

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	)	
Eugene Holmes,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 12-2980-EL-CSS
	)	
The Cleveland Electric Illuminating	)	
Company,	)	
	)	
Respondent.	)	

ENTRY

The Commission finds:

- (1) On November 14, 2012, the complainant, Eugene Holmes, filed a complaint against the respondent, The Cleveland Electric Illuminating Company (CEI), alleging that the respondent's actions, taken in response to power outages resulting from a recent storm, amount to an abuse of discretion.
- (2) By entry issued December 3, 2012, the respondent was granted an extension of time, until December 17, 2012, for filing its answer or other responsive pleading in this case. On December 27, 2012, CEI timely filed its answer, a motion to dismiss, and a memorandum in support of its motion to dismiss. The respondent's motion to dismiss, along with the memorandum submitted in support thereof are addressed in detail below.
- (3) By entry issued December 20, 2012, the complainant was granted an extension of time, until January 9, 2013, for filing a memorandum contra CEI's December 17, 2012, motion to dismiss. On January 7, 2013, the complainant filed such a memorandum contra. It is addressed in more detail below.
- (4) A prehearing settlement teleconference was held on January 6, 2013. However, the prehearing settlement

teleconference did not result in a resolution between the parties of any of the issues presented in this case.

- (5) Characterizing it as "a general complaint about the widespread power outages caused by Hurricane Sandy," CEI asserts that the complaint in this case should be dismissed for two reasons: first, because the complainant lacks standing to bring his claim; and second, because the complainant fails to allege that CEI violated any statute, Commission rule, or tariff provision. In support of the first argument, CEI claims that the complainant is not, and has not been a customer of CEI; that he does not live within CEI's service territory; and that he does not allege he was harmed either by a power outage or CEI's efforts to restore power outages caused by the storm. Moreover, submits CEI, the complainant lacks standing to bring an action based on another customer's interest or the interests of the general public.

CEI argues that, to allow this case to proceed based on the complainant's allegations that "the public needs answers" and that the alleged "abuse of discretion" is a matter of "great public interest" would be tantamount to turning this case into a class action. CEI cites legal authority in claiming that it is well established that the Commission does not allow class actions.

As for its second argument, CEI avers that the Commission routinely dismisses cases, finding that they fail to state reasonable grounds for complaint, where, as here, the complainant has failed to allege a violation of a statute, or a Commission rule or precedent. As a final matter, CEI submits that the Commission has consistently held both: (1) that the fact that an outage occurs does not constitute inadequate service and (2) that an electric utility cannot guarantee that outages and momentary interruptions will not occur.

- (6) In his memorandum contra CEI's motion to dismiss, the complainant claims that he "is a directly and indirectly affected party" inasmuch as he "provides support for" his 80-year old aunt, who happens to be a customer of the respondent, and who needs such support in order to live independently. Further explaining, Mr. Holmes alleges

that he and his wife "are the first responders in the event of any loss of power, and back up battery failure, etc." Based on assurances that he claims he received from the respondent in a phone call that occurred on October 29, 2012, that power was expected to be restored to his aunt's address within a two or three day period, his aunt decided to stay in her home throughout the duration of the power outage. In reality, alleges the complainant, the power outage lasted seven days at his aunt's address, leading to constant calling and numerous trips, during this period, between the complainant's home, in Columbia Station, Ohio, and his aunt's home, in Parma, Ohio, until power was at last restored on November 4, 2012.

Beyond this, the complainant notes that, even if the Commission determines that the complainant lacks standing to bring this case on his own, it is within the Commission's authority, to order, upon its own initiative, that a hearing be held under Section 4905.26, Revised Code. The complainant requests that the Commission should exercise its own discretion to set such a hearing, based upon the respondent's alleged "abuse of discretion and fiduciary lapse of same" which, it is further alleged, resulted in the complainant, as a directly affected party, suffering financial, emotional, and other hardships "due directly to the respondent's actions and inactions." The complainant urges the Commission to recognize that his complaint is as a matter "of great public interest," particularly because it entails alleged events occurring within a federally declared disaster area.<sup>1</sup>

- (7) On January 20, 2013, the respondent filed a reply to the complainant's memorandum contra CEI's motion to dismiss. The respondent reiterates its position that dismissal of this case is now appropriate, both because the complainant, as neither a customer nor consumer of CEI's utility service, lacks standing to bring a claim against CEI for inadequate service; and also because the complainant's arguments related to the federal designation of Cuyahoga

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<sup>1</sup> The complainant alleges that, due to Hurricane Sandy, Cuyahoga County, Ohio, was declared by the President of the United States to be a federal disaster area. His pleading includes a copy of a newspaper article purporting to have appeared in January 4, 2013 edition of The Plain Dealer, which reported that this declaration was made by the President on Thursday, January 3, 2013.

County as a disaster area following Hurricane Sandy, does not make up for the complainant's failure to state a reasonable basis for a complaint under Section 4905.26 Revised Code.

- (8) Upon review of the record as a whole, the Commission finds that, because the complainant is neither a customer nor a consumer of any utility service provided by CEI, he lacks standing to bring a complaint, on his own behalf, alleging inadequate service against CEI, under Section 4905.26, Revised Code. There is no indication of record that the complainant is an attorney licensed to practice law in the state of Ohio who, as such, holds the requisite authority to represent the legal interests of any persons other than himself before this Commission. For this reason, it is also true that the complainant lacks standing to bring the complaint he has filed in this case on behalf of any other person, besides himself (including his aunt who happens to be a customer of CEI). Consequently, CEI's motion to dismiss should be granted and this case should be dismissed based on the complainant's lack of standing to bring it.
- (9) Secondly, upon consideration of all of the allegations brought by the complainant considered as a whole, the Commission concludes that complainant has failed to present any reason why the Commission should proceed further with this case, on its own motion, such as by scheduling a hearing pursuant to Section 4905.26, Revised Code. The complaint, as filed, does not allege a violation by the respondent of any statute, public policy, Commission rule, or precedent. As such, it fails to state reasonable grounds for complaint against CEI or any other public utility. As such, it presents no grounds for the Commission, on its own initiative, to launch any investigatory or other specific regulatory proceeding in response to the allegations made in this case by the complainant. Therefore, the Commission denies the complainant's request that the Commission should, in the event that it finds the complainant lacks standing to bring this complaint himself, proceed further with this case on its own motion.

It is, therefore,

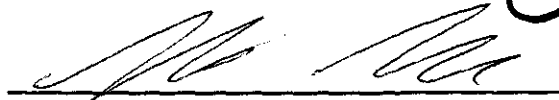
ORDERED, That, in accordance with the above findings, CEI's motion to dismiss this case is granted, and this case is hereby dismissed, based on the complainant's lack of standing to bring the complaint he has filed in this case. It is, further,

ORDERED, That, in accordance with the above findings, the complainant's request to have the Commission, in the event that it finds the complainant lacks standing to bring this complaint himself, proceed further with this case, on its own initiative, is denied. It is, further,

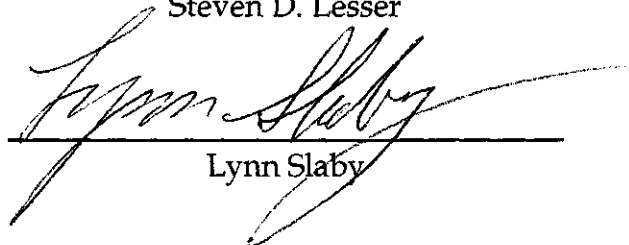
ORDERED, That a copy of this entry be served upon all parties of record.

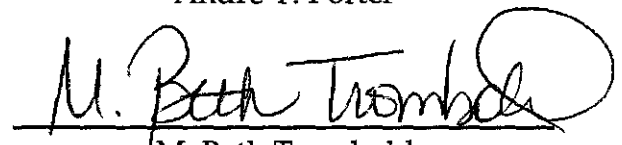
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

  
Andre T. Porter

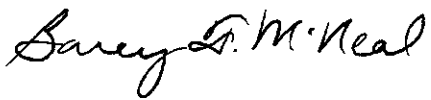
  
Lynn Slaby

  
M. Beth Trombold

DEF/sc

Entered in the Journal

**MAR 20 2013**

  
Barcy F. McNeal  
Secretary