

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
JOHN BLANCHARD,**

**COMPLAINANT,**

**CASE NO. 18-82-EL-CSS**

**v.**

**THE TOLEDO EDISON COMPANY,**

**RESPONDENT.**

**ENTRY**

Entered in the Journal on August 31, 2018

{¶ 1} The Toledo Edison Company (Toledo Edison, Company, or Respondent) is a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the jurisdiction of this Commission.

{¶ 2} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 3} On January 8, 2018, John Blanchard (Complainant) filed a complaint against Toledo Edison alleging that Toledo Edison improperly disconnected electric service for nonpayment without first providing advanced written notice at the premises and did not provide a reasonable opportunity to dispute the disconnection.

{¶ 4} On January 26, 2018, Toledo Edison filed its answer to the complaint, denying many of the allegations contained therein. Additionally, Toledo Edison raised several affirmative defenses, including, but not limited to, the following: Complainant fails to set forth reasonable grounds for complaint as required by R.C. 4905.26; Complainant fails to state a claim upon which relief can be granted; and Toledo Edison has complied with all

applicable rules, regulations, and orders of the Commission, and its tariffs. Additionally, Toledo Edison requested that the Commission dismiss the complaint.

{¶ 5} A prehearing settlement conference was held on March 27, 2018; however, the parties were unable to settle the matter and a hearing was set for August 9, 2018. The attorney examiner rescheduled the hearing for September 13, 2018, to allow the parties to continue with discovery.

{¶ 6} On August 1, 2018, Complainant filed a motion to compel discovery. In the motion, Complainant stated that Toledo Edison objected to three of his four interrogatories on various grounds. Complainant requested that Toledo Edison provide the exact email addresses of the e-bill emails and the identity of an individual who is familiar with the auto-dial system who can provide information such as the phone numbers dialed, the contents of the call, and what mechanism triggered the auto-dialing process.

{¶ 7} On August 16, 2018, Toledo Edison filed a memorandum contra Complainant's motion to compel discovery. In the memorandum contra, Respondent argued the interrogatories are overbroad and overly burdensome for the Company to answer; nevertheless, without waiving those objections, the Company attempted to respond substantively to the requests. In addition, Respondent stated that, contrary to the requirements of Ohio Adm.Code 4901-1-23(C), Complainant has not tried to resolve his discovery disputes with Respondent's counsel prior to filing the motion to compel. Respondent also stated that Complainant did not attach the required affidavit in support of the motion to compel. Ohio Adm.Code 4901-1-23(C).

{¶ 8} Ohio Adm.Code 4901-1-16(B), provides, in part, that:

Any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through interrogatories,

requests for the production of documents and things or permission to enter upon land or other property, depositions, and requests for admission.

{¶ 9} Ohio Adm.Code 4901-1-23(C), provides, in part, that:

No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

- (1) A memorandum in support, setting forth:
  - (a) The specific basis of the motion, and citations of any authorities relied upon.
  - (b) A brief explanation of how the information sought is relevant to the pending proceeding.
  - (c) Responses to any objections raised by the party or person from whom discovery is sought.
- (2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto.
- (3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.

{¶ 10} Initially, the attorney examiner finds that Complainant's motion to compel does lack certain requisite information. Ohio Adm.Code 4901-1-23(C) requires that a memorandum in support of a motion to compel set forth, among other things, responses to any objections raised by the party or person from whom discovery is sought. The party seeking to compel discovery also must submit an affidavit with its motion setting forth the efforts which have been made to resolve the parties' differences. Complainant has not included adequate responses to the objections raised by the Company or the required affidavit with his motion. The attorney examiner questions whether Complainant exhausted all other reasonable means of resolving these pending discovery issues or communicating with the Company beyond his initial request, as evidenced by, among other

things, the Company's memorandum contra and Complainant's failure to serve or notice his motion upon the Company. The Commission holds all parties to the same procedural standard for filings before it. Therefore, a ruling on the entire motion to compel, based on Complainant's non-compliance with Ohio Adm.Code 4901-1-23, would be justified at this point. Nevertheless, in an effort to consider all aspects of Complainant's motion fully, a discussion of each discovery request in the motion is set forth in the following paragraphs of this Entry.

{¶ 11} In an informal discovery request addressed in his motion to compel discovery, Complainant states he sought information regarding the emails Respondent alleges to have sent to Complainant prior to disconnection of service. Respondent produced a document titled "Emails of Billing Statement Notices." Complainant states Toledo Edison did not provide email addresses where the emails were sent and that Toledo Edison stated the information was unavailable.

{¶ 12} Toledo Edison responds within its memorandum contra that Complainant did not ask why email addresses were not included in this document, nor did he request that email addresses be added to the document. Toledo Edison asserts that Complainant asked for copies of the emails that were sent. Toledo Edison explained it does not retain copies of the actual email messages but that Company records show it has only one email address associated with Complainant's account.

{¶ 13} The attorney examiner finds that, because Toledo Edison has no documents responsive to Complainant's request, the motion to compel is denied, in part. However, to the extent the Company does have records showing the email address associated with Complainant's account, presumably to which the emails were sent, and that information has not otherwise already been provided to Complainant, the motion should be granted and that information should be produced for the Complainant.

{¶ 14} In Interrogatory 2 and 3, Complainant requested any and all data files used in preparing the document titled "Emails of Billing Statement Notices," as well as the content

of the files, including record layouts and descriptions of the contents of all data fields. In support of Interrogatory 2 and 3, Complainant states that this document is relevant because it is Complainant's central contention that only one of the emails listed in Attachment A was ever received by him and that information concerning the exact addressee of the alleged emails is relevant to his case.

{¶ 15} Respondent objects to Interrogatory 2 on the grounds that the request is overly broad, vague, and ambiguous as to the terms and is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objections, Toledo Edison states that it responded that the data was obtained from a screenshot of information supporting the Company website. Respondent also objects to Interrogatory 3 on the grounds the request is vague, ambiguous, overly broad, and unduly burdensome, and is not calculated to lead to the discovery of admissible evidence. Further, the Company argues that the request seeks to release confidential proprietary business information.

{¶ 16} The attorney examiner concludes the Respondent has responded to those requests by producing a computer record about the billing statement notices and it would be unduly burdensome to require the Company to produce thousands of data files contained within its database architecture, potentially including confidential customer information. For that reason, the motion to compel is denied as to Interrogatories 2 and 3.

{¶ 17} In Interrogatory 4, Complainant requests the identity of a person(s) who made attempts to contact Complainant by telephone, and the dates those attempts were made, prior to termination of service. In support of Interrogatory 4, Complainant argues it is his personal testimony the phone calls were never received by him. Complainant responds to Toledo Edison's initial response to Interrogatory 4 by further requesting what phone number was dialed, what mechanism triggered the auto-dialing process, and the contents of the phone call.

{¶ 18} Toledo Edison objects on the grounds the request mischaracterizes the content of confidential settlement negotiations and is not reasonably calculated to lead to the

discovery of admissible evidence. Without waiving those objections, Toledo Edison states that it provided the dates and times of the three autodial calls that were made. In response to Complainant's further request, Toledo Edison argues that it answered the original question posed in far more precision than requested and that Complainant is further requesting information that the Company has never been asked to provide. Toledo Edison argues that a litigant's desire to conduct additional follow up discovery may warrant delaying the hearing, but it cannot establish grounds for a motion to compel.

{¶ 19} The attorney examiner finds the Company has fully responded to the discovery request. Interrogatory 4, as presented in Complainant's motion to compel, only requested the person(s) who made the phone call attempts and the approximate dates of those phone calls. Therefore, the motion to compel is denied as to Interrogatory 4. To the extent Complainant would like to serve additional discovery requests regarding the auto-dial system and process on the Company, he may elect to do so; but, a motion to compel is not the appropriate method to obtain such information at this time.

{¶ 20} As a final matter, the attorney examiner again notes that the hearing in this case is currently scheduled for September 13, 2018. Ohio Adm.Code 4901-1-17(A) provides that, unless otherwise ordered for good cause shown, discovery must be completed prior to the commencement of the hearing. In the event that either of the parties believe a continuance is needed to conduct additional discovery, a motion requesting such a continuance should be filed no later than September 10, 2018.

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That Complainant's motion to compel discovery is denied, in part, and granted, in part. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Stacie Cathcart

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By: Stacie E. Cathcart  
Attorney Examiner

SJP/hac

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Attorney Examiner Entry Entry denying complainant's motion to compel discovery.  
electronically filed by Heather A Chilcote on behalf of Stacie E. Cathcart, Attorney Examiner,  
Public Utilities Commission