

FILE



76 South Main Street  
Akron, Ohio 44308

Carol L. Dacoros  
Attorney

330-384-4783  
Fax: 330-384-3875

August 2, 2005

**VIA OVERNIGHT MAIL**

Ms. Renee J. Jenkins  
Director, Administration Department  
Secretary to the Commission  
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43266-5073

RECEIVED-DOCKETING DIV  
2005 AUG -3 PM 12:39  
PUCO

Re: *Memorandum Contra to Complainant's Motion to Compel*  
Gregory L. Spatz vs. Ohio Edison Company  
PUCO Case No. 05-420-EL-CSS

Dear Ms. Jenkins:

Enclosed for filing please find the original and 12 copies of the *Memorandum Contra to Complainant's Motion to Compel* regarding the above-referenced case, which was fax filed today. Please file the attached. File-stamp the two extra copies and return them to the undersigned in the enclosed, postage-paid envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,

*Carol L. Dacoros/ge*

CLD:ge  
Enclosures

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business  
Technician 5 Date Processed 8-3-05

71387

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2005 AUG -3 PM 12:39  
PUCO

Gregory L. Spatz	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. 05-420-EL-CSS
	)	
Ohio Edison Company	)	
	)	
Respondent.	)	

**OHIO EDISON'S MEMORANDUM CONTRA TO  
COMPLAINANT'S MOTION TO COMPEL**

Comes now Respondent, Ohio Edison Company, by counsel, and respectfully submits its response to the Complainant's Motion to Compel (the "Motion").

The Respondent respectfully requests that the Complainant's Motion be denied for procedural defects and because the Motion is substantively without merit.

As to procedural deficiencies, the Complainant's Motion fails to attach a memorandum in support and an affidavit setting forth efforts made to resolve discovery disputes, each as required by O.A.C. 4901-1-23(C). In fact, Ohio Edison has made its personnel available for depositions, during which Complainant could have pursued relevant discovery questions, but Complainant cancelled the depositions at his discretion.

Apart from these procedural deficiencies, the Motion must be denied because it is substantively without merit. Ohio Edison has responded to each of the Complainant's discovery

requests in good faith. At the outset of this proceeding, the Complainant agreed that the sole issue before the Commission in this proceeding is: “Whether the increase in voltage from 7,200 volts to 19,000 volts on the above-ground distribution line that crosses Lot 2 created an adverse environmental impact to Lot 2”. Ohio Edison has provided discovery responses associated with the distribution line in question. All available and applicable information required within the scope of discovery has been provided in response to the Complainant’s discovery requests. Questions regarding distribution lines beyond Complainant’s property are not relevant to the question of “environmental impact” purportedly caused by the distribution line on Complainant’s property.

Complainant asserts in the Motion that the information requested pertaining to distribution facilities outside of his property is necessary in order to determine “if alternative service methods are available.” This issue is not before the Commission in this proceeding. In fact, the validity of Ohio Edison’s distribution line easement across Complainant’s property and Ohio Edison’s current use of such distribution line (to serve Complainant’s property and the adjoining property development) has already been upheld by a court of law. United States Construction Corp., et al., v. Ohio Edison Company et al., Ottawa County Case No. 04-CVH-191 (Decision issued February 15, 2005). It is not a condition of the easement that Ohio Edison only use it if there are no “alternative service methods available.” Rather, Ohio Edison has been exercising its rights under the easement to maintain a distribution line across that property for approximately 50 years; the issues of whether “alternative service methods are available” is irrelevant, since the current use is within the express easement rights.

Furthermore, to the extent Complainant is not satisfied with Respondent's responses, Complainant has the option to pursue discovery via depositions. Despite Respondent's efforts to schedule such depositions, Complainant has not pursued this solution, and therefore the Motion is inappropriate.

Finally, Complainant's assertion that the Respondent's response to discovery requests exceeded the twenty (20) days set forth in O.A.C. 4901-1-19 is inaccurate. Responses to Complainant's discovery requests were submitted to Complainant on July 15, 2005, which is sixteen (16) days after Complainant directed such requests to Respondent (June 29, 2005).

For each of the foregoing reasons, the Respondent respectfully requests that the Complainant's Motion be denied.

Respectfully submitted,



---

Carol L. Dacoros (0068319)  
FirstEnergy Service Company  
Attorney  
76 South Main Street  
Akron, Ohio 44308  
Phone: 330-384-4783  
Fax: 330-384-3875  
On behalf of Ohio Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Respondent Ohio Edison's Memorandum Contra Complainant's Motion to Compel was served electronically and by regular U.S. Mail, postage prepaid, to Gregory L. Spatz, 2925 S. Amherst Avenue, Port Clinton, Ohio 43452, this 2<sup>nd</sup> day of July, 2005.

A handwritten signature in cursive script, reading "Carol L. Dacoros".

---

Carol L. Dacoros  
Attorney