

FirstEnergy**FILE****FAX**76 South Main Street
Akron, Ohio 44308Kathy J. Kolich
Senior Attorney330-384-4580
Fax: 330-384-3875**Via Federal Express
and Facsimile (614-466-0313)**

July 22, 2008

Ms. Rence J. Jenkins
Director, Administration Department
Secretary to the Commission
Docketing Division
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

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PUCO

Dear Ms. Jenkins:

**Re: Ohio Edison Company's Reply Memorandum to Complainant's
Response to the Company's Motion to Dismiss or Alternatively to Set a
Minimum Payment Schedule
Case No. 08-428-EL-CSS**

Enclosed for filing, please find the original and twelve (12) copies of *Ohio Edison Company's Reply Memorandum to Complainant's Response to the Company's Motion to Dismiss or Alternatively to Set a Minimum Payment Schedule* regarding the above-referenced case. Please file the enclosed *Memorandum*, time-stamping the two extras and returning them to me in the enclosed envelope.

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

Very truly yours,

kag
Enclosures

cc: Parties of Record

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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

Thomas E. Merchant,

Complainant,

vs.

Ohio Edison Company,

Respondent.

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CASE NO. 08-428-EL-CSS

**OHIO EDISON COMPANY'S REPLY MEMORANDUM TO COMPLAINANT'S
RESPONSE TO THE COMPANY'S MOTION TO DISMISS OR
ALTERNATIVELY TO SET A MINIMUM PAYMENT SCHEDULE**

Pursuant to Section 4901-1-12(C) of the Ohio Administrative Code, Respondent, Ohio Edison Company ("Ohio Edison" or "Company") submits this Reply Memorandum to Complainant's Response to the Company's Motion to Dismiss or Alternately to Establish a Minimum Payment Schedule, stating simply that Complainant's response is nothing more than an attempt to try the facts of this case in writing rather than during the hearing process¹ and a smoke screen that raises issues that are irrelevant to the issue before this Commission. As is more fully discussed below, Complainant's only legal argument relies on a section of the Ohio Administrative Code that is inapplicable to Complainant's circumstances. The remainder of Complainant's claims, assertions, idle

¹ While the Company takes issue with many of the claims and allegations included in Complainant's response, the Company, for the record, denies that counsel for the Company agreed to Complainant's proposed change to the proposed minimum payment agreement that is discussed in Paragraph 22 of Complainant's response.

threats and lame attempts at psycho analysis are irrelevant to this proceeding and do not warrant a response.

Complainant relies on Section 4901: 1-10-19 of the Ohio Administrative Code, arguing that his offer to pay \$100 per month is sufficient because Complainant's electric bill in the same month of the previous year approximates this amount. (Response, Para. 11.) Complainant's analysis is flawed in several material respects. Section 4901:1-10-19 provides in pertinent part:

No EDU may disconnect service to a *residential customer* when: ... (C) The customer fails to pay any amount in *bona fide dispute*. Where the customer has ... filed a formal complaint with the commission which reasonably asserts a bona fide dispute, the EDU can not disconnect service when the customer pays either the undisputed portion of the bill or the amount paid for the same billing period in the previous year [Italics added.]

As a preliminary matter, the section upon which Complainant relies deals with residential customers. Complainant's service is to a building that has been commercial for years, a fact that is not in dispute. Complainant used more than 4,000 kWh in June, running up a bill of almost \$800. This is in addition to the more than \$12,000 arrearage that has accrued since October, 2007. During this period Complainant's bills were approximately \$2,000 per month in most months based on consumption levels of approximately 20,000 kWh per month. Clearly such levels of consumption do not reflect residential levels of usage. Complainant is a commercial customer until he can demonstrate otherwise and, accordingly, Section 4901:1-10-19 is *inapplicable* to this situation. Second, as is more fully discussed below, there is no bona fide dispute regarding Complainant's *current* bills. And finally, Complainant did not "reside" at the premises in question the year before. Therefore, the amount paid the year before is not an accurate proxy for current usage. Complainant admits that his plans to reduce consumption to levels comparable to

those of the prior year have failed to materialize. (Response, Para. 58.) Clearly the purpose of requiring payment in an amount commensurate with prior year usage is to provide a reasonable estimate of the amount that would currently be due. To interpret this section any other way would allow Complainant to get away with exactly what he has accomplished thus far - to consume as much electricity as he desires and pay virtually nothing.

Section 4901-9-01(D) of the Ohio Administrative Code governs the question of minimum payments while this complaint case is pending. This section provides: "A person making a request for assistance [to prevent disconnection] must agree to pay during the pendency of the complaint all amounts to the utility that are not in dispute."

Complainant tries to argue that his entire bill is in dispute because the Company does not offer a three phase residential rate. (Response, Para. 4.) Complainant is wrong. Ohio Edison can only charge the rates that have been approved by the Commission. Ohio Edison's rates do not include a three phase residential rate and therefore Complainant is being billed under the General Service Rate 21. As Commission representatives have already pointed out to Complainant on several occasions, the relief that Complainant seeks can only be applied on a prospective basis and only if the Commission finds in Complainant's favor at the conclusion of this proceeding. The Company demonstrated that Complainant is actually paying less under the Company's Rate 21 than he would otherwise pay under the Company's residential rates. Therefore, none of Complainant's current bills can be in dispute. He is being billed on the least cost rate that the Company has to offer based on Complainant's consumption history.

In light of the foregoing, the Attorney Examiner was correct to require Complainant to pay as his minimum payment his current bills as they become due. (July 10, 2008 Entry, p. 5.)

Complainant also whines that the Company does not have all of the facts surrounding the issues raised in this proceeding. (*See e.g.*, Response, Para. 60.) Ohio Edison submits that Complainant is preventing the Company from gathering such information due to Complainant's lack of participation in the discovery process, thus leaving the Company no choice but to use the only facts that are available without Complainant's input. To date, Complainant has (1) failed to abide by a Commission directive to provide the Company access to his premises; (2) failed to respond to written interrogatories served upon Complainant by the Company; (3) failed to provide the Company with documents requested through the discovery process; (4) somehow prevented the delivery of overnight packages to Complainant's "residence"; (5) blocked Company counsel's telephone numbers and email address, thus preventing counsel from contacting Complainant through any means other than U. S. mail when wanting to discuss this proceeding; and (6) failed to appear for his deposition. For Complainant to now cry foul because the Company is allegedly unaware of the facts is a joke given Complainant's antics thus far in the process.

In light of the foregoing, the requirement that Complainant pay at a minimum his current bills on a going forward basis is proper and in accordance with the rules set forth in the Ohio Administrative Code. Further, Complainant has failed to address the Company's request for dismissal of this matter or to provide any valid explanation for the issues giving rise to such request. Accordingly, the Company urges the Commission to

dismiss this case with prejudice for the reasons more fully discussed in the Company's original July 3, 2008 Motion to Dismiss.

Respectfully submitted,

Handwritten signature of Kathy J. Kolich in black ink, with the initials "AEK" written at the end.

Kathy J. Kolich (Reg. No. 0038855)

Senior Attorney

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

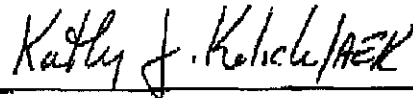
Phone: 330-384-4580

Fax: 330-384-3875

On behalf of Ohio Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Memorandum Contra Complainant's Reply to the Company's Motion to Dismiss or Alternatively to Establish a Minimum Payment Schedule was served upon Thomas E. Merchant, 808 Brookfield Ave. SE, Maury, Ohio 44438, by regular U.S. Mail, postage prepaid, this 22nd day of July, 2008.

Handwritten signature of Kathy J. Kolich in cursive script, followed by a horizontal line.

Kathy J. Kolich, Esquire