

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Russell Enyart,)	
)	
Complainant,)	
)	
v.)	Case No. 18-1734-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	

OHIO EDISON COMPANY’S PARTIAL MOTION TO DISMISS

Respondent Ohio Edison Company (“Ohio Edison”) hereby moves to dismiss the portions of the Complaint of Russell Enyart (“Complainant”) seeking damages. The Commission has long recognized that it lacks jurisdiction to award the damages sought by Complainant. For this reason and as further explained in the attached Memorandum in Support, the Commission should grant this Motion.

Dated: June 19, 2019

Respectfully submitted,

/s/ Ryan A. Doringo

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On behalf of Ohio Edison Company

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**MEMORANDUM IN SUPPORT OF OHIO EDISON COMPANY’S PARTIAL MOTION
TO DISMISS**

On November 28, 2018, Complainant filed a Complaint against Ohio Edison, alleging that a short delay in establishing service at Complainant’s property caused a pipe to freeze, burst, and damage the property. Among the remedies requested in the Complaint, Complainant seeks “to recover the damages he has suffered” as a result of Ohio Edison’s alleged conduct. (*See* Complaint at 1; *see also id.* at ¶¶ 82, 89.)

The Commission has long recognized, however, that it has no jurisdiction to award the monetary relief sought by Complainant. *See In the Matter of Atkinson v. Gen. Tel. Co. of Ohio*, Case No. 86-1518-TP-CSS, Entry (Sept. 15, 1986), 1986 Ohio PUC LEXIS 1897, at *2-3. The Commission’s powers are conferred—and limited—by statute. *See, e.g., Lucas Cty. Comm’rs v. Pub. Utilities Comm’n of Ohio*, 80 Ohio St. 3d 344, 347 (“The commission may exercise only that jurisdiction conferred by statute.”). And while the Commission has authority to determine whether a utility has violated a tariff or Commission rules, regulations, and orders, the Commission does not have the power to award damages to a complainant. *See, e.g., In the Matter of the Complaint of Delmer Smith v. Dayton Power & Light Company*, Case No. 03-

2544-EL-CSS, Entry (Jan. 29, 2004), 2004 WL 1813877, at *1. Indeed, the Commission “is not a court and has no power to ascertain and determine legal rights and liabilities.” *DiFranco v. FirstEnergy Corp.*, 134 Ohio St. 3d 144, 147 (2012). Put differently, “[t]o the extent [a] complainant alleges that the quality of service was inadequate and that he has been harmed as a result of the alleged inadequate service, the request is equivalent to a request for damages and, thus, is beyond the jurisdiction of the Commission.” *Smith*, Case No. 03-2544-EL-CSS, Entry (Jan. 29, 2004), 2004 WL 1813877, at *1.

Here, Complainant asks the Commission to award him damages he claims to have resulted from Ohio Edison’s alleged inadequate service. (*See* Complaint at 1.) This request falls outside of the Commission’s jurisdiction, as the Commission has previously recognized. The portions of the Complaint seeking damages must therefore be dismissed.

Dated: June 19, 2019

Respectfully submitted,

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On behalf of Ohio Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed this 19th day of June, 2019, and will be served upon the following by operation of the Commission's electronic filing system.

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Case No(s). 18-1734-EL-CSS

Summary: Motion Ohio Edison Company's Partial Motion to Dismiss and Memorandum in Support electronically filed by Ryan A Doringo on behalf of Ohio Edison Company