

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

GWENDOLYN TANDY,)	
)	
Complainant,)	
)	Case No. 12-2103-GA-CSS
v.)	
)	
THE EAST OHIO GAS COMPANY d/b/a)	
DOMINION EAST OHIO,)	
)	
Respondent.)	

**MOTION TO DISMISS OR
FOR AN ORDER REQUIRING AMENDMENT OF THE COMPLAINT**

In accordance with Ohio Adm. Code 4901-9-01(B), The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO” or “the Company”) respectfully requests that the Commission dismiss the complaint in this case. Alternatively, the Company requests that the Commission order the Complainant to amend her complaint within 30 days of the entry responding to this motion and to provide a clear explanation of the facts that constitute the basis of her complaint and of the relief sought. Arguments in support are set forth in the attached Memorandum in Support.

Dated: October 11, 2012

Respectfully submitted,

/s/ Gregory L. Williams

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On July 17, 2012, Ms. Gwendolyn Tandy filed her complaint in this case against DEO, which DEO answered on August 7, 2012. A couple of weeks later, Ms. Tandy filed another complaint in Case No. 12-2326-GA-CSS, which was later consolidated into this docket. This second complaint was soon followed by two more filings that contained additional allegations. As ordered by the Commission, DEO responded to the latter three filings in a supplemental answer on September 17, 2012.

In all, Ms. Tandy has filed 76 pages of material against DEO that contain dozens of fragmentary assertions and incomplete thoughts. It is far from clear what Ms. Tandy is complaining about and what she would have DEO do in response. It is one thing to complain about one's utility company; it is another to set forth reasonable grounds for a complaint. Ms. Tandy has achieved the former task, but not the latter. It is the complainant's burden to allege reasonable grounds for complaint. Despite availing herself of four opportunities, Ms. Tandy has not met her burden. This complaint should be dismissed.

Even if this case is not dismissed, it cannot fairly move forward on these pleadings. If this case went to hearing, DEO would be required to prepare direct testimony responding to dozens of disconnected, undeveloped assertions, covering dates ranging from May 2006 to August 2012. This would put on DEO either an unreasonable burden to file voluminous testimony affirmatively proving reasonable service over the last six years, or an unfair risk that it will have failed to respond to one of these dozens of incomplete thoughts. If the case must go forward, the Commission should require Ms. Tandy to eliminate this dilemma by providing a clear, plain explanation of the issue and what she would have DEO do about it.

For the reasons stated below, DEO respectfully requests that the Commission dismiss Ms. Tandy's complaint. Alternatively, the Company request that the Commission order Ms. Tandy to amend her complaint within 30 days of the entry responding to this motion and to provide a clear explanation of the facts that constitute the basis of her complaint and of the relief sought.

II. ARGUMENT

This complaint should be dismissed. It does not "clearly explain the facts which constitute the basis of the complaint" nor does it contain a clear "statement of the relief sought" as required by Ohio Adm. Code 4901-9-01(B). Failing on both of these fronts, it therefore fails to state "reasonable grounds" as required by R.C. 4905.26. Thus, the complaint should be dismissed.

A. The complaint does not clearly explain the facts that constitute the basis of the complaint.

The complaint does not rise to the minimum level of clarity required as a matter of procedure by Rule 4901-9-01(B), which states that complaints "shall contain . . . a statement which clearly explains the facts which constitute the basis of the complaint." *See also In re the Complaint of Ohio CARES v. FirstEnergy Corp.*, Pub. Util. Comm. No. 98-1616-EL-CSS, Entry at ¶ 7 (May 19, 1999) (to state reasonable grounds, a complaint must allege "specific incidents of inadequate service," or contain an "allegation of a violation of [some] statute, Commission rule, or order.").

Although Ms. Tandy's complaint is large (containing 76 pages of allegations) and copiously annotated, it is ultimately unintelligible. Her 76 pages of allegations make clear that Ms. Tandy is dissatisfied. But those pages contain so many fragmentary, disconnected allegations that it is simply not clear what this case is about or what any hearing should cover. How can DEO defend itself against allegations like the following?

- “Dominion Statement are fraudulent [sic]. That’s illegal [sic]. I believe Dominion has been stealing money from me since I first had gas turned on. However, the statements speak for themselves and for the last 30 months. All my bills have incorrect balance. past due amounts. And I believe. If they can misrepresent my past due they can also misrepresent my total current charges as well [sic]” Additional Information at 2 (August 27, 2012).
- “The law requires Dominion [sic] to come up with a solution. The answer is a bunch of undocuments [sic] lies. The statements themselves are evidence that I have proven my case.” *Id.* at 7.
- “The law requires Dominion [sic] to come up with a solution within 90. day. [sic] and it’s been four years. My solution would be a refund of \$4,000 Plus interest [plus] 1,200 infraction [equals] \$5,200 For gas being turned [sic] off illegally [sic] for 6 months.” *Id.* at 9.
- “I also made a complaint about the service man who came out to turn my gas o [sic] He refused to turn it on. And told me I need a new furnace. I had it check [sic] and he was wrong.” *Id.* at 27 (emphasis in original).

These incomplete allegations are merely illustrative of many throughout the 76-page complaint. The complaint seems to contain a record of virtually every negative thought Ms. Tandy has had with respect to DEO since May 2006. But as far as notice to DEO is concerned, the complaint asserts everything, and thus asserts nothing. DEO has tried to understand what Ms. Tandy is asserting that it did wrong, but it has simply been unable to do so.

B. Because the complaint does not clearly explain the facts, it follows that it does not set forth reasonable grounds.

Because Ms. Tandy has not met the threshold procedural requirement of clearly explaining what happened, then it follows that Ms. Tandy has not met the higher standard and shown reasonable grounds for complaint. To state reasonable grounds for complaint under R.C. 4905.26, Ms. Tandy must “allege . . . facts which would support a finding of inadequate service,” *see In Re J. Earl McCormick, et al. v. Ohio Bell Tel. Co., et al.*, Pub. Util. Comm. No. 90-1256-TP-PEX, Entry at ¶ 3 (Sept. 27, 1990), or show that DEO’s conduct violated “any statute, rule or Commission order.” *See, e.g., See Ohio CARES*, Entry at ¶ 7 (May 19, 1999). Because it is

unclear from reading Ms. Tandy's complaint exactly what she is complaining about, it is cannot be determined whether the Company did anything wrong.

It is Ms. Tandy's statutory burden to allege and prove that the Company provided unreasonable service; it is not the Company's responsibility to prove its absence. *See Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189, 190, 214 N.E.2d 666, 667 ("The burden of proof rests upon the complainant."). Despite four tries, she has not met her burden. The case should be dismissed.

C. If the case went to hearing on this complaint, DEO would be deprived of a fair hearing.

It would be unfair to the Company for the Commission to move forward with a hearing. DEO does not have fair notice of the allegations of the complaint. Because the complaint alleges so many things and none of them with clarity, DEO faces a dilemma.

On one hand, the Company could file voluminous testimony attempting to prove reasonable service for each and every moment that Ms. Tandy has been a customer. In addition to requiring a considerable commitment of the resources of the Company and its counsel, it would also require DEO to prove a negative, which is logically impossible. But if DEO does not take this route, on the other hand, it will be subject to ambush at the hearing. Ms. Tandy could decide to present evidence on and elaborate upon any one of the dozens and dozens of fragmentary allegations contained in her complaint.

Consider a few examples. Ms. Tandy complains that she "would have never agreed to" the Current Plus Plan Agreement. Additional Information at 15 (August 27, 2012). Is Ms. Tandy claiming that DEO does not have the authority in its tariff to enroll her in this payment plan? Or that she specifically requested not to be enrolled in the plan, but was enrolled despite her request? Or is she claiming that she requested to withdraw from the plan after she enrolled?

If her complaint means any of these, when did Ms. Tandy either request not to be enrolled or to withdraw? Or is she claiming that she agreed to this payment plan, but for a different amount? Or is she claiming that she agreed to a different plan with a different amount? It is utterly unclear.

Also consider Ms. Tandy's complaint, "When did transporting the gas become more than actual gas?" *Id.* at 43. DEO is unsure whether this is an actual allegation or merely a rhetorical question. If it is an allegation, it is not clear whether Ms. Tandy is generally alleging that the cost for gas transportation should not be more than the cost of the gas commodity, or if Ms. Tandy is specifically alleging that DEO miscalculated either her gas transportation charges or her gas commodity charges.

Likewise, Ms. Tandy makes numerous requests for monetary damages without articulating any tie between those requests and anything DEO did wrong, including the following:

- "[return of] all the money stolen," (Complaint at 1 (Aug. 22, 2012));
- \$4,000 (Additional Information at 7 (Aug. 27, 2012));
- \$5,200, including \$1,200 for an "infraction for gas being turned off illegally" (*id.* at 8 and 9);
- \$3,800 (*id.* at 11);
- \$3,800 "plus interest [and] ... all the late fees that weren't warranted" (*id.* at 12);
- \$3,766 "plus interest" (*id.* at 14).

DEO is aware of no facts that would support an award of any of these amounts. Nevertheless, as things stand, DEO has no fair way to defend itself against such incomplete allegations, and the Company is at risk that Ms. Tandy could choose to develop (and support with evidence) any one of them at hearing.

Ms. Tandy has already availed herself of four opportunities to supplement her complaint, but she has simply failed to set forth coherent allegations of unreasonable service. The remedy is not a fifth bite at the apple. She has failed to meet her burden, and the result should be dismissal. *See Grossman*, 5 Ohio St.2d at 190.

D. Alternatively, DEO requests that the Commission order the Complainant to amend and clarify her complaint.

As set forth above, Ms. Tandy's complaint should be dismissed. If the Commission denies this motion, however, the Company alternatively requests that the Commission order Ms. Tandy to amend and clarify her complaint. The Commission has ordered the amendment of complaints far more detailed and substantial than that in this case. *See, e.g., In re Complaint of Walter Reinhaus v. Duke Energy Ohio, Inc.*, Pub. Util. Comm. No. 07-356-EL-CSS, Entry at ¶ 1 (June 15, 2007); *In re Complaint of Terry S. Metzenbaum v. AT&T Ohio*, Pub. Util. Comm. No. 05-658-TP-CSS, Entry at ¶ 1 (May 30, 2006); *In re Complaint of Mamie Weddington v. U.S. Sprint Commc'ns Co.*, Pub. Util. Comm. No. 90-882-TP-CCS, Entry at ¶ 1 (June 29, 1990).

Allowing cases to go forward on the basis of a complaint such as the one in this case serves no good purpose. But enforcing the rules of proper pleading serves at least two useful purposes. First, it ensures that the Company is afforded the safeguards of due process. Second, the requirement to state "reasonable grounds" ensures that complaints will give companies notice of any problems, enabling them to investigate and potentially resolve those problems in the least litigious and costly way possible. The simple requirement of a short, written statement that identifies the utility, explains the problem, and requests that the problem be fixed, focuses the issues in dispute. It also prevents complaint cases from needlessly consuming the time, energy, and resources of the complainant, the Company and the Commission.

For these reasons, if the complaint is not dismissed, the Company asks that the Commission require Ms. Tandy to amend and clarify her complaint within 30 days of the entry granting the motion before any additional resources are expended on this case.

III. CONCLUSION

For the above reasons, the Company respectfully requests that the Commission dismiss the complaint in this case or, alternatively, order Ms. Tandy to amend her complaint within 30 days of the entry and to provide a clear explanation of the facts that constitute the basis of her complaint and of the relief sought.

Dated: October 11, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was served by U.S. mail to the following person on this 11th day of October 2012:

Gwendolyn Tandy
1439 Sulzer Avenue
Euclid, Ohio 44132

/s/ Gregory L. Williams
One of the Attorneys for
The East Ohio Gas Company d/b/a
Dominion East Ohio

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Summary: Motion to Dismiss or for an Order Requiring Amendment of the Complaint electronically filed by Mr. Gregory L. Williams on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio