

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

James L. Griffith,	)	Case No.: 13-1956-EL-CSS
)	
Complainant,	)	<u>MOTION TO COMPEL</u>
	)	<u>COMPLAINANT'S DEPOSITION</u>
vs.	)	<u>AND MOTION TO DISMISS</u>
)	
Ohio Edison Company,)	
)	
Respondent.	)	Emily Ciecka Wilcheck (0077895)
	)	ewilcheck@ralaw.com
	)	(willing to accept service by email)
	)	Denise M. Hasbrook (0004798)
	)	dhasbrook@ralaw.com
	)	(willing to accept service by email)
	)	Roetzel & Andress, LPA
	)	One SeaGate, Suite 1700
	)	Toledo, OH 43604
	)	Telephone: 419.242.7985
)	
	)	and
)	
	)	Carrie M. Dunn (0076952)
	)	Counsel of Record
	)	FirstEnergy Service Company
	)	76 South Main Street
	)	Akron, Ohio 44308
	)	Telephone: (330) 761-2352
	)	Facsimile: (330) 384-3875
	)	Email: cdunn@firstenergycorp.com
)	
	)	<i>Attorneys for Respondent,</i>
	)	<i>Ohio Edison Company</i>

Pursuant to Rule 4901-1-23 and Rule 37 of the Ohio Rules of Civil Procedure,
Respondent Ohio Edison Company respectfully moves for an Order compelling Complainant to

appear for deposition in this case. Alternatively, Respondent moves to dismiss Complainant's Complaint for failure to state reasonable grounds for relief. A memorandum in support is attached and an Affidavit of Counsel is attached as Exhibit A pursuant to Ohio Administrative Code 4901-1-23(c)(3).

Respectfully submitted,

/s/ Emily Ciecka Wilcheck

Emily Ciecka Wilcheck (0077895)

Denise M. Hasbrook (0004798)

Carrie M. Dunn (0076952)

*Attorneys for Respondent,
The Ohio Edison Company*

MEMORANDUM IN SUPPORT

I. FACTUAL AND PROCEDURAL BACKGROUND

A. FACTUAL BACKGROUND

This case involves Complainant's claim against Ohio Edison Company for allegedly leaving a "mess" after performing vegetation management activities on his property. Complainant admits that Ohio Edison Company had the right to undertake such maintenance activities within its right-of-way on the property. (See Complaint). Complainant seeks to have his right-of-way further cleared of the removed brush and stumps so that he can ride his four-wheeler on this area. Additionally, Complainant alleges that a corner property marker was "knocked out" during the maintenance activities, and he would like to have such marker replaced. However, since Complainant has filed his Complaint, Respondent has re-visited Complainant's property and conducted further work in an attempt to satisfy Complainant's concerns. Because Respondent has conducted further work on the property, Respondent does not have any idea as to what Complainant's concerns currently are.

B. PROCEDURAL HISTORY

On May 12, 2014, counsel for Respondent corresponded with Complainant requesting his deposition regarding his claim against the Company. (Affidavit of Emily Wilcheck, hereinafter "Wilcheck Aff.," ¶3, Ex. A). On May 19, 2014, counsel spoke with Complainant regarding the deposition. (Wilcheck Aff., ¶4). Complainant expressed a reluctance to appear for a deposition, but agreed to set his deposition for June 5, 2014 at 10:00 a.m. (Wilcheck Aff., ¶4). In exchange, Complainant requested that Respondent provide him with a list of its anticipated witnesses for trial and a copy of the Easement covering the property. (Wilcheck Aff., ¶4).

Arrangements for a deposition near Complainant's location were made and a Notice of Deposition was filed with the Commission on May 22, 2014. (Wilcheck Aff., ¶6). Counsel for

Respondent corresponded with Complainant by letter dated May 22, 2014 confirming the June 5, 2014 deposition at the offices of Court Reporters, Inc., 2223 Fulton Road, N.W., Suite 107, Canton, Ohio 44709. (Wilcheck Aff., ¶5, Ex. B). Per Complainant's request, counsel further identified Respondent's anticipated witnesses for the hearing and provided Complainant with a copy of the Easement covering the property. (Wilcheck Aff., ¶5, Ex. B).

On June 2, 2014, counsel for Respondent received a voicemail message from Complainant cancelling the deposition scheduled for June 5, 2014 on the basis that he was not feeling well. (Wilcheck Aff., ¶7). Complainant further indicated that he would not reschedule the deposition. (Wilcheck Aff., ¶7).

II. COMPLAINANT SHOULD BE COMPELLED TO APPEAR FOR DEPOSITION.

Respondent, Ohio Edison Company, requests that Complainant be compelled to appear for a deposition in this case. As discussed above, circumstances have changed since Complainant filed his Complaint. The deposition is necessary to learn the factual background and basis of Complainant's claim in this case. Without such information, Respondent cannot fully prepare or evaluate its defense for the hearing scheduled for July 29, 2014.

The Rules permit Respondent to take the deposition of Complainant. *See* Rule 4901-1-21. Despite working with Complainant to arrange such deposition, Complainant has declined to appear for a deposition in this matter. Accordingly, Complainant should be compelled to appear for a deposition or face dismissal or other appropriate sanctions as permitted under Ohio Administrative Code 4901-1-23(f).

III. ALTERNATIVELY, COMPLAINANT'S COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO ALLEGE REASONABLE GROUNDS.

In the alternative, Complainant's Complaint should be dismissed pursuant to Rule 4901-1-09 for failure to state reasonable grounds for relief. Under R.C. 4905.26, a complaint that fails

to set forth reasonable grounds must be dismissed. The mere act of filing a complaint does not automatically trigger a hearing before the Commission. Rather, “[r]easonable grounds for the complaint must exist before the Public Utilities Commission, either upon its own initiative or upon the complaint of another party, can order a hearing, pursuant to R.C. 4905.26 . . .” *Ohio Util. v. Pub. Util. Com’n* (1979), 58 Ohio St.2d, 153, paragraph 2 of the syllabus. Moreover, the Commission may only exercise the jurisdiction conferred upon it by statute. *Lucas County Com’rs. v. Pub. Util. Com’n of Ohio* (1997), 80 Ohio St.3d 344, 347.

The crux of Complainant’s Complaint against Ohio Edison Company is his personal dissatisfaction with the condition of the right-of-way on his property following vegetation maintenance activities permitted under Ohio Edison Company’s Easement. Since then, Respondent has re-visited the property in an effort to alleviate Complainant’s concerns. The Complaint neither alleges any facts to support a finding of inadequate service nor alleges that the Company has violated a statute, tariff provision, or any rule, regulation, or order of the Commission. “Reasonable grounds” under this standard necessarily requires that the complaint contain sufficient allegations of facts which could support a finding of inadequate service. *In the Matter of Petition of J. Earl McCormick, et al. v. The Ohio Bell Tel. Co., et. al.* (Sept. 27, 1990), PUCO Case No. 90-1256-TP-PEX, Entry ¶3; *In the Matter of Complaint of Ohio CARES v. FirstEnergy Corp.* (May 19, 1999), PUCO Case No. 98-1616-EL-CSS, Entry ¶7. A complaint that does not allege specific incidents of inadequate service must be dismissed. *Id.* Additionally, a complaint that fails to allege a violation of any statute, Commission rule, or order fails to state reasonable grounds and should be dismissed. *In the Matter of Complaint of Ohio CARES v. FirstEnergy Corp.* (May 19, 1999), PUCO Case No. 98-1616-EL-CSS, Entry ¶¶6-7. The Commission routinely dismisses such cases. *See, e.g., Ohio Consumer Alliance for Responsible*

Elec. Sys. v. FirstEnergy Corp., et al. (May 19, 1999), No. 98-1616-EL-CSS, Entry ¶¶6-7; *Lentz v. The East Ohio Gas Co.* (April 18, 1996), PUCO No. 96-25-GA-CSS, Entry ¶7; *Allison v. Columbia Gas of Ohio, Inc.* (April 9, 1992), PUCO No. 92-37-GA-CSS, Entry ¶4.

Here, the Complaint contains no allegations that the Company violated any statute, Commission rule, or order, nor does it set forth any facts which would support a finding of inadequate service on the part of the Company. Complainant merely alleges that the Company left an alleged “mess” after vegetation was cleared on the property – which Respondent has attempted to address. Complainant does not contend that such conduct resulted from inadequate service or that any statute, rule or order of the Commission was violated by the Company’s conduct. Rather, he merely believes that the Company should perform additional work to make the right-of-way suitable for his use in riding a four-wheeler. By failing to submit to deposition, Complainant is refusing to provide reasonable grounds for his Complaint. Therefore, there are no reasonable grounds for this Complaint to be heard before the Commission and it should be dismissed.

IV. CONCLUSION

Based upon the foregoing, Respondent seeks an ordering compelling Complainant to appear for a deposition at a mutually agreeable date and time before July 14, 2014. In the alternative, Respondent respectfully requests that the Commission dismiss Complainant’s Complaint.

Respectfully submitted,

/s/ Emily Ciecka Wilcheck

Emily Ciecka Wilcheck (0077895)

Denise M. Hasbrook (0004798)

Carrie M. Dunn (0076952)

Attorneys for Respondent,

The Ohio Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by ordinary U.S. Mail this 19th day of June, 2014 and that the PUCO's e-filing system will electronically serve notice of filing of this document on the following parties:

James L. Griffith
23541 Route 30
Minerva, OH 44657
Complainant

Respectfully submitted,

/s/ Emily Ciecka Wilcheck
Emily Ciecka Wilcheck (0077895)
Denise M. Hasbrook (0004798)
Carrie M. Dunn (0076952)

JAMES L. GRIFFITH,) Case No.: 13-1956-EL-CSS
)
)
Complainant,) **AFFIDAVIT OF COUNSEL**
)
)
vs.)
)
)
OHIO EDISON COMPANY,)
)
)
Respondent.)
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)
)
)
)
)
STATE OF OHIO)
) SS.
COUNTY OF LUCAS COUNTY)

4. On May 19, 2014, I spoke with Complainant for the purpose of arranging his deposition at a mutually agreeable date and time. Complainant expressed a reluctance to appear for a deposition, but agreed to set his deposition for June 5, 2014 at 10:00 a.m. In exchange,

Complainant requested that I provide him with a list of Ohio Edison Company's expected witnesses for the hearing and a copy of the Easement covering the property.

5. On May 22, 2014, I corresponded with Complainant confirming the June 5, 2014 deposition at the offices of Court Reporters, Inc., 2223 Fulton Road, N.W., Suite 107, Canton, Ohio 44709 near Complainant's location. Additionally, in response to Complainant's request, I identified the Company's anticipated witnesses for the hearing and provided Complainant with a copy of the Easement covering the property. A true and accurate copy of the May 22, 2014 is attached as Exhibit B.

6. A Notice of Deposition for Complainant's June 5, 2014 deposition was filed with the Commission on May 22, 2014.

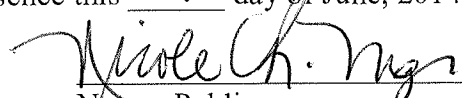
7. On June 2, 2014, Complainant left me a voicemail message cancelling the deposition scheduled for June 5, 2014 on the basis that he was not feeling well. Complainant further indicated that he would not reschedule the deposition.

8. The deposition of Complainant is necessary in order for Respondent to understand Complainant's claim in this case, prepare for the hearing, and evaluate its defenses in this matter.

FURTHER AFFIANT SAYETH NOT.


Emily C. Wilcheck

Sworn to and subscribed in my presence this 19th day of June, 2014.


Notary Public
My commission expires: 4/21/18



NICOLE R. MAYER
Notary Public, State of Ohio
My Commission Expires 4/21/18

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May 12, 2014

James Griffith
23541 Route 30
Minerva, OH 44657

Re: *James L. Griffith v. Ohio Edison Company*
Public Utilities Commission of Ohio
Case No. 13-1956-EL-CSS


Dear Mr. Griffith:

Please allow this to introduce myself as one of the attorneys representing Ohio Edison Company in the above matter. At this time, I would like to schedule your deposition regarding your claim against the Company.

I would like to schedule your deposition during the week of June 2 through June 6, 2014, if possible. Please contact me upon receipt of this correspondence with your availability in the first part of June so that we can finalize arrangements for this deposition at a mutually agreeable date and time. Thank you in advance for your cooperation.

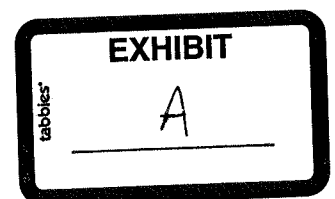
Very truly yours,

ROETZEL & ANDRESS, LPA


Emily Ciecka Wilcheck

ECW

cc: Carrie Dunn, Esq. (via email)





ROETZEL

FOCUSED ON WHAT MATTERS TO YOU

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COPY

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May 22, 2014

James Griffith
23541 Route 30
Minerva, OH 44657

Re: *James L. Griffith v. Ohio Edison Company*
Public Utilities Commission of Ohio
Case No. 13-1956-EL-CSS

Dear Mr. Griffith:

Please allow this to confirm your deposition scheduled for June 5, 2014 at 10:00 a.m. The deposition will take place at the offices of Court Reporters, Inc., 2223 Fulton Road, N.W., Suite 107, Canton, Ohio 44709. A Notice of Deposition is enclosed.

In response to your inquiry, the Company's anticipated witnesses for the hearing at this time are Operations Supervisor, Kate Bloss and Forestry Specialist, Alan Glover. The Company reserves the right to add additional witnesses should it determine that additional testimony is necessary. Per your request, a copy of the Easement covering the property is enclosed.

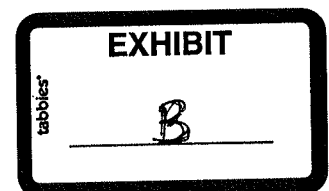
Very truly yours,

ROETZEL & ANDRESS, LPA


Emily C. Wilcheck

ECW

cc: Carrie Dunn, Esq. (via email)



This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 13-1956-EL-CSS

Summary: Motion Motion to Compel Complainant's Deposition of and Motion to Dismiss
electronically filed by Mrs. Emily C. Wilcheck on behalf of Ohio Edison Company