

FAX

FILE

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July 7, 2011

*Via Federal Express
and Facsimile (614-466-0313)*Ms. Renee J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 Broad Street
Columbus, OH 43215-3793RECEIVED-DOCKETING DIV
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PUCO

Dear Ms. Jenkins:

**Re: Motion to Dismiss of The Cleveland Electric Illuminating
Company and FirstEnergy Solutions
Case No. 11-3657-EL-CSS**

Enclosed for filing, please find the original and twelve (12) copies of the *Motion to Dismiss of The Cleveland Electric Illuminating Company and FirstEnergy Solutions* regarding the above-referenced case. Please file the enclosed *Motion*, time-stamping the two extras and returning them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,



Carrie M. Dunn

CMD/jhp
Enclosures
cc: Parties of Record

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

Michael Schroeder)	
Jeanne Schroeder)	
)	
Complainant,)	
)	
vs.)	Case No. 11-3657-EL-CSS
)	
The Cleveland Electric Illuminating)	
Company)	
)	
Respondent.)	

**MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND FIRSTENERGY
SOLUTIONS CORP.**

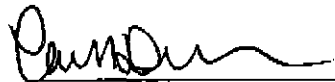
Michael and Jeanne Schroeder's ("Complainants") Complaint against Respondents The Cleveland Electric Illuminating Company ("CEI") and FirstEnergy Solutions Corp. ("FES") (collectively, "Respondents") alleges that CEI's failure to repair a power line caused damage to Complainants' property located at 14110 Watt Road, Novelty, Ohio 44072. As an initial matter, the Commission should dismiss FES from this case because the issue that is the subject of the Complaint has nothing to do with FES, a generation service provider. As such, Complainants do not (and cannot) allege any violation of statute or Commission authority by FES with respect to that issue. Simply put, FES is not an appropriate party to this Complaint.¹

Second, Respondents deny that CEI failed to repair a power line, which then caused damage to Complainants' property. Rather, the damage to Complainants' property was not due

¹ Complainants also consider NOPEC and FES to be one and the same. Counsel for Respondents does not represent NOPEC, however, for the same reasons above, the Commission should *sua sponte* dismiss NOPEC from this case.

to any fault on the part of Respondents. Third, Complainants' Complaint fails to state reasonable grounds for relief in that it fails to allege any facts supporting a claim of inadequate service and does not allege that Respondents have violated any statute, tariff provision, or any rule, regulation, or order of the Commission. Furthermore, Complainants seek damages, which the Commission does not have jurisdiction to award. For all of those reasons, further explained in the attached Memorandum in Support, the Commission should dismiss this case.

Respectfully submitted,



Carrie M. Dunn (#0076952)
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On behalf of The Cleveland Electric
Illuminating Company and FirstEnergy
Solutions Corp.

MEMORANDUM IN SUPPORT

I. FACTS ALLEGED IN THE COMPLAINT

In their Complaint, Complainants allege that on March 15, 2011, one of CEI's power lines fell and burned causing damage to Complainants' property. Complainants do not allege that Respondents have violated any statute, tariff provision, or any rule, regulation, or order of the Commission.

II. STANDARD OF REVIEW

A complaint under R.C. Section 4905.26 that fails to set forth reasonable grounds must be dismissed. R.C. § 4905.26. Filing a complaint does not automatically trigger a hearing under the statute. "Reasonable grounds for complaint must exist before the Public Utilities Commission, either upon its own initiative or upon the complaint of another party, can order a hearing, pursuant to R.C. 4905.26" *Ohio Util. Co. v. Pub. Util. Comm'n* (1979), 58 Ohio St.2d 153, syl. ¶ 2. If the facts alleged, even assuming they are true, do not set forth a cognizable claim, the complaint must be dismissed. *E.g., Lucas Cty. Comm'rs v. Pub. Util. Comm'n* (1997), 80 Ohio St.3d 344, 347.

III. LAW AND ARGUMENT

A. FES (and NOPEC) are not proper respondents to this case and should be dismissed.

Complainants assert their Complaint not only against CEI but also against NOPEC-FirstEnergy Solutions Corp. Complainants' Complaint has nothing to do with FES. FES is not an "electric utility" as defined by §4905.03(A)(4), O.R.C. and it does not provide distribution service. Rather, FES provides and markets competitive generation service. Indeed, FES does not own the power line at issue in this case. Other than denominating FES as a respondent, there

is not one mention of FES in the actual body of the Complaint. Thus, FES (and NOPEC) is not a proper respondent to this Complaint and must be dismissed.

B. The Complaint does not state reasonable grounds and should be dismissed.

In this case, Complainants' Complaint fails to state reasonable grounds for relief because it neither alleges any facts which would support a finding of inadequate service nor alleges that Respondents have violated any statute, tariff provision, or any rule, regulation, or order of the Commission. The Commission "view[s] 'reasonable grounds' as necessarily containing allegations of the receipt of inadequate service." *In the Matter of the Petition of J. Earl McCormick, et al. v. The Ohio Bell Tel. Co., et al.* (Sept. 27, 1990), PUCO Case No. 90-1256-TP-PEX, Entry ¶ 3. A complaint that "fails to allege any facts which would support a finding of inadequate service" does "not state[] reasonable grounds" and therefore "should be dismissed." *Id.* To state reasonable grounds, a complaint must allege "specific incidents of inadequate service" or "that a customer or group of customers has/have been provided inadequate service as a result of particular actions/inactions on the part of a public utility." *In the Matter of the Complaint of Ohio CARES v. FirstEnergy Corp.* (May 19, 1999), PUCO Case No. 98-1616-EL-CSS, Entry ¶ 7. Similarly, complaints containing "no allegation of a violation of any statute, Commission rule, or order" are also subject to dismissal. *Id.*

The Complaint does not contain a viable allegation that Respondents violated any statute, rule, or order. *See Ohio CARES*, Entry ¶ 7 (May 19, 1999). As in *McCormick*, the Complaint does not allege "any facts that would support a finding of inadequate service." Entry ¶ 3 (Sept. 27, 1990). As in *Ohio CARES*, the Complainants have "not alleged any specific incidents of inadequate service" or "particular actions/inactions on the part of a public utility." Entry ¶ 7 (May 19, 1999). And as in that case, the Complaint "contain[s] no allegation of a violation of any statute, Commission rule, or order." *Id.* This Complaint, like those, should be dismissed.

C. The Commission Does Not Have Jurisdiction to Grant the Relief Requested.

Complainants request compensation for damaged property. Complainants seek a form of relief beyond the jurisdiction of this Commission because the Commission is without jurisdiction to award damages. *See In the Matter of the Complaint of Bart's Cleaners, Inc. v. Cinergy Communications Co.* (July 22, 2004), PUCO Case No. 04-127-TP-CSS, Entry ¶ 9 (holding that "a request for damages . . . is beyond the jurisdiction of this Commission"). Complainants ask only for something the Commission cannot do is, quite literally, to state a claim for which relief cannot be granted.

IV. CONCLUSION

For all of those foregoing reasons, Respondents respectfully request that the Commission dismiss Complainants Complaint.

Respectfully submitted,

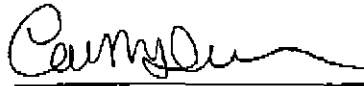


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On behalf of The Cleveland Electric
Illuminating Company and FirstEnergy
Solutions Corp.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Motion to Dismiss and Memorandum in Support of The Cleveland Electric Illuminating Company and FirstEnergy Solutions Corp. was served by regular U.S. Mail, postage prepaid, upon Michael and Jeanne Schroeder, 14110 Watt Road, Novelty, Ohio 44072



Carrie M. Dunn
Attorney