

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Diana Williams,)	
)	
)	
Complainant,)	
)	
v.)	Case No. 08-1230-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On November 17, 2008, Diana Williams (Ms. Williams or Complainant) filed a complaint against Ohio Edison Company (Ohio Edison). In the complaint, Ms. Williams alleges that she sought to obtain certain records from Ohio Edison through a subpoena and that Ohio Edison refused to produce the requested records. Ms. Williams alleges further that her wages have been illegally garnished for a period of almost two years. To resolve these issues, Ms. Williams requested a hearing.
- (2) In its answer filed on December 9, 2008, Ohio Edison admits that the Complainant is a customer receiving electric service, and that it currently maintains an account in the Complainant's name. Ohio Edison denies that it has refused to produce any discoverable documents or records pursuant to a valid subpoena and alleges that it is unclear about the records referred to by the Complainant. Ohio Edison also denies garnishing the Complainant's wages illegally.
- (3) On the date that it filed its answer, Ohio Edison also filed a motion to dismiss. In sum, Ohio Edison alleges that the complaint fails to state reasonable grounds, that the Commission lacks jurisdiction, that the complaint is insufficient in its factual allegations, and that the matter has been adjudicated in an Ohio court of common pleas.

With regard to the jurisdictional issue, Ohio Edison states that the Complainant does not raise any issues related to service or reliability. Instead, the Complainant challenges a court-ordered garnishment of wages and seeks the enforcement of a subpoena. These matters, argues Ohio Edison, are not properly before the Commission.

To support its position that the complaint fails to rise to the level of minimal clarity required by the Commission's rules, Ohio Edison relies on that portion of Rule 4901-9-01(B), Ohio Administrative Code (O.A.C.), that states that complaints "shall contain . . . a statement which clearly explains the facts which constitute the basis of the complaint." Describing the complaint as vague, incoherent, and disconnected, Ohio Edison argues that the complaint's lack of clarity precludes any finding of reasonable grounds for complaint.

An additional defect, according to Ohio Edison, is that the complaint fails to allege any violation of a statute, rule, or Commission order. Furthermore, Ohio Edison asserts that the complaint does not contain a sufficient allegation that could lead to a finding of "inadequate service."

Ohio Edison explains that the contract dispute that resulted in garnished wages was adjudicated in a Summit County Court of Common Pleas and arose from matters that occurred in 1998. Ohio Edison contends that if the complaint is based upon the facts of the underlying contract dispute that led to the garnishment, then presumably the statute of limitations has run. Nevertheless, Ohio Edison alleges that it cannot properly evaluate a statute of limitations defense without knowing the specific allegations from the Complainant.

- (4) On December 22, 2008, the Complainant filed a responsive pleading styled as a "Motion to Dismiss Respondents [sic] Motion to Dismiss & Motion for Summary Judgment Pursuant to 4901-9-01(D)." In her pleading, Ms. Williams claims that Ohio Edison refused to divulge an address, dates of service, or duration of service. Presumably, she refers to the address where Ohio Edison provided service to her. Ms. Williams attempted to obtain this and other information through a subpoena. She attached a copy of the subpoena to her pleading. The subpoena, issued through the Summit County

Clerk of Courts in Case No. CV-1998-10-3882, seeks copies of bills relating to garnishment. Ms. Williams claims that she has been charged for service that was not rendered. By subpoena, she attempted to compel Ohio Edison to produce records of service and thereby prove that she was a customer.

- (5) On April 6, 2009, the Complainant filed a pleading titled "Addendum to Original Complaint." In the pleading, Ms. Williams attached a copy of Section 2305.07, Revised Code. Section 2305.07, Revised Code, establishes a six-year statute of limitations for contracts not in writing. Ms. Williams contends that Ohio Edison not only violated this statute, but also committed acts that should be regarded as contempt of court and abuse of process.
- (6) On May 13, 2009, Ohio Edison filed a response to the Complainant's addendum to the complaint. Summarizing, Ohio Edison reduces the complaint to two issues. The first issue is that Ohio Edison has not responded to a subpoena filed in the Summit County Court of Common Pleas. Ohio Edison responds that the Summit County Court of Common Pleas has denied Ms. William's motion for contempt.

The second issue involves the alleged unlawful garnishment of wages by Ohio Edison and the illegality of the underlying judgment. In rejecting her claims that Ohio Edison obtained an illegal judgment against her, Ohio Edison explains that the Summit County Court of Commons Pleas and the Ninth District Court of Appeals have reviewed the matter and have rejected Ms. William's challenge of the judgment rendered in 1999. Ohio Edison also raises an issue concerning the identity of the creditor in the garnishment documents attached to the Complainant's pleading.

On examination of the garnishment documents provided by Ms. Williams, Ohio Edison contends that the documents have nothing to do with Ohio Edison. The notice of garnishment shows that Cleveland Postal Employees Credit Union is the judgment creditor that seeks garnishment, not Ohio Edison.

As in its motion to dismiss, Ohio Edison argues that Ms. Williams' complaint does not set forth reasonable grounds or a clear statement of the relief she seeks. Instead of raising service

or reliability issues, Ohio Edison contends that Ms. Williams is dissatisfied by court judgments that were rendered against her in 1999.

Ohio Edison rejects any notion that the Commission has jurisdiction over the matters raised by Ms. Williams. Even assuming that the Commission has jurisdiction, Ohio Edison argues that the Commission would be legally bound to dismiss the complaint by collateral estoppel. For the reasons stated in its motion to dismiss and its response to the Complainant's addendum, Ohio Edison urges the Commission to dismiss the complaint.

- (7) Ohio Edison's motion to dismiss raises the issue of whether the complaint meets the minimum standards under Section 4905.26, Revised Code, and the Commission's rules. Rule 4901-9-01(B), O.A.C., states that a complaint must contain "a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought." Moreover, a complaint filed under Section 4905.26, Revised Code, must state reasonable grounds for complaint.

The attorney examiner believes that the complaint, as filed on November 17, 2008, fails to meet the standards set by Rule 4901-9-01(B), O.A.C., or Section 4905.26, Revised Code. The statements in the complaint are unclear and incomplete. In addition, the complaint fails to provide any information regarding claims that led to the subpoena or garnishment. Moreover, the complaint refers to two matters over which the Commission has no jurisdiction: (1) enforcement of a court-issued subpoena and (2) garnishment of the Complainant's wages pursuant to a judgment issued by a court.

The Commission did not authorize the subpoena referenced in the complaint. Instead, the subpoena was issued in a Summit County Court of Common Pleas proceeding. The Commission, therefore, has no jurisdiction to enforce compliance with the subpoena. On this matter, the attorney examiner believes that there are no reasonable grounds for complaint.

The remainder of the complaint refers to unlawful garnishment of wages. By means of the complaint, the Complainant apparently seeks relief from garnishment. Because the

Commission has no jurisdiction to authorize or oversee the execution of judgments by garnishment or other means, there is no set of facts related to such matters that could possibly invoke the jurisdiction of the Commission. Consequently, the attorney examiner believes that there are no reasonable grounds for complaint with respect to the garnishment of the Complainant's wages.

- (8) Aside from matters over which the Commission has no jurisdiction, the complaint lacks a clear presentation of any facts and fails to make a proper request for relief. The attorney examiner, even after attempting to cure these defects by conjecture, is led to the conclusion that the complaint fails to state reasonable grounds.
- (9) In Complainant's subsequent pleading, titled "motion to dismiss respondents [sic] motion to dismiss & motion for summary judgment pursuant to 4901-9-01(D)," Complainant states that Ohio Edison, in the case filed in Summit County Court of Common Pleas, "never even gave an address as to where this alleged bill took place." Complainant contends that this action constitutes reasonable grounds for her complaint. She further argues that the Commission has the obligation to determine if service was performed and billed appropriately.
- (10) It appears that, to date, all of Complainant's actions and requests related to Ohio Edison have occurred as part of a Summit County Court of Common Pleas proceeding. This Commission has no legal authority to review matters decided by that court or to grant relief from garnishment of wages.
- (11) Pursuant to Rule 4901-9-01, Ohio Administrative Code, a complaint filed with the Commission against a public utility must provide a statement that clearly explains the facts that constitute the basis of the complaint and a statement of the relief sought. Prior to recommending to the Commission the possible dismissal of this case, the attorney examiner will give the Complainant an opportunity to file an amended complaint. The amended complaint should not reference issues that she may have with the conduct of or conclusion of the Summit County Common Pleas Court case because the Commission cannot address those issues. Section 4905.26, Revised Code, provides that the Commission has jurisdiction over and may


resolve customer complaints regarding the service provided and the rates charged by electric companies. If Complainant files an amended complaint, she must provide the Commission with sufficient information to determine if reasonable grounds for the alleged complaint exist.


It is, therefore,

ORDERED, That, Complainant shall have 15 days from the date of the entry to file an amended complaint. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

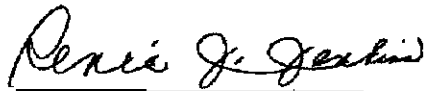
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: L. Douglas Jennings
Attorney Examiner


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Entered in the Journal

JUL 02 2009



Renee J. Jenkins
Secretary