

PUBLIC UTILITIES COMMISSION OF OHIO

Norma Nero, et al.,)	Case No. 13-149-EL-CSS
)	
Complainants,)	
)	
v.)	<u>RESPONDENT'S MOTION TO</u>
)	<u>DISMISS FIRSTENERGY CORP. AS</u>
FirstEnergy Corp./The Cleveland Electric)	<u>A PARTY, WITH MEMORANDUM</u>
Illuminating Company,)	<u>IN SUPPORT</u>
)	
Respondents.)	Denise M. Hasbrook (0004798)
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)	<i>Illuminating Company and</i>
)	<i>FirstEnergy Corp.</i>

Respondent, FirstEnergy Corp. moves to dismiss it as a party to this proceeding for the reason that FirstEnergy Corp. is not a public utility and is not subject to the jurisdiction of the

Commission. For this reason, explained in detail in the attached Memorandum in Support, the Commission should dismiss Respondent FirstEnergy Corp. as a party from this action.

Respectfully submitted,

/s/ Emily Ciecka Wilcheck.

Denise M. Hasbrook (0004798)

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*Counsel for The Cleveland Electric
Illuminating Company and
FirstEnergy Corp.*

MEMORANDUM IN SUPPORT

I. FACTS ALLEGED IN THE COMPLAINT

This case involves Complainants, Richard and Norma Nero's request for damages to reimburse them for the costs incurred to repair or replace various household appliances at their residence located at 13090 Spring Blossom Trail, Chesterland, Ohio. Complainants allege that such items were damaged as a result of inadequate service on the part of The Cleveland Electric Illuminating Company (hereinafter "CEI" and "the Company") and FirstEnergy Corp. Specifically, Complaints claim that Respondents provided inadequate service to their residence due to the Company's alleged delay in responding to their service calls about fluctuations in power to their residence. Complainants contend that they experienced flickering lights and power fluctuations on the evening of October 29, 2012 when the area experienced a major storm, which continued until full power was restored a few days later.

II. FIRSTENERGY CORP. IS NOT A PUBLIC UTILITY AND IS NOT SUBJECT TO THE JURISDICTION OF THE COMMISSION.

Complainants name CEI and FirstEnergy Corp. as respondents to this action. However, FirstEnergy Corp. is not a public utility, did not provide electric service to the Complainants, and, therefore, is not subject to the jurisdiction of the Commission. Accordingly, FirstEnergy Corp. should be dismissed as a party to this action.

The Commission's subject matter jurisdiction over public utilities is defined in the Ohio Revised Code. *In the Matter of Complaints of S.G. Foods, Inc., et al.* (Aug. 7, 2006), PUCO Case Nos. 04-28-EL-CSS, 05-803-EL-CSS, 05-1011-EL-CSS, 05-1012-EL-CSS, 05-1014-EL-CSS, Entry ¶10. FirstEnergy Corp. does not provide electric service and is, therefore, not a public utility as defined by R.C. 4905.02 and R.C. 4905.03(C). As such, Respondent FirstEnergy Corp. is not subject to the jurisdiction of the Commission.

Indeed, both the Commission and the Supreme Court of Ohio have previously held that FirstEnergy Corp. is not a public utility. In *In the Matter of the Application of National Aeronautics and Space Administration at Glenn Research Center to Establish a Reasonable Arrangement with The Cleveland Electric Illuminating Company and FirstEnergy Corporation for Electrical Service* (Mar. 12, 2009), PUCO Case No. 09-91-EL-AEC, the Commission found that FirstEnergy Corp. was not a public utility. *Id.* at Entry ¶3. Accordingly, the Commission dismissed FirstEnergy Corp. as a party to the proceeding for lack of jurisdiction over this entity. *Id.* Likewise, the Ohio Supreme Court in *DiFranco v. FirstEnergy Corporation*, Slip Opinion No. 2012-Ohio-5445, recently acknowledged that FirstEnergy Corp. is not a public utility. *Id.* at ¶1.

In light of the foregoing precedent, there is no question that the Commission lacks jurisdiction over FirstEnergy Corp. Accordingly, FirstEnergy Corp. is not a proper Respondent in this case and should be dismissed as a party to this action.

III. CONCLUSION

Based on the foregoing reasons, Respondent FirstEnergy Corp. respectfully request that the Commission dismiss FirstEnergy Corp. as a party to this case and allow this matter to proceed against The Cleveland Electric Illuminating Company only.

Respectfully submitted,

/s/ Emily Ciecka Wilcheck

Denise M. Hasbrook (0004798)

Emily Ciecka Wilcheck (0077895)

Carrie M. Dunn (0076952)

*Counsel for The Cleveland Electric
Illuminating Company and
FirstEnergy Corp.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ordinary U.S. Mail this 1st day
of February, 2013 to the following:

Norma and Richard Nero
1084 San Marco Road
Marco Island, FL 34145

Respectfully submitted,

/s/ Emily Ciecka Wilcheck.

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Case No(s). 13-0149-EL-CSS

Summary: Motion to Dismiss FirstEnergy Corp. as a Party, With Memorandum in Support electronically filed by Mrs. Emily C. Wilcheck on behalf of The Cleveland Electric Illuminating Company