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October 16, 2009

Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793

RE: Forest Hill Supermarket, Inc., dba Konnis Family Foods v. The Cleveland Electric Illuminating Company
Our File Number: 9322-17-65758-09

To Whom It May Concern:

Enclosed herein please find the following to be filed with the Public Utilities Commission of Ohio regarding the above-captioned matter:

1. Brief in Opposition to Respondent's Motion to Dismiss.

I have enclosed 11 copies for your reference. Kindly return the additional copy, time-stamped, in the self-addressed stamped envelope enclosed for your convenience.

Regards.

Very truly yours,

REMINGER CO., L.P.A.

Fred S. Papalardo

Fred S. Papalardo

FSP/db
Enclosure

cc: Paul A. Colbert
Grant W. Garber
David A. Kutik
Mark A. Hayden

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

FOREST HILLS SUPERMARKET, INC., dba
Konnis Family Foods

Complainant

-VS-

CLEVELAND ELECTRIC ILLUMINATING CO.

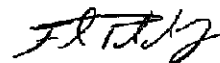
Respondent.

CASE NO. 09-800-EL-CSS

**BRIEF IN OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS**

Now comes Complainant, Forest Hills Supermarket, Inc. dba Konnis Family Foods, ("Forest Hills") by and through undersigned counsel, and hereby respectfully moves the Public Utilities Commission of Ohio to deny Respondent's Motion to Dismiss. The basis for this brief in opposition is that respondent arbitrarily cut off Forest Hills' power causing an unreasonable disruption of service pursuant to Ohio Revised Code § 4905.22 and § 4905.26. The support for this brief in opposition is set forth more fully in the attached memorandum incorporated herein by reference.

Respectfully Submitted,



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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Respondent sets forth in its motion that Forest Hills' claim is simply that CEI failed to provide service for one or two days due to the remnants of Hurricane Ike. To the contrary, Forest Hills did not lose power due to Hurricane Ike but rather because of CEI's decision to arbitrarily cut off power to Forest Hills without warning or notice. Thus, CEI's decision to cut off power to Forest Hills resulted in over \$100,000.00 in food spoilage damages.

II. LAW AND ARGUMENT

A. Summary of Applicable Law.

CEI is an electric utility company, as defined by Ohio Revised Code § 4905.03(A)(4), and a public utility, by virtue of Ohio Revised Code § 4905.02. CEI is subject to the jurisdiction of the Commission pursuant to Ohio Revised Code §§ 4905.04 and 4905.05.

O.R.C. § 4905.26, requires, among other things, that the commission set for a hearing a complaint against a public utility whenever there are reasonable grounds to find that:

"Any rate, fare, charge ... or service rendered, charged, [or] demanded ... is in any respect unjust, unreasonable, ... or in violation of law, ... or that any ... practice ... relating to any service ... is, or will be, in any respect, unreasonable, unjust, insufficient, ... or that any service is, or will be, inadequate ..."

While the burden of proof lies with the Complainant, the statutory obligation of a public utility relative to the service and facilities it must provide is set forth in O.R.C. § 4905.22, which states:

"Every utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission."

As Respondent states in its motion, the determination of whether a utility has provided "inadequate service" is not defined in the Revised Code and is left to the Commissions discretion. *Ohio Bell Tel. Co. v. Pub. Util. Comm.* (1984), 14 Ohio St. 3d 49, 50. Therefore, as a matter of law, Forest Hills is entitled to a hearing in front of the Commission to determine whether CEI's decision to arbitrarily cut off power is a violation of the Ohio Revised Code.

B. Forest Hills Has Alleged Sufficient Facts to Bring Forth a Claim in Front Of the Public Utilities Commission of Ohio.

As stated in Forest Hills' Complaint, on or about September 14, 2008, neighboring properties around Forest Hills lost power but Forest Hills continued to have power and operate its supermarket business. Without warning or notice, Respondent arbitrarily cut off power to Forest Hills on or about September 15, 2008.

It was Respondent's arbitrary decision to cut off Forest Hills' power, not remnants from Hurricane Ike that shut off power to Forest Hills. In addition, Respondent's pattern and practice is to provide notice and warning to supermarkets, hospitals, and other businesses due to the effect cutting off power has on security systems, computer systems, and specific to this case, refrigeration systems.

Respondent claims in paragraph 6 of its Answer that its records state Complainant (and the other nearly 600 customers on the same circuit) lost power on the evening of September 14, 2008 and power was restored on the evening of September 16, 2008. This claim is blatantly false. Forest Hills along with the other businesses in and around Forest Hills continued to have power until it was arbitrarily cut off. Moreover, one of Respondent's own employees (Mike Schiegenberg - SP?) informed Forest Hills to file a claim due to the fact Forest Hills power was cut off. Forest Hills did just that and Respondent chose not to honor the claim.

Forest Hills has stated sufficient facts for the Commission to set a hearing on its Complaint pursuant to Ohio Revised Code §4905.22 and §4905.26. As such, Forest Hills respectfully requests Respondent's motion be denied.

III. **CONCLUSION**

For the foregoing reasons, Forest Hills respectfully requests that the Commission deny Respondent's Motion to Dismiss and set a hearing on Forest Hills' Complaint.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing has been sent by regular U.S. Mail this 16 day of October

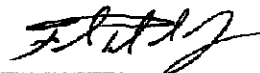
2009 to the following:

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