

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint)	
of United Services Automobile Association,)	
)	
Complainant,)	Case No. 14-1176-GA-CSS
v.)	
)	
NiSource Inc. <i>et al</i> ,)	
)	
Respondents.)	

**MOTION TO DISMISS
OF NISOURCE INC. AND COLUMBIA GAS OF OHIO, INC.**

Pursuant to Rules 4901-9-01(C) and 4901-1-12, Ohio Administrative Code (“O.A.C.”), Respondents NiSource Inc. (“NiSource”) and Columbia Gas of Ohio, Inc. (“Columbia”) move to dismiss the Complaint of United Services Automobile Association (“USAA”). USAA, an insurance company, is seeking to recoup payments it made to one of its insureds, a couple receiving natural gas service from Columbia, following a fire in 2012. USAA asserts that the fire was caused by a gas leak from respondents’ facilities. Yet, USAA offers no theory as to how the fire started. Instead, USAA suggests that respondents must have been negligent; must have violated their tariff-based, statutory, or regulatory obligations; or should be held strictly liable regardless because distributing natural gas is an ultra-hazardous activity. At the same time, USAA has filed a civil complaint in Delaware County, which asserts similar claims against NiSource and Columbia, but also asserts that three additional companies caused the fire through *their* purported negligence.

USAA’s claims are deficient for several reasons. The claims against NiSource are improper under Section 4905.26, Revised Code, because NiSource is not a “public utility.” USAA’s negligence, strict liability, and breach claims (Counts I, II, and III) are improper because this Commission has no jurisdiction over tort or contract claims. USAA’s “regulatory violations” claim (Count IV) is also just a thinly veiled tort claim, and thus is not properly before this Commission. USAA’s claims also fail to meet the fundamental requirement of Section

4905.26, that a complainant state “reasonable grounds for complaint.” Additionally, USAA seeks several kinds of relief that this Commission has no authority to grant.

For all of these reasons, as further explained in the attached Memorandum in Support, Respondents NiSource Inc. and Columbia Gas of Ohio, Inc. respectfully request that the Commission dismiss USAA’s Complaint and allow USAA’s claims to proceed in common pleas court, where they belong.

Respectfully submitted,

/s/ Eric B. Gallon

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

1. Introduction

On July 17, 2012, a fire occurred at the home of Roger and Joy Ellen Wood in Powell. USAA asserts that it “provided property insurance coverage” to the Woods¹ and paid over \$386,000 for “damages to [their] real and personal property” and “loss of use[.]”² USAA brings its Complaint as the Woods’ subrogee.³

USAA’s Complaint does not specify the fire’s origin, its cause, or respondents’ purported role in causing or enabling it. USAA asserts, broadly and ambiguously, that the fire “was caused by a leakage of gas supplied and distributed by NiSource and Columbia Gas from their defective pipeline, meter, and applicable equipment ***.”⁴ USAA does not specify, however, what “applicable equipment” means; which facilities purportedly leaked; why the gas leak occurred; or what facilities it is describing as “defective.” Nor does USAA specify what, exactly, it believes NiSource and Columbia did wrong. Count I of USAA’s Complaint asserts that respondents did any of a number of things wrong, including failing to inspect and maintain their facilities, failing to properly train their workmen, violating the pipeline safety code, or “continuing to provide gas to the subject premises when [they] knew or should have known of [unspecified] dangerous conditions within the supply and distribution system that provided gas to the subject premises.”⁵ Count II, however, asserts that respondents are “strictly liable” for any damage caused by the “supply and distribution of natural gas ***.”⁶ And, Count III simply and broadly alleges that respondents either “caused and/or permitted the gas leak and ensuing Fire to occur.”⁷ The clear inference is that USAA does not know what caused the fire and has brought this case in hopes of finding a reason to pin the blame on respondents.

¹ Complaint ¶7.

² *Id.* ¶¶12, and 13.

³ *Id.* at p. 1.

⁴ *Id.* at ¶11.

⁵ *Id.* at ¶19.

⁶ *Id.* at ¶¶23-25.

⁷ *Id.* ¶30.

This inference is confirmed by USAA's filing of a civil complaint against NiSource and Columbia, along with three other companies, only days after USAA filed its Complaint here. That complaint, which is attached to this Memorandum as Exhibit A (and is available on the website of the Delaware County Clerk of Courts),⁸ asserts the same negligence and strict liability claims as USAA's Complaint here.⁹ Yet, USAA's civil complaint also asserts that the fire was caused by the negligence of three other companies: Elster Perfection Corporation, which USAA asserts either "designed, manufactured, installed, serviced, repaired and/or supplied" the Woods' customer service line; NPL Construction Co., which USAA asserts constructed and installed the Woods' customer service line; and Elster American Meter Company, which USAA asserts supplied the Woods' gas meter.¹⁰ As with USAA's Complaint here, USAA's civil complaint accuses Elster Perfection, NPL, and Elster American Meter of a variety of failings, all of them described broadly and vaguely. The number of defendants in that action, and the breadth and generality of the claims asserted there, merely corroborate what is clear from USAA's Complaint here: USAA has no idea what caused the fire that damaged its insured's home, and it is suing all parties involved in the hopes of finding some evidence of wrongdoing.

Whether USAA's claims will pass muster in the Delaware County Court of Common Pleas is, of course, of no relevance to this proceeding. USAA's claims do not meet the Commission's requirements for a complaint case proceeding. USAA's claims against NiSource Inc. must be dismissed because NiSource is not a public utility. USAA's negligence, strict liability, and breach of contract claims must be dismissed because the Commission has no jurisdiction over pure tort and contract claims. USAA's "regulatory violations" claim must be dismissed because it simply restates USAA's tort and contract claims. USAA's claims must also be dismissed because USAA has failed to clearly explain the facts that constitute the basis of its Complaint. And, USAA's requests for damages, costs of litigation, and other equitable relief must be dismissed because the Commission lacks authority to grant those categories of relief. If USAA has valid tort or contract claims to litigate against NiSource or Columbia, it should press those claims in the Delaware County Court of Common Pleas along with its other civil claims.

⁸ See Delaware County Clerk of Courts, Case No. 14 CV C 07 0508, *United Services Automobile Association v. NiSource et al.*, Complaint with Jury Demand Endorsed (July 7, 2014), <http://www.delawarecountyclerk.org/pa/view.asp?p=00035269385>.

⁹ Delaware Complaint, Counts I and II.

¹⁰ See *id.* ¶¶11-13 and Counts III, IV, and V.

2. Law and Argument

2.1. The Commission lacks jurisdiction to consider USAA's claims against NiSource.

Section 4905.26 of the Ohio Revised Code authorizes “any person, firm, or corporation” to bring a “complaint in writing against any public utility” relating to the utility’s charges or services.¹¹ The first named respondent in USAA’s Complaint is NiSource Inc., which USAA asserts is a “registered public utility.”¹² USAA is mistaken. NiSource is not on this Commission’s Regulated Company List.¹³ Instead, NiSource is Columbia’s ultimate parent company.¹⁴ Because NiSource is a public utility’s parent company, and not a public utility itself, USAA may not bring a complaint case against NiSource.

The Commission has repeatedly recognized that corporate parents and holding companies are not subject to the Commission’s jurisdiction, holding, for example, that: (1) NiSource Corporate Services Company is not a “public utility” and therefore cannot be the subject of a complaint case under Section 4905.26, Revised Code;¹⁵ (2) Ameritech was not a proper party to a complaint case because it was “merely Ohio Bell’s parent company and is not, therefore, involved with the provision of service;”¹⁶ and (3) “[h]olding companies such as FE and AEP are not engaged in the business of supplying electricity to consumers and, thus, are not subject to our jurisdiction for purposes of service-quality complaints.”¹⁷ For this reason, USAA’s claims against NiSource should be dismissed.

¹¹ Section 4905.26, Revised Code.

¹² Complaint ¶4.

¹³ See PUCO, Regulated Company List (*available at* <http://www.puco.ohio.gov/puco/index.cfm/docketing/regulated-company-list>).

¹⁴ See Complaint ¶5 (“NiSource is the corporate parent of Columbia Gas.”).

¹⁵ *OCC et al. v. Interstate Gas Supply, Inc.*, Case No. 10-2395-GA-CSS, Entry, at ¶14 (Nov. 2, 2011).

¹⁶ *In the Matter of the Complaint of Robert A. Mackovjak v. The Ohio Bell Telephone Company*, Case No. 85-374-TP-CSS, 1985 Ohio PUC LEXIS 1854, Entry, ¶¶3-4 (May 29, 1985).

¹⁷ *In the Matter of S.G. Foods, Inc. et al. v. Cleveland Electric Illuminating Co. et al.*, Case Nos. 04-28-EL-CSS *et al.*, Entry, ¶57 (Mar. 7, 2006).

2.2. The Commission lacks jurisdiction to consider USAA’s tort and contract claims.

USAA’s primary claims against NiSource and Columbia are for negligence, strict liability, and breach of contract.¹⁸ Count I of USAA’s Complaint (“Negligence”) asserts that NiSource and Columbia’s “negligent and careless acts and omissions” caused the fire at the Wood residence.¹⁹ Count II (“Strict Liability for Ultra-Hazardous Activities”) asserts that supplying and distributing natural gas is an “ultra-hazardous activity” that created “an unreasonable risk of harm,” and thus the respondents are “strictly liable” for the “damage to [the Woods’] property.”²⁰ Count III (“Breach of Tariff”) asserts that respondents breached an “express *and/or implied* tariff agreement” with the Woods to provide “sufficient, necessary and reasonable gas service ***.”²¹

The Supreme Court of Ohio has repeatedly held that pure contract and tort claims are outside the Commission’s jurisdiction.²² The Commission, too, has held that “counts *** concerning damages for breach of contract and actions of negligence *** are matters for a court of competent jurisdiction to decide.”²³

USAA’s causes of action for Counts I and II, negligence and strict liability, are tort theories.²⁴ And, although the title of Count III in USAA’s Complaint suggests that USAA is asserting a breach of Columbia’s approved tariff, USAA’s claim that respondents “entered into an express *and/or implied* tariff agreement with Wood”²⁵ indicates that USAA intends to rely upon a contractual right not

¹⁸ See Complaint ¶¶18-32.

¹⁹ *Id.* ¶19-20.

²⁰ *Id.* ¶¶23-25.

²¹ *Id.* ¶¶29-30.

²² See, e.g., *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, ¶6, *cit- ing, inter alia, State ex rel. Ohio Edison Co. v. Shaker*, 68 Ohio St.3d 209, 211, 625 N.E.2d 608 (1994).

²³ *In the Matter of the Complaint of Jean Hails and Mary Higgins v. Columbia Gas of Ohio, Inc.*, Case No. 95-826-GA-CSS, 1996 Ohio PUC LEXIS 24, Entry, ¶13 (Jan. 11, 1996). See also *In the Matter of the Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Ap- proval of a New Rider and Revision of Existing Rider*, Case No. 10-176-EL-ATA, Second Entry on Re- hearing, ¶9 (Apr. 15, 2010) (holding, “the Commission has no power to determine legal rights and liabilities in cases solely involving contract rights even though a public utility is involved.”).

²⁴ See *Allstate Ins. Co.* at ¶8 (“Negligence is a common-law tort.”); *In the Matter of the B&T Express, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 99-274-TR-CVF, Entry on Rehearing, at p. 5 (Jan. 30, 2001) (referring to “the tort doctrine of strict liability”).

²⁵ Complaint ¶29.

explicitly provided in Columbia's tariff. To the extent USAA intends to rely on an *implied* contract, its contract claims are not properly presented here. "[T]he adjudication of any alleged agreements, promises, or inducements made *** outside of the express terms of [a public utility's] tariffs *** is best suited for a court of general jurisdiction rather than the Commission."²⁶

Because Counts I-III of USAA's Complaint assert claims based on tort and contract, those claims should be dismissed.

2.3. USAA has failed to state reasonable grounds for complaint against Columbia.

The Commission's rules require complaints to include "a statement which clearly explains the facts which constitute the basis of the complaint."²⁷ The Commission has explained that a complaint must set forth more than "broad and bare allegations of wrongdoing" in order to proceed to hearing.²⁸ Instead, "the Commission must know the specific facts upon which the complaint is based, and the specific relief being sought by the complainants, before it can determine whether reasonable grounds exist for a Commission adjudication of [the] case."²⁹ As the Commission has explained:

A complainant's right to participate in adjudicatory proceedings before this Commission depends upon his or her exercise of certain fundamental responsibilities, among the most basic of which must be a willingness and ability to present a particular topic or fact pattern for adjudication in such a manner as to establish, first, that all potential respondents have been provided with fair notice of the allegations being made against them, and with fair notice of the factual basis for such allegations; and second, that the material allegations made, indeed, relate to issues within the Commission's jurisdiction.³⁰

²⁶ *In the Matter of the Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Approval of a New Rider and Revision of Existing Rider*, Case No. 10-176-EL-ATA, Second Entry on Rehearing, ¶9 (Apr. 15, 2010)

²⁷ Ohio Adm. Code 4901-9-01(B).

²⁸ *In the Matter of the Complaint of James M. Carpenter v. Acme Telephone Answering Service*, Case No. 89-326-RC-CSS, 1989 Ohio PUC LEXIS 606, Entry, ¶10 (June 28, 1989).

²⁹ *Id.* ¶9.

³⁰ *Id.* ¶11.

USAA's Complaint fails to meet this basic standard. USAA asserts only four real facts – (1) a gas leak caused (2) a fire (3) on July 17, 2012, (4) at the Wood residence in Powell³¹ – and then offers the Commission a grab-bag of reasons why Columbia is responsible for the blaze.³² USAA does not explain where the fire started, how the fire started, or why the fire started. USAA does not specify whether the natural gas leaked directly from a Columbia facility;³³ whether Columbia had notice of the leak; or what, exactly, Columbia did or failed to do to that “caused and/or permitted the gas leak and ensuing Fire to occur.”³⁴ The ambiguity of USAA's Complaint, coupled with its equally vague but broader civil complaint in Delaware County, illustrates that USAA does not know what caused the fire at the Woods' house and is using this complaint proceeding in a desperate attempt to try and find a culprit.

The Commission has dismissed fact-finding complaints, like USAA's, that fail to include the specific factual allegations required by statute and Commission regulation. In *Diana Williams v. Ohio Edison Co.*, Case No. 08-1230-EL-CSS, for example, the Commission dismissed a complaint that, on its face, appeared only to seek account records for use in contesting a wage garnishment.³⁵ After Ohio Edison moved to dismiss that complaint, the complainant filed a “Motion to Dismiss Respondents Motion to Dismiss” in which she explained that Ohio Edison had failed to respond to a subpoena for account information that she had filed in the Summit County Court of Common Pleas.³⁶ In a subsequent, amended complaint, the complainant asserted that Ohio Edison had obtained a default judgment against the complainant even though she was not an Ohio Edison customer, and that she wanted Ohio Edison to return her garnished wages. She further stated, however, that she could not prove her claim without the documents that she sought in her initial complaint.³⁷ Ohio Edison moved to dismiss the amended complaint, and the Commission granted that motion, concluding that the complainant had failed to meet the Commission's pleading requirements. The Com-

³¹ Complaint ¶¶6, 10-11.

³² *See id.* ¶19.

³³ *See id.* ¶11.

³⁴ *Id.* ¶30.

³⁵ *See In the Matter of the Complaint of Diana Williams v. Ohio Edison Co.*, Case No. 08-1230-EL-CSS (“*Williams*”), Complaint (Nov. 17, 2008).

³⁶ *Williams*, Motion to Dismiss Respondents Motion to Dismiss & Motion for Summary Judgment Pursuant to 4901-9-01(D), §I.A. (Dec. 22, 2008).

³⁷ *Williams*, Amended Complaint & Motion for Extension of Time (July 24, 2009).

mission went on to explain that the complainant could not file a vague or ambiguous complaint and then use the Commission's complaint process to develop the facts to support her pleading, holding:

If Ms. Williams wishes to make the argument that she was not a customer of Ohio Edison at a particular point in time, she should allege facts to support such a claim. She cannot support her complaint by information that she expects to find in the possession of Ohio Edison. *A complaint must stand on its own to meet the standard under Section 4905.26, Revised Code. Without sufficient factual allegations, the complaint cannot go forward.*³⁸

USAA appears to be taking the same approach in this proceeding that Ms. Williams took in her complaint case. USAA does not assert any facts that would support a service-related claim against Columbia. Instead, USAA simply lists several categories of duties that it asserts Columbia failed to fulfill and asks for a broad declaration that Columbia "breached its obligations under Ohio statute, the regulations of the PUCO, and/or applicable tariffs ***."³⁹ The clear implication is that USAA is hoping to discover information that will support the broad and vague allegations in its Complaint. This, Commission precedent says, USAA may not do.

Absent any specific allegations as to how and where the fire started and what, exactly, Columbia supposedly did or did not do to cause it, USAA has not stated reasonable grounds for complaint.⁴⁰ For this reason, too, USAA's Complaint should be dismissed.

2.4. The Commission lacks jurisdiction to consider USAA's "regulatory violations" claim.

Count IV of USAA's Complaint ("Regulatory Violations") appears, on its face, to relate to Columbia's provision of natural gas service to the Woods. The Commission has noted, however, that some complainants will file "true negli-

³⁸ (Emphasis added.) *Williams*, Finding and Order, at 6 (Oct. 28, 2009).

³⁹ Complaint at 8.

⁴⁰ See also, e.g., *In the Matter of the Complaint of Paul Goldsberry v. United Telephone Co. of Ohio dba Embarq*, Case No. 07-559-TP-CSS, Entry, at 3 (Jan. 9, 2008) (dismissing as insufficiently pled a complaint's "bare" allegation that a telephone company "wrongfully disrupted his telephone service," without any "information about when the disruption occurred, how long it lasted, or whether it relates to a billing or a physical disconnection").

gence or breach of contract complaints [at the Commission] under the guise of ‘inadequate service’ in an attempt to receive treble damage awards.”⁴¹

Respondents cannot say that USAA filed a complaint at the Commission simply to increase its potential recovery. Yet, regardless of its motivations, USAA’s “regulatory violations” claim is not properly before this Commission. Actions against natural gas companies in Ohio for damage caused by gas fires or explosions are almost universally brought in civil court. The Ohio Reporters include several such cases, including:

- *Aetna Life & Casualty Co. v. Columbia Gas of Ohio*, 33 Ohio App. 2d 283 (1973): Action by Aetna Life & Casualty Co. against Columbia, alleging that Columbia’s negligence caused a gas explosion that destroyed a house.
- *Fry v. Columbia Gas of Ohio, Inc.*, Sixth Dist. Lucas No. L-76-016, 1976 Ohio App. LEXIS 7038 (Dec. 17, 1976): Action by a couple and their insurance company against Columbia, alleging liability for a gas explosion and fire at the couple’s home in Toledo.
- *Cucciolillo v. East Ohio Gas Co.*, 7th App. Mahoning No. 76 C.A. 23, 1978 Ohio App. LEXIS 9353 (Jan. 24, 1978): Action by a homeowner against East Ohio Gas Company, alleging that the company’s negligence caused a gas explosion that leveled his house.
- *Buckeye Union Ins. Co. v. Columbia Gas Co. of Ohio, Inc.*, Sixth Dist. Lucas No. L-80-014, 1980 Ohio App. LEXIS 9863 (June 27, 1980): Action by Buckeye Union Insurance Co. against Columbia, alleging that Columbia’s negligence had led to a gas explosion and fire at a home in Toledo.
- *Economy Fire & Casualty Co. v. Columbia Gas of Ohio, Inc.*, 7th Dist. Carroll Nos. 562, 563, 1991 Ohio App. LEXIS 3070 (June 26, 1991): Action by Economy Fire and Casualty Co. against Columbia and other defendants, alleging that the defendants’ negligence led to an explosion, causing property damage and personal injury.
- *Brown v. E. Ohio Gas Co.*, 8th Dist. Cuyahoga No. 79003, 2001 Ohio App. LEXIS 4475 (Oct. 4, 2001), *appeal denied*, 94 Ohio St.3d 1454 (2002): Action by a couple against East Ohio Gas Company, alleging that the company’s

⁴¹ *In the Matter of the Investigation into Limitation of Liability Clauses Contained in Utility Tariffs*, Case No. 85-1406-AU-COI, Finding and Order, ¶4 (Oct. 6, 1987).

negligence had caused the couple's neighbor's house to explode, damaging the couple's home.

- *Vorhees v. Jovingo*, 4th Dist. Athens Nos. 04CA16, -17, and -18, 2005-Ohio-4948: Action by a man against Columbia and other defendants, alleging that the defendants' negligence led to a house fire that killed the man's wife and two of his children.

A review of Commission entries, on the other hand, reveals only one complaint case involving a gas explosion or fire: a 1998 complaint against The East Ohio Gas Company, alleging that the company's negligence in inspecting and maintaining a drip tank assembly had led to a gas leak and, ultimately, an explosion at a neighboring structure.⁴² The attorney examiner denied a motion to dismiss for lack of jurisdiction,⁴³ but the full Commission never considered the issue of jurisdiction because the matter was ultimately settled.⁴⁴

USAA's primary claims against respondents are tort claims.⁴⁵ Its claims against respondents and against three other companies in the Delaware County Common Pleas Court are tort claims, too.⁴⁶ USAA, therefore, appears to believe that its claims are tort claims and should be heard by a civil court. And, while "the form of action" that USAA chose in both of its complaints is not "sufficient, by itself, to confer jurisdiction upon the common pleas court," "the substance of the allegations in the complaint"⁴⁷ does not suggest that USAA's claims are misleadingly presented.

The Supreme Court of Ohio held, in *Allstate Insurance Co. v. Cleveland Electric Illuminating Co.*, that a claim presented in tort form should be heard by the Commission if "PUCO's administrative expertise [is] required to resolve the issue in dispute" and "the act complained of constitute[s] a practice normally authorized by the utility[.]"⁴⁸ USAA's broad and ambiguous Complaint contains no

⁴² See *In the Matter of the Complaint of Phase II Enterprises, Inc. v. The East Ohio Gas Co.*, Case No. 98-796-GA-CSS.

⁴³ *Id.*, Entry (Aug. 6, 1998).

⁴⁴ *Id.*, Entry (Oct. 22, 1988).

⁴⁵ See Complaint, Counts I and II.

⁴⁶ See Exhibit A.

⁴⁷ (Citations omitted.) *DiFranco v. FirstEnergy Corp.*, 134 Ohio St.3d 144, 2012-Ohio-5445, ¶27.

⁴⁸ *Allstate Ins. Co.* at ¶¶12-13; see also *id.* at ¶16 (holding that it "would have been wasteful and futile for [the insurance company] to seek subrogation through PUCO" on its negligence claim).

allegations indicating that the Commission’s “administrative expertise” is required here. The Complaint, moreover, fails entirely to specify the “act complained of” – *i.e.*, the purported wrongdoing by NiSource or Columbia that allegedly caused the Woods’ fire. Because USAA’s Complaint does not meet either factor in *Allstate’s* jurisdictional test, all of USAA’s claims should be heard in the Delaware County court. The Commission should dismiss Count IV of USAA’s Complaint, along with Counts I through III.

2.5. The Commission has no authority to award the damages USAA seeks.

The relief that USAA seeks from this Commission is also, in large part, improper. USAA’s Complaint seeks several forms of relief: a declaration that respondents violated their legal obligations; “compensation for the damage resulting from Respondent’s [*sic*] breach;” “authorization for an award of treble damages;” “costs of litigation, including all expenses and attorney’s fees;” and other “just and equitable” relief.⁴⁹ For the reasons provided above, USAA has not stated reasonable grounds for complaint, much less grounds justifying a declaration of wrongdoing. Most of the relief USAA requests, moreover, is beyond the Commission’s authority to grant.

The Commission cannot award monetary damages.⁵⁰ The treble damages provision of Section 4905.61, Revised Code, provides “the only mechanism through which the legislature permits an injured party to obtain damages after liability is found by the [C]ommission.”⁵¹ The Commission also has no authority to award litigation expenses and attorney’s fees.⁵² And, the Commission lacks

⁴⁹ Complaint ¶2; *see also id.* at 8.

⁵⁰ *See, e.g., Andrew Hehemann v. Ohio American Water Company*, Case No. 05-1275-WW-CSS, Opinion and Order, at 3 (Apr. 23,2008), *citing Lahke v. Cincinnati Bell, Inc.*, 1 Ohio App.3d 114,439 N.E.2d 938 (1981).

⁵¹ *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St. 3d 394, 399, 2007-Ohio-2203, ¶18.

⁵² *See, e.g., In the Matter of the Complaint of Industrial Energy Users-Ohio v. Northeast Ohio Public Energy Council*, Case No. 04-1129-EL-CSS, Entry, ¶ 6 (Feb. 2, 2005), *citing Ohio Public Interest Action Group, Inc. v. Pub. Util. Comm’n, et al.*, 43 Ohio St.2d 175 (1975) (“As a general matter, the Commission is without authority to award attorney fees in complaint cases.”); *In the Matter of the Complaint of Carpet Color Systems v. The Ohio Bell Telephone Company*, Case No. 85-1076-TP-CSS, Attorney Examiner’s Report, 1987 Ohio PUC LEXIS 1606, *38 (June 2, 1987).

authority to award equitable relief.⁵³ For these reasons, the Commission should dismiss USAA's claims for damages, costs of litigation, and equitable relief.

3. Conclusion

USAA's Complaint names a respondent, NiSource, that is not subject to complaint at the Commission. It asserts tort and contract claims that the Commission lacks jurisdiction to consider. And, it requests relief that the Commission lacks the authority to grant. But, it is what USAA's Complaint fails to assert – any specific factual allegations demonstrating that USAA has a real service-related claim against Columbia – that most clearly demonstrates that USAA cannot proceed with its claims before this Commission. For all of these reasons, NiSource Inc. and Columbia Gas of Ohio, Inc. respectfully request that the Commission dismiss USAA's Complaint with prejudice.

Respectfully submitted,

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⁵³ See *In the Matter of the Application of Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co. for Approval of a New Rider and Revision of Existing Rider*, Case No. 10-176-EL-ATA, Fifth Entry on Rehearing, ¶13 (Nov. 10, 2010) ("the Commission will reiterate that we lack jurisdiction to hear "pure contract" claims, including *** claims seeking equitable remedies.").

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Dismiss was served by regular mail on this 23rd day of July, 2014, upon counsel for the Complainant at the following addresses:

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Summary: Motion to Dismiss of NiSource Inc. and Columbia Gas of Ohio, Inc. electronically filed by Ms. Christen M. Blend on behalf of NiSource Inc. and Columbia Gas of Ohio, Inc.