

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

R. SIMBALLA and MARY C. SIMBALLA,)	
)	
Complainants,)	CASE NO. 22-1065-EL-CSS
)	
vs.)	
)	
OHIO EDISON COMPANY,)	
)	
Respondent.)	

BRIEF OF COMPLAINANT MARY C. SIMBALLA

Now comes the Complainant, Mary C. Simballa, to brief the above captioned matter
before this Honorable Commission.

Respectfully submitted:



Mary C. Simballa # 0093314
42100 Cream Ridge Rd.
Lisbon, OH 44432
330-831-8341
Email: mary.simballa@simballalaw.com
Complainant

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TABLE OF AUTHORITIES

Cases

Lawyers Coop. Publ'g Co. v. Rose, 1938 Ohio Misc. LEXIS 1297, citing MOORMAN V VOSS, 3 O.N.P. (N.S.) 145

Stewart v. Hopkins, 30 Ohio St. 502 (1876), ¶13 aff'd sub nom. Libby v. Hopkins, 104 U.S. 303, 26 L. Ed. 769 (1881)

Union Nat. Bank v. City of Cleveland, 3 Ohio Dec. 297 (Cir. Ct. 1895)

Gaston v. Barney, 11 Ohio St. 506, 510 (1860)

Administrative Codes

Ohio Administrative Code 4901:1-10-02

Ohio Administrative Code 4901:1-10-12

Ohio Administrative Code 4901:1-10-19

Ohio Administrative Code 4901:1-10-22

Ohio Administrative Code 4901:1-10-30

Ohio Administrative Code 4901:1-37-04

Other Authorities

73 Ohio Jur. 3d Payment and Tender §43 Application of payments, generally

40 Ohio Jur. 3d Energy §108

STATEMENT OF ISSUES

1. Whether Ohio Edison's failure to apply partial payments as directed by Complainant violated common law, Ohio Administrative Codes 4901:1-10-02(D)(2) and 4901:1-10-22(H)(1), (2), and (3).
2. Whether the placement of Ohio Edison's Customer Rights and Obligations four pages from the home page on its website is considered to be 'prominently' as required by Ohio Administrative Code 4901:1-10-12.
3. Whether the disconnection notices issued by Ohio Edison meet the requirements of Ohio Administrative Code 4901:1-10-19(D).

STATEMENT OF THE CASE

This is a complaint against Ohio Edison for not applying partial payments according to law and Ohio Administrative Code 4901:1-10-22(H)(1), (2), and (3); failing to prominently post the Customer Rights and Obligations on its website; and failing to separate regulated from non-tariffed charges within its disconnection notices.

On May 20, 2022 Mary C. Simballa contacted 'customer service' of Ohio Edison to inquire about the imposition of a security deposit assessed on the account of R Simballa, to which the representative of the 'customer service' provided rude and dismissive 'service'. Payment was sent for the undisputed charges with computation of those charges noted on the payment form and as directed on the money order used to pay the undisputed charges. (*Complainant's Exhibit 1*). July 28, 2022, after receiving the next bill, Mary C. Simballa noticed

that the partial payment was applied to the security deposit instead of the current charges as had been directed on the payment form and money order submitted the previous month. Mary C. Simballa again contacted 'customer service' of Ohio Edison to discuss the misapplication of the partial payment and received more rude comments to her inquiry as well as a statement of 'we can do that! Our tariff says so'. Mary C. Simballa then contacted the Public Utilities Commission of Ohio to levy an informal complaint. When the issue was not resolved with the informal complaint, she filed a formal complaint with the Commission.

Mary C. Simballa continued to direct the application of each subsequent payment, direction which was ignored by Ohio Edison as it continued to apply each payment to past due charges.

After reviewing previous bills, it became evident that the Disconnection Notices provided with the relevant bills did not comply with the requirements of the Ohio Administrative Code since the notices did not separate regulated from non-tariffed charges.

A settlement conference was held on January 25, 2023 at 1 p.m. with Mr. Dan Fullin facilitating the conference. Both parties agreed to Mr. Fullin's statement that the content of the settlement conference could not be used in subsequent filings related to this dispute. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] e,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

OHIO EDISON’S FAILURE TO COMPLY WITH THE LAW AND MISAPPLICATION OF PARTIAL PAYMENT

Ohio Administrative Code 4901:1-10-22(H)(1-3) defines the manner in which partial payments are to be applied, specifically to (1) past due distribution, standard offer generation, and transmission charges; (2) current distribution, standard offer generation, and transmission charges; and (3) other past due and current charges for non-jurisdictional services. Ohio Administrative Code 4901:1-10-02(D) states ‘the rules in this chapter shall not relieve the electric utilities and/or transmission owners from * * * (2) complying with the laws of this state.’ The code does not stipulate statutory or administrative law nor exclude common law in the requirement to comply with the laws of the state.

Ohio courts have held the “common law rules regarding the application of payments apply in Ohio. Hence, a debtor owing a creditor more than one debt or a debt composed of several items has the right to direct to which debt or debts or to which items of a single debt and

to what amounts a payments made should be applied.’ (73 Ohio Jur. 3d Payment and Tender §43). “Where a person owes another several distinct debts, he has the right to choose which debt he will pay first; and where, at the time of payment, he expressly directs what application is to be made of the payment, the creditor, if he retains the money, is bound to appropriate it as directed by the debtor.” (*Stewart v. Hopkins*, 30 Ohio St. 502 (1876), ¶13 aff’d sub nom. Libby v. Hopkins, 104 .S. 303, 26 L. Ed. 769 (1881)).”It is undoubtedly true that a debtor at the time he makes a payment, can make application of the payment that he makes, and if received by the creditor, that ends the matter.(*Union Nat. Bank v. City of Cleveland*, 3 Ohio Dec. 297 (Cir. Ct. 1895)).”Where one person is indebted to another on various accounts, he has an undoubted right to choose which debt he will pay first; and where he tenders a sum sufficient fully to discharge any particular debt, he has right, at the time, to direct its appropriation accordingly. (*Gaston v. Barney*, 11 Ohio St. 506, 510 (1860)).

Mary C. Simballa expressly directed the payment to be applied to current charges on the payment form and the money order. (*Complaint’s Exhibit 1*). Contrary to the requirements of the common law and the Ohio Administrative Codes presented above, Ohio Edison applied the partial payments from Mary C. Simballa to the security deposit instead of applying the payment as she noted on the payment form and directed on the memo line of the money order. (*Complainant’s Exhibit A; Direct Testimony of Marilyn Cottrell, page 12, line 2 through page 13, line 4*). As a result of Ohio Edison’s misapplication of the payment contrary to the direction of Mary C. Simballa, the account was in arrears. (*Direct Testimony of Marilyn Cottrell, page 14, Lines 5-9*).

Ohio Edison continued to misapply each of the subsequent payments in direct contradiction to the requests included on the payment forms. (Id.)

OHIO EDISON'S RELIANCE ON TARIFF PROVISIONS THAT ARE INCONSISTENT WITH THE ADMINISTRATIVE CODE AND LAW

Ohio Administrative Code 4901:1-10-02(E) provides 'the rules of this chapter supersede any inconsistent provisions, terms and conditions of the electric utility's tariffs. * * * 'Public utilities, for their security and convenience and in the interests of efficient service, may adopt rules and regulations, if reasonable, *lawful*, and not unjustly or improperly discriminatory (40 Ohio Jur. 3d Energy §108, emphasis added). Representatives of Ohio Edison's 'customer service' stated that Ohio Edison is able to apply partial payments to security deposits in contradiction to state law because it is allowed by Ohio Edison's tariff. (*Testimony of Marilyn Cottrell, Page 12, Lines 2-29; Page 13, Lines 1-3*). This claim or provision in the tariff is inconsistent with Ohio law as well as the Administrative Code as discussed above. Since the terms are inconsistent, the terms of the Ohio Administrative Code 4901:1-10-22 regarding the application of partial payments supersedes the terms of Ohio Edison's tariff.

OHIO EDISON'S FAILURE TO SEPARATE REGULATED FROM NON-TARIFFED CHARGES WHEN IT ISSUED DISCONNECTION NOTICES

Ohio Administrative Code 4901:1-10-19(D) requires '* * * no electric utility may disconnect service to a residential customer when: * * * the electric utility issues a disconnection notice which fails to separate regulated from non-tariffed charges, including CRES charges,' The disconnection notices provided by Ohio Edison did not include the required separation of charges. Ohio Edison argues that the service was not

disconnected (*Transcript, page 58, lines 7-10*). However, Ohio Edison attempted to disconnect service by sending a field agent to do so. (*Transcript, Page 59, Lines 25 through Page 60, Lines 1-5*). In both instances, Kevin Simballa spoke with the agent and was told that the agent was there to disconnect the electric service. Kevin then asked if there was any way to stop the disconnection. The agent said ‘pay the bill’ and told Kevin the amount due. Kevin Simballa paid the full amount due to the agent. The agent then left without disconnecting the service. (*Testimony, page 59, lines 20-23*). Although Ohio Edison did not disconnect the service to this specific account only because Kevin Simballa paid the bill in full to the field collection agent, Ohio Edison intended to disconnect service based on the disconnection notices and field collection agent being sent out to do so.

Ohio Edison’s claim that the electric service was not disconnected seeks to cloud the issue of the validity of the disconnection notices. If Ohio Edison’s claim regarding the inapplicability of this code because the service was not disconnected is accepted, that evidences Ohio Edison’s tendency to threaten and bully its customers through the use of disconnection notices that are likely to be perceived as valid by its customers. Conversely, if Ohio Edison’s rationale of ‘no harm/no foul’ is not accepted, it evidences Ohio Edison’s violations of the Code. In either case, the disconnection notices provided by Ohio Edison are lacking in either content or intent.

OHIO EDISON'S FAILURE TO PROMINENTLY POST THE CUSTOMER RIGHTS AND OBLIGATIONS ON ITS WEBSITE

Ohio Administrative Code 4901:1-10-12 requires 'Each electric utility shall provide to new customers, upon application for service, and existing customers upon request, a written summary of their rights and obligations under this chapter. This written summary shall also be prominently posted on the electric utility's website.'

Ohio Edison admits in the direct testimony of Marilyn Cottrell that the Customer Rights and Obligations is buried four (4) pages below the home page of the company website. (*Exhibit A -Direct Testimony, page 14, lines 2 – 4*). Although the document is required to be *prominently* posted on the company's website, the document is placed on a webpage that is four pages from the homepage, and which requires prior knowledge of the path necessary to find the document. The placement of this document is not likely to be considered 'prominently' as required by Ohio Administrative Code 4901:1-10-12.

CONCLUSION

Ohio Edison failed to apply partial payments in accordance with the law and Administrative Code and issued disconnection notices that did not meet the requirements of the Administrative Code. Ohio Edison's Customer Rights and Responsibilities document is not prominently displayed on its website. Ohio Edison's business practices conflict with Administrative Codes 4901:1-10-02, 4901:1-10-12, 4901:1-10-19, 4901:1-10-22, 4901:1-10-30, and 4901:1-37-04 and violate the law regarding partial payments.

Partial payments were made for current consumption charges with notations on the payment form as well as the memo line of the money order. Contrary to law, Administrative Code, and the direction on the payment, Ohio Edison applied the payment to the security deposit instead of the current consumption charges.

Ohio Edison issued disconnection notices that did not separate the tariffed and non-tariffed charges and sent field collection agents to disconnect the service unless payment was attained. Kevin Simballa spoke with the field agents and paid the amount due, thereby stopping the disconnection of service. The payment by Kevin Simballa does not minimize the fact that Ohio Edison was going to disconnect the service based on disconnection notices that do not meet the requirements of the Administrative Code.

Ohio Edison's Customer Rights and Responsibilities document is positioned on the 4th page from the home page, in conflict with the Administrative Code that requires it to be displayed 'prominently' on the website.

A settlement agreement was attained on January 25, 2023. The agreement required Mary C. Simballa to pay the security deposit and dismiss the complaint and Ohio Edison agreed to refund the security deposit. Ohio Edison attempted to modify that agreement less than 48 hours later in an email. Mary C. Simballa rejected that proposal, specifically stating that she would accept the agreement attained 'during our phone conference last week' and 'as per the agreement, the security deposit will be refunded in June 2023'. Ohio Edison again attempted to change the original agreement in an email dated February 16, 2023, demanding a confidentiality agreement. The proposed confidentiality agreement far exceeded the terms of the original agreement and the scope of the complaint. Mary C. Simballa notified Mr. Fullin of the Public Utilities Commission of Ohio Edison's breach on February 20, 2023. Ohio Edison stated in an

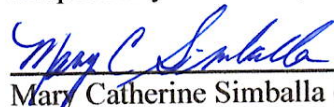
email dated March 13, 2023, 'If you are insisting on a refund check, we do not have a meeting of the minds and this matter should proceed to a hearing.' Ohio Edison attempted to revive negotiations by offering different versions of the confidentiality agreement, which was not a part of the original discussion or agreement. Neither proposal was accepted by Mary C. Simballa. On August 14, 2023, Ohio Edison claimed that the original agreement is still in effect, although Ohio Edison acknowledged the lack of an agreement in the email dated March 13, 2023.

PRAYER FOR RELIEF

Complainant Mary C. Simballa respectfully asks this Commission to:

1. order the refund of the late fees associated with the application of the partial payments to the security deposit;
2. order the refund of the security deposit;
3. investigate for other instances of similar violations by Ohio Edison of the law, Administrative Code, Ohio Edison's tariff, and other laws;
4. impose appropriate sanctions against Ohio Edison for the violations of the law, Ohio Administrative Code, Ohio Edison's tariff, and other laws.

Respectfully submitted,



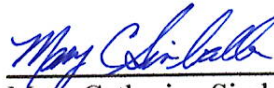
Mary Catherine Simballa (0093314)
42100 Cream Ridge Rd.
Lisbon, OH 44432
330-831-8341
mary.simballa@simballalaw.com

CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing Complaint

ant's Mary C. Simballa's Brief was served via electronic mail and USPS regular mail this 26th day of January 2024,

Christopher A. Rogers
Benesch, Friedlander, Coplan & Aronoff LLP
127 Public Square, Suite 4900
Cleveland, Ohio 44114-1284
crogers@beneschlaw.com



Mary Catherine Simballa (0093314)
Law Office of Mary C. Simballa
42100 Cream Ridge Rd.
Lisbon, OH 44432
330-831-8341
mary.simballa@simballalaw.com



Mary S <mary.simballa@gmail.com>

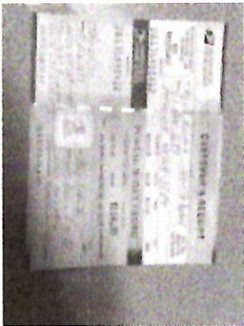
Evid. R. 408 Communication

Mary S <mary.simballa@gmail.com> Mon, Jan 30, 2023 at 1:33 PM
To: "Rogers, Christopher" <CRogers@beneschlaw.com>, Dan.Fullin@puco.ohio.gov, kfling@firstenergycorp.com

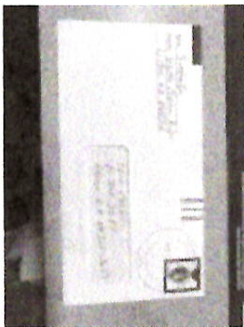


Mary C. Simballa
[Quoted text hidden]

2 attachments



IMG_0704.jpg
5154K



IMG_0705.jpg
3039K

EXHIBIT 2



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Rogers, Christopher <CRogers@beneschlaw.com>
To: Mary S <mary.simballa@gmail.com>

Fri, Jan 27, 2023 at 10:24 AM

Ms. Simballa,

[Redacted]



Christopher Rogers
(he/him/his)
Litigation Associate
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t: 216.363.6251 | m: 207.240.5354
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200 Public Square, Suite 2300, Cleveland, OH 44114-2378

Confidentiality Notice to Incorrect Addressee: www.beneschlaw.com/confidentialitynotice

From: Mary S <mary.simballa@gmail.com>
Sent: Wednesday, January 25, 2023 1:20 AM
To: Dan.Fullin@puco.ohio.gov; Rogers, Christopher <CRogers@beneschlaw.com>; kfling@firstenergycorp.com
Subject: Documents in support of complaint filed by Mary C. Simballa, hearing 1/25/2023 at 1 pm

Hello Mr. Fullin,

[Redacted]

EXHIBIT 5



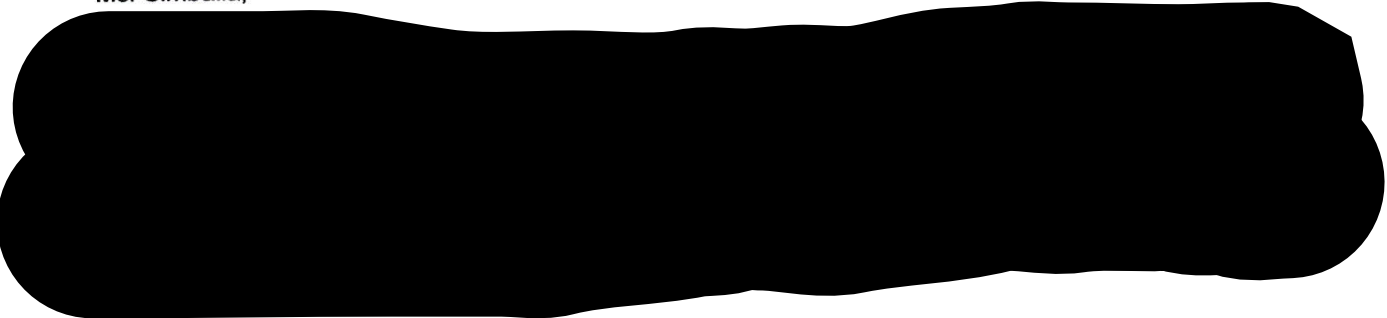
Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Rogers, Christopher <CRogers@beneschlaw.com>
To: Mary S <mary.simballa@gmail.com>

Thu, Feb 16, 2023 at 9:42 AM

Ms. Simballa,



vCard Bio

Christopher Rogers
(he/him/his)
Litigation Associate
Benesch Friedlander Coplan & Aronoff LLP

t: 216.363.6251 | m: 207.240.5354
CRogers@beneschlaw.com | www.beneschlaw.com
200 Public Square, Suite 2300, Cleveland, OH 44114-2378

Confidentiality Notice to Incorrect Addressee: www.beneschlaw.com/confidentialitynotice

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2 attachments



-  **Confidential Settlement Agreement and Release - Simballa v. Ohio Edison.DOCX**
38K
-  **Joint Motion to Dismiss - Exhibit A to Settlement Agreement and Release.DOCX**
22K

EXHIBIT 4



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Mary S <mary.simballa@gmail.com>
To: dan.fullin@puco.ohio.gov

Mon, Feb 20, 2023 at 12:02 PM

Mr. Fullin:

[Redacted]

[Redacted]

[Redacted]

EXHIBIT 5

[REDACTED]

[Redacted content]

[Quoted text hidden]

3 attachments

 **Confidential Settlement Agreement and Release - Simballa v. Ohio Edison.DOCX**
38K

 **Joint Motion to Dismiss - Exhibit A to Settlement Agreement and Release.DOCX**
22K



Simballa v OE - Notated OE Settlement Agreement and Joint Motion to Dismiss.PDF
2124K

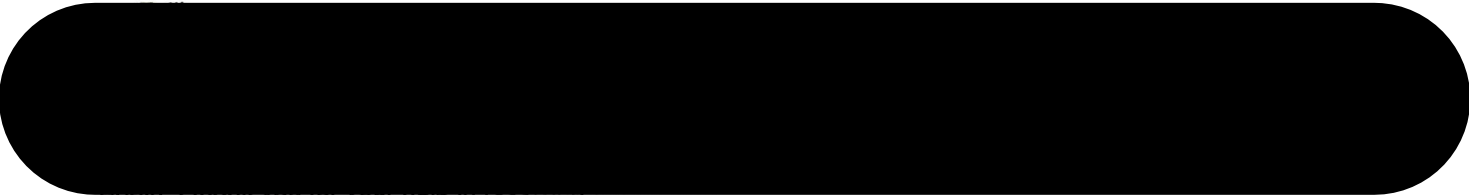


Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Mary S <mary.simballa@gmail.com>
To: dan.fullin@puco.ohio.gov

Tue, Feb 21, 2023 at 3:55 PM



Again, I thank you for your help in this matter.

Mary C. Simballa
[Quoted text hidden]

 **Complainant's Motion to Hold Case in Abeyance - 22-1065-EL-CSS.PDF**
380K

EXHIBIT 6



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Mary S <mary.simballa@gmail.com>
To: "Rogers, Christopher" <CRogers@beneschlaw.com>

Tue, Feb 21, 2023 at 4:15 PM

Mr. Rogers,



Mary C, Simballa
[Quoted text hidden]



Complainant's Motion to Hold Case in Abeyance - 22-1065-EL-CSS.PDF
380K



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

dan.fullin@puco.ohio.gov <dan.fullin@puco.ohio.gov>
To: Mary S <mary.simballa@gmail.com>

Tue, Feb 21, 2023 at 4:24 PM

Mary C. Simballa,

[Redacted content]

Thanks,

Dan Fullin

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION AND/OR PRIVILEGED ATTORNEY WORK PRODUCT AND/OR SUBJECT TO
THE COMMON INTEREST PRIVILEGE

NOT FOR PUBLIC RELEASE

EXHIBIT 8



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Rogers, Christopher <CRogers@beneschlaw.com>
To: Mary S <mary.simballa@gmail.com>

Tue, Feb 28, 2023 at 4:41 PM

Ms. Simballa,

[Redacted]

Mr. Rogers,

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

<http://www.PUCO.ohio.gov>

[Quoted text hidden]



Confidential Settlement Agreement and Release - Simballa v. Ohio Edison.DOCX
38K



Mary S <mary.simballa@gmail.com>

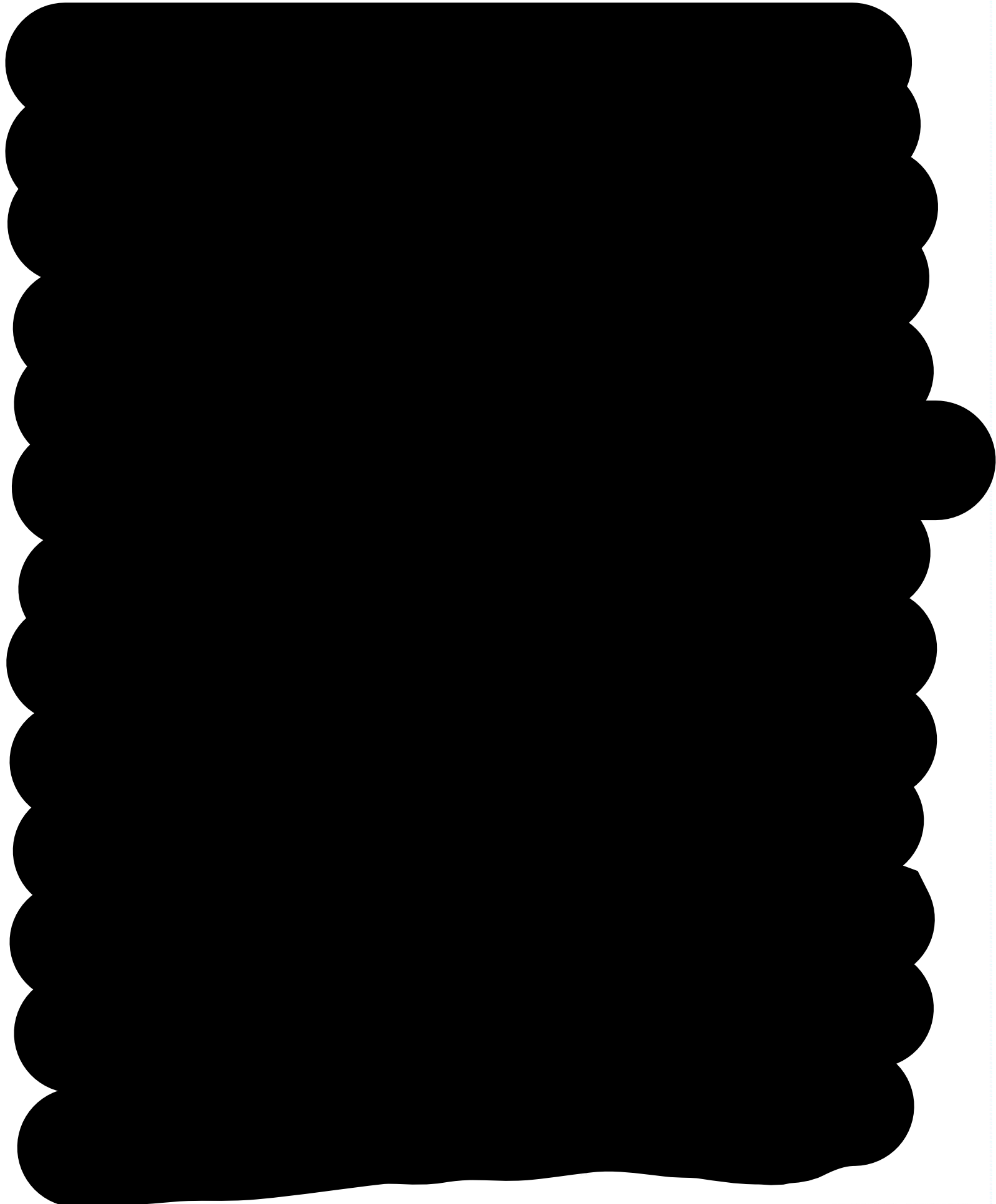
Evid. R. 408 Communication

Mary S <mary.simballa@gmail.com>
To: "Rogers, Christopher" <CRogers@beneschlaw.com>

Sat, Mar 11, 2023 at 3:26 PM

Mr. Rogers,

[REDACTED]



[Redacted content]

Mary C. Simballa
[Quoted text hidden]



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Rogers, Christopher <CRogers@beneschlaw.com>
To: Mary S <mary.simballa@gmail.com>

Mon, Mar 13, 2023 at 9:47 AM

Ms. Simballa,

[Redacted content]

2023.1.27 - Email to Mr. Simballa.pdf
140K



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Rogers, Christopher <CRogers@beneschlaw.com>
To: Mary S <mary.simballa@gmail.com>

Fri, Apr 28, 2023 at 2:25 PM

Ms. Simballa,



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Admitted in Ohio and Washington.
Practice temporarily authorized pending admission to the Kentucky Bar Association
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Confidential Settlement Agreement and Release - Simballa v. Ohio Edison.DOCX
42K

EXHIBIT 12

 Gmail

Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Rogers, Christopher <CRogers@beneschlaw.com>
To: Mary S <mary.simballa@gmail.com>

Wed, Jul 12, 2023 at 12:58 PM

Ms. Simballa,



 Benesch

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Confidentiality Notice to Incorrect Addressee: www.beneschlaw.com/confidentialitynotice
Please note that effective August 1, 2023 our new address will be 127 Public Square, Suite 4900, Cleveland, OH 44114. Please update your records accordingly.

[Quoted text hidden]
[Quoted text hidden]



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Rogers, Christopher <CRogers@beneschlaw.com>

Mon, Aug 14, 2023 at 2:43 PM

To: Mary S <mary.simballa@gmail.com>, "Dan.Fullin@puco.ohio.gov" <Dan.Fullin@puco.ohio.gov>, "Fling, Kristen M" <kfling@firstenergycorp.com>

Ms. Simballa,

[Redacted content]



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Christopher Rogers
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Litigation Associate
Admitted in Ohio and Washington.
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Confidentiality Notice to Incorrect Addressee: www.beneschlaw.com/confidentialitynotice

As of August 1, 2023 our new address is 127 Public Square, Suite 4900, Cleveland, OH 44114. Please update your records accordingly.

From: Mary S <mary.simballa@gmail.com>
Sent: Monday, January 30, 2023 1:33 PM
To: Rogers, Christopher <CRogers@beneschlaw.com>; Dan.Fullin@puco.ohio.gov; kfling@firstenergycorp.com
Subject: Re: Evid. R. 408 Communication

Hello Mr. Fullin and Mr. Rogers,

[Quoted text hidden]
[Quoted text hidden]

SimballaRBill062923MSW.pdf
1808K



Mary S <mary.simballa@gmail.com>

Evid. R. 408 Communication

Mary S <mary.simballa@gmail.com>

Tue, Aug 15, 2023 at 12:46 PM

To: "Rogers, Christopher" <CRogers@beneschlaw.com>, Dan.Fullin@puco.ohio.gov

Mr. Rogers,

[Redacted content]

[Quoted text hidden]

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

1/26/2024 1:14:26 PM

in

Case No(s). 22-1065-EL-CSS

Summary: Brief Complainant's Brief - Public electronically filed by Miss Mary C Simballa on behalf of Simballa, Mary C Miss.