

**FILE**

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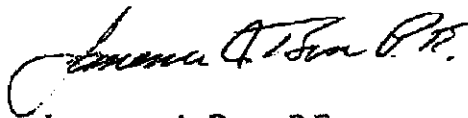
**FAX**

Reference Case No. 05-1281-EL-CSS

Message:

Attached is Motion To Dismiss Application For Rehearing from First Energy.  
Please call me if there is a problem of receiving this facsimile or there are any substantive questions.

Regards...



Lawrence A. Boros P.E.  
216-952-7287

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Before  
The Public Utilities Commission Of Ohio

Lawrence A. Boros P.E.  
5883 Dornwood Drive  
Mentor, Ohio 44060  
440-257-1433

Complainant

v.

First Energy Corporation  
aka The Illuminating Company

Respondent

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) Reference Case No. 05-1281-EL-CSS  
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MOTION TO DISMISS APPLICATION FOR REHEARING  
FROM LAWRENCE A. BOROS, P. E.  
COMPLAINANT

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1 I object to any rehearing of this case as it would not serve to benefit either First  
2 Energy/CEI or the Public and request that the Commission dismiss First Energy/CEI's  
3 Application For Rehearing.

4

5 In it's Application For Rehearing, First Energy/CEI makes a number of inaccurate and  
6 misleading statements that I will comment on in the order they are presented. Since my  
7 copy of the Application did not have line numbers on each page, I manually added them.

8

9 On page 1 line 5 & 6 regarding post top shielded light fixtures, First Energy makes the  
10 statement .."even though 75% of the market in North America does not include this type  
11 of fixture." This statement verifies the "lowest common denominator" logic that First  
12 Energy seems to follow rather than the logic of using best industry practices.

13

14 On page 1 line 8 & 9, First Energy states that I brought a complaint against First Energy  
15 related to service for which I do not qualify which implies that I am not entitled to any  
16 remedy because I personally do not have a lighting contract with First Energy. It seems  
17 that the term "Public" has no meaning to First Energy. I am a member of the Public that  
18 lives and works within the jurisdiction served by First Energy and have no choice but to  
19 pay First Energy/CEI for electrical service through direct billing or through taxes and  
20 assessments if levied by municipalities or other governmental agents for the Public with  
21 the Public as the intended beneficiary.

22

1 On page 1 lines 9 through 11 and page 2 line 1, First Energy implies that driving in the  
2 center or left of center for a short distance on a residential street without a center line is  
3 somehow very unusual and therefore implies that I am to blame for the near incident of  
4 hitting a boy on a skate board with my automobile. I would like to point out that when  
5 vehicles are parked at the curb, you have to drive in the center or left of center to avoid  
6 hitting them. Driving in the center or left of center on a narrow residential street that  
7 allows curb parking is a necessary, practical, and legal accommodation. The key issue  
8 remains unchanged. I would have seen the boy in my headlights at a distance without the  
9 existence of a brilliant unshielded post top mounted residential streetlight.

10

11 On page 2 lines 3 to 11, the two statements made by First Energy are again nonsensical. I  
12 am a public customer of First Energy and rely upon that company to provide best  
13 industry practice in many areas including public street lighting. The second statement  
14 again implies that left on its own, First Energy would prefer the status quo rather than  
15 best practices.

16

17 On page 2 lines 12 to 14, First Energy states that the Commission's decision has terrible  
18 unintended possible consequences legal or otherwise that would somehow negatively  
19 impact the Public. Again, this is nonsensical as will be discussed later.

20

21 On page 2 lines 14 to 18, First Energy states that regardless of any subsequent decision  
22 on its appeal, it will provide a shielded post top light fixture in its tariffs as required by  
23 the April 28<sup>th</sup> order. It sure would have saved a lot of time if this statement had been

1 made prior to October 2005. Unfortunately, regarding the public interest, First Energy  
2 seems to do only what it is compelled to do. I believe that changing the existing order  
3 could bring unintended and undesired consequences.

4

5 On page 3 line 1 through page 5 line 3, First Energy attempts to disenfranchise myself  
6 and any other member of the Public as incidental and unintended beneficiaries of street  
7 lighting. The questions must be asked, if the Public is an incidental and unintended  
8 beneficiary of street lighting then why is the Public taxed and assessed to pay for this  
9 benefit and why have street lighting at all if the Public is not the intended beneficiary?  
10 Certainly, street lighting is an expensive unnecessary service if intended only for the  
11 virtual entities of the municipalities acting as agents who contract for this service in the  
12 Public's behalf. Unlike the Public, virtual entities do not require lighting because they  
13 have no vision and are not ambulatory. Perhaps I should have said virtual entities seldom  
14 have vision, particularly big ones. Logically then, the Public is the intended beneficiary  
15 of the street lighting that they are ultimately assessed for.

16

17 On page 5 line 4 to page 6 line 6, the statements of First Energy imply that it would be  
18 more inclined to provide shielded post top street lighting if I had actually hit the kid on  
19 his skate board and/or had a heart attack as a result of the near miss. This is absurd.  
20 Certainly I will never forget this near life altering event and the feeling of panic seeing  
21 that kid inches off of my left fender. And certainly as I grow older and my vision  
22 deteriorates further, unshielded high intensity street lighting will create more stress and  
23 uncertainty while driving at night. Preventable mental stress can be considered injury.

1    Apparently the folks at First Energy don't plan on growing older and will tolerate  
2    unnecessary glare.

3

4    On page 6 lines 7 to 17, All three forms of light pollution (disability glare, light trespass,  
5    and sky glow) are generated by the same unshielded high intensity lighting. Certainly my  
6    complaint and the subsequent decision of the Commission will not alleviate all light  
7    pollution. Over time, education (on the available Public benefit of shielded lighting) and  
8    an increasing number of municipal lighting ordinances and township zoning will  
9    continually reduce all three forms of light pollution. And certainly electric utility  
10    companies will necessarily play a large roll in facilitating the reduction in light pollution  
11    in all of its forms. This continuing process of improving conspicuity from outdoor  
12    lighting started some years ago and the Mentor and South Euclid lighting ordinances are  
13    part of that trend along with the national model lighting ordinance currently being drafted  
14    by IESNA/IDA.

15

16    On page 6 line 18 through page 7 line 13, without choice, I am a customer of First  
17    Energy/CEI and have been and continue to be affected by the deliberate lack of  
18    availability of optional cut-off post top lighting in First Energy's service area in which I  
19    reside and work. And as previously shown, being a member of the Public, I am also an  
20    intended beneficiary of the residential street lighting that First Energy is paid to provide  
21    through taxes and assessments by municipal and other governmental agents for the Public  
22    that includes me.

23

1 On page 7 lines 13 through 22, First Energy implies that the Commission's decision on  
2 standing will allow any individual member of the Public to complain about any problem  
3 that is substantive or frivolous regarding any electrical service. And by granting  
4 standing on this complaint, First Energy will have to ward off obviously frivolous  
5 complaints in the future. This implication seems to show a small faith in the roll of the  
6 Attorney Examiner. While it is doubtful that many individuals would survive the  
7 tribulations afforded by First Energy, certainly those complaints like mine involving  
8 substantive individual and Public welfare issues should, on their merit, be granted  
9 standing and allowed to proceed through due process.

10

11 On page 8 lines 1 through 9, the Commission did not err as a matter of law. 4905.26 and  
12 4905.37 ORC provide the Commission with sufficient latitude to weigh the merits of  
13 each complaint and decide on the basis of the complaint, or on its own, if rule or  
14 regulation changes should be made.

15

16 On page 8 lines 10 through 24, First Energy blatantly attempts to cloud and confuse the  
17 definition of *cut-off and shielded street lighting*. The *cut-off lighting* that it currently  
18 offers is limited to pole mounted (cobra head) streetlights and not post top mounted  
19 streetlights. Pole mounted streetlights may be of a cut-off configuration or shielded with  
20 an attached shield or both cut-off and shielded. As mentioned in my testimony, the pole  
21 mounted cut-off streetlights must be available to satisfy the requirements of minimizing  
22 up lighting around airports. The city of Mentor has already requested and received cut-  
23 off pole mounted street lighting starting some time ago. Therefore this type of lighting

1 was never an issue. The complaint deals exclusively with the total lack of availability of  
2 the option of cut-off post top mounted residential street lights.

3

4 On page 9 lines 1 through 14, First Energy states that I am trying to decide what is best  
5 for everyone else. Since this is what First Energy is doing by not offering the choice of  
6 cut-off post top mounted residential street lighting, their statement seems disturbingly  
7 ironic.

8

9 On page 9 lines 15 through page 10 line 22, it seems that First Energy has at least become  
10 educated on the effects of glare. Although there were other contributory factors to the  
11 inability to see the boy on the skateboard, the fact remains that without the brilliant  
12 unshielded post top mounted residential street light, I would have seen the boy in my  
13 headlights at a distance. As in most accidents, including the blackout of 2003, there are  
14 usually several situational occurrences that contribute in varying degrees to the outcome  
15 of an accidental event.

16

17 On page 10 line 23 to page 11 line 5, First Energy again digs the "lowest common  
18 denominator" hole deeper by repeating that it would rather follow behind the industry on  
19 best practices and stating that it is capable of following IESNA Recommended Practices  
20 but as we know without having recognized expertise on board.

21



1 On page 11 lines 6 through 16, First Energy again intentionally attempts to confuse the  
2 difference between pole mounted "cobra head" streetlights and post top mounted street  
3 lights.

4  
5 On page 11 line 17 to page 12 line 7, First Energy exaggerates to the extreme when it  
6 refers to a requested option as a decision for all others. By denying an improved option  
7 First Energy is in effect making a decision for all others. The Commission, after  
8 understanding the facts of this complaint, was unanimously proactive in ordering that cut-  
9 off post top mounted residential street lights be offered as an option by First Energy to  
10 the Public through their agents, their respective municipalities.

11

12 On page 12 lines 8 through 14, First Energy raises an interesting point. Should a utility  
13 without recognized lighting expertise that lags behind industry best practices be liable for  
14 accidents where glare-full lighting was a contributory factor. I was genuinely surprised  
15 by the media attention that this Commission decision garnered. Neither I nor any of my  
16 acquaintances had any contact with the media regarding this decision. Yet somehow the  
17 media found it and the Commission decision seemed to have struck a popular chord.  
18 Public awareness of unnecessary glare-full lighting is increasing and all providers of  
19 outdoor lighting, be they electric utilities, electrical contractors, or individuals, need to be  
20 cognizant of this issue. Generally in matters of liability the questions asked are:

- 21 1. What did you find out?  
22 2. When did you find out about it?  
23 3. What did you do when you found out about it?

1 From a liability perspective, nothing from this time forward will change the first two  
2 answers to those questions for First Energy.

3

4 In Summary:

5 There are no valid reasons to have a rehearing on this case as it would not serve to benefit  
6 either First Energy or the Public. Therefore I object to any rehearing of this case and ask  
7 that First Energy's Application be dismissed. Throughout its Application For Rehearing,  
8 First Energy has contorted and confused the facts in an effort that appears to be driven  
9 primarily by narcissism and a bruised ego. Although First Energy states that it will  
10 provide cut-off post top residential street lighting regardless of the outcome of this  
11 Application, this is truly a moot point at this time. And I believe that changing the  
12 existing order could bring unintended and undesired consequences.

13

14 As a point of information, my copy of the Application For Rehearing arrived by mail on  
15 Wednesday May 30<sup>th</sup> while Docketing inexplicably received a hand delivered copy on  
16 Friday May 25<sup>th</sup>, which is five days earlier. In a telephone call to PUCO it was explained  
17 that I had ten days after receipt of the Application by Docketing to respond with a  
18 submission to Docketing. Therefore I had five days less to prepare this Motion To  
19 Dismiss as a response. Consequently I have not had sufficient time for feedback from  
20 legal counsel and am submitting this response on the tenth day and requesting that the  
21 Commission allow me an additional three days to provide an amended version if advised  
22 by counsel.

23

1 As previously mentioned, up to this point in time I have not had contact with the media.

2 Given their demonstrated receptivity, that may change.

3

4 In review, my complaint to the Public Utilities Commission of Ohio asked for two very

5 simple and modest remedies by the First Energy/ Cleveland Electric Illuminating

6 Company:

7 1. It requested that the GE Salem Model SEMT residential HID street light fixtures (or

8 other similar cutoff versions of residential post top street lighting fixtures) be made

9 available at a fair and reasonable cost under existing or amended tariffs.

10



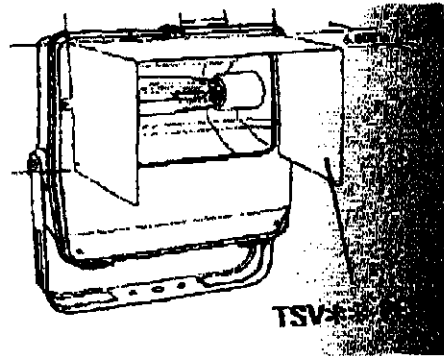
11

12 and

13 2. That optional shielding on utility-supplied un-metered HID floodlights be made

14 available at a fair and reasonable cost under existing or amended tariffs. Such shielding

15 is available from floodlight manufacturers for most of the models they produce.



1

2 I did not request that all new lighting be cut off or shielded. I did not request that all  
3 present lighting be immediately upgraded. I am simply asked that reasonable lighting  
4 options that reduce glare and improve the quality of lighting be available at a fair cost to  
5 those who request their installation.

6

7 There are numerous organizations interested in efficient, economical and comfortable  
8 outdoor lighting. The IESNA, of course, is well aware of poor outdoor lighting and its  
9 Recommended Practices manuals increasingly refer to the design of lighting applications  
10 to reduce the negative effects of glare and other forms of light pollution including light  
11 trespass and sky glow. Lighting engineers appreciate well-designed lighting applications  
12 that provide well-lit conspicuous pedestrian and vehicular environments free from  
13 counterproductive disability glare. Many of these lighting engineers also belong to the  
14 International Dark Sky Association (IDA.) The primary purpose of the IDA (11,000+  
15 members) is to reduce light pollution which is defined as any adverse effect of artificial  
16 light including sky glow, glare, light trespass, light clutter, decreased visibility at night,  
17 and energy waste.

18

1 The Ohio Turnpike Commission has installed cutoff fixtures at many of its interchanges  
2 and rest stops. If you travel around Ohio's urban areas, you will see numerous  
3 installations of cut-off and shielded lighting. While Ohio appears to have comparatively  
4 little cutoff street lighting as yet, just about all of the street lighting in California is cutoff.  
5 Electric utilities such as Progress Energy of the Carolinas and Florida and the Long  
6 Island Power Authority install and promote cutoff fixtures as the default configuration.  
7 The Federal Aviation Administration mandates cut off street lights all around airports to  
8 reduce up light that could make landing in fog much more dangerous.

9

10 The Federal Energy Policy Act of 2005 mandates that mercury lamp HID ballasts not be  
11 sold as of 1/1/08. This means that there is a rare opportunity to change out thousands of  
12 street lighting fixtures which use obsolete mercury vapor lamps and replace them with  
13 modern more-efficient, less glaring fixtures that use high pressure sodium or metal halide  
14 lamps. This change over to more efficient lighting could yield significant energy savings  
15 through the use of lower wattage fixtures. First Energy has not yet acknowledged this  
16 mandate.

17

18 We have a rational tradition of shielding the direct light from incandescent bulbs to  
19 reduce glare in our homes and offices. We also have a rational tradition of shielding the  
20 direct light from HID bulbs within indoor facilities such as offices, conference rooms,  
21 retail stores, and arenas. At the same time we have an irrational tradition of not shielding  
22 the direct light from outdoor HID bulbs at night. As a result much of our nighttime  
23 lighting generates disability glare that compromises our ability to see effectively.

1

2 Reiterating, it seems that without the intervention of the Public Utilities Commission of  
3 Ohio First Energy/CEI would not provide the requested modest remedies of optional  
4 cutoff post top residential street lighting and shields for floodlights which are the  
5 minimum lighting option improvements that should be considered.

6

7 Aside from this complaint, I again recommend that the Commission at some time in the  
8 future consider making low glare cutoff versions of pole mounted and post top mounted  
9 streetlights and shielded floodlights the default configurations for all new and  
10 replacement un-metered lighting throughout Ohio. Since existing lighting fixtures would  
11 be upgraded as they fail and are naturally replaced, the additional costs over time, if any,  
12 would be minimal.

13

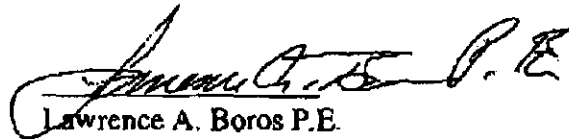
14 I still believe that for all of us the real issue is how can the knowledge, awareness, and  
15 attitudes of the key people within First Energy be changed so that they naturally support  
16 the consistent improvement of the lighting applications technology that First Energy  
17 provides to the public in its service areas.

18

19 In closing, it is now even more difficult for me to understand why an electric utility that  
20 spends considerable financial resources in media advertising creating the image of public  
21 service would in fact object to such minor changes with logical beneficial results and,  
22 further, why the utility would respond with such a costly, long and drawn-out legal  
23 process as we have been through.

**Certificate of Service**

I hereby certify that this Motion To Dismiss was served by mail on June 4, 2007 with eleven copies mailed to the Docketing Division and one copy mailed to Kathy J. Kolich at First Energy.



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