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PUCO

August 8, 2003

VIA OVERNIGHT MAIL

Ms. Daisy Crockron
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43266-5073

Re: *State Farm Fire & Casualty Company v.
The Cleveland Electric Illuminating Company*
Case No. 03-832-EL-CSS

Dear Ms. Crockron:

Enclosed for filing, please find the original plus 12 copies of the *Answer to First Amended Complaint and Motion to Dismiss of The Cleveland Electric Illuminating Company* regarding the above referenced case that was fax filed on Friday, August 08, 2003, in the above referenced matter. Please file-stamp the two extra copies and return them to the undersigned in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,

Carol L. Dacoras/CD

CLD:fd
Enclosures
[56487]

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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STATE FARM FIRE & CASUALTY)
COMPANY)
c/o Uhlinger, Keis & George)
55 Public Square, #800)
Cleveland, Ohio 44113)
COMPLAINANT,)

PUCO

vs.)

CASE NO. 03-832-EL-CSS

THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)
RESPONDENT.)

**ANSWER TO FIRST AMENDED COMPLAINT AND MOTION TO DISMISS
OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

Comes now Respondent, The Cleveland Electric Illuminating Company, by counsel, and for its Answer to the First Amended Complaint filed in the instant action says that:

1. The Cleveland Electric Illuminating Company ("CEI") is a public utility, as defined by §4905.03(A)(4), O.R.C. and is duly organized and existing under the laws of the State of Ohio.
2. With respect to Paragraph 1 of the Complaint, CEI admits that on April 4, 1999, Curtis and Phillis Petersen, whose residential address is 7398 Cadle Avenue, Mentor, Ohio (the "Premises"), were customers of CEI; CEI denies the remaining allegations in Paragraph 1 because it is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.
3. CEI denies the allegations in Paragraph 2 because it is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

4. With respect to Paragraph 3, CEI admits that a fire occurred at the Premises on April 4, 1999.

5. CEI denies the allegations in Paragraphs 4, 5 and 6 because it is presently without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein.

6. CEI denies the allegation in Paragraph 7 that the fire and resulting damages at the Premises were the direct and proximate result of the negligence of CEI; CEI denies the allegation in Paragraph 7 that it failed to properly inspect and maintain the electric meter and socket at the Premises, and that CEI has any obligation to inspect or maintain customer-owned equipment or facilities.

7. CEI denies the allegations in Paragraphs 8, 9 and 10.

8. CEI generally denies all allegations set forth in the Complaint that were not otherwise specifically addressed hereinabove.

For its affirmative defenses, the Company further avers that:

9. CEI breached no legal duty owed to Complainant, CEI has no duty to inspect or maintain customer-owned equipment or facilities, and Complainant failed to state reasonable grounds upon which its requested relief may be granted.

10. The Commission has no authority to award the civil or monetary damages sought by Complainant, and has no jurisdiction to grant the relief sought by Complainant.

11. CEI has at all times acted in accordance with its Tariff, PUCO No. 13, on file with the Public Utilities Commission of Ohio, as well as all rules and regulations as promulgated by the Public Utilities Commission of Ohio, the laws existing in the State of Ohio, and accepted standards

and practices in the electric utility industry, and CEI denies that its rates, charges, practices, or services are unjust or unreasonable.

CEI renews its outstanding Motion to Dismiss for the following reasons:

12. The Complainant has no standing before the Commission in this matter. The Commission's jurisdiction extends to disputes between regulated public utilities and their customers. The First Amended Complaint fails to include Curtis and Phillis Peterson as signatories to the First Amended Complaint. State Farm Fire & Casualty Company is not pursuing this matter in its capacity as a customer of CEI. Therefore, the Commission lacks jurisdiction to consider this matter.

13. Even if State Farm had standing to pursue this matter, which it does not, there is no cognizable cause of action stated in the First Amended Complaint. An electric utility has no duty to inspect or repair its customer's equipment. *Otte v. Dayton Power & Light Company*, (1988) 37 Ohio St.3d 33, 38, 523 N.E.2d 835, 840. Therefore, the Complainant has not stated any reasonable grounds for the First Amended Complaint to proceed and this matter should be dismissed.

14. Again, even if State Farm had standing to pursue this matter, which it does not, the relief requested in the First Amended Complaint cannot be granted. The Commission has established a long standing precedent that it will not entertain claims for money damages or civil damages, therefore the First Amended Complaint should be dismissed. The Commission has repeatedly stated, by way of example, that "the Commission is without jurisdiction to order relief in the form of monetary damages, to the extent the complaints seek monetary damages." *In Re Allied Roofing Company, Inc. v. Ameritech*, Case No. 95-1150-EL-CSS, January 22, 1996. "In regards to the complainant's request for treble damages, the Attorney Examiner notes that the Commission has no power to grant such money damages." *In Re City of Parma v. Cleveland Electric Illuminating*,

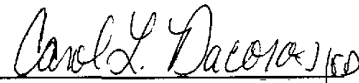
Case No. 95-579-EL-CSS, December 4, 1995. "Complainant requests monetary damages for destruction of his property. . . . The Commission does not have that authority to award such civil damages as that requested." *In Re Tom McDaniel v. Dayton Power and Light Company*, Case No. 94-1634-EL-CSS, November 8, 1994. Therefore, the First Amended Complaint should be dismissed.

Furthermore, CEI has no liability regarding the April 4, 1999 incident at the Premises under its Commission-approved rules and regulations. Rule XI(A) states "All of the customer's wiring and electrical . . . shall be installed and maintained by the customer to at least meet the provision of the National Electrical Code, the regulations of the governmental authorities having jurisdiction and the reasonable requirements of the Company." P.U.C.O. No. 13, Original Sheet No. 4, Page 12 of 21, XI(A). Rule XI(B) states "The Company shall not be liable for any loss, cost, damage or expense that the customer may sustain by reason of damage to or destruction of any property, including the loss of use thereof arising out of, or in any manner connect with . . . the use of electrical appliances or the presence of the Company's property on the customer's premises whether such damages are caused by or involve any fault, failure or negligence of the Company or otherwise except such damages that are caused by or due to the willful and wanton misconduct of the Company. The Company shall not be liable for damage to any customer or to third persons resulting form the use of the service on the customer's premises or from the presence of the Company's appliance or equipment on the customer's premises." P.U.C.O. No. 13, Original Sheet No. 4, Page 13 of 21, XI(B). As provided in these provisions, CEI is not liable for damages caused by the customer's equipment (i.e., the meter base, meter socket, and customer's wiring) at the Premises.

15. Given the complaints made and relief sought in the First Amended Complaint, it does not appear that any reasonable grounds for the Complaint exist. CEI would request that this matter be dismissed.

WHEREFORE, having fully answered the First Amended Complaint, Respondent, The Cleveland Electric Illuminating Company, respectfully requests that the instant action be dismissed, and that it be granted any other relief that this Commission may deem just and reasonable.

Respectfully submitted,

A handwritten signature in cursive script, reading "Carol L. Dacoros", followed by a horizontal line and the date "1/10".

Carol L. Dacoros (0068319)

Attorney

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

Phone: 330-384-4783

Fax: 330-384-3875

On behalf of The Cleveland Electric
Illuminating Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Answer to First Amended Complaint and Motion to Dismiss of The Cleveland Electric Illuminating Company was served by regular U.S. Mail, postage prepaid, upon Patrick J. O'Malley, Uhlinger, Keis & George, 55 Public Square, #800, Cleveland, Ohio 44113, this 8th day of August, 2003.

Carol L. Dacoros (FO)
Carol L. Dacoros
Attorney

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