

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 Commission finds:

- (1) On October 7, 2010, a complaint was filed by Lewis C. Zajac (complainant) against Ohio Edison Company (respondent or Ohio Edison). The complaint alleges that respondent extremely overcharged the complainant for electric service for the month of August 2010.
- (2) On October 27, 2010, Ohio Edison filed its answer to the complaint, denying the material allegations of the complaint. In its answer, Ohio Edison admits that the complainant's July 2010, bill was higher than bills for previous periods but contends that, nevertheless, it reflects the complainant's actual usage and that the charges reflected in that bill are proper.
- (3) By entry issued March 30 2011, the attorney examiner scheduled a settlement conference for April 18, 2011. The parties participated in the conference, which was held as scheduled, but were unable to settle matters.
- (4) By entry issued April 19, 2011, an evidentiary hearing in this matter was originally scheduled to occur on June 9, 2011. By entry issued on June 8, 2011, the hearing was postponed and rescheduled to take place on July 22, 2011. Later still, by entry issued July 11, 2011, in order to allow the complainant time to respond to Ohio Edison's discovery requests, the hearing was postponed once more and rescheduled for September 1, 2011.

- (5) On July 11, 2011, the attorney examiner issued an entry granting the respondent's motion to compel discovery, which had been filed on July 1, 2011, based on the fact that the complainant had not responded to Ohio Edison's outstanding discovery requests, consisting of the respondent's First Set of Interrogatories and Requests for Production of Documents, first served on the complainant on May 11, 2011. The purpose of the entry was to compel the complainant to reply to these discovery requests no later than July 18, 2011. Finding (6) of the entry specifically put the complainant on notice that, under Rule 4901-1-23(F)(4), Ohio Administrative Code (O.A.C.), if any party disobeys an order compelling discovery, the Commission may dismiss the proceeding that was initiated by the disobedient party.
- (6) On August 2, 2011, the respondent filed a motion, along with a memorandum in support, seeking to have the Commission dismiss this case, with prejudice, on grounds that the complainant has shown no intention of prosecuting this case and has ignored the July 11, 2011, entry ordering him to respond to Ohio Edison's discovery requests.

In its motion to dismiss, the respondent asserts that until the complainant finally telephoned counsel for the respondent on July 22, 2011, the complainant had consistently refused to return phone calls regarding the discovery requests left at his residence by counsel for the respondent. Pursuant to this telephone conversation, on July 22, 2011, the respondent re-sent its discovery requests to the complainant, along with an accompanying letter notifying the complainant that he had until 5:00 p.m. on July 29, 2011, to respond to the enclosed discovery requests or else a motion to dismiss this case for failure to prosecute would be filed with the Commission.

In its motion to dismiss, the respondent reports that the complainant has once again failed to respond to Ohio Edison's discovery requests and that the respondent's counsel has had no further communications with the complainant. This case should be dismissed, argues the respondent, because the complainant has completely ignored his obligation to respond to discovery requests and to obey the attorney examiner's instructions in this case. Moreover, the respondent asserts that its discovery requests go to the heart of the complainant's claims, and requiring the respondent to proceed to a hearing without the benefit of the complainant's complete responses would be severely prejudicial to the respondent's defense.

- (7) The complainant has filed no response to Ohio Edison's August 2, 2011, motion to dismiss.
- (8) The Commission finds that the complainant has failed to diligently prosecute his complaint and, by refusing to respond to the respondent's discovery requests, has severely prejudiced the respondent's right to prepare its defense to the complaint. In view of the complainant's steadfast refusal to cooperate in the discovery process, Ohio Edison's August 2, 2011, motion to dismiss this case for lack of prosecution by the complainant, should be granted. This case should, accordingly, be dismissed without prejudice and closed of record.

It is, therefore,

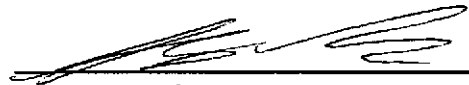
ORDERED, That in accordance with the above findings, Case No. 10-2310-EL-CSS is dismissed without prejudice and closed of record. It is, further,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

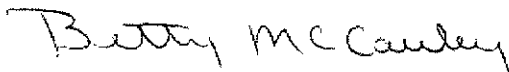

Andre T. Porter


Cheryl L. Roberto

DEF/dah

Entered in the Journal

AUG 24 2011


Betty McCauley
Secretary