

FILE

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

THOMAS AND DERRELL WILKES)

Complainants,)

vs.)

CASE NO. 09-682-EL-CSS

OHIO EDISON COMPANY)

Respondent.)

REPLY BRIEF OF OHIO EDISON COMPANY
IN SUPPORT OF MOTION TO DISMISS COMPLAINT
AND TO CANCEL ATTORNEY EXAMINER CONFERENCE

The opposition brief filed by Complainants Thomas and Derrell Wilkes (the "Wilkes") provides no reason for the Commission to assert jurisdiction over their complaint. The Wilkes do not dispute that the Mahoning County Court of Common Pleas had jurisdiction to hear claims arising from the enforcement of a public utility easement. Nor can they deny that the Court of Common Pleas has issued a final judgment on October 21, 2010, that orders the Wilkes to move their swimming pool and storage shed outside of Ohio Edison's right-of-way at the Wilkes' expense. Indeed, since the filing of the judgment, the Mahoning County Court of Common Pleas has issued an Order, dated December 1, 2010, that overrules the Wilkes' motion to stay execution of the judgment pending appeal to the Court of Appeals. (See Order of December 1, 2010) (copy attached hereto). Thus, the trial court has conclusively resolved the violation of the National Electrical Safety Code ("NESC") created by the Wilkes' swimming pool and storage shed by ordering the Wilkes to move their swimming pool and storage shed outside of Ohio Edison's right-of-way.

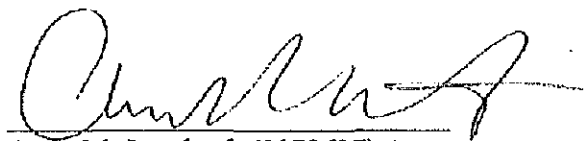
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Given this final judgment in Ohio Edison's favor, the administrative complaint that was filed by the Wilkes with the Public Utilities Commission of Ohio must be dismissed for lack of jurisdiction and failure to state a claim. Having acquired jurisdiction over the subject matter of this dispute, the Mahoning County Court of Common Pleas has the jurisdiction, *to the exclusion of all other tribunals*, to adjudicate upon the whole issue and to settle the rights of the parties. *State ex rel. Phillips v. Polcar* (1977), 50 Ohio St.3d 279, syllabus ¶ 1. Here, the Mahoning Court of Common Pleas has not only exercised its jurisdiction; it has entered a final judgment in Ohio Edison's favor. The Wilkes are bound by the judgment and cannot seek to circumvent the Court's ruling in another forum. *See Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Division of State Fire Marshal*, 115 Ohio St.3d, 2007-Ohio-5024, 875 N.E.2d 550. The Commission does not have the authority to reverse or overturn the Court's final judgment. Rather, the Wilkes' sole remedy is the appeal they have already filed with the Seventh District Court of Appeals. *See State ex rel. Ohio R.W. v. Sweeney*, 2009-Ohio-3743, ¶ 3, 2009 WL 2266940 (Ohio App. 8 Dist. July 28, 2009).

CONCLUSION

For these reasons, therefore, the Commission should dismiss the complaint and cancel the attorney examiner conference scheduled for December 15, 2010.

Respectfully submitted,



Anne M. Juterbock (0079637)

Attorney

FirstEnergy Corp.

76 South Main Street

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Phone: 330-374-6550

On behalf of Ohio Edison Company

CERTIFICATE OF SERVICE

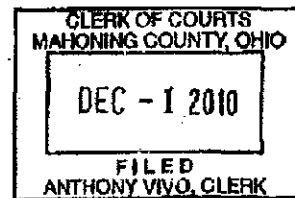
THIS IS TO CERTIFY that on this 7 day of December, 2010, a true and correct copy of the foregoing Brief was served by regular U.S. Mail, postage prepaid, upon Brett M. Mancino (counsel for Complainant, Thomas and Derrell Wilkes), 1360 East Ninth Street, 1000 IMG Center, Cleveland, Ohio 44114.

A handwritten signature in black ink, appearing to read 'Anne M. Juterbock', written over a horizontal line.

Anne M. Juterbock
Attorney

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

Case # 09 CV 1280



OHIO EDISON

Plaintiff

vs.

THOMAS E. WILKES, et al.,

Defendant

JUDGE JAMES C. EVANS

JUDGMENT ENTRY

This matter came before the Court on Defendants' Motion to Stay the Execution of Judgment and Plaintiff's Memorandum in Opposition to Defendants' Motion to Stay Execution of Judgment Pending Appeal.

Defendants' Motion to Stay Execution of Judgment Pending Appeal is hereby Overruled.

ALL THIS UNTIL FURTHER ORDER OF THE COURT.

November 24, 2010


JAMES C. EVANS, JUDGE

CLERK : COPY TO ALL COUNSEL
OR UNREPRESENTED PARTY.



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Attachment A