

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Complaint)	
of the)	
)	
Central Ohio Technical College)	
Cleveland State University)	
Kent State University)	
Northwest State Community College)	
Ohio University)	
University of Akron)	Case No. 15-0455-EL-CSS
University of Toledo,)	
)	
Complainants,)	
)	
v.)	
)	
FirstEnergy Solutions Corp.)	
The Toledo Edison Company)	
Ohio Edison Company)	
The Cleveland Electric Illuminating)	
Company)	
Ohio Power Company,)	
)	
Respondents,)	
)	
Relative to Alleged Unlawful Pass-Through)	
of RTO Expense Surcharges.)	
)	

MEMORANDUM CONTRA OF COMPLAINANTS

On March 2, 2015, the Complainants (Central Ohio Technical College, Cleveland State University, Kent State University, Northwest State Community College, Ohio University, the University of Akron, and the University of Toledo also known as “the Universities”) filed a Complaint against FirstEnergy Solutions Corp., relative to an alleged unlawful pass-through of RTO expense surcharges and also named The Toledo Edison Company, The Ohio Edison Company, The Cleveland Electric Illuminating Company (the “FirstEnergy EDUs”) and Ohio Power Company as Respondents.

In Paragraph 29 of its Complaint, the Complainants alleged that FirstEnergy Solutions and Cleveland Electric Illuminating Company, though on notice that Cleveland State had disputed the FES RTO Expense Surcharge, overpaid FES the disputed RTO Expense Surcharge from the Cleveland State payment and reflected the RTO Expense Surcharge as an underpayment for utility service. The Complainants also alleged in Paragraph 30 that the accounting for the RTO Expense Surcharge as an unpaid utility expense for Cleveland Electric Illuminating, Toledo Edison and Ohio Edison for universities other than Cleveland State may also have taken place. In their recently filed Answers to the March 2nd Complaint, the FirstEnergy EDUs and Ohio Power Company denied the allegations contained in Paragraphs 29 and 30 of the Complaint. Thus, a factual dispute exists between the Universities and the Respondants as to the utility accounting treatment of the RTO Expense Surcharge.

On March 17, 2015, the FirstEnergy EDUs filed a motion to dismiss them as Respondents in this proceeding. The FirstEnergy EDUs argue that the alleged facts giving rise to the complaint predominately involve FirstEnergy Solutions, not the FirstEnergy EDUs. They also argued that the mere fact that the FirstEnergy EDUs' bills included the disputed FirstEnergy Solutions charges should not make an EDU answerable for the rates and charges supplied by a competitive retail electric service provider. They also argued that the claim against CEI did not amount to reasonable grounds for complaint and that any claim against Toledo Edison and Ohio Edison was speculative and otherwise insufficient to state reasonable grounds for complaint. The FirstEnergy EDUs argue that there are no allegations that they violated any provision of their tariffs, statutes, rules or commission order and therefore the complaint should be dismissed as to the FirstEnergy EDUs.

Ohio Power Company filed its motion to dismiss on March 23. Similarly, it argued that it had not violated any law, regulation or tariff provision, that there were no substantive allegations against Ohio Power Company and that the disputed billing charges had no connection to AEP Ohio. Ohio Power moved to dismiss the complaint as it pertained to it.

The Complainants have not alleged any violation of statute, regulation or tariff on the part of Ohio Power Company, Ohio Edison Company, the Cleveland Electric Illuminating Company or The Toledo Edison Company. However, that allegation does not end the inquiry as to whether or not these Respondents are indispensable parties to this case.

Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Power Company are each engaged in consolidated billing. To the extent the Complainants receive a consolidated bill from the FirstEnergy EDUs and Ohio Power Company, they must remit payment to these Respondents. The Respondents then determine what must be paid to FirstEnergy Solutions and what must be retained as payment owed as a utility expense.

In Paragraph 30 of the complaint, the Complainants sought an accounting for an RTO expense surcharge as an unpaid utility expense. In paragraph (i) of its prayer for relief, the Complainants have asked the Commission to correct all past billings to the extent they reflect unpaid RTO expense surcharge as a utility expense and owed to a utility.

Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Power Company are each necessary to this proceeding. Without them as named Respondents in this case, the Complainants will not be able to obtain the full relief it seeks, namely, a proper accounting for any unpaid RTO expense surcharge as an unpaid utility expense and the correction of all past billings to the extent they reflect unpaid RTO

expense surcharge as a utility expense and owed to a utility. The FirstEnergy EDUs and Ohio Power Company are necessary parties to this case.

There have been several cases in the last two decades where the Commission or its Attorney Examiners have named or added public utilities as necessary parties to a complaint proceeding. In the Matter of the Complaint of the Ohio Consumers' Counsel v. Energy Max of N.E. Ohio, Inc., Case No. 00-2074-GA-CSS, 2001 Ohio PUC Lexis 290, Entry at Finding 11, June 6, 2001, the Commission found that Columbia Gas of Ohio was a necessary party to a complaint proceeding. It cited Ohio Civil Rule 19(A) which stated that one criterion for joining a necessary party is "if in his absence complete relief cannot be accorded among those already parties."

In the March 4, 1998 Attorney Examiner Entry in Case No. 97-1510-TP-CSS, the Attorney Examiner found that IGC Telecommunications, Inc. should be joined as a party respondent for several reasons, among them that it might have information that may prove valuable to the Commission in the resolution of the case. See In the Matter of the Complaint of Plus 1 Executive Suites, Inc. v. Ameritech Ohio, Case No. 97-1510-TP-CSS, Entry, March 4, 1998 at Finding 7.

In her December 10, 2001 Entry, In the Matter of the Complaint of Whitehorne Enterprises, Inc. dba The Ritz Catering Company v. XO Ohio, Inc. dba XO Communications and Ameritech Ohio, Case No. 01-2801-TP-CSS, Entry, December 10, 2001 at Finding 4, the Attorney Examiner found that under Ohio Civil Rule 19(A), Ameritech was a necessary party in that complaint case because in Ameritech's absence complete relief cannot be accorded among those already a party to this proceeding and the remedies that may be afforded to a successful complainant would be limited.

In the Matter of PS Executive Centers, Inc. v. Ameritech Ohio and XO Ohio, Inc. dba XO Communications, Case No. 01-2771-TP-CSS, 2002 Ohio PUC Lexis 87, Entry, January 22, 2002, the Attorney Examiner made a similar finding that under Ohio Civil Rule 19(A), XO was a necessary party because in XO's absence complete relief cannot be accorded among those already a party to this proceeding and the remedies that may be afforded to a successful complainant would be limited. Similar findings where a public utility was added to a complaint proceeding as a necessary party can be found in In the Matter of the Complaint of Crown Mold & Machine v. D&L Gas Marketing and Columbia Gas of Ohio, Inc., Case No. 01-772-GA-CSS, 2001 Ohio PUC Lexis 894, Entry, December 4, 2001 at Finding 4 and In the Matter of the Complaint of Crown Mold & Machine v. D&L Gas Marketing and East Ohio Gas Company dba Dominion East Ohio, Case No. 01-772-GA-CSS, 2001 Ohio PUC Lexis 915, Entry, December 18, 2001 at Finding 2.

The precedent established in the cases cited above are precisely the reason the Complainants named Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Power Company as Respondents. The Commission should deny the motion to dismiss. Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Power Company are necessary parties to this case because of their role in providing consolidated billing services to the Complainants. The relief sought by the Complainants includes an accounting for an RTO expense surcharge as an unpaid utility expense and a correction of all past billings to the extent they reflect unpaid RTO expense surcharges as a utility expense and owed to a utility. In the absence of the FirstEnergy EDUs and Ohio Power Company, complete relief cannot be accorded to the Complainants and the remedies that may be afforded to the Universities would be limited without them being

parties to this case. The Commission should follow its precedent and the policy of Ohio Civil Rule 19(A) and deny the motions to dismiss.

Respectfully Submitted,

MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO




M. Howard Petricoff (0008287)
Special Assistant Attorney General
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, Ohio 43215
(614) 464-5414
mhpetricoff@vorys.com

Attorneys for Central Ohio Technical College, Cleveland
State University, Kent State University, Northwest State
Community College, Ohio University, University of Akron,
and University of Toledo

CERTIFICATE OF SERVICE

The PUCO's electronic filing system will electronically serve notice of the filing of this document on all parties of record who have agreed to receive electronic service. In addition, I certify that a copy of the foregoing document was served via email on the following persons this 1st day of April, 2015.



M. Howard Petricoff

burkj@firstenergycorp.com
dunn@firstenergycorp.com
stnourse@aep.com
mjsatterwhite@aep.com
haydenm@firstenergycorp.com
akkumar@aep.com
whitt@whitt-sturtevant.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/1/2015 3:05:17 PM

in

Case No(s). 15-0455-EL-CSS

Summary: Memorandum Memorandum Contra of Complainants electronically filed by M HOWARD PETRICOFF on behalf of Central Ohio Technical College and Cleveland State University and Kent State University and Northwest State Community College and Ohio University and University of Akron and University of Toledo