

**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 FOR CONTINUANCE OF HEARING BY THE OHIO EDISON COMPANY  
(EXPEDITED RULING REQUESTED)**

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Pursuant to Rule 4901-1-13, Ohio Administrative Code (“O.A.C.”), the Ohio Edison Company (the “Company”) hereby respectfully moves for a continuance of the hearing currently scheduled for September 1, 2011. Good cause exists for this Motion. As fully set forth in the memorandum in support, Lewis C. Zajac (“Complainant”) has failed to respond to the Attorney Examiner’s July 11 Order (the “July 11 Entry”) compelling Complainant to respond the Company’s First Set of Interrogatories and Requests for Production of Documents, which were served over ten weeks ago. In light of Complainant’s continued failure to respond, on August 2, 2011, the Company filed its Motion to Dismiss for Failure to Prosecute (the “Motion to Dismiss”).

Pursuant to Rule 4901-1-07, O.A.C., the Attorney Examiner’s ruling on the Motion to Dismiss cannot be issued until August 24, 2011—eight days prior to the scheduled hearing. Should the Motion to Dismiss not be granted, the Company will likely have to proceed to the

hearing without the benefit of any written discovery from Complainant. Further, such a short timeframe will make it very difficult for the Company to depose the Complainant prior to the hearing. Lastly, the Company will also lack such discovery as an aid in preparing its direct, expert testimony, currently due on August 25, 2011.

Moreover, pursuant to Rule 4901-1-12(C), and given the extremely short time interval between the issuance of the decision on the Motion to Dismiss and the hearing, and the fact that pre-filed testimony is currently due the day after the decision on the Motion to Dismiss, the Company seeks an expedited ruling on this Motion. On August 12, 2011, counsel for the Company left a voicemail message for Complainant regarding this request for an expedited ruling but this message has gone unreturned. Rule 4901-1-12(F) further provides:

Notwithstanding paragraphs (B) and (C) of this rule, the commission, the legal director, the deputy legal director, or the attorney examiner may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

Importantly this short continuance will not affect any rights of the Complainant or prejudice him in any way. Also, this Motion is not being sought for purposes of delay.

Accordingly, the Company respectfully requests that the hearing currently scheduled for September 1, 2011 be rescheduled for September 22, 2011 and that direct, expert testimony be due on September 15.

DATED: August 12, 2011

Respectfully submitted,

/s/ Martin T. Harvey

David A. Kutik (0006418)

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ATTORNEYS FOR RESPONDENT  
OHIO EDISON COMPANY

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**MEMORANDUM IN SUPPORT OF THE OHIO EDISON COMPANY'S MOTION FOR  
CONTINUANCE OF HEARING**

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**I. INTRODUCTION**

Pursuant to Rule 4901-1-13, O.A.C., good cause exists for the requested continuance. Complainant has shown no intention of prosecuting his case, which led to the Company's filing of its Motion to Dismiss on August 2, 2011. Pursuant to Rule 4901-1-07, O.A.C., the Attorney Examiner cannot issue a ruling on the Motion to Dismiss until August 24, 2011, a mere eight days prior to the hearing currently scheduled for September 1, 2011. Should the Motion to Dismiss not be granted, the Company will likely have to proceed to the hearing with absolutely no offensive discovery at its disposal to use either at the hearing or in the preparation of its direct, expert testimony currently due on August 25, 2011. Accordingly, the Company respectfully requests that the hearing be rescheduled for September 22, 2011 to give the Company adequate time to attempt to collect written discovery, depose the Complainant and utilize these discovery materials in the preparation of its direct, expert testimony.

## II. ARGUMENT

To date, Complainant has consistently refused to comply with his discovery obligations. On May 11, 2011, the Company served its First Set of Interrogatories and Requests for Production of Documents on Complainant. *See* Company's Mot. to Compel dated July 1, 2011. Under the Commission's rules, responses to those requests were due on June 3, 2011, 2011. *See* Rule 4901-1-19. The Company did not receive any responses from Complainant by that date, nor any request for an extension to provide them. *See* Company's Mot. to Compel dated July 1, 2011. On June 16, 2011, counsel for the Company sent a letter to Complainant reminding him of his obligation to respond to that discovery and requesting responses by June 23, 2011, but the Company received no response to this letter. *See id.* Counsel for the Company also sent Complainant's spouse, Mrs. Michelle Zajac, two e-mail messages concerning Complainant's obligation to respond to the Company's discovery requests (Complainant does not have an e-mail account). *See id.* These e-mail messages received no response. *See id.* Throughout this litigation, counsel for the Company also has repeatedly left messages at the phone number listed on the Complaint in order to communicate with Complainant about these discovery requests. *See id.* Complainant has not returned those calls. *See id.*

On July 1, 2011, the Company filed a Motion to Compel Complainant to respond to those discovery requests. Complainant did not respond to that motion. On July 11, 2011, the Attorney Examiner granted the Company's Motion to Compel and ordered Complainants to respond to the Company's discovery requests no later than July 18, 2011. *See* July 11 Entry, ¶ 4. On July 19, July 20, and July 21, 2011 counsel for the Company left phone messages with Complainant

warning him that the Company would seek to dismiss his complaint for failure to prosecute unless Complainant met his discovery obligations.

On July 21, 2011, at approximately 9:00 p.m., Complainant finally telephoned counsel for the Company. Complainant eventually stated that if counsel for the Company would re-send him the Company's discovery requests then he would respond accordingly. On July 22, 2011, counsel for the Company re-sent the Company's first set of discovery requests to Complainant. *See* Ex. MTH-1 of the Company's Mot. to Dismiss. In the accompanying enclosure letter, counsel for the Company warned Complainant that if no discovery responses were received by July 29, 2011 then the Company would move to dismiss the Complainant's complaint. *See id.* On August 2, 2011, with still no response from Complainant, the Company filed its Motion to Dismiss. *See* Docket Entry 8/2/11.

Pursuant to Rule 4901-1-07, O.A.C., the Attorney Examiner cannot issue a ruling on the Motion to Dismiss until August 24, 2011. The hearing in this matter is currently scheduled for September 1, 2011. *See* July 11 Entry. Should the Motion to Dismiss not be granted, in the absence of a continuance, the Company will likely have to proceed to hearing without the benefit of written discovery. Importantly, the requested written discovery goes to the heart of Complainant's allegations. Complainant's responses to the propounded interrogatories are necessary for the Company's defense. *See* Company's Mot. to Compel dated July 1, 2011. Likewise, the Company needs Complainant to provide all requested documents. *See id.* Further, and in light of Complainant's general refusal to communicate with counsel for the Company, the eight-day interval will likely not provide enough time to schedule and take Complainant's deposition. Lastly, the Company's direct, expert testimony is due on August 25, 2011. *See* July 11 Entry. In the absence of a continuance, if the Motion to Dismiss is not granted then the

Company will have to proceed with its direct, expert testimony without having access to any discovery whatsoever from the Complainant. In light of the aforementioned and pursuant to Rule 4901-1-13, O.A.C, good cause exists for the requested continuance and it is not being sought for purposes of delay.

### **III. CONCLUSION**

For the foregoing reasons, the Company respectfully requests that the hearing scheduled for September 1, 2011 be rescheduled for September 22, 2011 and that direct, expert testimony be due on September 15, 2011.

DATED: August 12, 2011

Respectfully submitted,

/s/ Martin T. Harvey

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ATTORNEYS FOR RESPONDENT  
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 12th day of August, 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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Summary: Motion for Continuance of Hearing electronically filed by Mr. Martin T Harvey on behalf of Ohio Edison Company