

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Bruce Snyder,)	
)	
Complainant,)	
)	
v.)	Case No. 13-2031-EL-CSS
)	
FirstEnergy Solutions Corp.,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On March 4, 2014, Bruce Snyder (Complainant) filed a motion to compel the Commission to enforce Ohio Adm.Code 4901:1-21-04(C) and 4901:1-21-06(D)(2)(b)(iii). Complainant contended that the Commission should impose a fine on FirstEnergy Solutions Corp. (FES), pursuant to Ohio Adm.Code 4901:1-21-15, for not providing Staff with Complainant's records within five days of Staff's request for the records, pursuant to Ohio Adm.Code 4901:1-21-04(C) and 4901:1-21-06(D)(2)(b)(iii). Complainant added that a delay in enforcing Commission rules is indicative of favoritism to FES.
- (2) On March 17, 2014, FES filed its memorandum contra Complainant's motion to enforce. FES asserted that Complainant lacks standing to seek enforcement of Ohio Adm.Code 4901:1-21-04(C) and 4901:1-21-06(D)(2)(b)(iii).¹ Second, FES contended, Complainant has brought a claim against FES at the Commission, proceeded through discovery, and the matter is proceeding to a hearing. FES concluded that there has been no resolution of Complainant's claim and no opportunity for favoritism to FES by the Commission.

¹ To support this contention, FES cites *In re Complaint of Plastex Indus., Inc.*, Case No. 00-2132-EL-CSS (*Plastex*), Entry (Jan. 3, 2002) at 2. FES asserts that in *Plastex* the Commission construed Ohio Adm.Code 4901:1-9-06, a rule that is similar to that cited by Complainant, and the Commission concluded that a customer lacks standing to bring a complaint against a utility when the utility fails to provide records that the Commission requests.

- (3) Complainant replied to FES's memorandum contra on March 23, 2014. Complainant asserted that the memorandum contra was not properly served upon him, as service was made to an incorrect address, not his address as indicated in his pleadings. Complainant adds that he only became aware of the memorandum contra by checking the Commission website on March 21, 2014, and he urged the Commission to disallow the memorandum contra.
- (4) On March 24, 2014, FES filed a response to Complainant's reply. FES stated that through an inadvertent error, the memorandum contra was mailed to 4471 Powder Horn Drive, rather than Complainant's correct address at 4461 Powder Horn Drive. FES added that the memorandum contra was timely filed with the Commission and that FES did attempt to properly serve Complainant.
- (5) On March 28, 2014, the attorney examiner issued an entry allowing Complainant to answer the memorandum contra no later than April 8, 2014.
- (6) Following issuance of the attorney examiner's March 28, 2014 entry, Complainant replied two additional times to FES's memorandum contra, on March 30, 2014 and on April 6, 2014.

In his March 30, 2014 reply, Complainant asserts that FES's memorandum contra was "submitted after the 15 day response period" required by Ohio Adm.Code 4901-1-12. Complainant also contends that because there is no provision in Ohio Adm.Code 4901-1-12 for a response to a reply memorandum, the Commission should disallow FES's March 24, 2014 response.

In his April 6, 2014 reply, Complainant states that the intent behind his motion "was to identify PUCO rules that were broken through the course of this complaint so that the PUCO could do their job and enforce the rules." Complainant notes that FES's memorandum contra does not deny that FES failed to deliver records to Staff "within five calendar days as required * * * ." Complainant further states that he alleged slamming of his electric service by FES, and that he did so first by e-mail during the informal complaint process, then by telephone to Staff and an FES representative, and finally in his

formal complaint. In Complainant's opinion, "this allegation of slamming should have resulted in records being provided to PUCO and myself" and "the PUCO should have reviewed the documentation provided by FES and made a determination as to whether the records met the requirements of Ohio Adm.Code 4901:1-21-06."

- (7) Regarding the contentions made by Complainant in his March 30, 2014 and April 6, 2014 replies, the attorney examiner reemphasizes that under Ohio Adm.Code 4901-1-38(B), "the Commission may, upon its own motion or for good cause shown, waive any requirement, standard, or rule set forth in this chapter or prescribe different practices or procedures to be followed in a case." With this in mind, the attorney examiner recognized in his March 28, 2014 Entry, that FES accidentally typed the wrong address for Complainant while serving him with the memorandum contra, and because Complainant eventually read the contents of the memorandum contra on the Commission website, it was appropriate pursuant to Ohio Adm.Code 4901-1-38(B) to simply allow Complainant additional time to file a reply.

Next, it is necessary to address the matter of Complainant's standing in relation to FES providing records in timely manner. The attorney examiner observes that in his October 2, 2013, complaint, Complainant alleges slamming after a telephone conversation between him and an FES service representative. The complaint also indicates that Complainant informed FES that he had not authorized this change and contacted FES to cancel the change of service. The attorney examiner further notes that, pursuant to Ohio Adm.Code 4901:1-21-08(C), "If a customer contacts the CRES provider alleging that the customer's supplier has been switched without the customer's authorization, the CRES provider shall take the following actions: (a) Provide the customer with the enrollment information contained in its records." Further, Ohio Adm.Code 4901:1-21-06(D)(2)(b)(iii) requires that a CRES provider "provide a copy of the audio recording to the customer, commission, or the staff within five calendar days of a request." In sum, in relation to the alleged slamming, Complainant has standing regarding matters of FES's timeliness in providing records. The attorney examiner adds,

however, that the complaint makes no mention of such timeliness issues. If Complainant wishes to address, at hearing, FES's timing in providing records, he must amend his complaint accordingly.

Concerning remarks made by Complainant in his April 6, 2014, reply and March 4, 2014, motion to enforce, the attorney examiner notes that any penalty for noncompliance with Ohio Adm.Code 4901:1-21-04(C) or 4901:1-21-06(D)(2)(b)(iii), as proposed by Complainant, may only be made, as stated in Ohio Adm.Code 4901:1-21-15(A), "after opportunity for hearing." Given that no hearing on such issues has yet occurred, the attorney examiner denies Complainant's motion to enforce.

It is, therefore,

ORDERED, That Complainant's motion to enforce is denied. It is, further,

ORDERED, That if Complainant wishes to address, at hearing, FES's timing in providing records, he must amend his complaint accordingly. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

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Commission of Ohio Docketing Information System on

5/2/2014 12:06:33 PM

in

Case No(s). 13-2031-EL-CSS

Summary: Attorney Examiner Entry denies Complainant's motion to enforce and during the hearing, if the Complainant wishes, orders the Complainant to address FES's timing in providing the records and to amend the complaint accordingly. - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio