

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

LINDA KIRBY,)	
)	
Complainant,)	
)	Case No. 18-0691-EL-CSS
v.)	
)	
OHIO EDISON COMPANY,)	
)	
Respondent.)	
)	

OHIO EDISON COMPANY'S MOTION FOR CONTINUANCE

Pursuant to Ohio Administrative Code 4901-1-13, Respondent Ohio Edison Company ("Ohio Edison" or the "Company") respectfully moves the Commission for an Order continuing the Hearing that is currently scheduled for November 28, 2018, to allow adequate time to complete discovery prior to the Hearing, and to allow the Commission sufficient time to rule on Ohio Edison's pending Motion to Strike. A Memorandum in Support of this Motion is attached.

Respectfully submitted

/s/ Emily V. Danford
Emily V. Danford (0090747)
Counsel of Record
Scott J. Casto (0085756)
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Attorneys for Ohio Edison Company

MEMORANDUM IN SUPPORT

I. Factual & Procedural Background

The Complainant filed a Complaint against Ohio Edison on April 16, 2018, alleging that stray voltage on her property caused her financial loss related to her dairy cattle. Ohio Edison filed an Answer on May 4, 2018. On July 5, 2018, the Commission issued an Entry scheduling a settlement conference for August 7, 2018. The Complainant and Ohio Edison appeared for the settlement conference but were unable to resolve the issues raised in the Complaint. On September 6, 2018, Ohio Edison filed a Motion to Strike certain portions of the Complaint. Specifically, Ohio Edison argued that the Commission lacks jurisdiction to award monetary damages to the Complainant. As of the date of this Motion, the Commission has not issued a ruling on Ohio Edison's September 6th Motion to Strike.

On October 24, 2018, the Commission issued an Entry scheduling a Hearing in this matter for November 28, 2018. Also on October 24, 2018, Ohio Edison served Interrogatories, Requests for Production of Documents and Requests for Admissions (the "Discovery Requests") on Complainant pursuant to Ohio Administrative Code §§ 4901-1-16, 4901-1-19, 4901-1-20, and 4901-1-22. A copy of the Discovery Requests is attached hereto as Exhibit A.

Pursuant to Ohio Administrative Code §§ 4901-1-19(A) and 4901-1-22(A), Complainant's responses to the Discovery Requests are due on Wednesday, November 14, 2018. Pursuant to the Commission's October 24th Entry, the parties' direct expert testimony must be filed by Wednesday, November 21, 2018.

II. Law & Argument

Ohio Edison will be prejudiced if the Hearing proceeds on November 28th as scheduled. Ohio Edison's Discovery Requests seek additional information regarding the facts alleged in the

Complaint. They also include an interrogatory seeking the identity of any witness the Complainant expects to call in this proceeding, and the substance of the facts to which each such witness(es) will testify. Further, Ohio Edison's pending Motion to Strike deals with issues central to the Complainant's Complaint, and its resolution will have a material impact on the resolution of this matter. Ohio Edison respectfully requests that the Commission issue a ruling on the Motion to Strike in advance of the Hearing.

Ohio Administrative Code Section 4901-1-13(A) provides, in pertinent part, that "continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown[.]" The Commission has found that outstanding discovery requests are "good cause shown" under this provision of the Ohio Administrative Code, warranting the continuance of a hearing.¹

Ohio Edison served its Discovery Requests on the Complainant on the same day that the Commission issued its Entry scheduling the Hearing in this matter. Ohio Edison took this measure to allow for discovery prior to the Hearing. However, because the Complainant's responses to the Discovery Requests are not due until November 14th,² Ohio Edison will only have five business days to:

- (1) review the Complainant's responses to the Discovery Requests;
- (2) identify its own witnesses who may be necessary to rebut the substance of Complainant's witnesses' testimony (as identified in Complainant's response to the Discovery Requests); and

¹ See, e.g., *In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, PUCO Case No. 15-298-GE-CSS, at ¶¶ 7-8 (Sept. 17, 2015) (granting a continuance "to afford the parties additional time to complete the discovery process"); *In the Matter of the Complaint of Ohio Consumers' Counsel v. Revolution Communications Co., LLC, et al.*, PUCO Case No. 1-811-TP-CSS, at ¶¶ 6-7 (Oct. 30, 2001) (granting a continuance to allow the parties to complete "additional discovery").

² See Ohio Administrative Code §§ 4901-1-19(A) and 4901-1-22(A).

- (3) take and file the testimony of any newly identified expert witnesses by the November 21st deadline established by Ohio Administrative Code § 4901-1-29(A)(1)(h) and the Commission's October 24th Entry.

This brief, five-day window is likely to be further curtailed, as the Thanksgiving holiday falls on November 23rd, and employee expert witnesses identified on November 14th may be out of the office for planned absences leading up to the holiday.

Moreover, Ohio Edison respectfully submits that a ruling on its pending Motion to Strike is likely to have a material impact on the parties' resolution of this matter. The Complainant seeks monetary damages in this matter, and while Ohio Edison acknowledges the Complainant's right to have her Complaint heard by the Commission, Ohio Edison maintains that there is no corresponding right or authority for recovery of monetary damages. Resolution of this issue prior to the Hearing is likely to significantly limit the scope of the Hearing, which will preserve Commission resources.

III. Conclusion

For the foregoing reasons, Ohio Edison respectfully moves for a continuance of the Hearing in this matter pending the conclusion of discovery and the Commission's ruling on Ohio Edison's pending Motion to Strike.

Respectfully submitted

/s/ Emily V. Danford
Emily V. Danford (0090747)
Counsel of Record
Scott J. Casto (0085756)
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EXHIBIT A

Scott Casto
Attorney

330-761-7835
Fax: 330-384-3875

October 24, 2018

Ms. Linda Kirby
2222 Cooks Lane
N. Bloomfield, OH 44450

Dear Ms. Kirby,

Enclosed please find Interrogatories, Requests for Production of Documents and Requests for Admissions. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Scott J. Casto

SJC:dka

Enclosures

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

LINDA KIRBY

Complainant,

v.

OHIO EDISON COMPANY.

Respondent.

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Case No. 18-0691-EL-CSS

**RESPONDENT, OHIO EDISON
COMPANY'S FIRST SET OF
INTERROGATORIES,
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND
REQUESTS FOR ADMISSIONS**

TO THE COMPLAINANT:

Respondent, Ohio Edison Company ("Ohio Edison"), by and through its counsel and pursuant to O.A.C. §§ 4901-1-16, 4901-1-19, 4901-1-20 and 4901-1-22, serves the following Interrogatories, Requests for Production of Documents and Requests for Admissions upon Complainant, Linda Kirby, to be answered and responded to separately and fully, in writing and under oath, within twenty (20) days after the date of service thereof upon Complainant. Please be advised that you are under a duty to reasonably supplement your responses with respect to any question addressed to you herein.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control or within the possession and control of your family, your attorneys, investigators, agents, employees or other representatives.
2. Where an Interrogatory calls for an answer in more than one part, the parts should be separated in the answer so that they are clearly understandable.
3. You are reminded that all answers must be made separately and fully and that an incomplete or evasive answer is a failure to answer.
4. You are under a continuing duty to supplement your response with respect to any question directly addressed to the identity and locations of persons having knowledge of discoverable matters, and to correct any response which you know or later learn to be incorrect.
5. The word “document” or “documents” as used herein shall include without limitation the original and any non-identical copy of any written, recorded or graphic matter however produced or reproduced, including but not limited to any correspondence, memoranda, notes, minutes of meetings, reports, transcripts of telephone conversations or any other writings or documentary material of any nature whatsoever, together with any attachments thereto and enclosures therewith, and any other photographic and retrievable matter in your possession, custody or control.
6. The term “Complaint” as used herein shall mean the Complaint filed in Case No. 18-0691-EL-CSS before The Public Utilities Commission of Ohio.
7. Any request to "provide" (or words of similar import or meaning) a document shall be considered a request to produce documents.

INTERROGATORIES

INTERROGATORY NO. 1:

Please state the first date on which you became aware of possible neutral-to-earth voltage.

ANSWER:

INTERROGATORY NO. 2:

Please state the first date on which you notified Ohio Edison about possible neutral-to-earth voltage.

ANSWER:

INTERROGATORY NO. 3:

Please state the first date on which you noticed abnormal animal behavior as referenced in the Complaint.

ANSWER:

INTERROGATORY NO. 4:

After witnessing abnormal cow behavior, what steps did you take to investigate the cause of the abnormal behavior?

ANSWER:

INTERROGATORY NO. 5:

Please identify the neutral-to-earth testing procedures performed, along with the name of the individual or individuals performing the testing and the dates of any tests.

ANSWER:

INTERROGATORY NO. 6:

Please describe how the cows “demonstrated elevated levels of stress in milking parlor,” as stated in the Complaint.

ANSWER:

INTERROGATORY NO. 7:

Please describe what “failed to achieve complete milk letdown,” means as stated in the complaint.

ANSWER:

INTERROGATORY NO. 8:

Please describe what “elevated somatic cell testing” is as stated in the Complaint and identify the individual or individuals that performed the testing.

ANSWER:

INTERROGATORY NO. 9:

After finding “undesirable voltage levels,” as stated in the Complaint, what steps did you take to protect the cows?

ANSWER:

INTERROGATORY NO. 10:

Please describe the milk production levels

- (a) prior to the alleged neutral-to-earth voltage;
- (b) during the alleged neutral-to-earth voltage; and
- (c) after the neutral isolation device was installed.

ANSWER:

INTERROGATORY NO. 11:

Please describe what testing or method was used to measure the “cow stress” as stated in the Complaint.

ANSWER:

INTERROGATORY NO. 12:

Please state and describe, in detail, the “damages resulting therein to the dairy herd production and health to be repaid by electrical service provider responsible for poor power quality,” as stated in the Complaint.

ANSWER:

INTERROGATORY NO. 13:

Please describe the “cow contact surfaces” as referenced in the Complaint.

ANSWER:

INTERROGATORY NO. 14:

Please state the owner or owners of the property that is the subject of the Complaint.

ANSWER:

INTERROGATORY NO. 15:

Please state the owner or owners of the cows that are the subject of the Complaint.

ANSWER:

INTERROGATORY NO. 16:

Please identify each and every person you expect to call as a witness at hearing in this proceeding, their address and phone number, and the substance of the facts to which each such witness is expected to testify.

ANSWER:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please provide copies of any and all documentation that is related to your answers in any of the Interrogatories.

RESPONSE:

REQUESTS FOR ADMISSIONS

Instruction:

If your answer to any Request for Admission is anything other than an unqualified admission, please state in detail the reason for the denial.

REQUEST FOR ADMISSION NO. 1:

Admit that Ohio Edison promptly installed a neutral isolator after finding elevated neutral-to-earth voltage.

RESPONSE:

Respectfully submitted,

/s/ Scott J. Casto

Scott J. Casto (0085756)

FIRSTENERGY SERVICE COMPANY

76 South Main Street

Akron, OH 44308

(330) 761-7835

scasto@firstenergycorp.com

Attorney for Ohio Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by U.S. mail to the following person on this 24th day of October 2018. Electronic Word copies of the foregoing will be provided upon the receipt of a valid e-mail address for Complaint.

Linda Kirby
2222 Cooks Lane
N. Bloomfield, OH 44450

/s/ Scott J. Casto
Attorney for Ohio Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Ohio Edison Company's Motion for Continuance was served by U.S. mail to the following person on this 31st day of October 2018.

Linda Kirby
2222 Cooks Lane
N. Bloomfield, OH 44450

/s/ Emily V. Danford
Attorney for Ohio Edison Company

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/31/2018 9:02:20 AM

in

Case No(s). 18-0691-EL-CSS

Summary: Motion for Continuance of Ohio Edison Company electronically filed by Ms. Emily V Danford on behalf of Ohio Edison Company