

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
MARTIN PAINTING,**

**COMPLAINANT,**

**v.**

**CASE No. 14-1270-EL-CSS**

**FIRSTENERGY SOLUTIONS CORP.,**

**RESPONDENT.**

**ENTRY**

Entered in the Journal on May 24, 2016

{¶ 1} In this Entry, the attorney examiner finds that the complaint filed by Martin Painting against FirstEnergy Solutions Corp. should be scheduled for a settlement conference and that the motion to dismiss filed by FirstEnergy Solutions Corp. should be denied at this time.

{¶ 2} FirstEnergy Solutions Corp. (FES) is an electric services company as defined in R.C. 4928.01(A)(9), and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory. Pursuant to R.C. 4928.16, the Commission has jurisdiction under R.C. 4905.26, upon complaint of any person, regarding the provision by an electric services company subject to certification under R.C. 4928.08 of any service for which it is subject to certification.

{¶ 4} On July 17, 2014, Martin Painting filed a complaint against FES. In its complaint, Martin Painting alleges it was wrongfully billed an RTO expense surcharge.

{¶ 5} On August 7, 2014, FES filed an answer to the complaint, denying all allegations.

{¶ 6} Thereafter, on September 16, 2014, FES filed a motion to dismiss the complaint and a memorandum in support. According to FES, the Commission lacks jurisdiction to hear the claims.

{¶ 7} At this time, the attorney examiner finds that the motion to dismiss the complaint should be denied. As the Commission has previously found with similar complaints, the issues are within the jurisdiction of the Commission. *Ohio Schools Counsel, et al., v. FirstEnergy Solutions Corp.*, Case No. 14-1182-EL-CSS, Entry (Nov. 18, 2015).

{¶ 8} Accordingly, the attorney examiner finds that a settlement conference should be scheduled in this matter to discuss settlement of the issues. The settlement conference in this matter is scheduled for July 12, 2016, at 1:00 p.m., at the offices of the Commission, 180 East Broad Street, 12th Floor, Conference Room 1247, Columbus, Ohio 43215-3793. If it becomes apparent that the parties are not likely to settle this matter, the parties should be prepared to discuss a procedural schedule to facilitate the timely and efficient processing of this complaint.

{¶ 9} The attorney examiner notes that Ohio Adm.Code 4901-1-08(A) requires that corporations appearing before the Commission must be represented by a licensed attorney. For purposes of the settlement conference, however, Ohio Adm.Code 4901-1-08(D) permits anyone with the requisite authority to settle the issues in the case to stand in for a corporation.

{¶ 10} Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the public utility shall investigate the issues raised in the complaint prior to the settlement conference, and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the authority to settle those issues. In addition, parties attending the settlement conference should bring with them all documents relevant to this matter.

{¶ 11} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That FES' motion to dismiss be denied. It is, further,

{¶ 14} ORDERED, That a settlement conference is scheduled as set forth in Paragraph 8. It is, further,

{¶ 15} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy W. Chiles

By: Mandy Willey Chiles  
Attorney Examiner

JRJ/sc

**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 14-1270-EL-CSS**

Summary: Attorney Examiner Entry finding that the complaint filed by Martin Painting against FirstEnergy Solutions Corp. should be scheduled for a settlement conference and that the motion to dismiss should be denied. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio