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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint of Triple A Sport Wears, Inc.,)	
)	
Complainant,)	
)	
v.)	Case No. 05-1020-EL-CSS
)	Consolidated With Case Nos.:
FirstEnergy Corp., and American Transmission Systems, Inc.,)	04-28-EL-CSS
)	05-803-EL-CSS
)	05-1011-EL-CSS
Respondents.)	05-1012-EL-CSS
)	05-1014-EL-CSS

RENEWED MOTION TO DISMISS COMPLAINT OF TRIPLE A SPORT WEARS, INC.

Respondents, pursuant to Rule 4901-9-01(B) of the Commission's Rules of Practice, respectfully renew their motion to dismiss the Complaint of Triple A Sport Wears, Inc. Complainant, a New York corporation, alleges that it is customer of Consolidated Edison Company of New York. As explained in the Commission's Entry of March 7, 2006, the Commission's jurisdiction is limited to complaints by Ohio customers against Ohio utilities. Accordingly, the instant Complaint must be dismissed.

A Memorandum in Support is attached to this Motion.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Renewed Motion to Dismiss Complaint of Triple A Sport Wears, Inc. was mailed by ordinary U.S. mail to the following persons this 13th day of June, 2006.

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**MEMORANDUM IN SUPPORT OF RENEWED MOTION
TO DISMISS COMPLAINT OF TRIPLE A SPORT WEARS, INC.**

Complainant is a New York Corporation and a "customer of Consolidated Edison." (Complaint, ¶ 3.) Complainant alleges that as a result of a power outage at its place of business on August 14, 2003, Complainant suffered damages because of the acts of unknown criminals, who broke into and robbed Complainant's place of business. (*Id.*, ¶ 33.) The only Respondents named in the Complaint are FirstEnergy Corp. and American Transmission Systems, Inc. ("ATSI").

Respondents filed a motion to dismiss the Complaint on September 6, 2005. Respondents' argued that FirstEnergy Corp. should be dismissed because it is not a public utility, and that ATSI should be dismissed because Complainant is not and was not an ATSI customer. Because Complainant was not a customer, ATSI owed no duty to Complainant.

The Commission decided Respondents' motion in an Entry dated March 7, 2006. The March 7 Entry also consolidated all cases presently before the Commission arising from the August 14, 2003 outage. Many of these consolidated cases involve claims by non-customers. In discussing its jurisdiction over service-related complaints by non-customers, the Commission read R.C. 4905.26 "to limit the Commission's jurisdiction to hearing service-quality complaints by customers of Ohio utilities and consumers of electricity in Ohio, against the providers of that electricity. In the event of a complaint by any other category of person, the respondent would not be in the business of supplying electricity to a consumer within this state." (March 7, 2006 Entry, ¶ 51). The Commission further stated, "Unfortunately . . . the Triple A complaint . . . [does] not clearly set forth the complainants' status Ohio customers or consumers at the time of the blackout . . ." (*Id.*, ¶ 52.) The Commission ultimately determined that "it will allow any of the complainants in the consolidated cases to be appropriately amended, within 14 days of the date of the entry. *Following that date, the complaint by any complainant that is not clearly identified as an Ohio customer or consumer will be dismissed.*" (*Id.*, emphasis added.) Complainant has not filed an amended pleading, and the time to do so has expired.

The March 7 Entry requires dismissal of the Complaint. Complainant is "clearly identified" in the Complaint as a New York corporation and customer of Consolidated Edison. (Complaint, ¶ 3.) The Commission may take administrative notice that Consolidated Edison serves customers in New York and not in Ohio. The Complaint,

therefore, fails to plead a cause of action by an Ohio customer or consumer against an Ohio public utility. The Complaint must therefore be dismissed.

Respectfully submitted,



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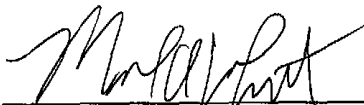
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