

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Nathan Sample	)	
	)	
Complainant	)	Case No. 20-1583-EL-CSS
	)	
v.	)	
	)	
Ohio Edison Company	)	
	)	
Respondent	)	
	)	

**MOTION OF OHIO EDISON COMPANY TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to Ohio Adm. Code 4901-9-01(C)(1) and 4901-1-12, Respondent Ohio Edison Company (“Ohio Edison”) respectfully moves the Commission to dismiss this case due to lack of subject matter jurisdiction. Additional reasons are set forth in the Memorandum in Support, which is attached hereto and incorporated herein by reference.

Wherefore, Ohio Edison respectfully requests that the Commission dismiss this case for lack of subject matter jurisdiction.

Respectfully submitted,

/s/Christine E. Watchorn

Christine E. Watchorn (0075919)

(Counsel of Record)

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## **MEMORANDUM IN SUPPORT**

### **I. DISCUSSION**

Complainant Nathan Sample (“Complainant”) alleges that on August 24, 2020, his vehicle was damaged when he drove into an Ohio Edison wire that had broken and was hanging over his lane of travel.<sup>1</sup> Complainant seeks monetary damages for the alleged damage to his vehicle.<sup>2</sup> The Commission should dismiss Complainant’s complaint for lack of subject matter jurisdiction. As it relates to the facts alleged here, Ohio Edison was not acting as a “public utility” as to Complainant. This Motion is timely, as subject matter jurisdiction cannot be waived and may be raised at any time.<sup>3</sup>

In *In re Complaint of Direct Energy Business, LLC v. Duke Energy Ohio, Inc.*, the Supreme Court of Ohio recently held that R.C. § 4905.22 and § 4905.26 “make clear” that, for purposes of Chapter 4905:

[O]nly a public utility is required to furnish adequate service and only a public utility may be held in violation of the statutes for failing to furnish such service. Thus, any inquiry into the adequacy of a particular service under the statutes depends on the existence of a “public utility.”<sup>4</sup>

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<sup>1</sup> Compl. (10/8/2020) at p. 3.

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75, 1998- Ohio 275, 701 N.E.2d 1002 (1998) (“A jurisdictional defect cannot be waived. *Painesville v. Lake Cty. Budget Comm.* (1978), 56 Ohio St. 2d 282, 10 Ohio Op. 3d 411, 383 N.E.2d 896. This means that the lack of jurisdiction can be raised at any time, even for the first time on appeal. See *In re Byard* (1996), 74 Ohio St. 3d 294, 296, 658 N.E.2d 735, 737. This is because jurisdiction is a condition precedent to the court's ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void. *Patton v. Diemer* (1988), 35 Ohio St. 3d 68, 518 N.E.2d 941.”).

<sup>4</sup> *In re Complaint of Direct Energy Business, LLC v. Duke Energy Ohio, Inc.*, 2020-Ohio-4429, ¶ 13 (Sept. 17, 2020).

Where a utility company did not act as a public utility under the facts of a case, the Commission does not have subject matter jurisdiction to hear a complaint under Chapter 4905 against the utility for allegedly failing to furnish adequate service.<sup>5</sup> The court further explained that:

For the purpose of R.C. Chapter 4905, [a utility company] is deemed a “public utility” when it is “engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state.” R.C. 4905.03(C) (defining an “electric light company”); *see also* R.C. 4905.02; *S.G. Foods, Inc. v. FirstEnergy Corp.*, Pub. Util. Comm. Nos. 04-28-EL-CSS et al., 2006 WL 769488 (Mar. 7, 2006) (a company is a public utility only when it is supplying electricity or transmission services to consumers within the state of Ohio). . . .<sup>6</sup>

In *Direct*, the court found that Duke Energy did not fit the definition of an “electric light company” because there was no evidence that Duke Energy was “engaged in the business of supplying electricity for light, heat, or power purposes” to *Direct*.<sup>7</sup>

Similarly, here, under the facts pled in the complaint, Ohio Edison was not acting as a “public utility” because it does not fit the definition of an “electric light company,” where it was not “engaged in the business of supplying electricity for light, heat, or power purposes” to Complainant.<sup>8</sup> Further, under the facts alleged in the complaint, Complainant was not acting as a consumer of electricity provided by Ohio Edison.<sup>9</sup> Therefore, because the General Assembly has limited the Commission’s jurisdiction to the supervision of “public utilities,” where, as here, the utility company was not acting as a “public utility” under the facts of the case, and the Complainant

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶ 14 (footnote omitted).

<sup>7</sup> *Id.* at ¶ 15.

<sup>8</sup> *Id.* at ¶¶ 15-16.

<sup>9</sup> *Id.* at ¶ 17.

was not acting as a consumer of electricity, the Commission lacks subject matter jurisdiction over the complaint pursuant to Ohio law.<sup>10</sup>

## II. CONCLUSION

For the foregoing reasons, Ohio Edison Company respectfully requests that the Commission dismiss this case for lack of subject matter jurisdiction.

Respectfully submitted,

/s/Christine E. Watchorn

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*Attorney for Respondent*

*Ohio Edison Company*

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing Motion of Ohio Edison Company to Dismiss for Lack of Subject Matter Jurisdiction was served upon the following by U.S. Mail on this 9th day of December 2020:

Nathan Sample  
14831 Robinson Rd.  
Newton Falls, Ohio 44444

/s/Christine E. Watchorn

Christine E. Watchorn

*Attorney for Respondent*

*Ohio Edison Company*

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<sup>10</sup> *Id.* at ¶ 25.

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Motion to Dismiss for Lack of Subject Matter Jurisdiction electronically filed by Ms. Christine E. Watchorn on behalf of Ohio Edison Company