

FILE

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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

MARCENA UPP,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 11-5427-EL-CSS
	)	
THE TOLEDO EDISON COMPANY	)	
	)	
	)	
Respondent.	)	

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THE TOLEDO EDISON COMPANY'S MOTION TO DISMISS COMPLAINANT'S  
FAIR DEBT COLLECTION PRACTICES ACT CLAIM

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Pursuant to Rule 4901-9-01(C) of the Ohio Administrative Code, The Toledo Edison Company ("Toledo Edison") hereby moves to dismiss Complainant Marcena Upp's ("Complainant") Fair Debt Collection Practices Act ("FDCPA") claim. *See* 15 U.S.C. §§ 1692-1692p. As set forth more fully in the accompanying Memorandum In Support, the Public Utilities Commission of Ohio (the "Commission") lacks subject matter jurisdiction to address Complainant's FDCPA claim.

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DATED: November 14, 2011

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT  
THE TOLEDO EDISON COMPANY

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>MARCENA UPP,</b>	)	
	)	
<b>Complainant,</b>	)	
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<b>v.</b>	)	<b>Case No. 11-5427-EL-CSS</b>
	)	
<b>THE TOLEDO EDISON COMPANY</b>	)	
	)	
	)	
<b>Respondent.</b>	)	

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**MEMORANDUM IN SUPPORT OF THE TOLEDO EDISON COMPANY’S MOTION TO  
DISMISS COMPLAINANT’S FAIR DEBT COLLECTION PRACTICES ACT CLAIM**

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**I. INTRODUCTION**

Complainant has alleged in her Complaint filed against Respondent Toledo Edison that Toledo Edison has violated the FDCPA. (Compl. ¶ 4.) Pursuant to Rule 4901-9-01(C) of the Ohio Administrative Code, Toledo Edison hereby moves to dismiss Complainant’s FDCPA claim because the Commission lacks subject matter jurisdiction to address it.

**II. ARGUMENT**

**A. The Commission Lacks Subject Matter Jurisdiction To Address Fair Debt Collection Practices Act Claims.**

The Commission “is a statutory agency of broad, but yet limited, jurisdiction having only those powers and authorities as mandated in its statutes, primarily within Title 49, Revised Code.” *Irwin v. Ohio Edison Co.*, No. 84-1145-EL-CSS, Entry Dated March 24, 1986, page 4, 1986 Ohio PUCO LEXIS 1955, at \*9. The Commission generally has subject matter jurisdiction over “every public utility” that operates in Ohio and “the records and accounts of the business thereof done within this state.” Ohio Rev. Code § 4905.05. More specifically, the Commission

has subject matter jurisdiction over any “complaint in writing against any public utility by any person” regarding any rate charged or service rendered by the public utility. Ohio Rev. Code § 4905.26. *See also Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 151 (1991) (§ 4905.26 confers jurisdiction upon the Commission to hear all complaints pertaining to rates and service provided by a public utility).

“The Commission has no jurisdiction to decide claims made pursuant to the Fair Debt Collection Practices Act or tort law” even if they are brought against public utilities generally subject to the authority of the Commission. *Mustrie v. Columbia Gas of Ohio, Inc.*, No. 01-2472-GA-CSS, Entry Dated February 5, 2003, page 5, 2003 Ohio PUCO LEXIS 20, at \*12. Those claims must instead be brought “in a court of competent jurisdiction.” *Id.* *See also Milligan v. Ohio Bell Tel. Co.*, 56 Ohio St. 2d 191 (1978).

**B. Complainant’s Fair Debt Collection Practices Act Claim Must Be Dismissed.**

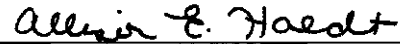
In her Complaint filed with the Commission, Complaint has asserted that Toledo Edison has violated the FDCPA, 15 U.S.C. §§ 1692-1692p. (Compl. ¶ 4.) Complainant alleges that bill collectors improperly contacted her at work, that cars drove by her home to harass her, that bill collectors failed to give her personal notice of her debt, and that bill collectors improperly communicated with her children. (*Id.* at ¶¶ 3, 8, 14, 17.) But Complainant’s FDCPA claim is not properly before the Commission because it does not have subject matter jurisdiction over FDCPA claims. Accordingly, Complainant’s FDCPA claim must be dismissed.

**III. CONCLUSION**

For the foregoing reasons, Toledo Edison respectfully requests that the Commission grant its Motion to Dismiss Complainant’s FDCPA claim.

DATED: November 14, 2011

Respectfully submitted,



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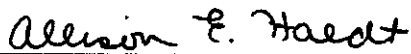
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ATTORNEYS FOR RESPONDENT  
THE TOLEDO EDISON COMPANY

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss and Memorandum in Support were sent by first class U.S. mail, postage prepaid, to the following person this 14th day of November, 2011:

Marcena Upp  
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\_\_\_\_\_  
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