

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**LEWIS C. ZAJAC,**

**Complainant,**

**v.**

**OHIO EDISON COMPANY,**

**Respondent.**

**Case No. 10-2310-EL-CSS**

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**MOTION TO COMPEL OF THE OHIO EDISON COMPANY  
(EXPEDITED RULING REQUESTED)**

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Pursuant to Rule 4901-1-23, Ohio Administrative Code (“O.A.C.”), The Ohio Edison Company (the “Company”) hereby moves to compel discovery responses from Lewis C. Zajac (“Complainant”). As fully set forth in the attached memorandum in support, Complainant has failed to respond to the Company’s First Set of Interrogatories and Requests for Production of Documents, which were served over six weeks ago. Given that the hearing in this case is scheduled to take place on July 22, 2011 (PUCO Entry 06/08/2011), it is essential that Complainant be compelled to respond to this discovery immediately. Moreover, pursuant to Rule 4901-1-12(C), and given the short time remaining before hearing, the Company seeks an expedited ruling on this Motion. On June 24, 2011, counsel for the Company left a voicemail message for Complainant regarding this request for an expedited ruling, but as with counsel’s other calls to Complainant, this message has gone unreturned. The Company’s Motion to

Compel should be granted, and Complainant should be ordered to respond to the Company's discovery requests no later than July 11, 2011.

DATED: July 1, 2011

Respectfully submitted,

/s/ Martin T. Harvey

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ATTORNEYS FOR RESPONDENT  
OHIO EDISON COMPANY

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On May 11, 2011, the Company served its First Set of Interrogatories and Requests for Production of Documents on Mr. Lewis C. Zajac (“Complainant”). *See* Affidavit of Martin T. Harvey (“Harvey Aff.”) Ex. MTH-1. Under Rule 4901-1-19 of the Commission’s Rules of Practice, responses to those requests were due within twenty (20) days of service, or on June 3, 2011. *See* Rule 4901-1-19. The Company has not received any discovery responses from Complainant as of the date of this Motion, nor any request for an extension to provide them. *See* Harvey Aff., ¶¶ 3.

On June 16, 2011, counsel for the Company sent a letter to Mr. Zajac reminding him of his obligation to respond to that discovery and requesting responses by June 23, 2011. *See* Harvey Aff. Ex. MTH-2. The Company has received no response to this letter. *See* Harvey Aff., ¶ 4. Counsel for the Company has also sent Complainant’s spouse, Mrs. Michelle Zajac, two emails requesting that she inform Complainant about the obligation to respond to the discovery

requests (Complainant does not have an email account). *See* Harvey Aff. Ex. MTH-3. Further, counsel for the Company also has left four messages at the phone number listed on the Complaint seeking responses to these discovery requests. *See* Harvey Aff., ¶ 5. Complainant has not returned these calls. *See id.*

## **II. ARGUMENT**

Complainant has completely ignored the Company's discovery requests, and he shows no intention of responding to them. Complainant's conduct violates the Commission's discovery rules, and it seriously prejudices the Company in its defense of this action. Therefore, Complainant should be compelled to respond to the Company's discovery requests.

Complainant's responses to the propounded interrogatories are necessary for the Company's defense. Without them, the Company cannot fully understand Complainant's allegations and respond to them. Indeed, in the absence of any responses to the Company's discovery requests, it is unclear what reasonable grounds the Complainant possesses here. Consequently, without any responses to the Company's interrogatories, the Company is left to resort to guesswork to mount a defense.

Thus, the Company needs Complainant to respond to Interrogatories Nos. 3-8. *See* Harvey Aff. Ex. MTH-1. The Company also needs Complainant to provide all documents regarding any analyses of electrical usage at Complainant's residence and any communications with the Company's employees. *Id.* This information goes to the heart of Complainant's allegations. Complainant's failure to respond reflects a total disregard for the Commission's rules and an unwillingness to prosecute his case. Complainant should be compelled to respond to the Company's discovery requests.

For the foregoing reasons, the Company respectfully requests that the Attorney Examiner issue an entry compelling Complainant to provide complete responses to the Company's First Set of Interrogatories and Requests for Production of Documents no later than July 11, 2011.

DATED: July 1, 2011

Respectfully submitted,

/s/ Martin T. Harvey

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ATTORNEYS FOR RESPONDENT  
THE OHIO EDISON COMPANY

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was delivered to the following person by first class mail, postage prepaid, this 1st day of July, 2011:

Lewis C. Zajac  
4969 Old State Road  
West Farmington, OH 44491

/s/ Martin T. Harvey  
An Attorney For Respondent

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

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**in**

**Case No(s). 10-2310-EL-CSS**

Summary: Motion to Compel of the Ohio Edison Company (Expedited Ruling Requested) and Memorandum in Support electronically filed by Mr. Martin T Harvey on behalf of Ohio Edison Company