

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

R. SIMBALLA AND MARY SIMBALLA,	)	
	)	
Complainant	)	
	)	
v.	)	CASE NO. 22-1065-EL-CSS
	)	
OHIO EDISON COMPANY	)	
	)	
Respondent	)	
	)	

**OHIO EDISON COMPANY’S INITIAL POST-HEARING BRIEF**

Respectfully submitted,

/s/ Christopher A. Rogers  
Christopher A. Rogers (100781)  
BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP  
127 Public Square, Suite 4900  
Cleveland, Ohio 44114-1284  
Telephone: 216.363.4500  
Facsimile: 216.363.4588  
Email: [crogers@beneschlaw.com](mailto:crogers@beneschlaw.com)  
*Counsel for Ohio Edison Company*

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	Statement of Facts.....	2
III.	Law and Argument .....	6
A.	Standard of Review.....	6
B.	Simballa’s Complaint is Moot Because She Agreed to Settle Her Complaint.....	6
1.	Simballa Agreed to Dismiss Her Complaint.....	6
2.	Suggesting Additional Terms in a Formalized Settlement Agreement Does Not Breach the Settlement Agreement .....	8
3.	Ohio Edison Did Not Anticipatorily Breach the Settlement Agreement.....	8
4.	Simballa Agreed to a Credit of the Security Deposit.....	9
C.	Ohio Edison Properly Assessed the Security Deposit .....	10
D.	Ohio Edison Provided Simballa Timely Notice of Its Intent to Assess a Security Deposit.....	11
E.	Ohio Law Does Not Prohibit Ohio Edison From Holding a Security Deposit for Longer than Six Months .....	12
F.	Ohio Edison Properly Applied Simballa’s Payments .....	13
G.	Ohio Edison’s Customer Rights & Obligations Pamphlet Is On Its Website .....	15
IV.	Conclusion .....	17

## I. INTRODUCTION

Complainants R. Simballa and Mary Simballa<sup>1</sup> (“Simballa”) filed this matter on November 16, 2022, alleging that she failed to receive timely notice that a continued failure to timely and adequately pay her monthly bills would result in Respondent Ohio Edison Company (“Ohio Edison”) imposing a security deposit on the account.<sup>2</sup> She further complains that: (1) Ohio Edison improperly applied her May 2022 payment to the security deposit, rather than to the current and past due charges; (2) improperly held the security deposit for longer than six months; and (3) Ohio Edison’s Customer Rights & Obligations is not located on its website.<sup>3</sup> Ohio Edison denies that it provided unreasonable or inadequate service or that it violated any statute or Commission rule.<sup>4</sup>

This is a contrived complaint proceeding. Simballa does not dispute that Ohio Edison was within its rights to assess a security deposit. Instead, she contends that Ohio Edison improperly settled her security deposit first when she failed to pay a bill in full. Because she does not dispute the validity of the security deposit assessment and did not have an informal or formal complaint pending when Ohio Edison settled the security deposit assessment, Ohio Edison properly applied her partial payment to settle the security deposit assessment. Similarly, no legal authority exists that limits Ohio Edison to holding the security deposit for more than six months. Finally, Ohio Edison’s Customer Rights & Obligations pamphlet is located on its homepage.

However, these issues are all moot because Simballa settled this matter with Ohio Edison yet refuses to dismiss her Complaint pursuant to the terms of the settlement agreement.

---

<sup>1</sup> R. Simballa is deceased. Record of Proceeding (“Tr.”), 7:3–12. To simplify, any action taken on behalf of the account will be considered to be taken by or on behalf of Ms. Simballa.

<sup>2</sup> *In the Matter of the Complaint of R. Simballa and Mary Simballa*, PUCO No. 22-1065, Complaint, ¶¶ 10–12 (Nov. 16, 2022) (“Compl.”).

<sup>3</sup> Compl., ¶¶ 15–17, 29, 34–35.

<sup>4</sup> *In the Matter of the Complaint of R. Simballa and Mary Simballa*, PUCO No. 22-1065, Answer (Dec. 6, 2022) (“Ans.”)

## II. STATEMENT OF FACTS

Simballa is a consumer of electricity at 4200 Cream Ridge Road, Lisbon, OH 44432.<sup>5</sup> The account is in the name of her father, R. Simballa, who died in 2014.<sup>6</sup>

Simballa has a lengthy history of delinquent payments on the account.<sup>7</sup> For example,

- She failed to make a payment on her October 2020, November 2020, and December 2020 bills until after the due date of her December 2020 bill.<sup>8</sup>
- She failed to make a payment on her January 2021, February 2021, March 2021, and April 2021 bills until May 3, 2021.<sup>9</sup>
- She failed to make a payment on her May 2021 and June 2021 bills until after the due date of her June 2021 bill.<sup>10</sup>
- She failed to make a payment on her July 2021, August 2021, and September 2021 bills until after the due date of the September 2021 bill.<sup>11</sup>
- She failed to make a payment on her October 2021 and November 2021 bills until the due date of her November 2021 bill.<sup>12</sup>
- She failed to make a payment on her December 2021 and January 2022 bill until after the due date of her January 2022 bill.<sup>13</sup>

Based on Ms. Simballa's payment history, Ohio Edison warned her in her bill dated February 16, 2022, that "If future payments are not made in a timely manner, you may be required to pay a security deposit equal to 130 percent of your estimated average bill."<sup>14</sup> She subsequently failed to pay her February 2022, March 2022, and April 2022 bills until Ohio Edison made a field

---

<sup>5</sup> Ohio Adm. Code 4901:1-10-01(G).

<sup>6</sup> Tr. 7:1–12.

<sup>7</sup> The Commission ruled at the evidentiary hearing that Ms. Simballa's payment history and bills were part of the public record. Tr. 50:2–11. Ms. Simballa did not object to this ruling.

<sup>8</sup> *In the Matter of the Complaint of R. Simballa and Mary Simballa*, PUCO No. 22-1065, Prefiled Testimony of Marilyn Cottrill (Dec. 7, 2023) ("Cottrill Testimony"), Company Ex. B, 5:1–7.

<sup>9</sup> Cottrill Testimony, Company Ex. B, 5:8–15.

<sup>10</sup> Cottrill Testimony, Company Ex. B, 5:16–19.

<sup>11</sup> Cottrill Testimony, Company Ex. B, 5:20–6:5.

<sup>12</sup> Cottrill Testimony, Company Ex. B, 6:6–9.

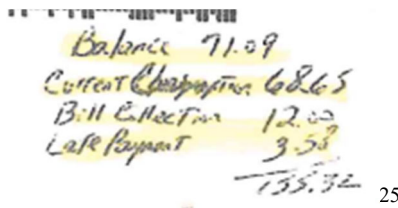
<sup>13</sup> Cottrill Testimony, Company Ex. B, 6:10–14.

<sup>14</sup> Cottrill Testimony, Company Ex. B, Ex. C.

collection on May 12, 2022.<sup>15</sup> However, Simballa failed to pay the outstanding account balance in full.<sup>16</sup> She did not dispute her payment history at the hearing.<sup>17</sup> She admitted that she would only pay off her account every few months when it became a “priorit[y].”<sup>18</sup>

Because Simballa continued to make inadequate payments, Ohio Edison assessed a security deposit of \$114 on May 12, 2022.<sup>19</sup> She does not dispute that Ohio Edison was entitled to assess a security deposit.<sup>20</sup> According to Ms. Simballa’s testimony, she called then Ohio Edison’s customer service line to inquire about the amount of her bill.<sup>21</sup> Ohio Edison informed her that the amount included a security deposit.<sup>22</sup> Simballa did not dispute the assessment of the security deposit during this call.<sup>23</sup>

Simballa then made the following notation on her payment stub<sup>24</sup>:



Balance 71.09  
Current Charges 68.65  
Bill Collection 12.00  
Late Payment 3.53  
155.27

Simballa did not identify any dispute with the security deposit on the payment stub.<sup>26</sup> Nor did she provide any instructions as to the meaning of this notation.<sup>27</sup> At the time she made this payment, she had not made an informal or formal complaint to the Commission.<sup>28</sup>

Pursuant to Ohio Edison’s settlement hierarchy, Ohio Edison applied Simballa’s partial

<sup>15</sup> Cottrill Testimony, Company Ex. B, 6:15–7:5 & Ex. B.

<sup>16</sup> Cottrill Testimony, Company Ex. B, 7:1–5.

<sup>17</sup> Tr. 36:11–37:2.

<sup>18</sup> See Tr. 17:21–18:5; 36:11–15.

<sup>19</sup> Cottrill Testimony, Company Ex. B, 7:1–3.

<sup>20</sup> Tr. 34:24–35:25 (“Q. Are you disputing Ohio Edison’s right to assess the Security Deposit? A. I don’t believe that’s ever been an issue....(record read). A. No.”)

<sup>21</sup> Tr. 14:18–25.

<sup>22</sup> Tr. 14:18–25.

<sup>23</sup> Cottrill Testimony, Company Ex. B, 10:6–11.

<sup>24</sup> Tr. 10:13–15; Complainant Ex. 1.

<sup>25</sup> Complainant Ex. 1.

<sup>26</sup> Complainant Ex. 1; Cottrill Testimony, Company Ex. B, 10:20–11:1, 11:16–12:1.

<sup>27</sup> Complainant Ex. 1; Cottrill Testimony, Company Ex. B, 10:20–11:1, 11:16–12:1.

<sup>28</sup> Tr. 40:22–41:13 Cottrill Testimony, Company Ex. B, 9:17–23, 11:16–12:1.

May 31, 2022 payment to the security deposit.<sup>29</sup> At this time, the security deposit was satisfied and Simballa had a remaining balance on her May 2022 bill.<sup>30</sup> She subsequently short paid her June 2022 bill on June 29, 2022.<sup>31</sup>

Simballa subsequently contacted Ohio Edison on July 28, 2022.<sup>32</sup> During that call, Simballa requested that Ohio Edison remove the late payment charges.<sup>33</sup> Ohio Edison refused to waive the late payment charges that were assessed for the unpaid consumption charges.<sup>34</sup>

Simballa subsequently submitted an informal complaint to the Commission on July 29, 2022.<sup>35</sup> Ohio Edison responded to the Commission on August 12, 2022, and the Commission never submitted additional inquiries.<sup>36</sup> Simballa's formal complaint was docketed on November 16, 2022.<sup>37</sup> Ohio Edison timely answered on December 6, 2022.<sup>38</sup>

The Commission set a settlement conference for January 25, 2023.<sup>39</sup> During the settlement conference, Ohio Edison extended the following offer:

1. Simballa would pay the disputed security deposit amount.
2. Simballa would continue to pay, in full and on time, her account balance through May/June 2023.
3. Simballa would enroll in autopay of her bills.
4. If the above conditions were met, Ohio Edison would return<sup>40</sup> the security deposit in May or June 2023.
5. Simballa would then dismiss her case.<sup>41</sup>

---

<sup>29</sup> Cottrill Testimony, Company Ex. B, 11:16–13:4.

<sup>30</sup> Cottrill Testimony, Company Ex. B, 13:5–9.

<sup>31</sup> Cottrill Testimony, Company Ex. B, Ex. B.

<sup>32</sup> Cottrill Testimony, Company Ex. B, 10:12–19.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Cottrill Testimony, Company Ex. B, 10:18–19.

<sup>36</sup> Cottrill Testimony, Company Ex. B, 9:17–21.

<sup>37</sup> *See* Compl.

<sup>38</sup> *See* Ans.

<sup>39</sup> *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Entry, ¶ 6 (Dec. 21, 2022)

<sup>40</sup> There is a dispute whether the original offer was a refund or a credit, but Simballa rejected this offer, so the difference is immaterial.

<sup>41</sup> Tr. 20:14–21:11, 27:15–21, 30:18–24; Company Ex. A (noting that Ohio Edison would not require enrollment in autopay).

Simballa rejected this offer because she refused to enroll in autopay.<sup>42</sup>

On January 27, 2023, Ohio Edison extended the following offer to Simballa via email:

Ohio Edison is willing [to] forego requiring you to enroll in autopay. Please let me know if you will accept Ohio Edison's offer to credit the security deposit to your account in May/June 2023 if you pay the security deposit and continue paying in full and on time until then, in exchange for dismissing your complaint.<sup>43</sup>

Simballa accepted this offer, which stated that Ohio Edison would credit the security deposit to her account in return for dismissal of her claims.<sup>44</sup> After agreeing to these terms, Ohio Edison sought to formalize the agreement. However, Simballa refused to negotiate on the additional proposed terms in the formalized agreement.<sup>45</sup> The formalized agreement was never executed and has no effect.

Simballa subsequently paid the disputed amount and continued to pay her monthly bills in full and on time.<sup>46</sup> Pursuant to the terms of the settlement, Ohio Edison credited the security deposit to her account in her bill dated June 19, 2023.<sup>47</sup>

On July 18, 2023, Ohio Edison moved to dismiss the Complaint as settled.<sup>48</sup> On August 2, 2023, Simballa objected to Ohio Edison's motion to dismiss, restating her allegations in the Complaint and that "the security deposit has not yet been returned to the Complainant."<sup>49</sup> Because Simballa refused to dismiss her Complaint, the Commission scheduled this matter for an evidentiary hearing.<sup>50</sup>

---

<sup>42</sup> Tr. 30:13–21.

<sup>43</sup> Company Ex. A (emphasis added).

<sup>44</sup> Company Ex. A.

<sup>45</sup> Tr. 31:15–24.

<sup>46</sup> See, e.g., Company Ex. A; Tr. 20:19–25.

<sup>47</sup> Cottrill Testimony, Company Ex B, 8:21–23 & Ex. G.

<sup>48</sup> *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Motion to Dismiss (July 18, 2023).

<sup>49</sup> *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Motion in Opposition to Respondent's Motion to Dismiss (Aug. 2, 2023).

<sup>50</sup> *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Entry, ¶¶ 8–9 (Sept. 21, 2023).

### **III. LAW AND ARGUMENT**

#### **A. Standard of Review**

Simballa failed to satisfy her burden of proof in this proceeding. R.C. 4905.26 requires that the Commission set for hearing a complaint against a public utility when grounds appear that:

[A]ny rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained.<sup>51</sup>

It is well-established that the burden of proof rests with the complainant in proceedings before the Commission.<sup>52</sup> To prevail, the complainant must prove, by the preponderance of the evidence, that the services provided were unreasonable.<sup>53</sup> “A preponderance of the evidence is defined as that measure of proof that convinces the judge or jury that the existence of the fact sought to be proved is more likely than its nonexistence.”<sup>54</sup>

#### **B. Simballa’s Complaint is Moot Because She Agreed to Settle Her Complaint**

##### **1. Simballa Agreed to Dismiss Her Complaint**

Simballa concedes she reached a settlement with Ohio Edison that would have resolved this matter.<sup>55</sup> However, she then contends that Ohio Edison breached the agreement by proposing additional standard terms in a formal settlement agreement.<sup>56</sup> Her interpretation of the law is

---

<sup>51</sup> R.C. 4905.26.

<sup>52</sup> *Grossman v. Pub. Util. Comm’n*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966).

<sup>53</sup> *Ohio Bell Tel. Co. v. Pub. Util. Comm’n of Ohio*, 49 Ohio St. 3d 123, 126, 551 N.E.2d 145, 148 (1990); *In the Matter of the Complaint of WorldCom et al. v. City of Toledo*, PUCO Case No. 02-3207-AU-PWC, 2003 WL 21087728, Opinion and Order at 18 (May 14, 2003).

<sup>54</sup> *Admin Net Tech LLC v. Med. Imaging Diagnostics, LLC*, 2019-Ohio-3584, ¶ 28 (7<sup>th</sup> Dist.).

<sup>55</sup> Tr. 20:16–18.

<sup>56</sup> Tr. 32:4–9.



incorrect and an enforceable settlement was reached.

A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration.<sup>57</sup>

“The law is clear that to constitute a valid contract, there must be a meeting of the minds of the parties, and there must be an offer on the one side and an acceptance on the other.”<sup>58</sup> Once there is a meeting of the minds on the essential terms, an enforceable contract is formed.<sup>59</sup>

Simballa concedes that the parties agreed on the essential terms of the agreement:

1. Simballa would pay the disputed security deposit amount.
2. Simballa would continue to pay, in full and on time, her account balance through May/June 2023.
3. If the above conditions were met, Ohio Edison would refund the security deposit to her account in May or June 2023.
4. Simballa would then dismiss her case.<sup>60</sup>

Simballa concedes that the contract could have been fully performed on these terms.<sup>61</sup> Simballa never required a check and Ohio Edison’s offer specified it would return the security deposit via a bill credit.<sup>62</sup> Thus, there was a meeting of the minds as to the essential terms of the contract and a binding contract exists.

Simballa paid the disputed amount and continued paying off her account in full and on time. Ohio Edison subsequently returned the security deposit to her via a bill credit.<sup>63</sup> After Ohio Edison moved to dismiss Simballa’s claim based on a settlement, Simballa refused to allow dismissal of her Complaint, thereby refusing to perform her obligations under the agreement.<sup>64</sup>

---

<sup>57</sup> *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16.

<sup>58</sup> *Noroski v. Fallet*, 2 Ohio St.3d 77, 79, 442 N.E.2d 1302 (1982).

<sup>59</sup> *Episcopal Retirement Homes, Inc. v. Ohio Dept. of Indus. Relations*, 61 Ohio St.3d 366, 369, 575 N.E.2d 134 (1991).

<sup>60</sup> Company Ex. A; Tr. 22:1–4.

<sup>61</sup> Tr. 33:5–14.

<sup>62</sup> Company Ex. A; Tr. 31:6–9.

<sup>63</sup> Tr. 26:3–9; Cottrill Testimony, Company Ex. B, 8:21–23 & Ex. G.

<sup>64</sup> See *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Motion

## **2. Suggesting Additional Terms in a Formalized Settlement Agreement Does Not Breach the Settlement Agreement**

Simballa justifies her refusal to honor the terms of the agreement by claiming that Ohio Edison breached the agreement by proposing additional terms in a memorialized settlement agreement.<sup>65</sup> It is black letter law that a mere request to negotiate additional terms does not breach the contract: “[A] mere request for a change in the terms or a request for cancellation of the contract is not in itself enough to constitute a repudiation.”<sup>66</sup> Therefore, Ohio Edison proposing additional terms in a settlement agreement does not allow Simballa to refuse to perform her obligations.

## **3. Ohio Edison Did Not Anticipatorily Breach the Settlement Agreement**

To allow her non-performance, Simballa must demonstrate that Ohio Edison anticipatorily breached the contract.<sup>67</sup> An anticipatory breach requires the refusal to perform the contract pursuant to its terms before the time fixed for performance has arrived.<sup>68</sup> An anticipatory breach must be an unequivocal repudiation of the contract.<sup>69</sup> Repudiation of a contract is

(a) a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach..., or

(b) a voluntary affirmative act which renders the obligor unable or apparently unable to perform without such a breach.<sup>70</sup>

During the evidentiary hearing, Simballa testified that nothing gave her the belief that Ohio Edison would not perform its obligations under the settlement agreement.<sup>71</sup> Therefore, Simballa

---

in Opposition to Respondent's Motion to Dismiss (Aug. 2, 2023).

<sup>65</sup> Tr. 32:4–9.

<sup>66</sup> *Murra v. Farrauto*, 2017-Ohio-842, ¶ 12, 85 N.E.3d 1231, 1236 (10th Dist.) (citing *McDonald v. Bedford Datsun*, 59 Ohio App. 3d 38, 40, 570 N.E.2d 299, 301 (8th Dist. 1989)); 18 Ohio Jur. 3d Contracts § 218.

<sup>67</sup> *Haman Enters. Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967, 50 N.E.3d 924, ¶¶ 23–24 (10th Dist.).

<sup>68</sup> *McDonald*, 59 Ohio App.3d at 40.

<sup>69</sup> *Id.*; *Sentinel Consumer Prod., Inc. v. Mills, Hall, Walborn & Assoc., Inc.*, 110 Ohio App.3d 211, 215, 673 N.E.2d 967 (1996).

<sup>70</sup> *White Hat Mgt. L.L.C. v. Ohio Farmers Ins. Co.*, 167 Ohio App.3d 663, 2006-Ohio-3280, 856 N.E.2d 991, ¶ 22 (alteration in original) (citation omitted).

<sup>71</sup> Tr. 34:14–23.

cannot demonstrate that Ohio Edison anticipatorily repudiated the settlement agreement to justify her non-performance.

#### 4. Simballa Agreed to a Credit of the Security Deposit

Her final contention is equally frivolous. She claims that the agreement was to “refund” the security deposit, not “credit” the security deposit to her account.<sup>72</sup> She bases this on a belief that Ohio Edison used the word “refund” during the settlement conference on January 25, 2023, and therefore Ohio Edison was prohibited from crediting the security deposit to her account.<sup>73</sup> However, she concedes that she never required Ohio Edison to send her a check.<sup>74</sup>

Fatal to Simballa’s argument is that she rejected the offer Ohio Edison made during the January 25, 2023 settlement conference. During that conference, Ohio Edison required that she sign up to autopay her bills.<sup>75</sup> She rejected that offer.<sup>76</sup> On January 30, 2023, Ohio Edison propounded the following offer:

Ohio Edison is willing [to] forego requiring you to enroll in autopay. Please let me know if you will accept Ohio Edison’s offer to credit the security deposit to your account in May/June 2023 if you pay the security deposit and continue paying in full and on time until then, in exchange for dismissing your complaint.<sup>77</sup>

This is the offer Simballa accepted—an offer that stated that Ohio Edison would credit the security deposit to her account.<sup>78</sup>

It is black letter law that unexpressed subjective beliefs regarding terms of the contract do

---

<sup>72</sup> Tr. 26:3–27:8. Her example is inapposite. Because she must pay for the electricity used each month, an account credit decreases the amount she owes on the bill. *See* Cottrill Testimony, Company Ex. B, Ex. G (noting that no payment is due on the bill because of the security deposit credit, despite having a bill totaling \$71.41). Thus, the use of “refund” versus “credit” is a difference without distinction as she would have the “cash in hand” when she did not have to remit payment for the electricity used.

<sup>73</sup> Tr. 30:2–7.

<sup>74</sup> Tr. 26:19–27:11, 31:6–11.

<sup>75</sup> Tr. 28:14–29:6; Company Ex. A.

<sup>76</sup> Tr. 28:14–29:6.

<sup>77</sup> Company Ex. A (emphasis added).

<sup>78</sup> Company Ex. A.

not excuse non-performance of a contract.<sup>79</sup> “Under the objective theory of mutual assent followed in all jurisdictions, a contracting party is bound by the apparent intention he outwardly manifests to the other contracting party. To the extent that his real, secret intention differs therefrom, it is entirely immaterial.”<sup>80</sup> Because the offer that Simballa accepted was to credit the security deposit to her account,<sup>81</sup> she has no basis for her contention that Ohio Edison did not comply with its obligations.

Accordingly, because Simballa’s non-performance with the terms of the settlement agreement is not excusable, this entire action is moot and the Complaint must be dismissed pursuant to the settlement.

### **C. Ohio Edison Properly Assessed the Security Deposit**

Ms. Simballa does not dispute that Ohio Edison had the right to assess a security deposit to her account: “Q: Are you disputing Ohio Edison’s right to assess the security deposit? A. I don’t believe that’s ever been an issue.... No.”<sup>82</sup> Regardless, Ohio Edison properly assessed the security deposit because Simballa’s account was in arrears.

The Commission’s rules allow Ohio Edison to assess a security deposit on a current customer account based on the customer’s credit history with Ohio Edison.<sup>83</sup> As detailed in the

---

<sup>79</sup> *Aultman Hosp. Ass’n v. Cmty. Mut. Ins. Co.*, 46 Ohio St. 3d 51, 54, 544 N.E.2d 920, 924 (1989) (“In the absence of fraud or mistake, the hospitals’ unexpressed intention cannot be implied in the contract.”)

<sup>80</sup> *Bulger v. Bulkowski*, 6<sup>th</sup> Dist. Sandusky No. 83-3, 1983 WL 6799, at \*2 (May 20, 1983).

<sup>81</sup> Company Ex. A.

<sup>82</sup> Tr. 34:24–35:25.

<sup>83</sup> Ohio Adm. Code 4901:1-17-04(A); Ohio Adm. Code 4901:1-10-14(G)(2)(a) (“A deposit may be required if the customer meets one of the following criteria: (a) After considering the totality of the customer’s circumstances, a utility company may require a deposit if the customer has not made full payment or payment arrangements for any given bill containing a previous balance for regulated service provided by that utility company.”). The prohibition in R.C. 4933.17 to prevent public utilities from assessing a security deposit more than 30 days after the initial of service does not apply where the account is in arrears. R.C. 4933.17 (“If the security is not demanded within thirty days of the initiation of service, except that this division does not apply where the account of a customer is in arrears.”); *In the Complaint of Juanita Thompson v. Columbia Gas of Ohio, Inc.*, PUCO No. 04-22-GA-CSS, Opinion & Order, at 17 (June 1, 2005).

Pre-filed Testimony of Marilyn Cottrill, Simballa had a long history of delinquent payments.<sup>84</sup> Based on Simballa's payment history,<sup>85</sup> and because Simballa had "not made full payment ... for two consecutive bills containing a past due balance,"<sup>86</sup> Ohio Edison properly assessed the security deposit.

**D. Ohio Edison Provided Simballa Timely Notice of Its Intent to Assess a Security Deposit**

Simballa alleges that Ohio Edison failed to provide timely notice that it would assess the security deposit, because Ohio Edison only provided notice in March 2021, thirteen months prior to Ohio Edison assessing the security deposit.<sup>87</sup> However, at the hearing Simballa did not dispute that Ohio Edison provided notice that it may assess a security deposit if she continued to make inadequate payments on her bill dated February 16, 2022.<sup>88</sup>

Instead, Simballa contends that it was not her practice to open her electric bills, so she did not open the bill at that time.<sup>89</sup> However, her failure to open her mail does not negate that Ohio Edison timely provided notice. The State of Ohio has adopted the "mailbox rule," so notice is presumed to have been delivered in due course once Ohio Edison delivers the notice to the U.S. Postal Service.<sup>90</sup> Thus, Ohio Edison provided Simballa with timely notice of its intent to assess the security deposit.

Although she now contends that the phone payment system did not notify her of the

---

<sup>84</sup> Cottrill Testimony, Company Ex. B, 4:15–6:22.

<sup>85</sup> Ohio Adm. Code 4901:1-17-04(A).

<sup>86</sup> Ohio Adm. Code 4901:1-17-04(B).

<sup>87</sup> Compl., ¶¶ 9–12.

<sup>88</sup> Cottrill Testimony, Company Ex. B, 7:6–9, Ex. C; Tr. 36:1–10.

<sup>89</sup> Tr. 9:5–22, 36:1–15. Simballa does not testify that her brother stole this notice. Indeed, she conceded in her discovery responses that she eventually opened this bill. *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Responses to Requests for Admissions, Interrogatories, and Production at 6 (Nov. 22, 2023).

<sup>90</sup> See *Miller v. Plain Dealer Publishing Co.*, 8th Dist. Cuyahoga No. 101335, 2015–Ohio–1016, ¶ 13 ("[T]he so called 'mailbox rule' is a common law rule that provides a rebuttable presumption that a letter sent by ordinary U.S. mail is presumed received in due course."); *State ex rel. LTV Steel Co. v. Indus. Comm.*, 88 Ohio St.3d 284, 286, 725 N.E.2d 639 (2000). Simballa failed to demonstrate that the Commission should not apply the mailbox rule.

security deposit requirement when she paid that bill by phone,<sup>91</sup> this allegation was not presented in her Complaint or the list of violations in her discovery responses and was raised for the first time at the hearing.<sup>92</sup> Accordingly, the Commission should disregard this allegation.<sup>93</sup>

Regardless, the Ohio Administrative Code only allows notice via electronic transmission if both Simballa and Ohio Edison consent.<sup>94</sup> For similar disconnection notices, the Commission allows the notice to be included as part of the monthly bill.<sup>95</sup> There is no evidence that Simballa consented to receive notice via electronic transaction, and therefore the only valid notice is the written notice included on her bill. Accordingly, Ohio Edison timely provided Simballa notice that failure to adequately pay her bill would result in the imposition of a security deposit.

**E. Ohio Law Does Not Prohibit Ohio Edison From Holding a Security Deposit for Longer than Six Months**

Simballa further contends that Ohio law prohibits Ohio Edison from holding a security deposit for longer than six months: “Ohio Edison's demand to hold the security deposit for 12 months violates ORC 4933.17 which limits the time frame for a utility company to hold a security deposit to six (6) months.”<sup>96</sup> However, Simballa is once again wrong on the law.

R.C. 4933.17 provides the following:

In case no such security can be furnished, a deposit not exceeding an amount sufficient to cover an estimate of the monthly average of the annual consumption by such consumer plus thirty per cent may be required, upon which deposit interest at the rate of not less than three per cent per annum shall be allowed and paid to the consumer,

---

<sup>91</sup> Tr. 36:1–15. Her testimony is inconsistent. She claims she called to pay the bill; however, the bill was not paid via phone, and was partially paid via a field collection. Cottrill Testimony, Company Ex. B, 6:15–7:5; Tr. 59:20–23.

<sup>92</sup> See generally Compl.; *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Responses to Requests for Admissions, Interrogatories, and Production at 19–20 (Nov. 22, 2023).

<sup>93</sup> *In the Matter of the Complaint of Almaz Ghebremariam v. Duke Energy Ohio, Inc.*, PUCO No. 10-1260-EL-CSS, Entry, ¶ 11 (July 6, 2011) (certain contentions “are beyond the scope of this complaint case and will not be allowed to be addressed at the hearing in this case”); *In the Matter of the Complaint of Ohiotelnet.com, Inc. v. Windstream Ohio, Inc.*, PUCO No. 09-515-TP-CSS, 2010 WL 5055080, Entry, ¶ 6 (Dec. 1, 2010) (“To stay within the scope of the complaint, testimony regarding adequate capacity should be stricken.”)

<sup>94</sup> Ohio Adm. Code 4901:1-17-02(E); Ohio Adm. Code 4901:1-18-02(D).

<sup>95</sup> Ohio Adm. Code 4901:1-18-06(A)(5) (requiring the notice to be mailed).

<sup>96</sup> Compl., ¶ 29; see also Tr. 37:3–13.

provided it remains on deposit for six consecutive months.<sup>97</sup>

R.C. 4933.17 merely requires Ohio Edison to pay interest on the deposit at three per cent per annum if the security deposit is held for at least six consecutive months.<sup>98</sup> It does not purport to limit Ohio Edison to holding a security deposit to no more than six months. Indeed, Ohio Adm. Code 4901:1-17-6(B) explicitly contemplates that a utility can hold a security deposit for at least twelve months because it requires a review of the justification to hold the security deposit “every twelve months.” As neither the Revised Code nor the Commission’s rules prohibit Ohio Edison from holding the security deposit longer than six months, Simballa’s position is without merit.

#### **F. Ohio Edison Properly Applied Simballa’s Payments**

Simballa contends that Ohio Edison failed to properly apply her payments pursuant to the notation on her payment stub and money order. However, Simballa does not dispute Ohio Edison’s ability to assess the security deposit.<sup>99</sup> Moreover, her payment stub and money order do not dispute the assessment of the security deposit. Instead, she merely calculates the current and past due charges.<sup>100</sup> It merely reflects her desire not to pay her bill in full—not a bona fide dispute of the amount. Absent a dispute filed with the Commission, Simballa did not meet the criteria to direct how her May 2022 payment would be applied.

In order to be eligible to direct payments only to undisputed amounts, Ms. Simballa would first need to have a “bona fide dispute.”<sup>101</sup> However, Simballa does not dispute that Ohio Edison had the right to assess the security deposit: “Q. Are you disputing Ohio Edison's right to assess the

---

<sup>97</sup> R.C. 4933.17.

<sup>98</sup> Ohio Adm. Code 4901:1-17-05(C) (“A utility company shall not be required to pay interest on a deposit it holds for less than one hundred eighty days.”).

<sup>99</sup> Tr. 34:24–35: 25.

<sup>100</sup> Complainant Ex. 1.

<sup>101</sup> Ohio Adm. Code 4901:1-10-22(H) (“Payments made on accounts for which there is a bona fide dispute shall be credited to the undisputed portion of the account.”).

security deposit? A. I don't believe that's ever been an issue.... No.”<sup>102</sup> She therefore fails the threshold requirement that she dispute the amount in question, much less have a bona fide dispute related to the assessment of a security deposit.

Although Chapter 4901:1-10 does not explicitly define a “bona fide dispute,” Ohio Adm. Code 4901:1-10-15(G) and Ohio Adm. Code 4901:1-10-19(C) prohibit a utility from disconnecting service when a customer fails to pay any amount in bona fide dispute, which it clarifies is “where the customer has registered a complaint with the commission's call center or filed a formal complaint with the commission which reasonably asserts a bona fide dispute.” Similarly, the Commission has defined “bona fide dispute” in other chapters for identical purposes:

- Ohio Adm. Code 4901:1-18-01(C) defines a “bona fide dispute” as “a complaint registered with the commission's call center or a formal complaint filed with the commission's docketing division.”
- Ohio Adm. Code 4901:1-13-01(A) defines a “bona fide dispute” as “a reasonable dispute registered with the commission's call center or a formal complaint filed with the commission's docketing division.”

Simballa also concedes that a bona fide dispute requires filing an informal or formal complaint with the Commission.<sup>103</sup> Thus, to constitute a “bona fide dispute,” Simballa must have first filed an informal or formal complaint with the Commission.

Simballa did not file her informal complaint until July 29, 2022.<sup>104</sup> She did not file a formal complaint until November 16, 2022.<sup>105</sup> She did not even call Ohio Edison to dispute the assessment of the security deposit until July 28, 2022.<sup>106</sup> Accordingly, as of May 22, 2022, when Simballa paid the security deposit, she did not have a bona fide dispute and was not able to partially pay her bill. Her contention otherwise is meritless.

---

<sup>102</sup> Tr. 34:24–35: 25

<sup>103</sup> Compl., ¶ 32.

<sup>104</sup> Cottrill Testimony, Company Ex. B, 9:17–21.

<sup>105</sup> See Compl.; Cottrill Testimony, Company Ex. B, 9:22–23.

<sup>106</sup> Cottrill Testimony, Company Ex. B, 10:6–19.



Nor was Ohio Edison prohibited from applying a partial payment to the security deposit first. The Ohio Administrative Code contemplates that a utility may require payment of a security deposit as a condition to the continued provision of electrical service. Ohio Adm. Code 4901:1-17-04(A) provides that “A utility company may require a customer to make a deposit or an additional deposit on an account ... to reestablish creditworthiness for tariffed service based on the customer's credit history on that account with that utility company.”<sup>107</sup> Ohio Edison’s Commission-approved tariff requires a customer to establish creditworthiness “as a condition to furnishing or continuing to furnish service.”<sup>108</sup> A customer’s service may be terminated for the failure or refusal to pay the security deposit.<sup>109</sup>

In such cases, the Commission has previously determined that applying payments first to the security deposit does not violate any rules: “It is therefore reasonable for [the utility] to have directed parts of the [complainant’s] payment toward the reconnection fee and the security deposit prior to using it for payment of the outstanding regular charges.”<sup>110</sup>

Accordingly, Ohio Edison did not violate any rule, statute, or tariff provision by applying the May 2022 payment to the security deposit first as a condition to the continued provision of electrical service.

#### **G. Ohio Edison’s Customer Rights & Obligations Pamphlet Is On Its Website**

Simballa claims that Ohio Edison’s Customer Rights & Obligations pamphlet (1) is not locatable on Ohio Edison’s website; and (2) does not contain the information required by the

---

<sup>107</sup> Ohio Adm. Code 4901:1-17-04(A) (emphasis added).

<sup>108</sup> PUCO No. 11, Sheet 4, 1<sup>st</sup> Revised Page 3 of 21 (emphasis added).

<sup>109</sup> Ohio Adm. Code. 4901:1-18-03(H); *In the Matter of the Complaint of Millicent Pruitt*, PUCO No. 84-324-EL-CSS, 1984 WL 992482, at \*2 (Dec. 18, 1984).

<sup>110</sup> *In the Complaint of Juanita Thompson v. Columbia Gas of Ohio, Inc.*, PUCO No. 04-22-GA-CSS, 2005 WL 1332611 at 17–18 (June 1, 2005) (“the Commission does not find any illegality with Columbia's actions in charging a security deposit under these circumstances or in directing its customer's payments toward that deposit.”).

Commission's Rules.<sup>111</sup>

Ohio Edison's Customer Rights & Obligations pamphlet is prominently located on its website at the following URL: <https://www.firstenergycorp.com/content/dam/customer/get-help/files/brochures/ohio-rights-obligations.pdf>.<sup>112</sup> This guide can easily be found via a simple Google search for "Ohio Edison Customer Rights & Obligations," or by navigating to Ohio Edison's homepage, where it is located under the "General Information" banner.<sup>113</sup> Ohio Edison's Customer Rights & Obligations pamphlet has been located at this URL since before Ohio Edison assessed the security deposit to Simballa's account.<sup>114</sup> Simballa's contention that Ohio Edison's Customer Rights & Obligations pamphlet is not located on its website is nothing short of frivolous.

Equally frivolous is her contention that Ohio Edison's Customer Rights & Obligations pamphlet does not comply with Ohio Adm. Code 4901:1-10-12. In relation to security deposits, Ohio Adm. Code 4901:1-10-12(B)(3) requires a description of "[t]he circumstances under which the electric utility may demand and/or hold security deposits." Ohio Edison's Customer Rights & Obligations pamphlet provides the following:

As a ... current customer, you may be asked to pay a security deposit if 1) you have failed to establish creditworthiness, 2) you have not paid in full the total amount due – or set up payment arrangements – for any given bill containing a previous balance, 3) you've received a disconnection notice due to nonpayment on two or more occasions over the past 12 months, 4) you are unable to provide a guarantor to secure payment of your bills, 5) your service has been disconnected during the last 12 months due to nonpayment, fraudulent practice, tampering or unauthorized reconnection, or 6) you are unable to provide a letter of credit from another electric utility.<sup>115</sup>

---

<sup>111</sup> Compl., ¶¶ 34–35; *In the Matter of R. Simballa and Mary Simballa v. Ohio Edison Company*, PUCO No. 22-1065-EL-CSS, Responses to Requests for Admissions, Interrogatories, and Production at 15–16, 20 (Nov. 22, 2023).

<sup>112</sup> Cottrill Testimony, Company Ex. B, 13:10–14.

<sup>113</sup> Cottrill Testimony, Company Ex. B, 13:15–14:5; [https://www.firstenergycorp.com/ohio\\_edison.html](https://www.firstenergycorp.com/ohio_edison.html).

<sup>114</sup> Cottrill Testimony, Company Ex. B, 14:6–15:11.

<sup>115</sup> Cottrill Testimony, Company Ex. B, Ex. A.

Accordingly, Ohio Edison's Customer Rights & Obligations pamphlet provides the requisite information required by Ohio Adm. Code 4901:1-10-12(B)(3).

#### IV. CONCLUSION

This entire matter is moot because Simballa agreed to dismiss this Complaint but now refuses to do so. Failure to enforce a settlement agreement will chill a utility's ability to engage in settlement discussions.

Even were the matter not moot, Simballa failed to carry her burden to prove her claims. She does not dispute that Ohio Edison was able to assess a security deposit to her account and had not filed an informal or formal complaint with the Commission. Accordingly, there is no authority to allow her to fail to pay the security deposit. Additionally, no statute or regulation prevents Ohio Edison from holding a security deposit for longer than 6 months. Finally, Ohio Edison's Customer Rights & Obligations pamphlet contains the Commission-required information and is located on Ohio Edison's website.

Based on the foregoing, the Commission should dismiss this matter with prejudice or rule in favor of Ohio Edison.

Respectfully submitted,

/s/ Christopher A. Rogers

Christopher A. Rogers (100781)  
BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP  
127 Public Square, Suite 4900  
Cleveland, Ohio 44114-1284  
Telephone: 216.363.4500  
Facsimile: 216.363.4588  
Email: [crogers@beneschlaw.com](mailto:crogers@beneschlaw.com)  
*Counsel for Ohio Edison Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the forgoing Initial Post-Hearing Brief  
was served upon the following by electronic and U.S. Mail on this 26th day of January 2024:

Mary C. Simballa  
42100 Cream Ridge Road  
Lisbon, OH 44432  
mary.simballa@gmail.com  
mary.simballa@simballalaw.com

/s/ Christopher A. Rogers  
Christopher A. Rogers  
Counsel for Respondent Ohio Edison Company  
23529263

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

**1/26/2024 3:26:50 PM**

**in**

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

Summary: Brief Ohio Edison Company's Initial Post-Hearing Brief electronically  
filed by Mr. Christopher A. Rogers on behalf of Ohio Edison Company.