

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Lewis C. Zajac,)	
)	
Complainant,)	
)	
v.)	Case No. 10-2310-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) By entry issued April 19, 2011, an evidentiary hearing in this matter was originally scheduled to occur on June 9, 2011. Later, by entry issued on June 8, 2011, the hearing was postponed and rescheduled to take place on July 22, 2011.
- (2) On July 1, 2011, the respondent, Ohio Edison Company (Ohio Edison) filed a motion to compel discovery, along with a request for an expedited ruling on that motion, regarding its need for discovery responses from the complainant, Lewis C. Zajac (Mr. Zajac). Ohio Edison explains that Mr. Zajac has not responded to its discovery requests, consisting of the respondent's First Set of Interrogatories and Requests for Production of Documents, served over six weeks ago, on May 11, 2011. Further, explains the respondent, Mr. Zajac has not replied to Ohio Edison's letter, e-mails, and telephone messages regarding his need to answer the respondent's interrogatories and to provide documents. Ohio Edison also asserts that Mr. Zajac did not answer a June 24, 2011, voicemail message concerning the request for expedited ruling. The respondent contends that the information that it seeks through discovery is necessary to formulate its defense in this matter, and that Mr. Zajac should be ordered to respond to discovery no later than July 11, 2011, given that the July 22, 2011, hearing date is approaching.

- (3) Under Rule 4901-1-12(C), Ohio Administrative Code (O.A.C.), a party that files a motion requesting an expedited ruling may first contact all other parties to determine whether any party objects to such a ruling without the filing of a memorandum contra. Rule 4901-1-12(C), O.A.C., also states that if the moving party fails to certify that no party has any objection, any party may file a memorandum contra within seven days after service of the motion.
- (4) The attorney examiner observes that Ohio Edison has not certified that Mr. Zajac has no objection to an expedited ruling. The attorney examiner does, however, take notice of Ohio Edison's assertion that, on June 24, 2011, it left Mr. Zajac a voicemail message regarding its motion for expedited ruling, and that he has not responded. Further, the attorney examiner notes that Mr. Zajac did not file a memorandum contra by July 8, 2011. Given these factors, and Ohio Edison's assertion that discovery responses are necessary to formulate its position at the upcoming hearing, the attorney examiner grants, on an expedited basis, Ohio Edison's motion to compel. In doing so, however, the attorney examiner finds it appropriate to order both that Mr. Zajac shall have until July 18, 2011, to reply to Ohio Edison's discovery requests, and further, to order that the hearing currently scheduled for July 22, 2011, should be postponed and rescheduled to occur, instead, on September 1, 2011.
- (5) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.* (1966), 5 Ohio St.2d 198.
- (6) In addition, the attorney examiner emphasizes to Mr. Zajac that under Rule 4901-1-23(F)(4), O.A.C., if any party disobeys an order of the Commission compelling discovery, the Commission may dismiss the proceeding that was initiated by the disobedient party.

It is, therefore,

ORDERED, That Ohio Edison's motion to compel discovery is granted. It is, further,

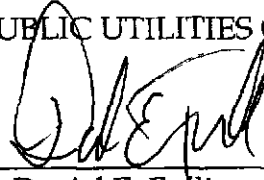
ORDERED, That Mr. Zajac shall reply to Ohio Edison's discovery requests no later than July 18, 2011. It is, further,

ORDERED, That the hearing currently scheduled to occur on July 22, 2011, is postponed and rescheduled to take place on September 1, 2011, at 10:00 a.m., in Hearing Room 11-D, on the 11th Floor of the Commission offices, 180 East Broad Street, Columbus, Ohio 43215-3793. It is, further,

ORDERED, That any party intending to present direct, expert testimony should comply with Rule 4901-1-29(A)(1)(h), Ohio Administrative Code, which requires that all such testimony to be offered in this type of proceeding be filed and served upon all parties no later than seven days prior to the commencement of the hearing. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Daniel E. Fullin
Attorney Examiner

gfg /sc

Entered in the Journal

JUL 11 2011

Betty McCauley

Betty McCauley
Secretary