

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Larry Winston Angus, Jr.,</b>	)	
	)	
<b>Complainant,</b>	)	<b>Case No. 22-1073-EL-CSS</b>
	)	
<b>v.</b>	)	
	)	
<b>Ohio Power Company,</b>	)	
	)	
<b>Respondent.</b>	)	

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**OHIO POWER COMPANY’S REPLY BRIEF  
IN SUPPORT OF ITS MOTION TO DISMISS**

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**I. INTRODUCTION**

Mr. Angus’ response to Ohio Power Company (“AEP Ohio”)’s Motion to Dismiss (the “Memo Contra”) does not rebut any of AEP Ohio’s arguments. Mr. Angus does not dispute that the Commission approved AEP Ohio’s smart meter opt-out fee. Nor does he claim that AEP Ohio failed to comply with Ohio Adm.Code 4901:1-10-05(J) or any other Ohio law. Instead, Mr. Angus largely reiterates that he “opted-out” of AEP Ohio’s smart meter service “without a fee.” (Memo. Contra, Part 1, at 3.) But as discussed in the AEP Ohio’s Motion, opting out “without a fee” is not an option under Ohio law. (Mot. to Dismiss at 4.) And the Commission has already explained that the smart meter opt-out fee cannot be “waived.” (*Id.* at 5, citing *In the Matter of the Complaint of Doug Mink v. Duke Energy Ohio*, Case No. 19-1305-EL-CSS, Opinion and Order, ¶ 29 (July 15, 2020).) Taken as true, Mr. Angus’ allegations do not present reasonable grounds upon which relief can be granted. Accordingly, Mr. Angus’ Complaint should be dismissed.

## II. LAW AND ARGUMENT

### A. Mr. Angus' Complaint Fails to Set Forth Reasonable Grounds For Hearing.

Mr. Angus first argues that the Commission, having already found that “reasonable grounds for complaint have been presented,” cannot reconsider its prior entry and dismiss this action. (Memo Contra, Part 1, at 3.) While it is true that the Attorney Examiner’s April 21, 2023 Entry set a hearing date after finding reasonable grounds for Mr. Angus’ complaint, that Entry was filed *before* AEP Ohio’s Motion to Dismiss and was nothing more than a prima facie review after seeing the complaint and answer. Mr. Angus’ assertion that the Commission’s hearing entry irreversibly presupposes reasonable grounds for his Complaint lacks legal grounding. To read the Commission’s Entry as suggested by Mr. Angus would effectively equate it to a decision on the merits, which is certainly not what the Commission did or intended. In setting a complaint case for hearing, the Commission does not forfeit its ability to grant a motion to dismiss the matter pursuant to R.C. 4905.26.

If Mr. Angus’ Complaint were truly to meet the ‘reasonable grounds’ test, “it [would need to] contain allegations, which, if true, would support the finding that the rates, practices, or services complained of are unreasonable or unlawful.” *In re Complaint of the Office of Ohio Consumers’ Counsel v. West Ohio Gas Co.*, Case No. 88-1743-GA-CSS, 1989 Ohio PUC LEXIS 104, Entry, at \*16 (Jan. 31, 1989). To find otherwise and “permit a complaint to proceed to hearing when complainant has failed to allege one or more elements necessary to a finding of unreasonableness or unlawfulness would improperly alter both the scope and burden of proof.” *Id.* Mr. Angus’ Complaint does not set forth reasonable grounds to justify a hearing. And Mr. Angus’ Memo Contra does not address those deficiencies. Instead, Mr. Angus merely repeats the same claims he made in his Complaint, and asks the Commission to ignore past precedent, AEP Ohio’s

Commission-approved tariff, and Ohio Adm.Code 4901:1-10-05(J). The Commission should decline this request, and grant AEP Ohio's Motion to Dismiss.

**B. AEP Ohio's Refusal to Waive Its Opt-Out Fee Was Not Inadequate, Unjust, or Unreasonable.**

Mr. Angus' Memo Contra reiterates the same points made in his Complaint: (1) he "[o]pted [o]ut [of AEP's smart meter service] [w]ithout [a] [f]ee"; (2) the fee is improper because he "[h]as [n]o 'Smart Meter' [a]t [h]is [h]ome"; and (3) "[AEP's] [o]riginal [c]ontract [w]ith [Mr. Angus] [p]recludes \* \* \* [the smart meter opt-out fee]." (Memo Contra, Part 1, at 3.) Mr. Angus also alleges that AEP Ohio failed to disclose the opt-out fee when Mr. Angus first chose to opt-out of AEP Ohio's smart meter service. (*Id.*, Part 3, at 4.) Without citing any support, Mr. Angus concludes that this alleged failure constituted a "waiver" of the opt-out fee, and that any subsequent opt-out charge was unlawful. (*Id.*) He admits, however, that after he decided to opt-out of AEP Ohio's smart meter service, AEP Ohio sent him letters explaining the opt-out fee. (*Id.* at 2.) Although Mr. Angus mischaracterizes these letters as an attempt to "rehash" the opt-out fee (*id.*), AEP Ohio was complying with Ohio law by providing notice that Mr. Angus "will be required to pay the amount of the approved tariff charge." Ohio Adm.Code 4901:1-10-05(J)(3)(a) (emphasis added).

Mr. Angus does not argue, nor could he prove, that AEP Ohio acted contrary to Ohio law. As explained in AEP Ohio's Motion, Ohio law requires AEP Ohio to provide a "cost-based, tariffed opt-out service" for customers who do not want to use a smart meter. (*See* Mot. to Dismiss at 4, citing Ohio Adm.Code 4901:1-10-05(J)(1).) Mr. Angus does not contest that AEP Ohio was granted approval for its smart meter opt-out tariff nearly a decade ago. And Mr. Angus made it clear to AEP Ohio and throughout his Complaint that he does not want a smart meter. (Compl. at 2; 5.) And he admits that he does not have one. (Memo. Contra, Part 1, at 3 ("Larry Has No

‘Smart Meter’ At His Home”).) Thus, Mr. Angus’ attempts to distinguish the *Peck v. Duke Energy Ohio* case by arguing that “[t]his [g]uy [w]as told of the opt out fee when trying to opt out . . . Larry was not,” (Memo Contra, Part 3, at 2), runs contrary to numerous assertions in his Complaint and Memo Contra. Accordingly, AEP Ohio properly charged Mr. Angus its Commission-approved smart meter opt-out fee after Mr. Angus requested a traditional meter in lieu of a smart meter. (Compl. at 3.)

**C. The Commission Has Already Rejected Mr. Angus’ Claims In Similar Customer Cases.**

As explained in AEP’s Motion, the Commission has rejected similar arguments made in Mr. Angus’ Complaint and repeated throughout his Memo Contra. (Mot. to Dismiss at 4-7.) Mr. Angus argues that these decisions do not apply to his case because “[n]one [o]f [t]hose [d]ecisions [b]y [the Commission] [involved] the issue of ‘Larry Already Opted-Out With Out Fee’ \* \* \*.” (Memo Contra, Part 1, at 3.) But the cited cases are applicable because they involve customers, like Mr. Angus, who wished to opt-out of a utilities’ smart meter service without paying the associated fee. For example, the complainant in *Peck* similarly declined installation of a smart meter, but argued that he should not have to pay Duke’s smart meter opt-out service fee. *In the Matter of the Complaint of Gregory Peck v. Duke Energy Ohio, Inc.*, Case No. 16-2338-EL-CSS, Opinion and Order, ¶ 18 (May 22, 2019). The Commission disagreed, finding that because the complainant refused installation of Duke’s smart meter service, Duke properly charged him its smart meter opt-out service fee. *Id.* at ¶ 22.

Likewise, in *Bushong*, the complainant alleged that AEP Ohio improperly refused his request to opt-out without a fee. *In the Matter of the Complaint of Ned Bushong v. American Electric Power Company*, PUCO Case No. 18-1828-EL-CSS, Opinion and Order, ¶ 12 (Oct. 07, 2020). There, the Commission also determined that complainant’s “refusal to allow installation

of [AEP Ohio's] smart meter is an opt-out service election, which subjects him to the \$24.00 monthly meter ready charge, as approved in [AEP Ohio's tariff]." *Id.* at ¶ 29. And the complainant *Mink*, like Mr. Angus, argued that "although he has opted-out of the advanced meter service" he nevertheless should not have to pay the opt-out fee due a supposed "grandfather clause." *In the Matter of the Complaint of Doug Mink v. Duke Energy Ohio*, Case No. 19-1305-EL-CSS, Opinion and Order, ¶ 4 (July 15, 2020). The Commission, once again, disagreed. *Id.* at ¶ 39.

Accordingly, because Complainant bears the burden of establishing that he set forth reasonable grounds for his complaint, his failure to do so requires that the Commission dismiss his Complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1996).

### III. CONCLUSION

For all of these reasons, AEP Ohio respectfully requests the Commission dismiss the Complaint for failure to state reasonable grounds for a complaint.

Respectfully submitted,

/s/ Spencer C. Meador

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**Counsel for Ohio Power Company**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and accurate copy of the foregoing was served upon Complainant at the address listed below by regular U.S. mail, postage prepaid, on this 16th day of June, 2023.

Larry Winston Angus Jr.  
2300 Vadis St.  
Columbus, Ohio 43223

/s/ Spencer C. Meador  
Spencer C. Meador

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Summary: Reply Brief in Support of Motion to Dismiss electronically filed by Ms.  
Spencer C. Meador on behalf of Ohio Power Company.