

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**Russell Enyart,**

**Complainant,**

**v.**

**Ohio Edison Company,**

**Respondent.**

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**Case No. 18-1734-EL-CSS**

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**COMPLAINANT RUSSELL ENYART’S MEMORANDUM CONTRA RESPONDENT  
OHIO EDISON COMPANY’S PARTIAL MOTION TO DISMISS**

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**I. INTRODUCTION**

Complainant, Russell Enyart, now timely files this Memorandum Contra to Respondent Ohio Edison Company’s Partial Motion to Dismiss. Respondent, Ohio Edison Company’s (“Ohio Edison”) Partial Motion to Dismiss (“Motion”) should be denied because, substantively, the Motion disregards the express language of Commission rules and, procedurally, the Motion fails to specifically identify those portions of the Complaint it is requesting be dismissed. Instead, it broadly requests dismissal of “portions of the Complaint \* \* \* seeking damages.” (Mot. To Dismiss 1.) For the following reasons Mr. Enyart respectfully requests that the Commission deny Ohio Edison’s Motion.

**II. LAW AND ANALYSIS**

Ohio Edison bases its entire motion to dismiss upon one argument: The Commission does not have jurisdiction to award monetary relief. (*See* Mot. to Dismiss 3-4.) Ohio Edison supports its partial motion to dismiss with two decisions *In the Matter of Atkinson v. Gen. Tel. Co. of Ohio*

and *In the Matter of the Complaint of Delmer Smith v. Dayton Power & Light Company*, both of which predate Ohio Administrative Code 4901:1-10-30 (the “Rule”).<sup>1</sup>

The decisions relied upon by Ohio Edison are inapplicable here because the Rule authorizes the Commission to award “restitution or damages,” as requested by Enyart in his Complaint. The Rule states:

**(A) Any electric utility or CRES provider that fails to comply with the rules and standards in this chapter, or with any commission order, direction, or requirement promulgated thereunder, may be subject to any and all remedies available under the law, including but not limited to the following:**

(1) Forfeiture to the state of not more than ten thousand dollars for each such failure, with each day’s continuance of the violation being a separate offense.

(2) Corrective action to effectuate compliance.

**(3) Restitution or damages to the customer/consumer.**

Ohio Adm. Code 4901:1-10-30. (Emphasis added.)

The Commission has previously rejected various amendments to this Rule and held that the general rules “provide a balance among public transparency and legal processes, the electric utility’s responsibility for meeting the standards and corrective plans” and that O.A.C. 4901:1-10-30 reflects, “the consequences to the electric utility if it fails to meet the standards.” *Comm. Review*, Pub. Util. Comm. Case No. 06-0653-EL-ORD, Finding and Order at p. 26 (Nov. 5, 2008.)

Moreover, in a decision earlier this year in *In the Matter of the Complaint of Direct Energy Business, LLC, v. Duke Energy Ohio, Inc.*, the Commission said that “R.C. 4928.16(B)(2) permits the Commission to award **restitution** . . . for violations of R.C. sections 4928.01 to 4928.15.” *In*

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<sup>1</sup> Ohio Edison cites to two other decisions (*Lucas Cty. Comm. v. Pub. Utilities Comm. of Ohio* and *DiFranco v. FirstEnergy Corp.*) but only to support a general proposition, and not to support its legal argument about the Commission’s ability to award monetary relief.

*the Matter of the Complaint of Direct Energy Business, LLC, v. Duke Energy Ohio, Inc.*, Pub. Util. Comm. Case No. 14-1277-EL-CSS, 2019 Ohio PUC LEXIS 416 at ¶ 31. (Emphasis added). In *Direct Energy*, the complainant only alleged violations of R.C. 4905.22, 4905.30, and 4905.32 and thus the Commission lacked jurisdiction to award monetary relief. *Id.* However, all of the counts in Enyart’s Complaint alleged violations of R.C. 4928.11, therefore, under *Direct Energy*, the Commission may award restitution as requested by Enyart.

In his Complaint, Mr. Enyart asked the Commission to “order Ohio Edison to provide **restitution or damages**” for the harm Enyart suffered from Ohio Edison’s violations. (Compl. ¶¶ 82, 89) (Emphasis added.) Contrary to Ohio Edison’s characterization of Enyart’s Complaint, Enyart asks for relief that the Rule expressly authorizes.

Mr. Enyart’s Complaint seeks remedies expressly authorized by the Commission’s Rules and further recognized by the Commission as recently as April of this year. If the Commission were to grant Ohio Edison’s Motion, based on the reasoning therein, the Commission would be relinquishing its own authority. Ohio Edison would not face any consequences for failing to uphold the standards set by the Commission. And, finally, Mr. Enyart would be denied an opportunity to be made whole expressly provided for by the Commission’s Rule.

Mr. Enyart’s request for restitution is within the Commission’s jurisdiction and expressly authorized by the Rules created by the Commission. For the foregoing reasons, Mr. Enyart respectfully requests that the Commission deny Ohio Edison’s unspecific Motion to dismiss “portions of the Complaint”.

[Signature block on the following page.]

Respectfully submitted,

*/s/ Robert Dove*

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed this 28th day of June 2019 and served upon the following through the electronic mail pursuant to Ohio R. Civ. P. 5(B)(2)(f) and O.A.C. 4901-1-05(D)(4):

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/s/ Robert Dove

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Summary: Memorandum Contra to Ohio Edison Company's Partial Motion to Dismiss  
electronically filed by Mr. Robert Dove on behalf of Mr. Russell Enyart