

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Board of Commissioners of)	
Lucas County)	
)	
Complainant,)	
)	Case No. 15-08896-EL-CSS
v.)	
)	
FirstEnergy Solutions, Corp.,)	
)	
Respondent.)	

LUCAS COUNTY MEMORANDUM CONTRA
FES MOTION TO DISMISS

I. Background and Procedural History

Lucas County filed a Complaint and Motion for Relief with the Commission on May 8, 2015. The Complaint arose from respondent First Energy Solutions (FES) attempts to collect “polar vortex charges.” It was finally triggered by the collection letters sent from two law firms representing FES, attached to the Complaint.

Respondent FES filed an Answer and a Motion to Dismiss on May 29, 2015. The Motion alleges that the matter is “purely contractual” and lies outside the scope of the Commission.

II. Argument

FES in its motion states that Lucas County’s complaint is the most recent of a number of “polar vortex cases” pending before the Commission. Lucas County believes the first of these is case number 14-1182 brought by the Ohio Schools Council and other

school groups collectively called Power4Schools. (Here, the “Schools Case”). As FES notes, in each case it has filed a Motion to Dismiss and the issues were fully briefed and are pending decision. FES incorporates its early briefs by reference into the record here. At page 3 states it will not supplement its brief here unless Lucas County notes some distinguishing factor in our reply.

Lucas County believes this is a prudent approach. The outcome in the Schools Case and other polar vortex cases regarding the jurisdictional issue will certainly be the lode stone, if not controlling here. For the purposes of this motion, the County at this point will cite no factors that would distinguish it from the School Case and the other polar vortex cases at docket numbers 14-1610- EL-CSS, 14-1944-EL-CSS, and 15-0455-EL-CSS. (But, if the cases are not uniformly decided, then the County reserves its right to do so at a later stage, if necessary.)

FES has incorporated its prior briefs. In turn, Lucas County incorporates by reference the briefs and pleadings that oppose FES’s Motions to Dismiss in the polar vortex cases cited above.

Lucas County’s own independent review of Ohio law also concludes that jurisdiction lies with the Commission under the Supreme Court’s current two part test. See for example *DiFranco v. First Energy Corp.* 134 Ohio St. 3d 144, 2012-Ohio-5445 and other cases cited in the incorporated briefs. In sum, FES’s characterization of this matter as “pure contract” issue and outside the Commission’s purview is grossly in error.

III. Conclusion

For the reasons set forth here and in the incorporated memorandums and briefings from the earlier polar vortex cases, FES’s motion to dismiss should be denied.

Lucas County, therefore, requests that the motion be denied.

Respectfully submitted,

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LUCAS COUNTY PROSECUTOR

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(Both counsel are willing to accept service by email).

CERTIFICATE OF SERVICE

The above Memorandum Contra FES Motion to Dismiss was filed on the Public Utilities Commission of Ohio's Docketing Information System on June 8, 2015. The PUCO's e-filing system will electronically serve notice of the filing of this document and the undersigned will have served copies to the parties below.

/s/Thomas R. Hays

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Summary: Brief Memorandum Contra First Energy Corp. Motion to Dismiss and Service Notice electronically filed by Mr. Thomas R. Hays on behalf of Lucas County Board of Commissioners