

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

|                        |   |                         |
|------------------------|---|-------------------------|
| JUDY DEFRENCH,         | ) |                         |
|                        | ) |                         |
| Complainant,           | ) |                         |
|                        | ) |                         |
| vs.                    | ) | CASE NO. 21-0950-EL-CSS |
|                        | ) |                         |
| THE CLEVELAND ELECTRIC | ) |                         |
| ILLUMINATING COMPANY,  | ) |                         |
|                        | ) |                         |
| Respondent.            | ) |                         |

**ANSWER OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

The Cleveland Electric Illuminating Company (“CEI”) is a public utility company as defined by Section 4905.03(C) of the Ohio Revised Code and is duly organized and existing under the laws of the State of Ohio. In accordance with Rule 4901-9-01(D) of the Ohio Administrative Code, CEI for its answer to the Complaint of Judy DeFrench (“Complainant”) states as follows:

1. Regarding the allegations in Paragraph 1 of Complainant’s Complaint, CEI admits that it charges \$28.29 per month (\$339.48 per year) for Complainant to opt-out of a smart meter, and that she is requesting that the Commission approve waiving the opt-out fee due to her disability. CEI denies, however, that Complainant is entitled to such relief under current Commission jurisprudence and CEI’s Commission-approved tariff.

2. Regarding the allegations in Paragraph 2 of Complainant’s Complaint, CEI lacks knowledge regarding Complainant’s alleged medical condition and symptoms, or whether such symptoms are a result of exposure to electromagnetic frequencies. Her allegation that her medical condition qualifies as a disability under the Americans with Disabilities Act is a legal conclusion which does not require a response.

3. Regarding the allegations in Paragraph 3 of Complainant's Complaint, CEI lacks knowledge regarding the occupancy of Complainant's home and the devices that she keeps in her home, and therefore denies the same. CEI also lacks knowledge regarding Complainant's employment or her daily activities, and therefore denies the same.

4. Regarding the allegations in Paragraph 4 of Complainant's Complaint, CEI admits that it is a subsidiary of FirstEnergy Corp. and provides electric service to Complainant. CEI further admits that it is replacing traditional meters with smart meters, which emit low levels of radio waves to wirelessly transmit data to CEI and that such transmission are sent out in short transmission bursts; the meters do not constantly transmit data. CEI denies that installing a smart meter would be medically unsafe or disabling. By way of further answer, various international governmental agencies have determined that "[t]here are **no health risks** from exposure to radiofrequency EMF from smart meters."<sup>1</sup>

5. Regarding the allegations in Paragraph 5 of Complainant's Complaint, CEI admits that the Commission approved CEI's request to install smart meters with an option to opt-out of the installation with payment of a monthly fee of \$28.29. Regarding whether the opt-out provision is a fundamental alteration to CEI's business and applicability of the Americans with Disabilities Act to the opt-out provision, such allegations are conclusions of law which do not require a response.

6. Regarding the allegations in Paragraph 6 of Complainant's Complaint, Complainant's allegation regarding alleged violations of the ADA are conclusions of law which do not require a response. CEI also lacks knowledge regarding Complainant's financial situation, and therefore denies the same. CEI admits that Complainant contacted it regarding a waiver of

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<sup>1</sup><https://www.canada.ca/en/health-canada/services/health-risks-safety/radiation/everyday-things-emit-radiation/smart-meters.html>

the opt-out fee based on her medical condition and was informed that CEI could not waive the opt-out charge because the charge was approved by the Commission without any provisions for waiving the charge. CEI admits that it must follow its tariff as approved by the Commission. CEI admits that Complainant was directed to petition the Commission to change its policies to accommodate her disability.

7. Regarding the allegations in Paragraph 7 of Complainant's Complaint, CEI lacks knowledge regarding Complainant's communications and interactions with the Commission, and therefore denies the same. CEI admits that the Commission contacted it regarding waiving the surcharge and that CEI denied Complainant's request because it would violate its tariff.

8. Regarding the allegations in Paragraph 8 of Complainant's Complaint, CEI lacks knowledge regarding any advice she received from an attorney or of her communications and interactions with the Disability Rights Section of the U.S. Department of Justice, and therefore denies the same. CEI also lacks knowledge regarding Complainant's interactions and communications with the Commission, and therefore denies the same.

9. Regarding the allegations in Paragraph 9 of Complainant's Complaint, CEI lacks knowledge regarding Complainant's interactions and communications with the Commission, and therefore denies the same. CEI admits that Complainant filed a Complaint in this matter.

10. Regarding the allegations in Paragraph 10 of Complainant's Complaint, CEI lacks knowledge regarding Complainant's understanding of the intent of the Commission when it approved CEI's tariff, and therefore denies the same. The allegations regarding interpretation of the ADA are legal conclusions which do not require a response.

11. Regarding the allegations in Paragraph 11 of Complainant's Complaint, Complainant's allegation that CEI is misinterpreting its tariff, the Ohio Administrative Code, and

the Ohio Revised Code, are legal conclusions which do not require a response. CEI admits that Complainant requests the Commission to compel CEI to waive the opt-out fee but denies that Complainant is entitled to the relief requested, or any relief whatsoever, under the current Commission Rules and CEI's tariff. CEI lacks knowledge regarding Complainant's medical condition, and therefore denies the same.

12. Regarding the allegations in Paragraph 12 of Complainant's Complaint, CEI admits that it began charging the Smart Meter Opt-Out Fee ("Rider AMO"), which the Commission approved in Commission Case No. 20-0385-EL-ATA, in the September 2021 bill, due September 28, 2021. CEI denies that the charge is illegal. CEI denies that it will disconnect Complainant's service or send her account to collections for non-payment of Rider AMO so long as her Complaint is pending.

13. Regarding the allegations in Paragraph 13 of Complainant's Complaint, CEI lacks knowledge regarding Complainant's employment situation, and therefore denies the same. CEI denies that Complainant is allowed to send a proxy to introduce evidence through hearsay and without proper authentication, and to prevent CEI from examining Complainant regarding her claims. Subject to Commission approval, CEI is willing to have the hearing conducted remotely or in Cleveland, Ohio to accommodate Complainant's alleged disability.

To the extent CEI does not respond to a specific allegation, CEI denies any such allegation. CEI reserves the right to supplement or amend this Answer.

#### **AFFIRMATIVE DEFENSES**

- 1. The Complaint fails to set forth reasonable grounds for her Complaint, as required by Section 4905.26, Revised Code.**
- 2. The Complaint fails to state a claim upon which relief may be granted.**
- 3. CEI at all times complied with the Ohio Revised Code Title 49; the applicable rules, regulations, and orders of the Public Utilities Commission of Ohio; and**

its Tariff, PUCO No. 13, on file with the PUCO. These statutes, rules, regulations, orders, and tariff provisions bar Complainant's claims.

4. The Commission lacks subject matter jurisdiction over some or all of Complainant's claims.
5. CEI reserves the right to raise other defenses as warranted by discovery in this matter.

WHEREFORE, CEI respectfully requests an Order dismissing the Complaint and granting CEI all other relief deemed necessary and proper.

Respectfully submitted,

/s/ Christopher A. Rogers

Christopher A. Rogers (Practice Pending  
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**CERTIFICATE OF SERVICE**

On October 4, 2021, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record in this proceeding. A service copy has been sent by U.S. Mail on this 4th day of October 2021 to the Complainant at the following address:

Judy DeFrench  
1156 East Miner Road  
Mayfield Heights, OH 44124

/s/ Christopher A. Rogers  
*Attorney for The Cleveland Illuminating  
Company*

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

**Commission of Ohio Docketing Information System on**

**10/4/2021 1:43:16 PM**

**in**

**Case No(s). 21-0950-EL-CSS**

Summary: Answer of The Cleveland Electric Illuminating Company electronically filed by Mr. Christopher Rogers on behalf of THE CLEVELAND ELECTRIC ILLUMINATING COMPANY