

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the)	
Office of the Ohio Consumers' Counsel,)	
)	
Complainant,)	
)	
v.)	Case No. 10-1128-EL-CSS
)	
The Toledo Edison Company, the Ohio)	
Edison Company, and The Cleveland)	
Electric Illuminating Company,)	
)	
Respondents.)	

ENTRY

The Commission finds:

- (1) On August 12, 2010, the Ohio Consumers' Counsel (OCC) filed a complaint against The Toledo Edison Company, the Ohio Edison Company, and The Cleveland Electric Illuminating Company (collectively, the Companies), alleging that the Companies are violating various Ohio statutes and administrative rules by enforcing interconnection and net-metering standards that are unduly burdensome and expensive for residential customers.
- (2) On September 1, 2010, the Companies filed an answer denying the material allegations of the complaint.
- (3) On February 22, 2011, OCC filed a motion to compel discovery. In its motion, OCC explained that the Companies have not fully responded to OCC's interrogatories 1, 3, 5, 7, 9, and 15, and requests for production of documents 5, 6, 7, and 8. Specifically, OCC contended that the Companies refused to provide two categories of information: (1) the names and other identifying information of residential customers who have filed applications for interconnection agreements with the Companies; and (2) the names of the Companies' employees who processed or currently process interconnection applications.

- (4) In its memorandum contra filed March 9, 2011, the Companies argued that the redacted interconnection files provide sufficient information for OCC to determine whether any violations of the Commission's interconnection rules have occurred. The Companies further contended that the requested information is not relevant to the subject matter of the complaint and that Rule 4901:1-37-04(D), Ohio Administrative Code (O.A.C.), prohibits the Companies from disclosing the customer information. In addition, the Companies explained that they have already disclosed the names of employees who process interconnection agreements.
- (5) OCC filed a reply to the Companies' memorandum contra on March 21, 2011. In its reply, OCC contended that its requested discovery is relevant to OCC's determination of the extent to which the Companies are violating Ohio statutes and the Commission's rules. Moreover, OCC explained that it has already entered into a protective agreement with the Companies; therefore, there should be no concern of inappropriate disclosure of the customer information.
- (6) By entry issued on April 14, 2011, the attorney examiner granted OCC's motion to compel. The attorney examiner found that OCC's discovery request was reasonably calculated to lead to the discovery of admissible evidence and further found that Rule 4901:1-37-04(D), O.A.C., provides that the Companies may disclose the information sought by OCC if required to do so by the Commission. Accordingly, the attorney examiner directed the Companies to respond to the discovery requests served by OCC concerning the redacted customer information contained in the interconnection files.

Regarding OCC's request that the Companies provide the names of the employees who reviewed the interconnection files, the attorney examiner recognized that the Companies had responded, in part, to this request. However, the attorney examiner further found that it was clear that the Companies had not responded completely to OCC's request. As a result, the attorney examiner directed the Companies to thoroughly respond to OCC's discovery request for the names of employees who process/have processed requests for interconnection agreements from residential customers.

- (7) On April 19, 2011, the Companies filed an application for review for an interlocutory appeal, appealing the attorney examiner's ruling directing the Companies to respond to the discovery requests served by OCC concerning the redacted customer information contained in the interconnection files as well as the directive that the Companies thoroughly respond to OCC's discovery request for the names of employees who process/have processed requests for interconnection agreements from residential customers. OCC filed a memorandum contra on April 25, 2011.
- (8) Rule 4901-1-15(A), Ohio Administrative Code (O.A.C.), sets forth the applicable substantive standard for consideration of appellants' interlocutory appeal. The relevant portion of the rule states that any party who is adversely affected by an attorney examiner's ruling granting a motion to compel discovery may take an immediate interlocutory appeal to the Commission.
- (9) With regard to the redacted customer information, the Companies contend that the attorney examiner improperly ordered the Companies to produce the names, addresses, and other identifying information of hundreds of residential interconnection applicants who are neither a party to, nor a subject of, this proceeding. Maintaining that OCC's complaint is limited to the five customers who previously filed complaint cases with the Commission, the Companies assert that the information from the other residential interconnection applications is not relevant to this proceeding.

Moreover, the Companies maintain that they are not permitted to disclose the redacted customer information. The Companies state that, absent a customer's consent, they cannot pick and choose to whom it can release a customer's information and that there is no statutory exception permitting disclosure to OCC. Recognizing that disclosure in this instance would occur pursuant to the Commission's directive, the Companies nevertheless contend that such disclosure is improper in this case, as OCC has not established its right to the redacted customer information. The Companies claim that, except for the five customers specifically referenced in OCC's complaint, OCC has not pointed to any evidence suggesting that any rule violation occurred with respect to any other interconnection

application. Conceding that OCC believes that other violations may have occurred, the Companies contend that belief absent any supporting evidence in the record does not suffice to establish the relevance of the requested information. In addition, the Companies argue that OCC is not automatically entitled to receive the redacted customer information. The Companies assert that by making allegations beyond those raised by the five customers referenced in the complaint, OCC is, in essence, improperly bringing a class action suit.

- (10) OCC responds that the Companies continue to rely upon an inaccurate and oversimplified view of OCC's complaint in order to explain the Companies' continued delay in this proceeding. OCC explains that its complaint is broader in scope and is not limited to the specific circumstances of the five customers who filed individual complaints. OCC specifically points out that previous discovery in this matter revealed that the Companies have provided refunds to ten customers in connection with net metering and interconnection agreements. This information, OCC posits, demonstrates the Companies' awareness that issues concerning the Companies' treatment of interconnections extend beyond the five individuals cited in OCC's complaint. OCC contends that, as stated in its motion to compel, OCC's inspection of the Companies' customer files revealed several other instances of apparent statutory and rule violations. OCC seeks discovery of the redacted customer information in order to confirm these violations, conduct further discovery as needed, and potentially amend its complaint.

OCC further asserts that the Companies' reliance upon Rule 4901:1-37-04(D)(1), O.A.C., is misplaced, as that rule explicitly states that a utility may release customer information when required to do so by a regulatory agency, which is what happened in this case, as the attorney examiner authorized by the Commission to preside over this proceeding ordered the Companies to release the redacted customer information. OCC also points out that, under Ohio law, the burden in a discovery dispute lies upon the objecting party to show that the information sought is privileged or not relevant, and therefore the Companies are simply wrong in insisting that OCC must establish its right to the redacted customer information.

OCC contends that the same arguments made by the Companies in this case were rejected in another proceeding, in which OCC sought customer contracts through discovery, citing *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications Associated with Reconciliation Mechanism, and Tariffs for Generation Service*, Case No. 09-906-EL-SSO, Attorney Examiner Entry (December 7, 2009), at 2. OCC also notes that the redacted customer information will be subject to a protective agreement between the Companies and OCC.

- (11) As the Companies point out, the Commission's discovery rules are intended to encourage the exchange of information among parties when there is a bona fide dispute. Here, despite the Companies' protestations to the contrary, a bona fide dispute does exist between OCC and the Companies. OCC alleges that the Companies have violated Ohio law by enforcing interconnection and net-metering standards that are unduly burdensome and expensive for residential customers, and the Companies vigorously deny OCC's allegations. Under these circumstances, OCC has the same discovery rights as any other complainant before the Commission and, like any other complainant, OCC is entitled to discovery of this information, as the information at issue is relevant to the subject matter of the proceeding, the information sought appears reasonably calculated to lead to the discovery of admissible evidence, and the Companies have not proven that the information is either privileged or irrelevant. The Commission accordingly finds that the attorney examiner did not err in granting OCC's motion to compel with regard to the redacted customer information.
- (12) The Companies next assert that the attorney examiner erred in granting OCC's motion to compel the Companies to thoroughly respond to OCC's discovery request for the names of employees who process/have processed requests for interconnection agreements from residential customers. The Companies contend that it did fully respond to OCC's discovery request, by permitting OCC to review approximately 18,000 pages of documents. According to the Companies, OCC

should have compiled its own "complete" list of all Company employees who may have processed or reviewed an interconnection file during that review process. The Companies point out that Rule 4901-1-19(D), O.A.C., provides that, when the answer to an interrogatory may be derived or ascertained from the business records of the party from whom discovery is sought, permitting the party submitting the interrogatory to examine the records constitutes a sufficient answer to the interrogatory. Since the Companies gave OCC an opportunity to review the relevant business documents, the Companies contend that its discovery obligations have been satisfied.

- (13) In response, OCC points out that Rule 4901-1-18(D), O.A.C., requires the responding party to specify the documents from which the answer to the interrogatory may be derived. OCC argues that the specificity requirement of the rule is not met by simply pointing to 18,000 documents and declaring that the answer is somewhere within them. OCC suggests that, while the names of many employees appear in the documents reviewed by OCC, only the Companies know exactly what responsibilities were assigned to each individual employee. Further, OCC states that, even when it pointed out to the Companies that a specific person who signed several of the interconnection agreements was not named by the Companies in response to OCC's interrogatories, the Companies still refused to explain that employee's role in the interconnection process. Finally, OCC contends that the Companies have a duty to amend a deficient response. OCC states that Rule 4901-1-16(D)(2), O.A.C., requires that a party supplement its response to discovery upon discovery that the response was incorrect or otherwise materially deficient. Since OCC pointed out to the Companies that the responses to OCC's interrogatories were deficient, OCC contends that the Commission's rules mandate that the Companies amend the response with complete information.
- (14) The Commission agrees with OCC. While the Companies did answer OCC's discovery requests, the Companies' answers were incomplete. Once OCC pointed out that the responses were deficient, the Companies had an obligation, pursuant to Rule 4901-1-16(D)(2), O.A.C., to amend the responses with complete information. Accordingly, the Commission finds that

the attorney examiner did not err in granting OCC's motion to compel the Companies to thoroughly respond to OCC's discovery request for the names of employees who process/have processed requests for interconnection agreements from residential customers.

- (15) Since the Commission finds that neither ground for relief requested in the Companies' interlocutory appeal has merit, the Commission finds that the Companies' interlocutory appeal should be denied.

It is, therefore,

ORDERED, That the interlocutory appeal filed by the Companies be denied. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman

Paul A. Centolella



Andre T. Porter



Steven D. Lesser

Cheryl L. Roberto

HPG/KLS/sc

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Betty McCauley

Betty McCauley
Secretary