

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

EUGENE HOLMES,)	
)	
Complainant,)	
)	Case No. 12-2980-EL-CSS
v.)	
)	
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,)	
)	
)	
Respondent.)	

**REPLY IN SUPPORT OF RESPONDENT THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY’S MOTION TO DISMISS**

I. INTRODUCTION

Complainant’s Response to The Cleveland Electric Illuminating Company’s (“CEI”) Motion to Dismiss (the “Response”) does not save the failure of the Complaint to state a reasonable basis for a claim against CEI. The Response misses its mark for two reasons. First, Complainant contends that the Commission should grant a hearing for this case because Complainant was affected by the power outage caused by Hurricane Sandy as a result of his care for Betty DeGirolamo. But Ohio Revised Code § 4905.26 does not provide unlimited standing for anyone affected by a power outage to bring a claim against a utility company. Standing for an inadequate service claim based on power outages is limited to customers and consumers of the utility’s services. Here, Complainant has not alleged (and does not dispute) that he is not a

customer or consumer of CEI's services. Thus, Complainant lacks standing to bring a claim against CEI for inadequate service.

Second, Complainant's request that the Commission should nonetheless order a hearing because Cuyahoga County has been declared a federal disaster area, which makes the county eligible for \$17 million dollars in storm-related aid, does not save his case from dismissal. The Commission's jurisdiction over inadequate service claims is a creature of statute. The designation of a county as a federal disaster area is not a basis for a claim under Section 4905.26. Therefore, for the reasons set forth in CEI's Memorandum in Support of its Motion to Dismiss and those set forth below, the Commission should dismiss Complainant's Complaint for failure to provide a reasonable basis for a claim against CEI.

II. ARGUMENT

A. Complainant's Failure To Allege That He Is A Customer Or Consumer Of CEI Requires Dismissal.

Complainant seeks a hearing under Ohio Revised Code § 4905.26. As set forth in CEI's Memorandum in Support of the Motion to Dismiss, Section 4905.26 limits the Commission's jurisdiction over complaint cases to "service-quality complaints by customers of Ohio utilities and consumers of electricity in Ohio, against the providers of that electricity." (CEI's Mem. in Support at 2, citing *S.G. Foods v. Cleveland Elec. Illum. Co.*, No. 04-28-EL-CSS, (Entry of March 7, 2006, at 24).) A claim for inadequate service under Section 4905.26 requires that the complainant allege that he is a customer or consumer of the utility's services. *Id.* As CEI previously demonstrated, the Complaint must be dismissed because Complainant failed to allege that he is either a customer or consumer of CEI's services.

In the Response, Complainant does not dispute that he is not, and has not been a customer or consumer of CEI's services. That alone should end the inquiry and the Complaint should be

dismissed. But even if the Commission considers Complainant's argument (based on facts that are not alleged in the Complaint) that he is a "directly and indirectly affected party" because he served as a "first responder" for the care of Betty DeGirolamo during the power outage, (Mem. Sup. Response at 1), the Complaint still fails to state a claim. Complainant's alleged hardships that he incurred as a result of having to tend to Ms. DeGirolamo during the power outage are not grounds for standing under Section 4905.26.

Indeed, in cases alleging inadequate service and where a complaining party's status as a customer or consumer is in doubt, the Commission has required the complainant to establish status as a customer or consumer before proceeding. *Vass v. Ohio Edison Co.*, No. 90-1391-EL-CSS (Entry of Sept. 27, 1990, at 3-4) (requiring complainant to establish that she was a customer in order to proceed with complaint); *S.G. Foods v. Cleveland Elec. Illum. Co.*, No. 04-28-EL-CSS, (Entry of March 7, 2006, at 24) (requiring complainants to amend their complaints to establish their status as Ohio customers and consumers and to identify the Ohio utility that provides their service). Here, that step is unnecessary. Complainant does not dispute that he is not a customer or consumer of CEI's services. Accordingly, the Complaint should be dismissed.

To hold otherwise would open the doors for anyone affected by a power outage to bring a claim for inadequate service and create the unwarranted and perhaps unlimited expansion of liability of utilities for claims arising from power outages. This result would contradict the language of Section 4905.26 and Ohio precedent that provides that a utility's duty to furnish electric service extends only to customers. *See Gin v. Yachanin*, 75 Ohio App. 3d 802 (Cuyahoga Cty. 1991) (holding that a public utility's duty to furnish adequate service extends only to customers).

Simply put, Complainant does not have standing to allege a claim based on the power outage caused by Hurricane Sandy. The Complaint should be dismissed.

B. The Federal Government's Designation Of Cuyahoga County As A Federal Disaster Area Does Not Grant Complainant A Right To A Hearing Before The Commission.

In his Response, Complainant contends that the Commission should grant a hearing in the matter because Cuyahoga County has been declared a federal disaster area, which makes Cuyahoga County eligible for \$17 million dollars in storm-related aid. (Response at 2.) But the designation of Cuyahoga County as a federal disaster area is not basis for an inadequate service claim under Section 4905.26. Thus, Complainant's arguments regarding the impact of such designation are not relevant.

Indeed, Complainant's reference to the \$17 million dollars in storm-related aid suggests that Complainant improperly seeks an award of damages from the Commission. The Commission has no authority to award monetary damages. *Sirocky v. Columbia Gas of Ohio, Inc.*, No. 10-3004-GA-CSS (Entry of February 28, 2011, at 2).

Accordingly, Complainant's arguments related to the federal designation of Cuyahoga County as a disaster area cannot save the Complaint's failure to state a reasonable basis for a claim. The Complaint should be dismissed.

III. CONCLUSION

For the foregoing reasons and the reasons demonstrated in CEI's previous Memorandum in Support, the Commission should grant CEI's Motion to Dismiss and dismiss the Complaint with prejudice.

Dated: January 14, 2013

Respectfully submitted,

s/ Lydia M. Floyd

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ATTORNEYS FOR RESPONDENT
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ILLUMINATING COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply in Support of Respondent The Cleveland Electric Illuminating Company's Motion To Dismiss were sent by first class U.S. mail, postage prepaid, to the following person this 14th day of January, 2013.

Eugene Holmes
23507 Royalton Road
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s/ Lydia M. Floyd
An Attorney for Respondent

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Summary: Reply in Support of the Cleveland Electric Illuminating Company's Motion to Dismiss electronically filed by Lydia M. Floyd on behalf of The Cleveland Electric Illuminating Company