

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

Complainant Enyart (“Complainant”) claims that a short delay in establishing service caused his property to suffer damages from “pipes freezing and bursting.” (Compl. ¶ 26.) He asks the Commission to award him “the damages he has suffered” as a result of the alleged incident, (*see id.* at 1, ¶ 82, ¶ 89), claiming that his property “suffered severe damages in excess of \$60,000,” (*id.* at ¶ 43). This is a classic claim for compensatory damages. And, as Ohio Edison explained in its Partial Motion to Dismiss (the “Motion”), Complainant’s request is beyond the Commission’s jurisdiction. Indeed, the Complaint itself expressly recognizes what the Motion makes plain—the Commission does not have authority to award monetary damages to a complainant. (*Id.* at ¶ 79 (“The Commission has previously stated it lacks the authority to award monetary damages to compensate Complainant for the damages he has suffered . . .”).) The Complaint likewise acknowledges that, to the extent Complainant believes he is entitled to damages, his proper—and only—recourse is to first seek a finding of inadequate service from the Commission and to then seek compensatory damages in a court of common pleas under R.C. 4905.61. (*Id.* at ¶ 80.)

In response to the Motion and contrary to decades of Commission precedent, however, Complainant argues that the Commission can award him “restitution or damages” under O.A.C. 4901:1-10-30(A)(3) for the property damage he claims to have suffered. (Memo Contra at 2.) But Complainant cites no decisions to support that proposition. Nor could he. Rule 4901:1-10-30(A)(3) *effectuates* the provisions of the Revised Code granting the Commission jurisdiction to issue certain remedies for violations of its rules, regulations, or orders. *See In the Matter of the Commission’s Promulgation of Amendments to the Electric Service and Safety Standards Pursuant to Chapter 4928, Revised Code*, Case No. 99-1613-EL-ORD, Finding and Order (April 6, 2000), 2000 Ohio PUC LEXIS 413, at *50-51. The Rule does not—and could not—*expand* the Commission’s power beyond that which it was granted by the Ohio General Assembly. In other words, the question here is a jurisdictional one: does the Commission have the authority to award Complainant the damages he seeks? The answer, as the Commission has held time and again, is “no.” (See Motion at 3-4.) Rule 4901:1-10-30(A)(3) does not somehow override the statutory limitations placed on the Commission and is in fact irrelevant to the jurisdictional question.

Complainant also argues that the Commission can award him “restitution” under *In the Matter of the Complaint of Direct Energy Business, LLC, v. Duke Energy Ohio, Inc.*, Case No. 14-1277-EL-CSS, 2019 Ohio PUC LEXIS 416. (Memo Contra at 2-3.) But *Direct Energy* does nothing to change long-standing Commission precedent and nothing to save Complainant’s request for damages from dismissal. In *Direct Energy*, the Commission *denied* a complainant’s request for damages, stating unequivocally that “the Commission lacks authority to award monetary damages to a complainant.” *Direct Energy*, 2019 Ohio PUC LEXIS at ¶ 31. The Commission did recognize that restitution may be available under R.C. 4928.16 “in limited

circumstances” that were inapplicable to the case before it.¹ *Id.* But those circumstances are similarly inapplicable here, and Complainant, tellingly, has not even attempted to articulate what the applicable circumstance might be. Rather, he relies only upon the sweeping (and patently incorrect) statement that the Commission can award him restitution under R.C. 4928.16 because he has alleged violations of R.C. 4928.11. (Memo Contra at 3.)

But whether Complainant calls the more than \$60,000 in monetary relief he asks the Commission to award him “damages” or “restitution,” the fact remains that he has plead a claim for compensatory damages that are beyond the Commission’s jurisdiction to award. Specifically, Complainant alleges that Ohio Edison’s service was inadequate, leading to burst pipes that caused damages to his property, which he now seeks to recover in this proceeding. But as Ohio Edison already noted and as the Commission has expressly held, “[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.” *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.

For these reasons, the Commission should grant the Motion and dismiss Complainant’s request for monetary relief that is beyond the Commission’s jurisdiction.

¹ For example, R.C. 4928.16(B)(1) permits the Commission to order “restitution to customers including damages due to electric power fluctuations.” That provision is irrelevant to this case, since Complainant has not plead any damages relating to electric power fluctuations.

Dated: July 5, 2019

Respectfully submitted,

/s/ Ryan A. Doringo

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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 5th day of July, 2019, and will be served upon the following by operation of the Commission's electronic filing system.

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