

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
LINDA KIRBY,**

COMPLAINANT,

v.

CASE NO. 18-691-EL-CSS

OHIO EDISON COMPANY,

RESPONDENT.

ENTRY

Entered in the Journal on November 13, 2018

{¶ 1} On April 16, 2018, Linda Kirby (Complainant) filed a complaint against Ohio Edison Company (Ohio Edison or the Company). The Complainant alleged that stray voltage from Ohio Edison's facilities resulted in elevated levels of stress on the Complainant's dairy cattle, resulting in decreased milk production. The Complainant alleged that after the Company initially denied electrical effects on her livestock, a utility technician later detected stray voltage and installed a remedial device. The Complainant alleged that her cows returned to normal behavior and normal milk production.

{¶ 2} On May 4, 2018, Ohio Edison filed an answer to the complaint. Ohio Edison admitted that it tested and found elevated neutral-to-earth voltage. In response, Ohio Edison alleged that it promptly installed a neutral isolator. Ohio Edison asserted affirmative defenses and urged the Commission to dismiss the complaint.

{¶ 3} By Entry issued July 5, 2018, the attorney examiner scheduled a settlement conference for August 7, 2018. The parties were not able to resolve the dispute.

{¶ 4} On September 6, 2018, Ohio Edison filed a motion to dismiss, urging the Commission to dismiss that portion of the complaint seeking monetary damages. Ohio

Edison asserted that the Commission does not have jurisdictional authority to award the relief sought by the Complainant.

{¶ 5} On October 24, 2018, the attorney examiner scheduled this matter for hearing to occur on November 28, 2018.

{¶ 6} On October 31, 2018, Ohio Edison filed a motion to continue the hearing and to obtain a ruling on its pending motion to dismiss. In support of its motion, Ohio Edison states that it needs additional time to complete discovery. Ohio Edison states that it served interrogatories on the Complainant on October 24, 2018. Responses are due November 14, 2018. Expert testimony must be filed by November 21, 2018. Taking into account the schedule imposed by the November 28, 2018 hearing, Ohio Edison points out that it will only have five business days to review the Complainant's responses to discovery requests, identify witnesses who can rebut the Complainant's witness' testimony, and take and file the testimony of any expert witnesses by November 21, 2018. Moreover, Ohio Edison is concerned that the intervening Thanksgiving holiday may make some witnesses unavailable. Ohio Edison believes that a ruling on its motion to dismiss will have a material impact on the parties' resolution of this matter and will likely limit the scope of the hearing.

{¶ 7} The attorney examiner finds that Ohio Edison has stated good cause to continue the hearing. Ohio Edison has demonstrated that it lacks sufficient time to complete discovery and thoroughly prepare for hearing. Accordingly, the motion to continue the hearing shall be granted. The attorney examiner shall consult the parties prior to scheduling a hearing.

{¶ 8} The Complainant did not oppose or respond to Ohio Edison's motion to dismiss. Although time remains for the Complainant to respond to the motion to continue the hearing, the attorney examiner shall issue sua sponte an expedited ruling to

relieve the time constraints of the discovery schedule and the impending date to file testimony.

{¶ 9} Ohio Edison's motion to strike that portion of the complaint seeking monetary damages should be granted. In *In re the Complaint of Delmer W. Smith v. Dayton Power & Light Co.*, Case No. 03-2544-EL-CSS, Entry (Jan. 29, 2004), the attorney examiner, in ruling on a motion to dismiss a demand for monetary damages, stated as follows:

The Commission's powers are conferred by statute and its authority is thereby limited. The Commission is vested with the authority to determine if a public utility, under its jurisdiction, has complied with the utility's tariff, Commission rules, regulations and orders in the provision of service to its customers. However, this Commission's jurisdiction is different from a court of general jurisdiction with the authority to award compensatory and punitive monetary damages. To the extent that the complainant alleges that the quality of service was inadequate and that he has been harmed as a result of the alleged inadequate service, the request is equivalent to a request for damages and, thus, is beyond the jurisdiction of the Commission. As such, the complainant's request for monetary damages in this matter must be presented to a court of competent jurisdiction * * *.

{¶ 10} For relief, the Complainant urges the Commission to conduct an investigation into the effects of stray voltage and to determine the damages to be paid by the Company. It is well-established and clear from precedent that the Commission does not have the authority to award monetary damages. The Commission's inquiry is limited to whether Ohio Edison has complied with its tariff, the Commission's rules, regulations, and orders. Consequently, Ohio Edison's motion to strike must be granted.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Ohio Edison's motion to strike that portion of the complaint seeking monetary damages is granted. It is, further,

{¶ 13} ORDERED, That, in accordance with Paragraph 7, Ohio Edison's motion to continue the hearing be granted. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/L. Douglas Jennings

By: L. Douglas Jennings
Attorney Examiner

JRJ/sc

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/13/2018 3:47:04 PM

in

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

Summary: Attorney Examiner Entry granting motion to continue hearing - electronically filed by Sandra Coffey on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio