

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE)	
COMPLAINT OF DONELL BARKER,)	Case No. 16-1225-EL-CSS
)	
Complainant,)	
)	
v.)	
)	
THE TOLEDO EDISON COMPANY,)	
)	
Respondent.)	

**THE TOLEDO EDISON COMPANY’S MOTION TO DISMISS FOR FAILURE TO
PROSECUTE**

Pursuant to Section 4901-1-23(F)(4) of the Ohio Administrative Code and the Public Utilities Commission of Ohio’s (“PUCO” or the “Commission”) January 19, 2017 Entry in this case, Respondent The Toledo Edison Company (“Respondent” or “Toledo Edison”) respectfully requests that the Commission dismiss this case because Complainant Donell Barker (“Complainant” or “Mr. Barker”) has disobeyed the Commission’s order compelling him to respond to Toledo Edison’s First Set of Combined Discovery Requests to Complainant (“Combined Discovery Requests”), which were propounded upon him on November 11, 2016.

Additional reasons in support of this Motion are set forth in the attached Memorandum in Support, which is incorporated herein by reference.

Respectfully submitted,

/s/Christine E. Watchorn

Carrie M. Dunn (0076952)

Counsel of Record

Joshua Eckert (0095715)

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

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(Willing to accept service by email)

On behalf of The Toledo Edison Company

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

Complainant filed this action on June 1, 2016. (See Compl.) Toledo Edison filed its Answer on June 21, 2016, and denied Complainant's allegations. (See Answer.) The Commission scheduled a settlement conference for August 10, 2016. (See 7/13/16 Attorney Examiner Entry.) The parties were unable to resolve the case during the settlement conference. Pursuant to Complainant's request, a follow-up conference was conducted by telephone on September 16, 2016. (See 8/11/16 Attorney Examiner Entry.) The parties were unable to resolve the case during the follow-up settlement conference, and the hearing was scheduled for December 8, 2016.

On November 11, 2016, Toledo Edison served Combined Discovery Requests on Complainant via email and U.S. Mail. (See Exs. A and B to Toledo Edison's Motion to Compel Discovery, 1/6/17.) On December 1, 2016, Complainant requested a continuance of the December 8, 2016 hearing, stating that he needed additional time to "attain additional facts, Information, Medical Records, Documents and evidence." (See 12/1/16 Request for Extension of Time.) The Commission continued the hearing to February 1, 2017. (See 12/13/16 Attorney Examiner Entry.)

Complainant's responses the Combined Discovery Requests were due on or before December 1, 2016. (See Ex. A to Toledo Edison's Motion to Compel Discovery, 1/6/17.) The Combined Discovery Requests included interrogatories and requests for production of documents. (See Ex. B to Toledo Edison's Motion to Compel Discovery, 1/6/17.) They seek, among other things: the names and contact information of all people with knowledge of Complainant's claims; all witnesses he intends to call at the hearing of this matter, including lay

and expert witnesses; copies of all documents upon which he relies, which support his allegations, and/or which he intends to use at the hearing; an explanation of his alleged damages; information about any inspection or testing performed on the electrical equipment at the subject residence on Melrose Avenue; the names of each person who has lived at Melrose Avenue from January of 2011 to the present; his affiliation with a company called BMT Properties Limited; and Complainant's residential addresses for the past 10 years. (*Id.*)

On November 23, 2016, counsel for Toledo Edison had a telephone conference with Complainant and confirmed that he received the Combined Discovery Requests, and Complainant agreed that he would respond on or before December 1, 2016. (See Ex. A to Toledo Edison's Motion to Compel Discovery, 1/6/17, ¶ 4.) Complainant did not respond to the Combined Discovery Requests by December 1, 2016. (*Id.* at ¶ 5.) On December 6, 2016, counsel for Toledo Edison sent correspondence to Complainant, via email and U.S. Mail, notifying him that the discovery responses were overdue, summarizing and simplifying the Combined Discovery Requests and explaining why they are relevant to the case, and requesting that Complainant provide the overdue responses on or before December 13, 2016 or Toledo Edison would ask the Commission to compel him to respond. (*Id.*) Complainant did not respond to the Combined Discovery Requests by December 13, 2016. (*Id.* at ¶ 7.)

On December 16, 2016, counsel for Toledo Edison had a telephone conference with Complainant about his deposition and at that time also discussed the status of his responses to the Combined Discovery Requests. (*Id.* at ¶ 8.) Complainant stated that he would respond to the discovery requests. (*Id.*) However, by December 23, 2016, Complainant had not responded. (*Id.* at ¶ 9.) Therefore, counsel for Toledo Edison sent Complainant another letter advising him

that Toledo Edison would ask the Commission to compel him to respond if he did not provide his responses by December 30, 2016. (*Id.*)

On January 6, 2017, having still not received discovery responses from Complainant, Toledo Edison filed a motion to compel discovery.¹ (See Toledo Edison’s Motion to Compel Discovery, 1/6/17.) The Commission granted the motion to compel on January 19, 2017. (See Entry 1/19/17.) The Entry warned Complainant that “**if Mr. Barker fails to respond fully to TEC’s discovery requests, the case will likely be dismissed for failure to prosecute the matter.**” (*Id.*, ¶6, emphasis added.)

On January 20, 2017, having still not received discovery responses from Complainant, counsel for Toledo Edison sent correspondence to him stating that the Commission had granted Toledo Edison’s motion to compel discovery and enclosing another copy of the Entry. (See Ex. A attached hereto.) Counsel requested that Complainant provide complete responses to the Combined Discovery Requests, as ordered by the Commission, on or before February 6, 2017, or Toledo Edison would ask the Commission to dismiss the case for failure to prosecute. (*Id.*) To date, Complainant has not provided responses to the Combined Discovery Requests or responded in any way to counsel’s January 20, 2017 letter. (*Id.*)

Toledo Edison’s Combined Discovery Requests were served upon Complainant nearly three months ago. Complainant has stated on multiple occasions that he would provide the discovery responses. Yet, despite numerous letters and phone calls from Toledo Edison’s counsel **and** a Commission order requiring him to respond, Complainant has failed to do so.

¹ Toledo Edison contemporaneously filed a motion to continue the February 1, 2017 hearing, which motion was also granted by the Commission on January 19, 2017.

II. LAW AND ARGUMENT

Section 4901-1-23(F)(4) of the Ohio Administrative Code provides that:

If any party or person disobeys an order of the commission compelling discovery, the commission may . . . [d]ismiss the pending proceeding, if such proceeding was initiated by an application, petition, or complaint filed by the disobedient party, unless such a dismissal would unjustly prejudice any other party.

In the present case, the Commission should dismiss this proceeding. Complainant has defied the Commission's January 19, 2017 Entry compelling him to provide complete responses to discovery. The requirements of O.A.C. 4901-1-23(F)(4) are met here, because this case was initiated by a complaint filed by the disobedient party (*i.e.*, Complainant), and the dismissal will not unjustly prejudice any other party.

Moreover, Complainant was warned by the Commission in its January 19, 2017 Entry that failure to comply would likely result in the dismissal of this case for failure to prosecute. (See Entry 1/19/2017.) Toledo Edison reiterated this warning and enclosed the Commission's Entry in its January 20, 2017 letter to Complainant. (See Ex. A hereto.) Complainant has not responded at all to Toledo Edison's Combined Discovery Requests.

III. CONCLUSION

Wherefore, for the reasons set forth herein, and pursuant to Section 4901-1-23(F)(4) of the Ohio Administrative Code and the Public Utilities Commission of Ohio's January 19, 2017 Entry in this case, Respondent The Toledo Edison Company respectfully requests that the Commission dismiss this case.

Respectfully submitted,

/s/ Christine E. Watchorn

Carrie M. Dunn (0076952)

Counsel of Record

Joshua Eckert (0095715)

FirstEnergy Service Company

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cwatchorn@ulmer.com

aterrell@ulmer.com

(Willing to accept service by email)

On behalf of The Toledo Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *The Toledo Edison Company's Motion to Dismiss for Failure to Prosecute* was served via e-mail and U.S. Mail this 8th day of February, 2017 upon:

Donell Barker

409 Melrose Avenue

Toledo, Ohio 43610

donell_barker@sbcglobal.net

Complainant, pro se

/s/Christine E. Watchorn

On behalf of The Toledo Edison Company

COL1997 271951

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

IN THE MATTER OF THE)	
COMPLAINT OF DONELL BARKER)	Case No. 16-1225-EL-CSS
)	
Complainant,)	
)	
v.)	
)	
THE TOLEDO EDISON COMPANY)	
)	
Respondent.)	

**AFFIDAVIT OF COUNSEL FOR THE TOLEDO EDISON COMPANY IN SUPPORT
OF MOTION TO DISMISS FOR FAILURE TO PROSECUTE**

STATE OF OHIO)	
)	SS:
COUNTY OF FRANKLIN)	

CHRISTINE E. WATCHORN, having been first duly sworn, and having personal knowledge of the matters contained herein, hereby deposes and says:

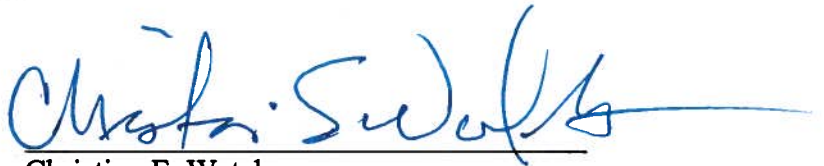
1. I am an attorney with the law firm of Ulmer & Berne LLP, and my firm and I are counsel for The Toledo Edison Company ("Toledo Edison") in the referenced case.
2. On January 20, 2017, I sent correspondence to Complainant Donell Barker stating that the Commission had granted Toledo Edison's motion to compel discovery and enclosing a copy of the Entry. A true and accurate copy of my January 20, 2017 letter is attached hereto.
3. In my January 20, 2017 correspondence, I requested that Complainant provide complete responses to the Combined Discovery Requests, as ordered by the

Commission, on or before February 6, 2017, or Toledo Edison would ask the Commission to dismiss the case for failure to prosecute.

4. I included another copy of the Combined Discovery Requests with my letter.

5. To date, Complainant has not provided responses to the Combined Discovery Requests or responded in any way to my January 20, 2017 letter.

Further Affiant sayeth naught.


Christine E. Watchorn

Subscribed and sworn to before me this the 8th day of February, 2017, by:


Notary Public
TERESA F SCHARF, Notary Public
In and for the State of Ohio
My Commission Expires December 20, 2019
My Commission expires: _____

Watchorn, Christine

From: Sigman, Amy
Sent: Friday, January 20, 2017 10:32 AM
To: donell_barker@sbcglobal.net
Cc: Watchorn, Christine
Subject: Donell Barker v. The Toledo Edison Company
Attachments: Scanned from a Xerox Multifunction Device (2).pdf

Mr. Barker:

Christine Watchorn asked that I send you the attached documents.

Thank you.

Amy Sigman
Legal Secretary



DIRECT: [614.229.0477](tel:614.229.0477)
DIRECT FAX: [614.229.0001](tel:614.229.0001)
EMAIL: asigman@ulmer.com

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January 20, 2017

**VIA EMAIL(donell_barker@sbcglobal.net)
& U.S. MAIL**

Donell Barker
409 Melrose Avenue
Toledo, Ohio 43610

Re: Donell Barker v. The Toledo Edison Company
Case No. 16-1225-EL-CSS

Dear Mr. Barker:

The Public Utilities Commission of Ohio has granted Toledo Edison's motion to compel discovery. A copy of the Commission's Entry is enclosed here. As ordered by the Commission in the Entry (see ¶¶ 6, 9), please provide complete responses to Toledo Edison Company's First Set of Combined Discovery Requests to Complainant. These discovery requests were sent to you by email and U.S. Mail on November 11, 2016, and a copy is enclosed here.

We expect to receive your complete discovery responses on or before February 6, 2017, otherwise we will ask the Commission to dismiss the case for failure to prosecute the matter.

Very truly yours,



Christine E. Watchorn

CLEVELAND

CEW/als

COLUMBUS

Enclosure

CINCINNATI

COL1997 271765v1

CHICAGO

29414.00077

BOCA RATON

ULMER.COM

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF DONELL BARKER,

COMPLAINANT,

v.

CASE NO. 16-1225-EL-CSS

THE TOLEDO EDISON COMPANY,

RESPONDENT.

ENTRY

Entered in the Journal on January 19, 2016

{¶ 1} On December 13, 2016, an Entry was issued rescheduling the hearing in this matter to February 1, 2017. The hearing was continued at the request of Donell Barker (Complainant), who indicated that additional time was necessary to obtain records, documents, and other information concerning his complaint.

{¶ 2} On January 6, 2017, The Toledo Edison Company (TEC) filed a motion to continue the February 1, 2017 hearing, as well as a request for an expedited ruling. Also on January 6, 2017, TEC filed a motion to compel discovery.

{¶ 3} In its motion for continuance and request for expedited ruling, TEC explains that it sent Complainant its first set of discovery requests on November 11, 2016. When Mr. Barker did not reply by December 1, 2016, TEC adds, a December 6, 2016 letter was served, stating that Complainant's response to discovery was overdue, and requesting a reply by December 13, 2016. When Mr. Barker did not respond, TEC served him with a December 23, 2016 letter, stating that it would file a motion to compel if he did not respond to the discovery requests by December 30, 2016. TEC asserts that, to date, Mr. Barker has not responded to TEC's December 23, 2016 letter, nor has he produced any of the information for which he sought a continuance. TEC contends that it can not adequately prepare its case for the hearing, or comply with the prefiled

testimony deadline of January 25, 2017, when Mr. Barker does not respond to discovery requests. TEC asserts that a continuance will provide additional time to obtain discoverable information from Mr. Barker.

{¶ 4} In its motion to compel discovery, TEC reiterates its remarks from the motion for continuance, while also providing additional comments. TEC explains that a deposition of Mr. Barker was initially set for December 2, 2016, but was ultimately rescheduled to January 12, 2017, because of his request to continue the December 8, 2016 hearing. TEC adds that during November 23, 2016, and December 16, 2016 teleconferences, Mr. Barker confirmed that he would respond to the discovery requests, but has not done so. TEC asserts that it has made a good faith effort to resolve issues concerning discovery.

{¶ 5} Pursuant to Ohio Adm.Code 4901-1-12(C), if the party moving for an expedited ruling fails to certify that no party objects to such a ruling, a memorandum contra may be filed within seven days after service of the motion. Complainant did not file a reply to either motion by January 13, 2017, or at any time to date.

{¶ 6} The attorney examiner finds that TEC has demonstrated good cause for its motion to continue and motion to compel discovery. Accordingly, the motion to continue should be granted, with the February 1, 2017 hearing continued to a date that will be indicated in a future Entry. In addition, the motion to compel should be granted; if Mr. Barker fails to respond fully to TEC's discovery requests, the case will likely be dismissed for failure to prosecute the matter.

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That the motion to continue the February 1, 2017 hearing be granted, with the rescheduled hearing date to be indicated in a future Entry. It is, further,

{¶ 9} ORDERED, That the motion to compel be granted, with Mr. Barker directed to respond fully to the discovery requests. It is, further,

{¶ 10} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/19/2017 7:19:22 AM

In

Case No(s). 16-1225-EL-CSS

Summary: Attorney Examiner Entry granting motion for continuance of the hearing to a date indicated in a future Entry and granting motion to compel directing Mr. Barker to respond fully to discovery requests. - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio

Code. Such supplementary responses are to be filed and served upon the Ohio Edison Company within five (5) days after receipt of such information.

DEFINITIONS

A. "Document" or "documents" means the original and all copies that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise, and drafts) of any printed, typewritten, handwritten, or otherwise recorded matter of whatever character (including, without limitation, telegraphs, personal notes, diaries, statements, photographs, videotapes, tape recordings, motion pictures, computer tapes or discs, and any Xerox, carbon, magnetic, digital or photographic copies of any such material if Complainant does not have custody and control of the original). Designated documents are to be considered as including all attachments and enclosures. The enumeration of various specific items as included within the definition of the term "document" or "documents" shall not be taken to limit the generality of the terms, and the Document Requests herein are intended to obtain all documents in the broadest and most comprehensive sense and meaning of the term.

B. "Identify," with respect to any natural person, shall mean to provide the following information about the person: full name; present or last known address; employer; and relationship, if any, to Complainant. If any of this information is not available to Complainant, state any other means of identifying such natural person.

C. "Identify," with respect to any document, shall mean to provide the following information about the document: general description; subject matter; date; title; author; recipients; and, if the document is not in Complainant's possession, the location of the document.

If any of this information is not available to Complainant, state any other means of identifying the document.

D. As used herein, the terms "you," "your", and "Complainant" refer to Donell Barker and each person acting or purporting to act on behalf of Donell Barker.

E. As used herein, the terms the "Company" and "Toledo Edison" refer to The Toledo Edison Company and each person acting or purporting to act on behalf of The Toledo Edison Company.

F. As used herein, the term "Complaint" refers to the Complaint filed by Complainant with the Public Utilities Commission of Ohio, Case No. 16-1225-EL-CSS.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who have knowledge or information, or may have knowledge or information, regarding your claims in the Complaint.

ANSWER:

INTERROGATORY NO. 2: Identify any and all exhibits or demonstrative evidence that you intend to present at any hearing of this matter.

ANSWER:

INTERROGATORY NO. 3: Identify each person whom you intend to call as a lay (fact) witness at any hearing of this matter.

ANSWER:

INTERROGATORY NO. 4: Identify each person whom you intend to call as an expert witness at any hearing of this matter.

ANSWER:

INTERROGATORY NO. 5: For each person identified in your answer to Interrogatory No. 4, state:

- a. the subject matter and substance of the facts and opinions about which he or she is expected to testify;
- b. the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years; and
- c. the cases in which the witness has testified as an expert at trial, hearing, or by deposition within the preceding four (4) years.

ANSWER:

INTERROGATORY NO. 6: State the amount of damages, if any, you are claiming in this case and explain your calculation.

ANSWER:

INTERROGATORY NO. 7: If anyone other than Toledo Edison personnel has inspected, examined, tested, measured, or otherwise made any assessment of the electric service and/or electrical equipment and/or electric meter(s) at 409 Melrose Ave., Toledo, Ohio 43610 ("409 Melrose Ave."), state the following for each person: (a) his or her full name, (b) the company he or she works for, (c) his or her address, (d) his or her phone number, (e) the date of each inspection, examination, test, measurement or other assessment, and (f) the results of the inspection, examination, test, measurement or other assessment.

ANSWER:

INTERROGATORY NO. 8: Identify each person who has resided at 409 Melrose Ave. from January 1, 2011 to the present, and for each person, state the date(s) they resided there.

ANSWER:

INTERROGATORY NO. 9: Identify each person who is currently residing at 409 Melrose Ave. and the date(s) on which they began residing there.

ANSWER:

INTERROGATORY NO. 10: Identify each person who is currently residing at 2372 Fulton St. Uppr, Toledo, Ohio 43620, and the date(s) on which they began residing there.

ANSWER:

INTERROGATORY NO. 11: Are you affiliated with BMT Properties Limited in any way, including but not limited to, as an employee, owner, shareholder, or representative, and if so, state the nature of your affiliation.

ANSWER:

INTERROGATORY NO. 11: State your current residential address and all addresses where you have resided in the past 10 years, including the dates you resided at each address.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all documents you identified, referred to, or relied upon in providing answers and responses to these Discovery Requests.

RESPONSE:

REQUEST NO. 2: Produce all documents and workpapers that reflect or explain the calculation of damages, if any, you claim in this case.

RESPONSE:

REQUEST NO. 3: Produce all documents related to any inspection, examination, testing, measurement, or other assessment of the electric service and/or electrical equipment and/or electric meter(s) at 409 Melrose Ave., including without limitation, all reports of such inspection, examination, testing, measurement, or assessment.

RESPONSE:

REQUEST NO. 4: Produce all documents that you intend to rely upon, refer to, or use as exhibits at any deposition or at any hearing in this matter.

RESPONSE:

REQUEST NO. 5: Produce all documents which refer, relate, or in any way pertain to any witnesses you have retained or specifically employed to provide expert testimony in this case, including but not limited to:

- a. Any written reports, including drafts thereof, including a statement of all opinions to be expressed and the basis thereof;
- b. The data or other information considered by the witness(es) in forming the opinions;
- c. Any exhibits to be used as a summary of, or support for, the opinions;
- d. The qualifications of the witness(es), including a list of all publications authored by the witness within the preceding ten (10) years; and
- e. A listing of any other cases in which the witness has testified as an expert at trial, hearing, or by deposition within the preceding four (4) years.

REQUEST NO. 6: Produce all lease agreements entered into with tenants of 409 Melrose Ave. from January 1, 2011 to the present.

RESPONSE:

/s/ Christine E. Watchorn

Carrie M. Dunn (0076952)

Counsel of Record

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

(330) 761-2352

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cwatchorn@ulmer.com

(Willing to accept service by email)

On behalf of The Toledo Edison Company

INTERROGATORY VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF _____)

The undersigned hereby verifies that the foregoing interrogatory responses of
Complainant Donell Barker are true and accurate to the best of his knowledge and belief.

Donell Barker

SWORN TO BEFORE ME and subscribed in my presence this ____ day of
_____, 2016.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *The Toledo Edison Company's First Set of Combined Discovery Requests to Complainant* was served this 11th day of November, 2016 via email and regular mail upon:

Donell Barker
409 Melrose Avenue
Toledo, Ohio 43610
donell_barker@sbcglobal.net

/s/ Christine E. Watchorn

Christine E. Watchorn (0075919)

On behalf of The Toledo Edison Company

COL1997 270863
29414.00077

4901-1-19 Interrogatories and response time.

(A) Any party may serve upon any other party written interrogatories, to be answered by the party served. If the party served is a corporation, partnership, association, government agency, or municipal corporation, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories and all other parties within twenty days after the service thereof, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow. The party submitting the interrogatories may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to answer an interrogatory.

(B) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion, but the commission, the legal director, the deputy legal director, or the attorney examiner may direct that such interrogatory need not be answered until certain designated discovery has been completed, or until some other designated time. The answers to interrogatories may be used to the extent permitted by the rules of evidence, but such answers are not conclusive and may be rebutted or explained by other evidence.

(C) 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.

(D) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, and the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

R.C. 119.032 review dates: 03/26/2014 and 03/26/2019

Promulgated Under: 111.15

Statutory Authority: 4901.13

Rule Amplifies: 4901.13, 4901.18, 4903.082

Prior Effective Dates: 3/1/81, 12/25/87, 4/20/01, 5/07/07

4901-1-20 Production of documents and things; entry upon land or other property.

(A) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, any party may serve upon any other party a written request to:

(1) Produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, which are in the possession, custody, or control of the party upon whom the request is served.

(2) Produce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served.

(3) Permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(B) The request shall set forth the items to be inspected either by individual item or by category, and shall describe each category with reasonable particularity. The request shall also specify a reasonable time, place, and manner for conducting the inspection and performing the related acts.

(C) The party upon whom the request is served shall serve a written response within twenty days after the service of the request, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow. The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.

(D) Where a request calls for the production of a public document on file in this state, or a document which the party upon whom the request is served has furnished to the party submitting the request within the preceding twelve months, it is a sufficient response to such request to specify the location of the document or the circumstances under which the document was furnished to the party submitting the request.

R.C. 119.032 review dates: 03/26/2014 and 03/26/2019

Promulgated Under: 111.15

Statutory Authority: 4901.13

Rule Amplifies: 4901.13, 4901.18, 4903.082

Prior Effective Dates: 3/1/81, 6/1/83, 12/25/87, 5/07/07

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Summary: Motion to Dismiss for Failure to Prosecute electronically filed by Ms. Christine E. Watchorn on behalf of The Toledo Edison Company