

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

GWENDOLYN TANDY,)	
)	
Complainant,)	
)	
v.)	Case No. 15-395-EL-CSS
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
)	
Respondent.)	
)	
GWENDOLYN TANDY,)	
)	
Complainant,)	
)	
v.)	Case No. 15-396-GA-CSS
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION EAST OHIO)	
)	
Respondent.)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO'S
JOINT MOTION FOR RELIEF FROM VEXATIOUS LITIGATION**

In accordance with Ohio Adm. Code 4901-1-12, The Cleveland Electric Illuminating Company (CEI) and The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) (collectively, the Companies) respectfully request that the Commission grant their Joint Motion for Relief from Vexatious Litigation. Good cause exists to grant this motion for the reasons set forth in the attached Memorandum in Support.

Dated: March 16, 2015

Respectfully submitted,

/s/ Andrew J. Campbell

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Over the past three years, Gwendolyn Tandy has repeatedly burdened the Commission and her utility providers with repetitive, lengthy, ill-developed, and meritless complaints. The past month marked the filing of her sixth and seventh complaints against The Cleveland Electric Illuminating Company (CEI) and The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) (collectively, the Companies). This present round comprises 204 total pages of fragmentary notations and barely developed grievances. Upon closer inspection (to the extent the complaints are susceptible of being understood), it is clear that the complaints do not raise a single allegation that has not already been directly or indirectly resolved by the Commission's prior orders.

Ms. Tandy's complaints may not have gained any traction with the Commission, but they have succeeded in one regard: repeatedly inflicting direct losses upon the Companies in the form of attorneys' fees and lost time by company employees. Ohio law makes clear that the repetitive, habitual submission of the same meritless arguments constitutes abuse of the judicial process and is patently unfair to the defending parties. And the Commission undoubtedly has power to govern and protect the integrity of its own proceedings. The Companies plead with the Commission to exercise this power and rein in Ms. Tandy's unjustified filings.

For these reasons, as explained more fully below, the Companies respectfully request that the Commission act either to restrict Ms. Tandy's ability to initiate complaint proceedings, or relieve the Companies' duty to respond, unless it is first determined that the complaint has some shred of possible merit.

II. BACKGROUND

A. *Tandy I*

This marathon began on July 17, 2012. That day, Ms. Tandy separately filed a pair of complaints against both CEI and DEO, totaling 49 and 21 pages respectively. *See* Case Nos. 12-2102-EL-CSS & 12-2103-GA-CSS. Additional packets of information—all covered with handwritten notes, exclamations, and other commentary—followed in both cases. For CEI, Ms. Tandy submitted 6 pages on October 29, 2012; another 6 pages on November 8; and then 50 more pages, again on November 8. For DEO, she followed up her original complaint with 4 more pages on August 22; another 4 pages on August 24; 47 pages on August 27; and 3 pages on October 29.

The complaints were both set for hearing on January 15, 2013, but due to Ms. Tandy's tardiness and lack of preparation, only the hearing against CEI went forward. 12-2103 Order at 6. The DEO complaint was then rescheduled two more times, for February 6 and 28. *Id.* at 6–7. Counsel for DEO attended both; Ms. Tandy attended neither. *Id.* The Commission ultimately dismissed both complaints with prejudice—in CEI's case, for “fail[ing] to sustain her burden of proof to establish that CEI violated its tariff, any Commission rule, or any provision of Title 49,” 12-2103 Opin. at 9 (Mar. 6, 2013), and in DEO's case, for failure to prosecute, 12-2102 Opin. at 9 (Mar. 27, 2013).

The Commission upheld these orders despite Ms. Tandy's repeated and indiscriminate filing of challenges, “evidence,” and other “information” after the close of the hearing, after issuance of the order, and even after the closing of the case. In DEO's case, Ms. Tandy submitted a 39-page post-hearing filing on March 11, 2013, a 3-page filing on April 5, and two post-order filings totaling 40 pages on April 9. In CEI's case, Ms. Tandy submitted four post-order filings,

totaling 41 pages, on April 5, 2013, April 9, 2013, January 13, 2014, and February 11, 2014 (the latter two after the docket was officially closed).

B. *Tandy II*

Unfortunately, the effort and cost required to endure and resolve *Tandy I* did not achieve a lasting solution. About one year later, in April 2014, Ms. Tandy filed “new” complaints against DEO and CEI. *See* Case Nos. 14-0686-EL-CSS & 14-0795-GA-CSS. *Tandy II* measured 43 pages for DEO and 132 pages for CEI—comprising, once again, reams of disorganized exclamations and uncorroborated accusations. But again, as required by Commission rule, CEI and DEO responded by reviewing the filings, submitting answers to the extent possible, and preparing and filing motions to dismiss.

As it turned out, both complaints, despite their prodigious length, did nothing more than reiterate the same issues that had been litigated *ad nauseum* in *Tandy I*. On July 30, 2014, the Commission dismissed both cases on the grounds of *res judicata*.

C. *Tandy v. FES*

The orders in *Tandy II* did not conclude matters. Indeed, *before* the orders in *Tandy II* were issued, Ms. Tandy filed a fifth complaint, this time against CEI and (as ordered by the Commission) FirstEnergy Solutions (FES). *See Tandy v. FES*, Case No. 14-1241-EL-CSS (July 11, 2014). After filing the complaint, she submitted an additional 31 pages of material in two filings on September 17 and October 27, 2014. Yet again, CEI and FES responded by reviewing the allegations, drafting answers, and filing motions to dismiss.

Although *Tandy v. FES* pertained to different issues than *Tandy I* and *Tandy II*, it proved equally wasteful of company and Commission resources. Despite multiple notices, Ms. Tandy failed to attend the Commission-ordered settlement conference on October 27, 2014 (which Commission personnel and counsel for both CEI and FES attended), and also failed to provide

any response to the Commission's request that she provide notice of her intentions by December 1, 2014. 14-1241 Entry at 3 (Nov. 6, 2014). Accordingly, the Commission dismissed *Tandy v. FES* on December 10, 2014. 14-1241 Entry at 4 (Dec. 10, 2014).

D. *Tandy III*

Perhaps not surprisingly, the fifth dismissal was *not* the last. On February 23, 2015, complaints number six and seven (*Tandy III*) were filed against the Companies in this case, weighing in at 49 pages against CEI, and 155 pages against DEO. Once again, the pleadings comprise hundreds of pages marked with over a thousand dense handwritten notations, random exclamations, and fragmentary accusations. But as discussed in the motions to dismiss filed today on behalf of both Companies, further pain-staking review makes clear that *Tandy III* does nothing more than dredge up the same meritless claims that have been rejected now multiple times by the Commission.

What *Tandy III* will entail, and how many more sequels will follow, the Companies can only guess. But every single one of these filings—by the Companies' count, seven separate cases numbers,¹ 30 separate filings, and 817 pages—has required and will continue to require both the Companies and the Commission to review and determine an appropriate course of action. Many have required and will require responsive filings, motions to strike, or further Commission entries and orders.

III. ARGUMENT

The Companies respect the right of customers to file complaints, and they recognize that the availability of the complaint process is an important component of Commission oversight.

¹ Seven is *not* counting Case No. 12-2326-GA-CSS, which Ms. Tandy filed against DEO and which was merged with *Tandy I*. See 12-2326 Entry (Aug. 28, 2012).

Together, they respond to dozens of complaints every year, and the Commission handles many more. It is an important process, and it should not be abused.

Abuse of process, however, describes precisely what Ms. Tandy has repeatedly worked upon the Commission and the Companies. Literally tens of thousands of dollars and dozens if not hundreds of hours have been spent responding to Ms. Tandy's ill-formed filings and no-show proceedings.

Ohio law recognizes that the judicial power is not lightly to be invoked and never to be abused. And it is long-settled that the Commission is vested with power to govern and control its proceedings. It should exercise that power here and either prohibit further filings by Ms. Tandy unless she first receives the leave of the Commission or relieve the Companies from filing responsive pleadings until any future complaint has been determined to have some minimal indicia of plausible merit.

A. Ohio law and Ohio courts do not permit abuse of the judicial process.

Ohio courts will not tolerate tactics of attrition like Ms. Tandy's.

1. The Ohio Supreme Court will sanction parties who repeatedly file ungrounded or meritless actions.

The Supreme Court—the only court with power of review over the Commission—prohibits vexatious litigation by rule. Supreme Court Rule of Practice 4.03(A) provides that the Court may “impose appropriate sanctions” on the signer of an action if the action “is frivolous or is prosecuted for delay, harassment, or any other improper purpose.” Frivolous means “not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.” *Id.* And a person who “habitually, persistently, and without reasonable cause engages in frivolous conduct” may be declared “a vexatious litigator.” *Id.* 4.03(B). Such parties are subject to filing restrictions, including

requirements that the party must obtain leave to file or continue ongoing proceedings, and “any other restriction the Supreme Court considers just.” *Id.*

2. Lower courts have recognized that sanctions are appropriate against parties who repeatedly file a complaint already deemed meritless.

Lower courts similarly protect their process, as provided under R.C. 2323.52. As the Ohio Supreme Court explained, this statute “seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state.” *Mayer v. Bristow*, 91 Ohio St. 3d 3, 13 (2000) (internal quotations omitted). “Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources—resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.” *Id.*

Ohio courts have recognized that repeatedly presenting the same meritless argument or claim represents vexatious litigation and demands relief for the afflicted parties. In *Hull v. Sawchyn*, the appellate court considered the conduct of a plaintiff who lost his first action, and then followed up with three additional lawsuits “asserting the same complaint.” 145 Ohio App. 3d 193, 195 (8th Dist. 2001). The defendant eventually filed suit seeking to have the plaintiff declared a “vexatious litigator.” *Id.* The trial court did not grant relief, and the appellate court reversed. “It is patently unfair and unreasonable that any person should be continually forced to defend against, and the court system should be forced to handle, *the same unwarranted complaint* that cannot be supported by any recognizable good-faith argument.” *Id.* at 197 (emphasis added). Thus, the appellate court declared “as a matter of law that [plaintiff] is a vexatious litigator.” *Id.* at 198.

Similarly, in *Easterling v. Union Savings Bank*, 2013-Ohio-1068 (2d Dist.), the appellate court affirmed a declaration that a *pro se* plaintiff engaged in vexatious litigation by filing the same meritless action four times. *Id.* ¶ 2. The court observed that “the consistent repetition of arguments and legal theories that have been rejected by the trial court numerous times can constitute vexatious litigation.” *Id.* ¶ 16. Plaintiff’s “multiple actions constitute vexatious litigation” and although the fact “his conduct serves merely to harass may not be obvious to [plaintiff], . . . it is obvious to others—objectively so.” *Id.* His “history as a *pro se* litigator demonstrates the conduct to which the vexatious-litigator statute should apply.” *Id.*

These case are not exceptional but illustrative. *See also, e.g., Gains v. Harman*, 148 Ohio App. 3d 357, 361 (7th Dist. 2002) (filing seven meritless cases against same party constituted vexatious litigation); *Mid-Ohio Mech., Inc. v. Eisenmann Corp.*, 2009-Ohio-5804 (5th Dist.), ¶¶ 133, 142 (presenting same meritless argument in five separate pleadings and once at hearing constituted vexatious litigation).

3. The Commission has “inherent power” to govern (and protect) its own proceedings.

Although the vexatious-litigator statute does not by its terms apply to Commission proceedings, the Commission nevertheless has ample power to protect the integrity of its proceedings, and it should exercise that power here.

Ohio law vests the Commission with power “to govern its proceedings and to regulate the mode and manner of all valuations, tests, audits, inspections, investigations, and hearings relating to parties before it.” R.C. 4901.13. While this power expressly includes rulemaking, it also provides the Commission with “discretion to decide how . . . it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort.” *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559,

560 (1982). This power has been long recognized. *State ex rel. Columbus Gas & Fuel Co. v. Pub. Util. Comm.*, 122 Ohio St. 473, 475 (1930) (“The public utilities commission is invested with a discretion as to its order of business, and there is such a wide latitude of that discretion that this court may not lawfully interfere with it, except in extreme cases.”). Indeed, the Court has described the Commission as possessing “inherent power to manage the orderly flow of its business.” *Senior Citizens Coalition v. Pub. Util. Comm.*, 69 Ohio St.2d 625, 627 (1982).

The Court has repeatedly recognized that the Commission’s power includes the power to limit—and even prohibit—participation in its proceedings. It has recognized that a “concomitant” of the Commission’s statutory “authority to regulate the manner and mode of its hearings” includes “discretionary power to permit or deny intervention in its proceedings.” *Toledo Coalition*, 69 Ohio St. 2d at 560. Similarly, the “discretionary authority of the commission to control its proceedings” includes the power to determine whether a party has a “right of participation in the hearing.” *Office of Consumers’ Counsel v. Pub. Util. Comm.*, 56 Ohio St.2d 220, 229 (1978). And the Commission is also permitted to dismiss complaints without granting a hearing. *Cleveland v. Pub. Util. Comm.*, 64 Ohio St.2d 209, 217 (1980) (affirming that “the commission properly denied appellant’s request for a hearing” for failing to state reasonable grounds under R.C. 4905.26).

The Commission itself has recognized that there are limits to a complainant’s right to burden the system with repeat filings. In dismissing a case for lack of jurisdiction, the Commission emphasized that “the repeated filings and initiation of proceedings by [complainant] have produced voluminous efforts by the Commission staff, by respondents, and by interested parties. While the Commission is always ready to address any legitimate consumer concern, and to determine which concerns may or may not be legitimate, it cannot repeatedly address

irrelevant discourses on the personal history between a complainant and a company.” *Carpenter v. Ohio Power*, Case No. 89-1763-EL-CSS, 1990 Ohio PUC LEXIS 51, Entry at *4–5 (Jan. 17, 1990).

B. Good cause exists to limit Ms. Tandy’s right to file complaints or the Companies’ duty to respond.

In short, Ohio law makes clear that the Commission has power to govern and control its proceedings, and it has discretion to deny intervention, deny participation in a hearing, and dismiss a complaint without hearing. And the Commission has already recognized the burdens imposed on itself and on respondents by vexatious litigation. There is no reason the Commission could not exercise its governing power, in an appropriate circumstance, to require a complainant to make a preliminary showing of “reasonable grounds” *before* requiring respondents to incur the costs of responding. (Such relief would be essentially identical to a waiver of the rule-based requirement that companies file answers under Ohio Adm. Code 4901-9-01(B).)

The Commission should exercise its power here and prevent further abuse of the complaint process by Ms. Tandy. Accordingly, the Companies respectfully request that the Commission issue an entry establishing one of two things:

- (1) that Ms. Tandy will not be permitted to file future complaints unless she first receives leave from the Commission or its designee (such as an attorney examiner or member of the Commission’s Service Monitoring and Enforcement Division);
- or*
- (2) that the Companies will have no duty to file a responsive pleading to a complaint filed by Ms. Tandy unless affirmatively ordered by the Commission.

The Companies recommend that proceedings only be permitted to continue if Ms. Tandy clears the minimal hurdle of understandably articulating an issue that both (1) has not been raised before and (2) would demonstrate, if the facts were proven true, potentially unreasonable or unlawful conduct on the part of the Companies.

The Companies do not lightly ask this of the Commission. But they have demonstrated in detail above that Ms. Tandy has burdened the Commission and the Companies with repetitive, voluminous, and utterly meritless filings—again, seven separate dockets, approaching a thousand pages of filings. There is no sign that these repetitive, meritless filings will let up. Indeed, there is no sign that the dismissals of *Tandy I*, *Tandy II*, or *Tandy v. FES* have left any impression on Ms. Tandy or that those dismissals will help stem the tide. The cases and rules cited above show that the repetitive submission of the same meritless claim constitutes vexatious litigation and that such conduct should be sanctioned.

The Companies do not seek a harsh sanction against Ms. Tandy—such as costs and fees. They are not even asking that she be generally prohibited from filing complaints—although such relief could be safely granted here. They merely ask that *before* they are required to incur the substantial expenses of reviewing Ms. Tandy’s voluminous filings, drafting responsive pleadings and dispositive motions, and attending (likely alone) settlement conferences and hearings, Ms. Tandy *first* be required to make a very minimal showing.

Seven complaints have made it clear that the normal remedy of dismissal with prejudice will not suffice. The record shows that an extraordinary remedy is needed here.

IV. CONCLUSION

For the reasons stated above, the Companies respectfully request that the Commission grant their Joint Motion for Relief from Vexatious Litigation.

Dated: March 16, 2015

Respectfully submitted,

/s/ Andrew J. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Relief from Vexatious Litigation was served by U.S. mail this 16th day of March, 2015, to the following:

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/s/ Rebekah J. Glover
One of the Attorneys for The Cleveland
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Summary: Motion for Relief from Vexatious Litigation electronically filed by Ms. Rebekah J. Glover on behalf of The Cleveland Electric Illuminating Co. and The East Ohio Gas Company d/b/a Dominion East Ohio