

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

MARIO D. BLUE)	
)	
Complainant,)	
)	
v.)	Case No. 22-0855-GA-CSS
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION ENERGY OHIO,)	
)	
Respondent.)	

MARIO D. BLUE)	
)	
Complainant,)	
)	
v.)	Case No. 22-1075-GA-CSS
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION ENERGY OHIO,)	
)	
Respondent.)	

BLUE ACRES, LLC)	
)	
Complainant,)	
)	
v.)	Case No. 22-1089-GA-CSS
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION ENERGY OHIO,)	
)	
Respondent.)	

**REPLY IN SUPPORT OF THE MOTION TO CONSOLIDATE COMPLAINT CASES
OF THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO**

I. INTRODUCTION

Mario D. Blue raises only two issues in opposition to the Motion of The East Ohio Gas Company d/b/a/ Dominion Energy Ohio (DEO or the Company) to consolidate the three above-captioned cases. Mr. Blue asserts that (1) his due process rights will be violated by consolidation and that he is entitled to have each complaint heard separately, and (2) that he is not the entity Blue Acres LLC. *See* Motion to Object to Respondents Consolidate Motion, Aff. ¶¶ 6–8 (Feb. 8, 2023) (“Motion to Object”).

As further discussed below, neither assertion supports denial of the Company’s motion to consolidate these three cases. As the Company explained in its Motion, these cases should be consolidated under the Commission’s precedent because they all involve the same or similarly situated parties and similar factual circumstances and issues relating to Mr. Blue’s nonpayment of bills sent to him by DEO for natural gas service. Consolidation would reduce burdens on the Commission, the Company, and Mr. Blue, and would not deprive Mr. Blue of any process that is due. Mr. Blue’s objection to consolidation offers no facts or legal arguments supporting his assertion that the Commission and parties should waste time and resources litigating related issues over the course of three separate and largely duplicative dockets.

II. ARGUMENT

DEO will first address Mr. Blue’s claims that consolidation would deny him process, and then his claim that consolidation is specifically improper as to Blue Acres LLC.

A. Consolidation would not violate Mr. Blue’s due process rights.

First, the claim that consolidation would violate due process is both unsupported and contrary to Commission precedent.

1. Mr. Blue does not explain how consolidation would deny him due process.

Mr. Blue's due process argument consists entirely of the bald assertions that his "due process under law will be violated if complaints are consolidated" and that he "is entitled to have each complaint heard separately under law." Motion to Object, Aff. ¶¶ 6, 8. Mr. Blue does not explain how consolidation would violate his due process rights or identify any legal rule or doctrine that entitles him to have his complaints heard separately. Mr. Blue's arguments should be disregarded on this basis alone. *Brannon v. Rinzler*, 77 Ohio App.3d 749, 756, 603 N.E.2d 1049 (2d Dist. 1991) ("[S]tatements contained in affidavits must be based on personal knowledge and cannot be legal conclusions.") (internal quotations omitted); *see also Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944, 92 L. Ed. 2d 209 (1986) (a "legal conclusion couched as a factual allegation" may be disregarded).

2. The Commission has consolidated cases over similar objections.

In addition to being wholly unexplained and unsupported, Mr. Blue's due process argument is inconsistent with Commission precedent.

For example, in the *Wellman* cases discussed in the Company's Memorandum in Support of its Motion to Consolidate, the Commission rejected essentially the same argument when concluding that consolidation was appropriate. Specifically, on rehearing, Ms. Wellman opposed consolidation on the grounds that she would be "too confused and placed at a 'big disadvantage' if the cases [were] consolidated" and that consolidation would "prevent her from receiving a fair hearing" in violation of the Commission's responsibility to "protect customers against unfair, inadequate, and unsafe utility practices." *Wellman v. Ameritech Ohio, et al.*, Case Nos. 99-768-TP-CSS, *et al.*, Entry on Reh'g ¶ 13 (March 15, 2001). The Commission rejected this argument, concluding that consolidation was appropriate because the cases involved the same or related

parties and the same or closely related issues such that consolidation would “simplify matters.” *Id.* ¶ 15.

The Commission should reach the same conclusion here, where Mr. Blue’s three cases all involve the same or similarly situated parties and the same or similar issues such that consolidation would “simplify matters” and reduce burdens on the Commission, the Company, and Mr. Blue. DEO Mem. at 6–7. Consolidation would not prevent Mr. Blue from taking advantage of any procedural opportunity as to each case, but would reduce the number of procedural steps, including pleadings, hearings, and Commission orders, the bulk of which can be expected to plow the very same ground.

B. Mr. Blue does not (and cannot) dispute that he is the registered agent for Blue Acres LLC, or that Case No. 22-1089-GA-CSS involves the same issue as his other two cases: Mr. Blue’s non-payment for natural gas service.

In opposing consolidation, Mr. Blue asserts that he is not the entity Blue Acres LLC. Motion to Object, Aff. ¶¶ 6–8. DEO acknowledged this fact in its motion, and this assertion does not rebut the factual bases for the Company’s Motion to Consolidate. Nor does it explain why consolidation would be inappropriate under the circumstances here.

Specifically, Mr. Blue does not dispute that he is the statutory agent of Blue Acres LLC. DEO Motion at 2. Nor does he dispute that Case No. 22-1089-GA-CSS, involving Blue Acres, LLC, involves a similar dispute over payment responsibility as Mr. Blue’s other two cases, namely, Mr. Blue’s nonpayment of bills issued by DEO, his claims of having paid all outstanding amounts due, and DEO’s payment processor informing DEO that Mr. Blue’s payments had been reversed for “no cardholder authorization.” DEO Mem. at 3–4. Additionally, as noted in DEO’s Answer filed in Case No. 22-1089-GA-CSS, the September 22, 2022 payments made on the accounts at issue in that case were made using a MasterCard credit card in the name of Mario D. Blue, which payments were reversed just like the payments made on Mr.

Blue's personal natural gas account because Mr. Blue disputed the transactions. Case No. 22-1089-GA-CSS, Answer ¶¶ 10–11 (Dec. 13, 2022). Simply put, the mere fact that Case No. 22-1089-GA-CSS involves a legal entity that Mr. Blue appears to control, and for which he makes payments using his personal credit card, does not mean that case should not be consolidated with Mr. Blue's other two cases involving the same issues and the same defendant: DEO.

Consolidation under these circumstances is also consistent with Commission precedent. For example, in the *Wellman* cases discussed above and in the Company's Memorandum, the Commission consolidated cases brought separately by two different persons—Ms. and Mr. Wellman—because the cases involved the same or similar issues and factual circumstances. *Wellman v. Ameritech Ohio, et al.*, Case Nos. 99-768-TP-CSS, *et al.*, Entry on Reh'g ¶¶ 13–15 (March 15, 2001). Similarly, in Case Nos. 19-1766-EL-CSS, 19-1767-EL-CSS and 19-1768-EL-CSS, the Commission consolidated three cases brought by three separate complainants (two corporate entities and one natural person) against the same defendant where the complaints stemmed from similar issues and the same underlying facts. *104 Investment Holdings, Inc., et al. v. The Dayton Power and Light Company*, Case Nos. 19-1767-EL-CSS, *et al.*, Entry ¶ 8 (Nov. 7, 2019).

Mr. Blue provides no reason for the Commission to not reach the same result here and consolidate his three cases.

III. CONCLUSION

For the foregoing reasons, and those explained in the Company's Motion and supporting Memorandum, DEO respectfully requests that the Commission grant its Motion and consolidate the above-captioned cases.

Dated: February 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by U.S. Mail to the following persons this 15th day of February 2023:

Mario D. Blue
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/s/ Christopher T. Kennedy
One of the Attorneys for The East Ohio Gas
Company d/b/a Dominion Energy Ohio

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Case No(s). 22-0855-GA-CSS, 22-1075-GA-CSS, 22-1089-GA-CSS

Summary: Reply Reply in Support of the Motion to Consolidate Complaint Cases
electronically filed by Christopher T. Kennedy on behalf of The East Ohio Gas
Company d/b/a Dominion Energy Ohio