

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

GWENDOLYN TANDY)	
)	
Complainant,)	
)	Case No. 14-1241-EL-CSS
v.)	
)	<u>MOTION TO DISMISS</u>
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY and)	
FIRSTENERGY SOLUTIONS CORP.)	
)	
Respondents.)	

RESPONDENT FIRSTENERGY SOLUTIONS CORP.'S MOTION TO DISMISS

Pursuant to Ohio Administrative Code 4901-1-12, Respondent FirstEnergy Solutions Corp. (FES) respectfully moves the Commission to Dismiss the Complaint with prejudice because Complainant fails to set forth reasonable grounds for complaint as required by Ohio Administrative Code 4901-9-01(C)(3) and due to Complainant's lack of sufficient prosecution of the Complaint. A Memorandum in Support of this Motion is attached.

Respectfully submitted,

/s/ Scott J. Casto
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MEMORANDUM IN SUPPORT

I. Facts

Gwendolyn Tandy (“Complainant”) filed a Complaint against The Cleveland Electric Illuminating Company (“CEI”) on July 11, 2014. Complaint alleges that she opted out of the city of Euclid’s government aggregation program on September 9, 2013.¹ Complainant also alleges that the program was not a benefit for her.² FirstEnergy Solutions Corp. (“FES”) was joined as a party on August 5, 2014. Subsequently, the Attorney Examiner scheduled a settlement conference for September 11, 2014, which required the attendance of all parties.

II. Complainant’s Failure To Set Forth Reasonable Grounds For Complaint

Attached as part of her Complaint is a letter from CEI confirming that Complainant was becoming a customer of FES as part of the city of Euclid’s government aggregation program.³ Euclid became a governmental aggregator in 2001⁴ and continues to operate as a governmental aggregator.

Currently, FES provides generation service to customers of Euclid’s program. In accordance with Ohio Administrative Code (“OAC”) 4901:1-21-17, Complainant received a supplemental opt-out notice as a new governmental aggregation customer on

¹ Complaint page 1.

² Id.

³ Id at 2.

⁴ See Case No. 01-228-EL-GAG, Certificate # 01-066 issued March 6, 2001.

or after June 28, 2013.⁵ The opt-out notice Complainant received included several facts relevant to the Complaint.

First, the notice gives residents 21 days to opt-out of the program, which is the time period proscribed under OAC 4901:1-21-17 (A)(11). The notice further explains, as required under the rules, that residents are not obligated to participate in the program, and also details the proper process to opt-out of the program. Second, the notice explains that customers are *guaranteed* to receive 6% off the utility's Price to Compare.

The above facts, which are indisputable, demonstrate that Complainant has failed to set forth reasonable grounds for Complaint. The claim that the program was not a benefit for Complainant is clearly false and should be dismissed. At all times Euclid's governmental aggregation program provided participating customers a guaranteed 6% discount off the utility's Price to Compare. In addition, the claim that Complainant attempted to opt out of the program on September 9, 2013 is irrelevant. Commission rules proscribe when residents are eligible to opt-out of an aggregation program. FES maintains that Complainant could not have opted out on September 9, even if she attempted to, because the opt-out period had elapsed. According to the notice Complainant received, the deadline for residents to opt-out was July 19, 2013, which is within the timeframe provided for in the Commission's rules. Therefore, even treating the allegation that Complainant attempted to opt-out on September 9th as true, this claim must fail as well.

III. Failure To Prosecute

⁵ Id. Entry on June 13, 2013, demonstrating compliance with OAC 4901:1-21-17(F).

If the Complaint is not dismissed for the failure to set forth reasonable grounds for complaint, then the Complaint should be dismissed for failure to prosecute. Complainant is well aware of Commission procedures. A cursory review of the Commission's docket shows several proceedings instituted by Complainant⁶ and an almost equal amount of non-appearances. Complainant failed to appear at the October 7, 2014 settlement conference, notwithstanding almost one month prior notice. Complainant did not notify counsel for CEI or FES, and to FES's knowledge, Complainant did not contact the Commission to notify it of her unexplained absence. Complainant's failure to appear wasted several resources of the Respondent, and more importantly, of Commission staff. At the time of this filing, Complainant has yet to provide any justification for her absence.

IV. Conclusion

For the reasons stated herein, the Complaint should be dismissed with prejudice.

Respectfully submitted,

/s/ Scott J. Casto
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⁶ See Case Nos. 12-2102-EL-CSS; 12-2103-GA-CSS; 12-2326-GA-CSS, 14-0686-EL-CSS and 14-0795-GA-CSS.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by U.S. Mail to the following person on this 15th day of October, 2014.

Gwendolyn Tandy
1439 Sulzer Ave.
Euclid, OH 44132

I hereby certify that a copy of the foregoing was served by Electronic Mail to the following persons on this 15th day of October, 2014.

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Summary: Motion to Dismiss electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.