gmail.com

*Attorney for Complainant
Richard Collins*



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

EXHIBIT A

November 8, 2011 Billing Statements for

**Richard L. Collins
2896 E. 111th Street
Cleveland, Ohio 44104**

Page 1 of 2

For questions about Dominion East Ohio charges call 1-800-362-7557.

£9.044

Payment Programs for Eligible Customers

Budget Payment Plan - Levels monthly payment by averaging gas usage over the past 12 months, then adjusted for current rates. Plan reviewed periodically so that customers only pay for what they owe.

Budget Plus - Pay a special budget amount, plus one of 12 equal payments of the past-due amount.

Current Plus - Pay current charges and make one of six equal payments of the past-due amount.

One-Third Winter Heating Plan - Pay one-third of the account balance if current charges include gas used between November 1 and April 15.

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PIPP Plus - This program allows income eligible residential customers to pay 6% of their monthly gross household income or \$10, whichever is greater. It replaces the Percentage of Income Payment Plan (PIPP). Call the Ohio Department of Development at 1-800-282-0880 for an application or for the location of the nearest Community Action Agency.

Graduate PIPP Plus - A special plan for customers no longer enrolled in PIPP Plus. Monthly amount is the average of the most recent PIPP Plus amount and budget billing amount. It replaces the PIPP Repayment Plan.

Explanation of Billing Terms (The following items will not appear on every bill.)

Basic Monthly Charge - This charge replaces the Monthly Service Charge for most customers. It includes fixed costs for delivering gas, plus applicable riders.

Cancel Billing - A credit issued to the account when a correction is needed on past charges.

CR - Credit

Estimated Gas Bill - During the months we don't read your meter, your bill is based on previous gas usage, gas rates and the weather. An estimated bill will be verified when your meter is read or you may enter your own meter reading online at www.dom.com.

Gas Cost - The price charged to cover the cost of natural gas.

Gas Usage Charge - Covers expenses, including SSO gas cost and transportation charges, involved in providing gas services to customers who purchase gas from Dominion East Ohio.

Gross Receipts Tax - Ohio tax levied on public utilities.

Investigation Fee - Fee to be levied in those circumstances where Dominion East Ohio has reasonable proof of the customer's fraudulent or damaging practice related to gas service.

Late Payment Charge - A 1.5% late payment charge (LPC) may be imposed on all past-due balances if the required payment is not paid in full by the time the next bill is generated. For Payment Plan and Budget customers, the LPC applies only to the past-due plan amount.

MCF - An abbreviation for the standard measure of gas meaning 1,000 Cubic Feet.

Meter Test Fee - Fee charged for a meter test performed at the customer's request.

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Reset Read - Adjusted meter reading that establishes the point from which you are responsible for gas use following equipment replacement or a billing adjustment.

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RICHARD L COLLINS
18709 HARLAN DR
MAPLE HEIGHTS OH 44137-2237

Page 1 of 2

For questions about Dominion East Ohio charges call 1-800-362-7557.

No Payment Due

ENERGYSHARE: Help people without heat by donating to EnergyShare. To donate, add exactly \$1, \$2, \$6, \$12, \$18 or \$36 to your payment or mail a separate check payable to EnergyShare, Salvation Army, P.O. Box 5847, Cleveland, OH 44101.

Pipeline Infrastructure Replacement Charge
In Case No. 11-3238-GA-RDR, the Public Utilities Commission of Ohio approved an adjustment to the Pipeline Infrastructure Replacement (PIR) Cost Recovery Charge. This charge provides recovery of certain costs associated with replacement of older pipelines and ownership of and responsibility for service lines. With the rider change, the Basic Monthly Charge increased by \$0.64 to a total of \$20.37 per month as of November 2, 2011.

DOMINION EAST OHIO
PO BOX 26785
RICHMOND VA 23261-6785

59 846

Payment Programs for Eligible Customers

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RICHARD L. COLLINS
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Page 1 of 2

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Balance from last bill	\$716.57
Reconnect Credit	33.00 CR
Cancel Billing	682.05 CR
Gross Receipts Tax Credit (4.6044%)	1.52 CR
Balance	\$0.00

Current Charges

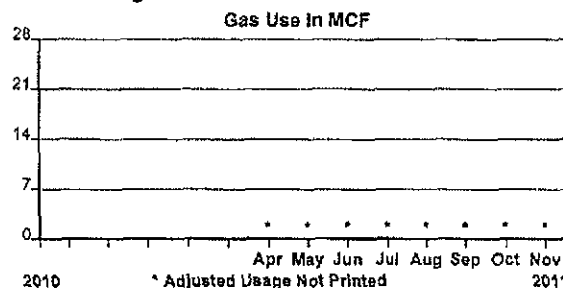
General Sales Service Rate	
Standard Service Offer (SSO)	
Total Account Balance	\$.00

This is your Final Bill.

Monthly Usage Comparison

Average Daily Temperature
For This Billing Period

2011
0°F



Billing Period And Meter Readings

<u>Date</u>	<u>Read Type</u>	<u>Reading</u>	<u>Difference</u>
Meter Number	4895		
Aug 19, 2010	Estimate	671.3	
Aug 19, 2010	Estimate	671.3	
MCF Used in 0 Days			.0

No Payment Due

Need to Locate an Authorized Payment Center?

Go to www.dom.com and type in "Payment Center" in the search box.

ENERGYSHARE: Help people without heat by donating to EnergyShare. To donate, add exactly \$1, \$2, \$6, \$12, \$18 or \$36 to your payment or mail a separate check payable to EnergyShare, Salvation Army, P.O. Box 5847, Cleveland, OH 44101.

Account Number 9351

NO PAYMENT DUE

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264

RICHARD L COLLINS
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\$2,943

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EXHIBIT B

**Affidavit of
Roxie A. Edwards**

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RICHARD COLLINS,)	
)	
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)	Case No. 11-4368-GA-CSS
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)	
Respondent.)	

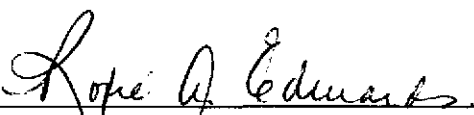
AFFIDAVIT OF ROXIE A. EDWARDS

Roxie A. Edwards, being first duly sworn, states:

1. My name is Roxie A. Edwards. I am the Customer Relations Support Manager for The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"). I am authorized to make this Affidavit on behalf of DEO and have personal knowledge of the facts stated herein.
2. DEO billed Richard L. Collins on April 5, 2011, for the unauthorized usage incurred at the four units located at 2896 E. 111th Street, Cleveland, Ohio 44104. The billed amount totaled \$3,171.58.
3. When this bill went unpaid, DEO's billing system transferred the arrearage onto Mr. Collins's personal account at 18709 Harlan Drive, Maple Heights, Ohio 44137. DEO immediately removed the charge on July 19, 2011 when it discovered the transfer.
4. On November 8, 2011, DEO re-billed Mr. Collins for \$0 for the unauthorized usage incurred at the four units located at 2896 E. 111th Street, Cleveland, Ohio 44104.
5. An accurate copy of the November 8, 2011 billing statements sent to Mr. Collins are attached to the Motion to Dismiss as Exhibit A.

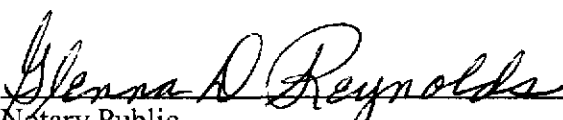
6. DEO is not and will not attempt to recover the disputed amount from Mr. Collins.

FURTHER AFFIANT SAYETH NAUGHT.


Roxie A. Edwards

STATE OF OHIO)
) ss.
COUNTY OF CUYAHOGA)

Sworn to before me and subscribed in my presence this 8th day of December, 2011.


Notary Public

GLENNA D. REYNOLDS
Notary Public, State of Ohio, Cuy. Cty.
My commission expires Dec. 28, 2011