

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.	)	

FINDING AND ORDER

The Commission finds:

- (1) On November 17, 2008, Diana Williams (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.
- (2) On December 8, 2008, Ohio Edison filed an answer and a motion to dismiss. In its motion to dismiss, Ohio Edison alleged 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.
- (3) 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 she has been charged for service that was not rendered. Through a subpoena issued by the Summit County Clerk of Courts in Case No. CV-1998-10-3882, Ms. Williams seeks

copies of bills from Ohio Edison for the service it claims to have provided.

- (4) On April 6, 2009, the complainant filed a pleading that she identified as an addendum to the complaint. In the pleading, Ms. Williams claimed that, pursuant to Section 2305.07, Revised Code, the statute of limitations has expired and that Ohio Edison has violated the statute.
- (5) On May 13, 2009, Ohio Edison filed a response to the complainant's addendum to the complaint. In its response, Ohio Edison concludes that Ms. Williams' addendum does nothing to shield her complaint from dismissal for lack of jurisdiction. Ohio Edison initially points out that the addendum merely consists of a copy of Section 2305.07, Revised Code, along with a cover letter that claims that Ohio Edison violated this particular provision. Because the addendum fails to state any claims against Ohio Edison or provide support for the complaint, Ohio Edison urges the Commission to dismiss the complaint. Procedurally, Ohio Edison contends that there is no provision in the Commission's rules for an "addendum" to a complaint. To the extent that the Commission may consider the addendum an effective pleading, Ohio Edison denies all allegations.

Summarizing, Ohio Edison distills two issues from the complainant's pleadings: (1) Ohio Edison has refused to respond to a subpoena filed in the Summit County Court of Common Pleas and (2) Ohio Edison is illegally garnishing her wages. Ohio Edison alleges that, with regard to the first issue, the court denied the complainant's motion for contempt. In addition, Ohio Edison emphasizes that the Commission has no authority to enforce a subpoena issued by a court of common pleas.

As for the second issue, Ohio Edison states that the complainant is challenging the court's judgment rendered involving an underlying alleged utility debt. The Summit County magistrate's decision documents the rejection of the complainant's claim in both the Summit County Common Pleas Court and the Ninth District Court of Appeals. Ohio Edison argues that the merits of the Summit County litigation cannot be re-litigated before the Commission. Ohio Edison

adds further that even if the Commission had authority to consider Ms. Williams' complaint, the Commission would be barred from doing so by collateral estoppel.

As for the garnishment, Ohio Edison points out that the copy of the complainant's pleading shows that the Cleveland Postal Employees Credit Union obtained the garnishment that Ms. Williams attributes to Ohio Edison.

Far from raising issues relating to service and reliability, Ohio Edison characterizes the complaint as an attempt to raise issues regarding the fairness and authority of the Summit County Court of Common Pleas.

- (6) On July 2, 2009, the attorney examiner issued an entry providing the complainant with an opportunity to file an amended complaint within 15 days. The attorney examiner advised the complainant that she should not reference issues that she may have with the conduct or conclusion of the Summit County Common Pleas Court. The attorney examiner pointed out to the complainant that Section 4905.26, Revised Code, grants the Commission authority over customer complaints regarding service and rates charged by utilities.
- (7) On July 24, 2009, the complainant filed an amended complaint and a motion for extension of time to file the amended complaint. The amended complaint was filed on July 24, 2009, past the 15-day period allowed by the attorney examiner. In her amended complaint, Ms. Williams disputes that she was a customer of Ohio Edison in 1998 and that the default judgment obtained by Ohio Edison against her for nonpayment is unlawful. As compensation for "malicious tort" and "emotional distress," Ms. Williams demands the return of all garnished wages, \$16,000 in compensatory damages, and treble damages.
- (8) In support of her motion for an extension of time, Ms. Williams alleges that a copy of the envelope in which the entry was delivered shows a mailing date of July 7, 2009. She contends that she did not receive a copy of the entry until July 15, 2009, suggesting that she did not have sufficient time to file an amended complaint within the allotted 15 days.

- (9) In a motion to dismiss filed August 12, 2009, Ohio Edison argues that the amended complaint should be dismissed for failure to be timely filed. Noting that the complainant filed the amended complaint on July 24, 2009, Ohio Edison points out that the filing is well beyond the 15-day period allowed by the attorney examiner. For her failure to file the amended complaint on time, Ohio Edison urges the Commission to dismiss the complaint.
- (10) The complainant's motion to extend time shall be granted. According to the period specified by the July 2, 2009, entry, the complainant should have filed her amended complaint by July 17, 2009. If she did not receive a copy of the entry until July 15, 2009, we agree that there was insufficient time to respond in a timely manner. The complainant's motion to extend time is, therefore, reasonable and should be granted.
- (11) In its August 12, 2009, motion to dismiss, Ohio Edison also sought to dismiss the amended complaint with prejudice. In its supporting memorandum, Ohio Edison argues that the complainant has failed to plead factual allegations that would invoke the Commission's jurisdiction.

For its argument, Ohio Edison relies upon Section 4905.26, Revised Code, which requires that reasonable grounds for complaint must be stated before a hearing may go forward. Ohio Edison also relies upon Rule 4901-9-01(B), Ohio Administrative Code, which requires that all complaints contain a statement which clearly explains the facts which constitute the basis of the complaint and a statement of the relief sought. Essential to a complaint, argues Ohio Edison, are factual allegations that would support a finding of "inadequate service."

Pointing to deficiencies of the complaint noted by the attorney examiner in the July 2, 2009, entry, Ohio Edison argues that the complainant has again failed to state sufficient factual allegations. According to Ohio Edison, the attorney examiner advised the complainant that the Commission had no authority over matters related to a Summit County Court of Common Pleas proceeding, that the Commission has no legal authority to review court matters or grant relief from the garnishment of wages, and that the complaint lacked a proper

presentation of the facts or request for relief. Highlighting these deficiencies, Ohio Edison points out that the attorney examiner warned the complainant not to reference issues related to the Summit County Common Pleas Court proceedings.

Ohio Edison contends that the amended complaint does not address the deficiencies identified by the attorney examiner. In its review of the amended complaint, Ohio Edison contends that it still cannot ascertain any substantive factual allegations that are within the Commission's jurisdiction. Rather, Ohio Edison only can delineate two factual allegations relating to a court-issued subpoena and the garnishment of wages. Ohio Edison emphasizes that both matters are beyond the Commission's jurisdiction.

Ohio Edison asserts that the complainant did not follow the attorney examiner's instructions. Because it lacks factual allegations that would establish reasonable grounds, Ohio Edison contends that it is entitled to dismissal of the complaint, as amended, for the complainant's failure to state a claim. Because the complainant has failed to state reasonable grounds, notwithstanding multiple filings, Ohio Edison urges the Commission to dismiss the complaint with prejudice.

- (12) On August 28, 2009, Ms. Williams filed a response to Ohio Edison's motion to dismiss. Ms. Williams claims that Ohio Edison's motion is untimely and should be stricken. Contrary to Ohio Edison's assertions, she also denies that her amended complaint lacks specificity. In her pleading, Ms. Williams requests, by means of a Freedom of Information request, a complete copy of her account. She further requests a period of 30 days to review the records. She reiterates her claim that Ohio Edison refuses to provide her the records she sought through subpoena. She now seeks to obtain the records through a Freedom of Information request.
- (13) We find that the complainant's complaint, as amended, fails to state reasonable grounds. The attorney examiner's July 2, 2009, entry instructed the complainant to "provide sufficient information to determine if reasonable grounds for the alleged complaint exist." The attorney examiner cautioned the complainant against referencing issues that she may have with

the conduct or conclusion of the Summit County Court of Common Pleas. The attorney examiner explained that the Commission does not have jurisdiction to address those issues. The attorney examiner advised the complainant that 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 public utilities.

The complainant, in her amended complaint, claims that she needs information from Ohio Edison in order to allege facts to support her complaint. She explains that it is "very difficult to be specific in stating A [sic] clear presentation of any facts." Thus, the complainant virtually admits that she has not complied with the attorney examiner's instruction to "provide a statement that clearly explains the facts that constitute the basis of the complaint...." Furthermore, as is the case with all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Utilities Commission*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966).

In her pleadings thus far, Ms. Williams has directed her efforts toward obtaining account information from Ohio Edison by subpoena. It appears that Ms. Williams believes she can use account information to overturn a default judgment issued by the Summit County Court of Common Pleas in an action that began in 1998. Ms. Williams' pleadings suggest that she believes that Ohio Edison's records will establish that she was not a customer at the time relevant to the judgment. Ms. Williams' August 28, 2009, pleading is her latest attempt to extract such information from Ohio Edison by a Freedom of Information request.

If Ms. Williams wishes to make the argument that she was not a customer of Ohio Edison at a particular point in time, she should allege facts to support such a claim. She cannot support her complaint by information that she expects to find in the possession of Ohio Edison. A complaint must stand on its own to meet the standard under Section 4905.26, Revised Code. Without sufficient factual allegations, the complaint cannot go forward. Absent a clear statement of reasonable grounds in the initial complaint, the amended complaint, and

intervening pleadings, the Commission finds that Ohio Edison's motion to dismiss the complaint is reasonable and should be granted.

It is, therefore,

ORDERED, That, in accordance with Finding (13), Ohio Edison's motion to dismiss the complaint be granted. It is, further,

ORDERED, That the complaint be dismissed. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



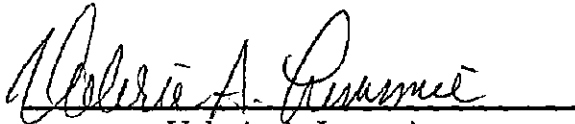
Alan R. Schriber, Chairman



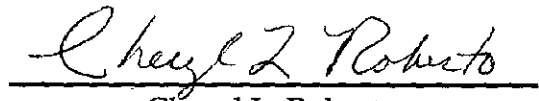
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Entered in the Journal

OCT 28 2009



Renee J. Jenkins  
Secretary