

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

DONELL BARKER,)	
)	Case No. 16-1225-EL-CSS
Complainant,)	
)	
v.)	
)	
THE TOLEDO EDISON COMPANY,)	
)	
Respondent.)	
)	

THE TOLEDO EDISON COMPANY’S MOTION TO COMPEL DISCOVERY

In accordance with Rule 4901-1-23 of the Ohio Administrative Code, Respondent The Toledo Edison Company (“Toledo Edison”) respectfully moves the Public Utilities Commission of Ohio (“the Commission”) for an Order: (1) compelling Complainant Donell Barker (“Complainant”) to respond to Toledo Edison Company’s First Set of Combined Discovery Requests to Complainant (“Combined Discovery Requests”), which were propounded upon him on November 11, 2016, and to which responses are overdue; and (2) notifying Complainant that if he fails to do so, the Commission will dismiss the pending proceeding.

A Memorandum in Support is attached and incorporated by reference. An affidavit of counsel is attached as Ex. A.

Respectfully submitted,

/s/Christine E. Watchorn

Carrie M. Dunn (0076952)

Counsel of Record

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

(330) 761-2352

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cwatchorn@ulmer.com

(Willing to accept service by email)

On behalf of The Toledo Edison Company

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND BACKGROUND

Complainant filed this action on June 1, 2016, alleging that he was charged an “excessive amount” of electric usage after Toledo Edison replaced the electric meter at 409 Melrose Avenue in Toledo, Ohio (“Melrose Ave.”). (See Compl.) Complainant also alleges that Toledo Edison has “a practice of targeting EEP customers with declining balances and selecting them for unwarranted meter changes” and that Toledo Edison demanded Complainant pay his account balance or “risk termination of service.” (*Id.*) Toledo Edison filed its Answer on June 21, 2016, and denied the allegations. (See Answer.) Among other things, Toledo Edison explained in its Answer that it replaced the meter at Melrose Avenue on November 10, 2015, pursuant to the 2016 Statistical Testing Meter Exchange program; Complainant was not charged an “excessive amount” of usage after the meter was replaced; and Toledo Edison did not, and does not, engage in the practice of targeting EEP customers with declining balances. (*Id.* at ¶ 4.) After Toledo Edison replaced Complainant’s meter in November of 2015, he made complaints about the recorded usage. Therefore, Toledo Edison removed and tested the meter, which showed an accuracy of 99.98%, which is within the tolerances specified in Rule 4901:1-10-05(B) of the Ohio Administrative Code. Additionally, although Complainant alleges in his Complaint that his “total balance at the end of 2015 was \$800.00,” his last reported balance for the year 2015 was actually \$1,545.37 (which has since increased), and all disconnection notices Toledo Edison issued to him complied with Toledo Edison’s Tariff, Commission Rules, and Ohio law. (See Compl. at p. 2 and Answer at ¶ 4.)

The Commission scheduled a settlement conference for August 10, 2016. (See 7/13/16 Attorney Examiner Entry.) The parties were unable to resolve the case during the

settlement conference. Pursuant to Complainant's request, a follow-up conference was conducted by telephone on September 16, 2016. (See 8/11/16 Attorney Examiner Entry.) The parties were unable to resolve the case during the follow-up settlement conference, and the hearing was scheduled for December 8, 2016.

On November 11, 2016, Toledo Edison served Combined Discovery Requests on Complainant via email and U.S. Mail. (See Ex. A at ¶ 1 and Combined Discovery Requests with Email and Cover Letter, attached as Ex. B.) On November 23, 2016, Toledo Edison served on Complainant a Notice setting his deposition for the agreed-upon date of December 2, 2016. On December 1, 2016, Complainant requested a continuance of the December 8, 2016 hearing, stating that he needed additional time to "attain additional facts, Information, Medical Records, Documents and evidence." (See 12/1/16 Request for Extension of Time.) Because the hearing was going to be continued, Toledo Edison agreed to reschedule Complainant's deposition and attempted to coordinate a new date with him. However, Complainant was not responsive; therefore, Toledo Edison noticed his deposition for December 19, 2016. The Commission then continued the hearing to February 1, 2017. (See 12/13/16 Attorney Examiner Entry.) Toledo Edison subsequently continued Complainant's deposition to the agreed-upon date of January 12, 2017.

Complainant's responses the Combined Discovery Requests were due on or before December 1, 2016. (*Id.*) The Combined Discovery Requests included interrogatories and requests for production of documents. They seek, among other things: the names and contact information of all people with knowledge of Complainant's claims; all witnesses he intends to call at the hearing of this matter, including lay and expert witnesses; copies of all documents upon which he relies, which support his allegations, and/or which he intends to use at the

hearing; an explanation of his alleged damages; information about any inspection or testing performed on the electrical equipment at Melrose Avenue; the names of each person who has lived at Melrose Avenue from January of 2011 to the present; his affiliation with a company called BMT Properties Limited; and Complainant's residential addresses for the past 10 years. (*Id.*)

On November 23, 2016, counsel for Toledo Edison had a telephone conference with Complainant and confirmed that he received the Combined Discovery Requests, and Complainant agreed that he would respond on or before December 1, 2016. (Ex. A at ¶ 4.) Complainant did not respond to the Combined Discovery Requests by December 1, 2016. (*Id.* at ¶ 5.) On December 6, 2016, counsel for Toledo Edison sent correspondence to Complainant, via email and U.S. Mail, notifying him that the discovery responses were overdue, summarizing and simplifying the Combined Discovery Requests and explaining why they are relevant to the case, and requesting that Complainant provide the overdue responses on or before December 13, 2016 or Toledo Edison would ask the Commission to compel him to respond. (See Ex. A at ¶ 5 and 12/6/16 correspondence, attached as Ex. C.) Complainant did not respond to the Combined Discovery Requests by December 13, 2016. (*Id.* at ¶ 7.)

On December 16, 2016, counsel for Toledo Edison had a telephone conference with Complainant about his deposition and at that time also discussed the status of his responses to the Combined Discovery Requests. (*Id.* at ¶ 8.) Complainant stated that he would respond to the discovery requests. (*Id.*) However, by December 23, 2016, Complainant had not responded. (*Id.* at ¶ 9.) Therefore, counsel for Toledo Edison sent Complainant another letter advising him that Toledo Edison would ask the Commission to compel him to respond if he did not provide his responses by December 30, 2016. (*Id.* at ¶ 9 and 12/23/16 correspondence, attached as Ex.

D.) To date, Complainant has not provided responses to the Combined Discovery Requests or responded in any way to counsel's December 23, 2016 letter.

The hearing is currently scheduled for February 1, 2017, and prefiled testimony is due January 25, 2016. Because it has not received discovery responses (or any information or communication whatsoever) from Complainant, and with the testimony and hearing deadlines fast-approaching, Toledo Edison is contemporaneously filing a Motion to Continue February 1, 2017 Hearing and Request for Expedited Ruling. (See 1/6/17 Mot. to Continue.)

II. LAW AND ARGUMENT

Toledo Edison served its Combined Discovery Requests, including interrogatories and requests for production of documents, upon Complainant by email and U.S. Mail on November 11, 2016 in accordance with Rules 4901-1-16, 4901-1-18, 4901-1-19, and 4901-1-20 of the O.A.C. Complainant's responses were due on or before December 1, 2016, pursuant to Rules 4901-1-19(A) and 4901-1-20(C) of the O.A.C. Complainant failed to respond to the discovery requests.

As set forth above, counsel for Toledo Edison has made a good faith effort to resolve this discovery dispute with Complainant. (See Affidavit, attached as Ex. A.) Specifically, counsel for Toledo Edison had two phone conferences with Complainant and sent him two letters, on December 6, 2016 and December 23, 2016, explaining and simplifying the discovery requests, explaining why they are relevant, explaining that they are overdue, and advising that Toledo Edison would ask the Commission to compel him to respond. (See Exs. A, C, and D.) In its December 23, 2016 correspondence, Toledo Edison asked Complainant to provide his responses by December 30, 2016. (See Exs. A and D.) To date, Complainant has not responded to the Combined Discovery Requests. (Ex. A at ¶ 10.)

As evidenced by the discovery requests themselves, they are narrowly tailored to elicit information that is relevant and discoverable in the pending proceeding, in accordance with Rules 4901-1-16(B) and 4901-1-23(C)(1)(b). (See Ex. B.) Toledo Edison's interrogatories and requests for production of documents seek, among other things: the names and contact information of all people with knowledge of Complainant's claims; all witnesses he intends to call at the hearing of this matter, including lay and expert witnesses; copies of all documents upon which he relies, which support his allegations, and/or which he intends to use at the hearing; an explanation of his alleged damages; information about any inspection or testing performed on the electrical equipment at Melrose Avenue; the names of each person who has lived at Melrose Avenue from January of 2011 to the present; his affiliation with a company called BMT Properties Limited; and Complainant's residential addresses for the past 10 years. (*Id.*)

All information sought by Toledo Edison is relevant to this proceeding and is discoverable. O.A.C. 4901-1-16(B). The PUCO frequently grants motions to compel under circumstances similar to those at issue here. See, e.g., *In the Matter of the Complaint of Patrick Allen v. Ohio Edison Company*, Case No. 15-1237-EL-CSS (Entry Issued December 1, 2015); *In the Matter of the Complaint of Diane Wilkos v. Ohio Edison Company*, Case No. 16-183-IL-CSS (Entry Issued July 19, 2016).

III. CONCLUSION

For the reasons set forth herein, The Toledo Edison Company respectfully requests, pursuant to Rule 4901-1-23 of the O.A.C., that the Commission grant this Motion in full and: (1) issue an order directing Complainant to respond fully, in writing, and in the case of the interrogatories, under oath, by a date certain to Toledo Edison's Combined Discovery

Requests; and (2) notifying Complainant that if he fails to do so, the Commission will dismiss the pending proceeding.

/s/ Christine E. Watchorn

Carrie M. Dunn (0076952)

Counsel of Record

FirstEnergy Service Company

76 South Main Street

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aterrell@ulmer.com

(Willing to accept service by email)

On behalf of The Toledo Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *The Toledo Edison Company's Motion to Compel* was served via U.S. Mail this 6th day of January, 2017 upon:

Donell Barker

409 Melrose Avenue

Toledo, Ohio 43610

donell_barker@sbcglobal.net

Complainant, pro se

/s/Christine E. Watchorn

On behalf of The Toledo Edison Company

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

DONELL BARKER)	
)	Case No. 16-1225-EL-CSS
Complainant,)	
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v.)	
)	
THE TOLEDO EDISON COMPANY)	
)	
Respondent.)	
)	

**AFFIDAVIT OF COUNSEL FOR THE TOLEDO EDISON COMPANY IN SUPPORT
OF MOTION TO COMPEL DISCOVERY**

STATE OF OHIO)	
)	SS:
COUNTY OF FRANKLIN)	

ALYSON TERRELL, having been first duly sworn, and having personal knowledge of the matters contained herein, hereby deposes and says:

1. I am an attorney with the law firm of Ulmer & Berne LLP, and my firm and I are counsel for The Toledo Edison Company ("Toledo Edison") in the referenced case.
2. On November 11, 2016, Toledo Edison served Toledo Edison Company's First Set of Combined Discovery Requests to Complainant ("Combined Discovery Requests") upon Complainant via email and U.S. Mail.
3. Complainant's responses to the Combined Discovery Requests were due December 1, 2016.

4. On November 23, 2016, I had a telephone conference with Complainant wherein I confirmed that Complainant received the Combined Discovery Requests, and he stated that he would send his responses to me on or before December 1, 2016.

5. Complainant failed to respond by the due date of December 1, 2016.

6. In an effort to resolve the discovery issue with Complainant, on December 6, 2016, I sent him a letter, via email and U.S. Mail, notifying him that the discovery responses were overdue, summarizing and simplifying the Combined Discovery Requests and explaining why they are relevant to the case, and requesting that Complainant provide the overdue responses on or before December 13, 2016, or Toledo Edison would ask the Commission to compel him to respond.

7. Complainant failed to provide his responses by December 13, 2016.

8. On December 16, 2016, I had another phone conference with Complainant wherein I inquired about the status of his responses to the Combined Discovery Requests, and he stated that he would send his responses to me.

9. On December 23, 2016, Complainant still had not responded to the Combined Discovery Requests. Therefore, on December 23, 2016, I sent Complainant another letter, via email and U.S. Mail, notifying him that Toledo Edison would ask the Commission to compel him to respond if I did not receive his responses by December 30, 2016.

10. To date, Complainant has not responded to the Combined Discovery Requests.

Further Affiant sayeth naught.

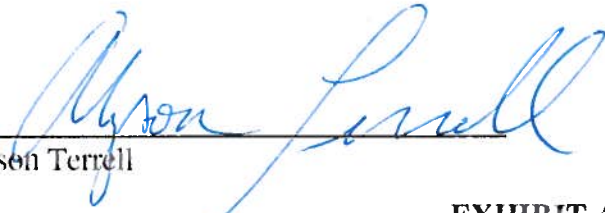

Alyson Terrell

EXHIBIT A

Subscribed and sworn to before me this the 6th day of January, 2017, by:

Teresa F. Scharf
Notary Public

**TERESA F SCHARF, Notary Public
In and for the State of Ohio**

My Commission expires **My Commission Expires December 20, 2019**

COL1997 271497v1
29414.00077

EXHIBIT A

Terrell, Alyson

From: Sigman, Amy
Sent: Friday, November 11, 2016 3:39 PM
To: 'donell_barker@sbcglobal.net'
Cc: Watchorn, Christine; Terrell, Alyson
Subject: Donell Barker v. The Toledo Edison Company
Attachments: Letter.pdf; First Set of Discovery Requests to Donell Barker.docx; Rules 4901-1-19 and 4901-1-20.pdf

Mr. Barker:

Christine Watchorn asked that I send you the attached documents.

Thank you.

Amy Sigman
Legal Secretary



DIRECT: 614.229.0477
DIRECT FAX: 614.229.0001
EMAIL: asigman@ulmer.com

Ulmer & Berne LLP
65 East State Street, Suite 1100
Columbus, Ohio 43215-4213
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ULMER & BERNE LLP - CONFIDENTIAL COMMUNICATION

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Christine E. Watchorn
Partner

TELEPHONE 614.229.0034
DIRECT FAX 614.229.0035
EMAIL cwatchorn@ulmer.com

November 11, 2016

**VIA EMAIL (donell_barker@sbcglobal.net)
AND U.S. MAIL**

Donell Barker
409 Melrose Avenue
Toledo, Ohio 43610

Re: Donell Barker v. The Toledo Edison Company
Case No. 16-1225-EL-CSS

Dear Mr. Barker:

Enclosed please find The Toledo Edison Company's First Set of Combined Discovery Requests to Complainant.

If you have any questions, please feel free to contact me.

Sincerely,

Christine E. Watchorn

CEW/als
Enclosure

CLEVELAND

COLUMBUS

CINCINNATI

CHICAGO

HOUSTON

LOS ANGELES

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FAX 614.229.0001

EXHIBIT B

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

DONELL BARKER)	
)	Case No. 16-1225-EL-CSS
Complainant,)	
)	
v.)	
)	
THE TOLEDO EDISON COMPANY)	
)	
Respondent.)	
)	

**THE TOLEDO EDISON COMPANY'S FIRST SET OF
COMBINED DISCOVERY REQUESTS TO COMPLAINANT**

Pursuant to Rules 4901-1-19 and 4901-1-20, Ohio Administrative Code, The Toledo Edison Company propounds the following combined set of Interrogatories and Requests for Production of Documents (collectively, the "Discovery Requests") upon Complainant Donell Barker to be responded to fully, separately, and in writing within twenty (20) days of service.

INSTRUCTIONS

A. Completeness: In answering these Discovery Requests, Complainant must furnish all information and documents available to Complainant. This includes documents in the possession, custody or control of Complainant's attorneys or of any third party or parties to whom Complainant has surrendered possession, custody or control or who are acting on Complainant's behalf, or who have otherwise obtained possession, custody or control, or who, upon Complainant's request would surrender possession, custody or control to Complainant.

B. Supplementation: These Discovery Requests shall be deemed continuing in nature so as to require supplementary responses between the time the initial responses are served and the time of a hearing, if any, in accordance with Rule 4901-1-16(D), Ohio Administrative

Code. Such supplementary responses are to be filed and served upon the Ohio Edison Company within five (5) days after receipt of such information.

DEFINITIONS

A. "Document" or "documents" means the original and all copies that are different in any way from the original (whether by interlineation, receipt stamp, notation, indication of copies sent or received or otherwise, and drafts) of any printed, typewritten, handwritten, or otherwise recorded matter of whatever character (including, without limitation, telegraphs, personal notes, diaries, statements, photographs, videotapes, tape recordings, motion pictures, computer tapes or discs, and any Xerox, carbon, magnetic, digital or photographic copies of any such material if Complainant does not have custody and control of the original). Designated documents are to be considered as including all attachments and enclosures. The enumeration of various specific items as included within the definition of the term "document" or "documents" shall not be taken to limit the generality of the terms, and the Document Requests herein are intended to obtain all documents in the broadest and most comprehensive sense and meaning of the term.

B. "Identify," with respect to any natural person, shall mean to provide the following information about the person: full name; present or last known address; employer; and relationship, if any, to Complainant. If any of this information is not available to Complainant, state any other means of identifying such natural person.

C. "Identify," with respect to any document, shall mean to provide the following information about the document: general description; subject matter; date; title; author; recipients; and, if the document is not in Complainant's possession, the location of the document.

If any of this information is not available to Complainant, state any other means of identifying the document.

D. As used herein, the terms “you,” “your”, and “Complainant” refer to Donell Barker and each person acting or purporting to act on behalf of Donell Barker.

E. As used herein, the terms the “Company” and “Toledo Edison” refer to The Toledo Edison Company and each person acting or purporting to act on behalf of The Toledo Edison Company.

F. As used herein, the term “Complaint” refers to the Complaint filed by Complainant with the Public Utilities Commission of Ohio, Case No. 16-1225-EL-CSS.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who have knowledge or information, or may have knowledge or information, regarding your claims in the Complaint.

ANSWER:

INTERROGATORY NO. 2: Identify any and all exhibits or demonstrative evidence that you intend to present at any hearing of this matter.

ANSWER:

INTERROGATORY NO. 3: Identify each person whom you intend to call as a lay (fact) witness at any hearing of this matter.

ANSWER:

INTERROGATORY NO. 4: Identify each person whom you intend to call as an expert witness at any hearing of this matter.

ANSWER:

INTERROGATORY NO. 5: For each person identified in your answer to Interrogatory No. 4, state:

- a. the subject matter and substance of the facts and opinions about which he or she is expected to testify;
- b. the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years; and
- c. the cases in which the witness has testified as an expert at trial, hearing, or by deposition within the preceding four (4) years.

ANSWER:

INTERROGATORY NO. 6: State the amount of damages, if any, you are claiming in this case and explain your calculation.

ANSWER:

INTERROGATORY NO. 7: If anyone other than Toledo Edison personnel has inspected, examined, tested, measured, or otherwise made any assessment of the electric service and/or electrical equipment and/or electric meter(s) at 409 Melrose Ave., Toledo, Ohio 43610 ("409 Melrose Ave."), state the following for each person: (a) his or her full name, (b) the company he or she works for, (c) his or her address, (d) his or her phone number, (e) the date of each inspection, examination, test, measurement or other assessment, and (f) the results of the inspection, examination, test, measurement or other assessment.

ANSWER:

INTERROGATORY NO. 8: Identify each person who has resided at 409 Melrose Ave. from January 1, 2011 to the present, and for each person, state the date(s) they resided there.

ANSWER:

INTERROGATORY NO. 9: Identify each person who is currently residing at 409 Melrose Ave. and the date(s) on which they began residing there.

ANSWER:

INTERROGATORY NO. 10: Identify each person who is currently residing at 2372 Fulton St. Uppr, Toledo, Ohio 43620, and the date(s) on which they began residing there.

ANSWER:

INTERROGATORY NO. 11: Are you affiliated with BMT Properties Limited in any way, including but not limited to, as an employee, owner, shareholder, or representative, and if so, state the nature of your affiliation.

ANSWER:

INTERROGATORY NO. 11: State your current residential address and all addresses where you have resided in the past 10 years, including the dates you resided at each address.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all documents you identified, referred to, or relied upon in providing answers and responses to these Discovery Requests.

RESPONSE:

REQUEST NO. 2: Produce all documents and workpapers that reflect or explain the calculation of damages, if any, you claim in this case.

RESPONSE:

REQUEST NO. 3: Produce all documents related to any inspection, examination, testing, measurement, or other assessment of the electric service and/or electrical equipment and/or electric meter(s) at 409 Melrose Ave., including without limitation, all reports of such inspection, examination, testing, measurement, or assessment.

RESPONSE:

REQUEST NO. 4: Produce all documents that you intend to rely upon, refer to, or use as exhibits at any deposition or at any hearing in this matter.

RESPONSE:

REQUEST NO. 5: Produce all documents which refer, relate, or in any way pertain to any witnesses you have retained or specifically employed to provide expert testimony in this case, including but not limited to:

- a. Any written reports, including drafts thereof, including a statement of all opinions to be expressed and the basis thereof;
- b. The data or other information considered by the witness(es) in forming the opinions;
- c. Any exhibits to be used as a summary of, or support for, the opinions;
- d. The qualifications of the witness(es), including a list of all publications authored by the witness within the preceding ten (10) years; and
- e. A listing of any other cases in which the witness has testified as an expert at trial, hearing, or by deposition within the preceding four (4) years.

REQUEST NO. 6: Produce all lease agreements entered into with tenants of 409 Melrose Ave. from January 1, 2011 to the present.

RESPONSE:

/s/ Christine E. Watchorn

Carrie M. Dunn (0076952)

Counsel of Record

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

(330) 761-2352

(330) 384-3875 Fax

cdunn@firstenergycorp.com

(Willing to accept service by email)

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65 East State Street, Suite 1100

Columbus, Ohio 43215

(614) 229-0034

(614) 229-0035 Fax

cwatchorn@ulmer.com

(Willing to accept service by email)

On behalf of The Toledo Edison Company

INTERROGATORY VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF _____)

The undersigned hereby verifies that the foregoing interrogatory responses of Complainant Donell Barker are true and accurate to the best of his knowledge and belief.

Donell Barker

SWORN TO BEFORE ME and subscribed in my presence this ____ day of _____, 2016.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *The Toledo Edison Company's First Set of Combined Discovery Requests to Complainant* was served this 11th day of November, 2016 via email and regular mail upon:

Donell Barker
409 Melrose Avenue
Toledo, Ohio 43610
donell_barker@sbcglobal.net

/s/ Christine E. Watchorn

Christine E. Watchorn (0075919)

On behalf of The Toledo Edison Company

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29414.00077

4901-1-19 Interrogatories and response time.

(A) Any party may serve upon any other party written interrogatories, to be answered by the party served. If the party served is a corporation, partnership, association, government agency, or municipal corporation, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories and all other parties within twenty days after the service thereof, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow. The party submitting the interrogatories may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to answer an interrogatory.

(B) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served. An interrogatory which is otherwise proper is not objectionable merely because it calls for an opinion, contention, or legal conclusion, but the commission, the legal director, the deputy legal director, or the attorney examiner may direct that such interrogatory need not be answered until certain designated discovery has been completed, or until some other designated time. The answers to interrogatories may be used to the extent permitted by the rules of evidence, but such answers are not conclusive and may be rebutted or explained by other evidence.

(C) Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, or from documents which the party served with the interrogatory has furnished to the party submitting the interrogatory within the preceding twelve months, it is a sufficient answer to such interrogatory to specify the title of the document, the location of the document or the circumstances under which it was furnished to the party submitting the interrogatory, and the page or pages from which the answer may be derived or ascertained.

(D) Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, and the burden of deriving the answer is substantially the same for the party submitting the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

R.C. 119.032 review dates: 03/26/2014 and 03/26/2019

Promulgated Under: 111.15

Statutory Authority: 4901.13

Rule Amplifies: 4901.13, 4901.18, 4903.082

Prior Effective Dates: 3/1/81, 12/25/87, 4/20/01, 5/07/07

4901-1-20 Production of documents and things; entry upon land or other property.

(A) Subject to the scope of discovery set forth in rule 4901-1-16 of the Administrative Code, any party may serve upon any other party a written request to:

(1) Produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, or data compilations, which are in the possession, custody, or control of the party upon whom the request is served.

(2) Produce for inspection, copying, sampling, or testing any tangible things which are in the possession, control, or custody of the party upon whom the request is served.

(3) Permit entry upon designated land or other property for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(B) The request shall set forth the items to be inspected either by individual item or by category, and shall describe each category with reasonable particularity. The request shall also specify a reasonable time, place, and manner for conducting the inspection and performing the related acts.

(C) The party upon whom the request is served shall serve a written response within twenty days after the service of the request, or within such shorter or longer time as the commission, the legal director, the deputy legal director, or an attorney examiner may allow. The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. The party submitting the request may move for an order under rule 4901-1-23 of the Administrative Code with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.

(D) Where a request calls for the production of a public document on file in this state, or a document which the party upon whom the request is served has furnished to the party submitting the request within the preceding twelve months, it is a sufficient response to such request to specify the location of the document or the circumstances under which the document was furnished to the party submitting the request.

R.C. 119.032 review dates: 03/26/2014 and 03/26/2019

Promulgated Under: 111.15

Statutory Authority: 4901.13

Rule Amplifies: 4901.13, 4901.18, 4903.082

Prior Effective Dates: 3/1/81, 6/1/83, 12/25/87, 5/07/07

December 6, 2016

VIA EMAIL & U.S. MAIL

Donell Barker
409 Melrose Avenue
Toledo, Ohio 43610

Re: Donell Barker v. The Toledo Edison Company
Case No. 16-1225-EL-CSS

Dear Mr. Barker:

On November 11, 2016, we sent you via mail and email Toledo Edison Company's First Set of Combined Discovery Requests to Complainant. According to the rules of the Public Utilities Commission of Ohio (Sections 4901-1-19 and 4901-1-20 of the Ohio Administrative Code), your written responses were due by December 1, 2016. When we talked on the phone on November 23, 2016, you confirmed that you received the requests and that you would provide your responses to me on or before December 1, 2016. I have not received your written responses and they are now overdue. Please provide the written responses to me by **December 13, 2016**. If I do not receive them by that date, we will ask the PUCO to compel you to respond.

Toledo Edison's discovery requests seek information that is relevant to this case, because it relates to witnesses, exhibits, and key facts. **Specifically, we are asking you to answer these questions in writing:**

1. List the names and contact information (addresses and phone numbers) of all people who have information about your claims in this case.
2. List all of the exhibits (papers, materials, documents) that you are going to use at the hearing.
3. List the names and contact information (addresses and phone numbers) of all witnesses that you will call at the hearing – including fact witnesses and expert witnesses.
4. For each expert witness, tell us his or her qualifications and the subjects, facts, and opinions about which he or she will testify.
5. Tell us the amount of the damages, if any, you are claiming and give an explanation of how you determined that amount.
6. Tell us whether any people, other than employees of Toledo Edison, have inspected, examined, tested, measured, or otherwise made any assessment of the

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electric service and/or electrical equipment and/or electric meters at 409 Melrose Ave., and if so, provide their names, company names, addresses, phone numbers, dates of inspection or testing, and results.

7. Tell us each person who has lived at 409 Melrose Ave. from January 1, 2011 to the present, and the dates each person resided there.
8. Tell us each person who is currently living at 409 Melrose Ave. and the date(s) on which they began residing there.
9. Tell us each person who is currently living at 2372 Fulton St. Uppr, Toledo, Ohio 43620, and the date(s) on which they began residing there.
10. Tell us if you are affiliated with BMT Properties Limited in any way (for example as an employee, owner, shareholder, or representative), and if so, what your affiliation is.
11. Tell us your current residential address and all addresses where you have lived in the past 10 years, including the dates you lived at each address.

And, we are asking you to give us copies of these documents:

1. All documents you looked at or referred to in answering the questions listed above.
2. All documents and papers that explain how you calculate the damages, if any, that you are claiming in this case.
3. All documents (including all reports) related to any testing or inspections of the electric service or equipment at 409 Melrose Ave. performed by anyone other than Toledo Edison.
4. All of the documents that you plan to use at any deposition and at the hearing. **This includes the medical records, documents, and evidence that you referred to in your November 30, 2016 request for a continuance of the hearing.**
5. All documents that relate to any expert witnesses you will call at the hearing, including: their resumes, lists of materials they have professionally published, their reports (including drafts), any letters or emails between you and them, any documents they have reviewed, any documents they have created, and any documents or data you gave them.
6. All lease or rental agreements entered into with tenants of 409 Melrose Ave. from January 1, 2011 to the present.

December 6, 2016
Page 3

As indicated above, we expect to receive the written discovery responses from you by **December 13, 2016**.

If you have any questions, please feel free to contact me.

Sincerely,


Alyson Terrell

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December 23, 2016

VIA EMAIL & U.S. MAIL

Donell Barker
409 Melrose Avenue
Toledo, Ohio 43610

Re: Donell Barker v. The Toledo Edison Company
Case No. 16-1225-EL-CSS

Dear Mr. Barker:

On November 11, 2016, we sent to you via mail and email Toledo Edison Company's First Set of Combined Discovery Requests to Complainant. Your written responses were due by December 1, 2016.

On December 6, 2016, I sent to you via email and mail the enclosed letter asking you to provide your responses by December 13, 2016. When we did not receive your responses, I called you on December 16, 2016. You said that you would forward your responses to me. To date, we have not received your responses.

Please be advised that if we do not receive your written responses on or before **December 30, 2016**, we will file a motion asking the PUCO to compel you to respond.

Sincerely,


Alyson Terrell

AT/als
Enclosure

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December 6, 2016

VIA EMAIL & U.S. MAIL

Donell Barker
409 Melrose Avenue
Toledo, Ohio 43610

Re: **Donell Barker v. The Toledo Edison Company**
Case No. 16-1225-EL-CSS

Dear Mr. Barker:

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3. List the names and contact information (addresses and phone numbers) of all witnesses that you will call at the hearing – including fact witnesses and expert witnesses.
4. For each expert witness, tell us his or her qualifications and the subjects, facts, and opinions about which he or she will testify.
5. Tell us the amount of the damages, if any, you are claiming and give an explanation of how you determined that amount.
6. Tell us whether any people, other than employees of Toledo Edison, have inspected, examined, tested, measured, or otherwise made any assessment of the

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9. Tell us each person who is currently living at 2372 Fulton St. Uppr, Toledo, Ohio 43620, and the date(s) on which they began residing there.
10. Tell us if you are affiliated with BMT Properties Limited in any way (for example as an employee, owner, shareholder, or representative), and if so, what your affiliation is.
11. Tell us your current residential address and all addresses where you have lived in the past 10 years, including the dates you lived at each address.

And, we are asking you to give us copies of these documents:

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2. All documents and papers that explain how you calculate the damages, if any, that you are claiming in this case.
3. All documents (including all reports) related to any testing or inspections of the electric service or equipment at 409 Melrose Ave. performed by anyone other than Toledo Edison.
4. All of the documents that you plan to use at any deposition and at the hearing. **This includes the medical records, documents, and evidence that you referred to in your November 30, 2016 request for a continuance of the hearing.**
5. All documents that relate to any expert witnesses you will call at the hearing, including: their resumes, lists of materials they have professionally published, their reports (including drafts), any letters or emails between you and them, any documents they have reviewed, any documents they have created, and any documents or data you gave them.
6. All lease or rental agreements entered into with tenants of 409 Melrose Ave. from January 1, 2011 to the present.

December 6, 2016
Page 3

As indicated above, we expect to receive the written discovery responses from you by **December 13, 2016**.

If you have any questions, please feel free to contact me.

Sincerely,

Alyson Terrell

A handwritten signature in cursive script, appearing to read "Alyson Terrell", written in black ink.

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This foregoing document was electronically filed with the Public Utilities

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1/6/2017 2:54:47 PM

in

Case No(s). 16-1225-EL-CSS

Summary: Motion The Toledo Edison Company's Motion to Compel Discovery electronically filed by Ms. Christine E. Watchorn on behalf of The Toledo Edison Company