

Kathy J. Kolich
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*Via Federal Express
And Facsimile (614-466-0313)*

June 6, 2008

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Ms. Renee J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

08-428-EL-CSS

Dear Ms. Jenkins:

**Re: Motion to Cancel the Prehearing Conference or Alternatively to
Establish a Discovery Schedule**

Enclosed for filing, please find the original and twelve (12) copies of the *Motion to Cancel the Prehearing Conference or Alternatively to Establish a Discovery Schedule* regarding the above-referenced case. Please file the enclosed, time-stamping the two extras and returning 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,

Kathy J. Kolich

kag
Enclosures

cc: Parties of Record

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

Thomas E. Merchant,)	
)	
Complainant,)	
)	
vs.)	CASE NO. 08-428-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	

**MOTION TO CANCEL THE PREHEARING CONFERENCE OR
ALTERNATIVELY TO ESTABLISH A DISCOVERY SCHEDULE**

Pursuant to Rule 4901-1-12 of the Ohio Administrative Code and for the reasons more fully discussed in the attached memorandum in support, Respondent, Ohio Edison Company ("Ohio Edison" or "Company") respectfully requests that the prehearing conference be cancelled and that this proceeding go immediately to hearing. Or in the alternative the Company asks that the discovery period in the instant action be set to run concurrent with the period between the present and the date of the pre-trial conference, ending no later than July 7, 2008, so as to minimize the period of time that elapses while this case is pending.

Respectfully submitted,


Kathy J. Kolich (Reg. No. 0038855)
Senior Attorney
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Phone: 330-384-4580
Fax: 330-384-3875

On behalf of Ohio Edison Company

MEMORANDUM IN SUPPORT OF MOTION

I. Procedural History

On or about April 2, 2008, Complainant, Thomas E. Merchant, filed a complaint against Ohio Edison Company alleging among other things (1) that it is unreasonable for the Company not to offer a residential three phase service (Complaint at numbered paragraph 1 on page 1 of the Complaint); (2) that he is being discriminated against because of the Company's failure to do the same (Id. at paragraph 3); and (3) that he has been charged for electricity consumed by someone else (unnumbered paragraph 3 on page 2 of the Complaint.) In the complaint Complainant also requested that a 'Stay' be issued, upon receipt of [his] Formal Complaint ...", in an effort to prevent Ohio Edison from disconnecting service while the complaint is pending. (Complaint at unnumbered page 5.)

In her Entry of May 14, 2008, the Attorney Examiner assigned to this matter noted that Rules 4901-9-01(E) and 4901:1-10-19 of the Ohio Administrative Code authorized her to prevent the disconnection of service provided that "the customer pays either the undisputed portion of the bill or the amount paid for the same billing period in the previous year." (May, 14, 2008 Entry, pp. 2-3.) Because Complainant is alleging qualification under a residential rate, rather than the commercial rate under which he is currently being billed, the attorney examiner granted a temporary stay until a prehearing conference could be held in order to determine the undisputed portion of the bill. (Id. at 3.) In this same Entry, a prehearing conference was scheduled for June 3, 2008. (Id.) On June 1, 2008, via a voice mail to the Attorney Examiner, Complainant requested that the prehearing conference be rescheduled. On June 3, 2008 the parties held a conference

call with the Attorney Examiner during which the parties agreed to stay disconnection during the pendency of this proceeding in exchange for Complainant making a minimum payment. Based on Complainant's historical usage, this minimum payment will not be sufficient to cover future monthly bills. By entry dated June 5, 2008, the pre-hearing is currently scheduled on June 25, 2008. As more fully discussed below, there is no need for a prehearing conference and the Company asks that this case go immediately to hearing.

II. There is No Need for a Pre-Hearing Conference.

According to Company records, payments made by Complainant on his electric account total \$447.49, plus a security deposit of \$216. Complainant has not made a payment on his electric bill since November, 2007. In the interim, as evidenced in attached Exhibit A, Complainant has accrued an arrearage of almost \$10,000 (through February 2008) and based on consumption history, the minimum payments Complainant is to start paying in July will not cover future monthly charges. The Company has reviewed the facts surrounding this proceeding and from its perspective sees no violations of Commission rules and regulations, Ohio statutes or the Company's tariffs. Moreover, as evidenced on attached Exhibit B, based on Complainant's historic consumption, Complainant would have paid approximately \$3300 more under a residential rate than under the commercial rate under which he is currently being billed. In other words, Complainant will pay more for his electricity if he prevails on his request to be placed on one of Ohio Edison's residential rates. In light of the foregoing, the Company is not interested in settling this matter. Because an arrearage will more than likely continue to mount during the pendency of this proceeding, the Company is interested in bringing the

matter to a close as quickly as possible. In light of the foregoing, the Company is not interested in settling this matter and respectfully requests that a procedural schedule be immediately established to go directly to hearing.

III. At a Minimum a Discovery Schedule Should be Established


If the Company's request for cancellation of the pre-hearing is denied, the Company asks, at a minimum, that the discovery period run concurrent with the time pending between now and the time of the pre-hearing conference, ending no later than July 7, 2008. As already discussed, based on Complainant's consumption history, Complainant's arrearage on his electric account will continue to grow during the pendency of this proceeding. Rather than allow three weeks to go by before a discovery and procedural schedule can be established, the Company asks the Commission to establish a discovery schedule that can run during this three week period. Doing so is a more effective use of this time. Moreover, given the nature of the complaint, the Company asks that the discovery period be limited to one month, ending on July 7, 2008, with 10 day response times established.

IV. Summary

In sum, based upon the fact that Complainant will actually pay more if he prevails on his request to be billed under one of the Company's residential rates, absent Complainant dismissing this Complaint, the Company is not interested in settlement discussions. Moreover, given that Complainant's arrearage will continue to grow while this matter is being resolved by the Commission, the Company is interested in proceeding to Order as quickly as possible. Accordingly, Ohio Edison respectfully asks that the pre-hearing conference be cancelled and a procedural schedule for hearing be immediately

established. Alternatively, if this request is denied, the Company asks that the Commission, at a minimum, establish a discovery schedule that runs concurrent with the time period during which the parties are awaiting the schedule pre-hearing, ending no later than July 7, 2008, with 10 day response times established.

Respectfully submitted,

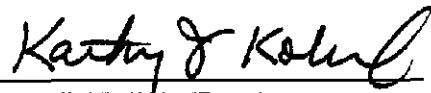


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On behalf of Ohio Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Motion to Cancel the Pre-Hearing Conference or Alternatively to Establish a Discovery Schedule, along with the related Memorandum in Support were served upon Thomas E. Merchant, 808 Brookfield Ave. SE, Masury, Ohio 44438, by regular U.S. Mail, postage prepaid, and by email at Thomasmerchant@hotmail.com this 6th day of June, 2008.


Kathy J. Kolich, Esquire

Thomas E. Merchant
Case No. 08-428-EL-CSS
Billing History
Exhibit A

(1)			(2)			(3)		
From	To Date Range	#days	R7	Consumption	Daily Cons	Watt-Hrs	Billed kWh	MR Ratio
02/27/2008	03/27/2008	30	14	19,920.000	664	31	1759.54	3334
01/29/2008	02/26/2008	29	14	22,240.000	767	29	1836.20	2836
12/28/2007	01/28/2008	32	14	22,960.000	718	29	1963.73	2280
11/28/2007	12/27/2007	30	14	20,880.000	696	31	1728.97	1708
10/27/2007	11/27/2007	32	14	16,280.000	509	41	1442.73	1184
09/28/2007	10/26/2007	29	14	2,920.000	101	61	517.51	777
08/25/2007	09/27/2007	34	01	800.000	24	66	148.01	704
07/27/2007	08/24/2007	29	01	560.000	19	72	133.59	684
06/27/2007	07/26/2007	30	01	680.000	23	68	135.95	670
06/05/2007	06/26/2007	22	14	640.000	29	66	112.61	653

Source: FirstEnergy billing system

(1) = Billing Period

(2) = Monthly kWh consumption

(3) = Amount charged to customer

Total Amount billed through March, 2008 = \$9678.84

Amount paid throughout the time Complainant has had service = \$447.49 plus \$216 security deposit

KWH (A)	KW (B)	Hours Use (C)	Rate 21 Incl LPC (D)	LPC (E)	Security Dep. Int. (F)	Rate 21 Calculation (G)	Rate 10A Calculation (H)	Difference (I) (H) - (G)
04/26/2008-								
05/28/2008								
03/28/2008-								
04/25/2008	22.4	408.9	\$ 888.66		\$ (0.55)	\$ 889.21	\$ 1,102.16	\$ 212.95
02/27/2008-								
03/27/2008	33.2	314.5	\$ 1,341.83	\$ 137.57	\$ (0.52)	\$ 1,204.78	\$ 1,255.71	\$ 50.93
01/29/2008-								
02/26/2008	43.2	461.1	\$ 1,759.54		\$ (0.57)	\$ 1,760.11	\$ 2,368.41	\$ 608.30
12/28/2007-								
01/28/2008	43.2	514.8	\$ 1,836.20		\$ (0.53)	\$ 1,836.73	\$ 2,642.88	\$ 806.15
11/28/2007-								
12/27/2007	42	546.7	\$ 1,863.73	\$ 30.64	\$ (0.22)	\$ 1,833.31	\$ 2,738.21	\$ 904.90
10/27/2007-								
11/27/2007	42.4	492.5	\$ 1,728.97	\$ 30.64	\$ (0.48)	\$ 1,698.81	\$ 2,415.33	\$ 716.52
09/28/2007-								
10/26/2007	37.6	433.0	\$ 1,442.73			\$ 1,442.73	\$ 1,885.82	\$ 443.09
08/25/2007-								
09/27/2007	26.4	110.6	\$ 517.51			\$ 517.51	\$ 366.12	\$ (151.39)
07/27/2007-								
08/24/2007	10	80.0	\$ 148.01			\$ 148.01	\$ 99.00	\$ (49.01)
06/27/2007-								
07/26/2007	22.4	25.0	\$ 133.59	\$ 3.77	\$ (0.55)	\$ 133.59	\$ 68.72	\$ (64.87)
06/05/2007-								
06/26/2007	22.4	30.4	\$ 135.95	\$ 1.74	\$ (0.52)	\$ 135.95	\$ 83.86	\$ (52.09)
	640	22.4	112.61		\$ (0.43)	\$ 116.17	\$ 75.79	\$ (40.38)
			\$ 11,909.33			\$ 11,716.90	\$ 15,102.01	\$ 3,385.11

Rate 21 Minimum Bill (CC
LPC)
Rate 21 Minimum Bill (CC
LPC)

(A), (B), (C) = information per billing system

(D) = Actual amount charged to customer

(E) = Late Payment charges

(F) = Interest from security deposit

(G) = calculation of bill, excluding late payment charges, based on usage as run through the rate blocks included in OE Commercial Rate 21

(I) = calculation of what customer would have been billed based on historic usage as run through the rate blocks included in OE Residential Rate 10A