

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	)	
Marcena Upp,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 11-5427-EL-CSS
	)	
The Toledo Edison Company,	)	
	)	
Respondent.	)	

ENTRY

The attorney examiner finds:

- (1) On October 11, 2011, Ms. Marcena Upp (complainant) filed a complaint against the Toledo Edison Company (Toledo Edison). In her complaint, Ms. Upp alleges that for the period 2008 to the present Toledo Edison has engaged in a practice of improper billing, abusive collection practices, wrongful disconnection, and inaccurate meter reading.
- (2) On September 6, 2012, Toledo Edison filed a motion to compel complete responses to its written discovery requests. In its motion, Toledo Edison claims that the complainant has failed to produce relevant documents. Toledo Edison adds that responses to several of its interrogatories are inadequate or improper.

For background, Toledo Edison explains that on June 27, 2012, it served the complainant with its first set of interrogatories, requests for production, and requests for admissions. Responses were due by July 20, 2012. In response to a letter requesting immediate responses, Toledo Edison states that the complainant provided responses on July 23, 2012. The responses, however, did not include any documents. Toledo Edison regards the responses to its interrogatories as improper or incomplete. Toledo Edison states that it sent a letter to the complainant on August 10, 2012, requesting that she contact Toledo Edison by August

17, 2012, to discuss discovery requests. Toledo Edison filed a motion to compel because the complainant did not contact counsel for Toledo Edison.

- (3) Toledo Edison asserts that the documents that it seeks are relevant to the issues in the case. As examples, Toledo Edison highlights its request for exhibits to be used at hearing, documents relating to medical certificates and medical care, disconnection notices, and documents relating to payments over the past five years. Instead of providing documents, Toledo Edison states that the complainant has stated that documents will be provided at a later date.

In response to Toledo Edison's request for production of documents, Ms. Upp stated that the "[c]omplainant is currently pro se but will provide documentation under separate cover following consultation with an attorney." This is not a proper response. With respect to its request for production of documents, Toledo Edison's motion to compel should be granted.

- (4) In addition to the production of documents, Toledo Edison seeks to compel responses to specific interrogatories. Specifically, Toledo Edison seeks responses to the following interrogatories: 5-7, 10, 12-19, 21-37.
- (5) For her response to several of the interrogatories, Ms. Upp refers to the narrative provided in her complaint and the attached documents. Ms. Upp believes that this information provides a sufficient response to some of the interrogatories.
- (6) Rule 4901-1-19(C), Ohio Administrative Code (O.A.C.), states as follows:

Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, or from documents which the party served with the interrogatory has furnished to the party submitting the interrogatory within the preceding twelve months, it is a sufficient answer to such interrogatory to specify the title of the document, the location of the document or the

circumstances under which it was furnished to the party submitting the interrogatory, and the page or pages from which the answer may be derived or ascertained.

By referring to the narrative in her complaint and the attached documents, it appears that Ms. Upp has, in some cases, provided sufficient answers to Toledo Edison's interrogatories.

- (7) For interrogatory nos. 5-7, and 10 Toledo Edison seeks facts supporting the violation of tariffs, statutes, and rules. In response to interrogatory no. 5 concerning tariff violations, Ms. Upp objects to the inquiry because she believes that it is overbroad and unclear. She adds that she is unable to respond. Bearing in mind that Ms. Upp is a pro se litigant, she shall be granted lenience and shall not be required to identify specific provisions of tariffs, as an attorney would be expected to do. From the facts alleged in the complaint, Toledo Edison should be able to ascertain any pertinent tariff provisions. Therefore, Toledo Edison's motion to compel shall be denied for interrogatory no. 5.

For interrogatory nos. 6 and 7, concerning statutes and rules violations, Ms. Upp cites Commission rules and relies upon the allegations in her complaint. Pursuant to Rule 4901-1-19(C), (O.A.C.), the complainant's reference to her complaint and its attached documents is permissible and is sufficient to alert Toledo Edison as to the applicable statutes and rules that Ms. Upp may rely upon in this case. Should Toledo Edison desire clarification, it may do so through further discovery.

Interrogatory no. 10 requests that Ms. Upp identify the rights of parents of disabled children that she claims Toledo Edison violated and the facts supporting the finding of a violation. In response, Ms. Upp refers to the Americans with Disabilities Act and Electric Consumers' Bill of Rights. Her response is incomplete. She has stated no facts to support her claim that Toledo Edison violated the Americans with Disabilities Act or the Electric Consumers' Bill of Rights. Toledo Edison should, therefore, be granted an order to compel a response to interrogatory no. 10.

- (8) For her response to interrogatory nos. 12-16, and 18, Ms. Upp states that the interrogatories are repetitive and redundant. Nevertheless, she answers the interrogatories by referring to her complaint with its attached documents. Noting the extensive narrative in her complaint coupled with the attached documents, it appears that Ms. Upp has responded in a manner permitted by Rule 4901-1-19(C), O.A.C. Toledo Edison should evaluate Ms. Upp's responses by taking into account the information and documents that she has provided in her complaint. The motion to compel responses to interrogatories 12-16 and 18 should, therefore, be denied.
- (9) Ms. Upp's answer to interrogatory no. 17 fails to assert facts that would constitute a complete response to the question concerning her daughter's illness and relocation. For interrogatory no. 19, Ms. Upp reveals that she has documentation of her eligibility for income qualifying repayment plans. Ms. Upp should provide the documentation. Consequently, Toledo Edison's motion to compel should be granted for interrogatory nos. 17 and 19.
- (10) In interrogatories 21-37, Toledo Edison seeks information concerning persons spoken to by the complainant, the date of the conversations, the substance of the conversations, and any related documents. For her answer, Ms. Upp points to the allegations in her complaint. Again, this manner of response is permitted under Rule 4901-1-19(C), O.A.C. Consequently, Toledo Edison's motion to compel, with respect to interrogatories 21-37, should be denied.
- (11) Although Ms. Upp's responses are, for some interrogatories, sufficient under Rule 4901-1-19(C), O.A.C., in that they point Toledo Edison to the location of information, this does not necessarily mean that her answers are complete or that Toledo Edison is denied the opportunity to conduct further discovery. It should be noted that if the complainant attempts to introduce evidence that should have been produced in response to discovery requests, such information may be denied admission.

It is, therefore,

ORDERED, That, in accordance with findings (3) and (7) through (10), Toledo Edison's motion to compel is granted in part and denied in part and that the complainant respond to Toledo Edison's request for production of documents and provide responses to interrogatories 10, 17, and 19 on or before November 21, 2012. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/L. Douglas Jennings

By: L. Douglas Jennings  
Attorney Examiner

GAP/dah

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

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**Case No(s). 11-5427-EL-CSS**

Summary: Attorney Examiner Entry granting in part and denying in part Toledo Edison's motion to compel; electronically filed by Debra Hight on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio.