

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Eric Edmisten,	)	
	)	
Complainant,	)	
	)	Case No. 19-1143-EL-CSS
v.	)	
	)	
Ohio Edison Company,	)	
	)	
Respondent.	)	
	)	

**MOTION TO DISMISS FOR FAILURE TO PROSECUTE  
OF OHIO EDISON COMPANY**

Pursuant to Ohio Administrative Code 4901-1-12, Respondent Ohio Edison Company (“Ohio Edison” or the “Company”) respectfully moves the Commission for an Order dismissing the Complaint with prejudice due to Complainant’s lack of prosecution of the Complaint. A Memorandum in Support of this Motion is attached.

Respectfully submitted

/s/ Robert M. Endris  
Robert M. Endris (0089886)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
(330) 384-5728  
[rendris@firstenergycorp.com](mailto:rendris@firstenergycorp.com)

*Attorney for The Ohio Edison Company*

## **MEMORANDUM IN SUPPORT**

### **I. Factual & Procedural Background**

On May 20, 2019, Eric Edmisten (the “Complainant”) filed a complaint against Ohio Edison, alleging, in essence, that he has received high bills and that Ohio Edison overcharged him for electric service. On June 10, 2019, Ohio Edison filed its Answer, in which it denied overcharging Complainant for electric service. On June 25, 2019, the Commission issued an Entry scheduling a Settlement Conference for July 25, 2019. At approximately 3 p.m. on July 24, 2019, Complainant faxed a notice to the Commission’s Docketing Division advising that he was unable to move prior commitments and therefore would not attend the settlement conference scheduled for 10:00 a.m. the next day. On August 1, 2019, the presiding Attorney Examiner issued an Entry rescheduling the settlement conference for August 20, 2019. On August 9, 2019, Complainant filed a request to convert the settlement conference into a telephonic conference, which Ohio Edison opposed in a Memorandum Contra filed Monday, August 12, 2019. On August 19, the Attorney Examiner issued an Entry denying Complainant’s request for a telephonic conference, and rescheduled the settlement conference to September 23, 2019, at 11:00 a.m., specifically noting that the new date was agreed to by the parties. On September 23, 2019, counsel for Ohio Edison and the mediating Attorney Examiner both were present for the settlement conference at the specified time and place, but Complainant failed to show. To date, nothing has been filed by Complainant regarding his absence nor has counsel for Ohio Edison been contacted by Complainant regarding the same.

### **II. Law & Argument**

The Complaint should be dismissed with prejudice. Commission precedent is clear that failure to prosecute one’s Complaint, as Complainant has done in this case, is grounds for dismissal

with prejudice.<sup>1</sup> Further, the Attorney Examiner’s August 19, 2019 Entry clearly put Complainant on notice of the firmness of the September 23, 2019 date by stating “Moreover, given that both parties have agreed to the date of the rescheduled prehearing conference, the attorney examiner notes that she will not grant any additional requests to reschedule the prehearing conference absent extraordinary circumstances.” Complainant not only failed to show physically, but also failed to show extraordinary circumstances.

The Complainant, like all pro se litigants appearing before the Commission, “is held to the same procedural standards as other litigants that have retained counsel.”<sup>2</sup> It is true that “[t]o the greatest extent fairness allows, this Commission always genuinely strives to ensure that pro se litigants are not victimized by an unfamiliarity with legal practice and procedure.”<sup>3</sup> The Commission “may, in practice, grant a certain amount of latitude toward pro se litigants[.]”<sup>4</sup> But the Commission “cannot simply disregard [the Rules] in order to accommodate a party who fails to obtain counsel.”<sup>5</sup> Otherwise, the Commission “begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.”<sup>6</sup> Indeed, “equally important” to the latitude granted to pro se complainants “is the Commission’s

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<sup>1</sup> See, e.g., *In re Chaney v. CEI*, PUCO Case No. 18-1898-EL-CSS, Entry (Aug. 28, 2019); *In re Inwood v. CEI*, PUCO Case No. 18-744-EL-CSS, Entry (Nov. 28, 2018).

<sup>2</sup> *In the Matter of Michael Barker, D/B/A Comex Transport, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 16-2186-TR-CVF, p. 9-10 (July 12, 2017).

<sup>3</sup> *In re Carpenter, et al. v. Acme Telephone Answering Service, et al.*, 1990 Ohio PUC LEXIS 201, PUCO Case No. 89-326-RC-CSS (Feb. 6, 1990).

<sup>4</sup> *In the Matter of Michael Barker, D/B/A Comex Transport, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case No. 16-2186-TR-CVF, p. 9-10 (July 12, 2017); see also *In the Matter of John Blanchard v. The Toledo Edison Company*, Case No. 18-82-EL-CSS, Entry at p. 4, August 31, 2018 (“The Commission holds all parties to the same procedural standard for filings before it.”).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

unwillingness to tolerate the abuse or misuse of the adjudicatory process by any party, whether represented by counsel or not.”<sup>7</sup>

The Commission has granted ample latitude to Complainant in this case, accommodating his untimely request to reschedule the first settlement conference as well as his request to convert or reschedule the second scheduled date. Despite having been warned that a further rescheduling would not be available absent extraordinary circumstances, Complainant thereafter chose to skip completely the third scheduled date without communicating with the Company’s counsel, the Attorney Examiner, or via filing with the docketing division. The Commission should dismiss the Complaint, *with* prejudice, for failure to prosecute.

### **III. Conclusion**

For the reasons stated herein, the Complaint should be dismissed with prejudice.

Respectfully submitted,

/s/ Robert M. Endris  
Robert M. Endris (0089886)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
(330) 384-5728  
[rendris@firstenergycorp.com](mailto:rendris@firstenergycorp.com)

*Attorney for Ohio Edison Company*

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<sup>7</sup> *In re Carpenter, et al. v. Acme Telephone Answering Service, et al.*, 1990 Ohio PUC LEXIS 201, PUCO Case No. 89-326-RC-CSS (Feb. 6, 1990).

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss for Failure to Prosecute of  
The Cleveland Electric Illuminating Company was served by U.S. mail to the following person  
on this 2<sup>nd</sup> day of October, 2019.

Eric Edmisten  
426 Washburn Rd  
Tallmadge, OH 44278

/s/ Robert M. Endris  
*Attorney for Ohio Edison Company*

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

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Summary: Motion Motion to Dismiss for Failure to Prosecute of Ohio Edison Company  
electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company