

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
LUIS T. LEAL,**

CASE NO. 19-1984-EL-CSS

COMPLAINANT,

v.

THE TOLEDO EDISON COMPANY,

RESPONDENT.

ENTRY

Entered in the Journal on January 13, 2021

I. SUMMARY

{¶ 1} The Commission grants the motion filed by The Toledo Edison Company, to dismiss this case on grounds that the complaint fails to set forth reasonable grounds for complaint.

II. DISCUSSION

A. *Procedural Background*

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

{¶ 3} The Toledo Edison Company (TE or Respondent) is a public utility, as defined in R.C. 4905.02, and, as such, is subject to the Commission's jurisdiction.

{¶ 4} On October 28, 2019, Luis T. Leal (Complainant) filed in the above captioned case (19-1984) a complaint against TE (Original Complaint). The Original Complaint consists of 15 pages and, among other things, alleges that TE "is participating in a circumstance against" Complainant "that is discriminatory and preferential" and that is causing Complainant personal injury.

{¶ 5} On November 18, 2019, TE filed its answer to the Original Complaint. In its answer, TE submitted that the complaint “is unintelligible” such that TE “is incapable of properly responding to it.” In addition, TE declared that, at no time, did Complainant receive from TE any unreasonable, discriminatory, or preferential service, rate, classification, or charge; and states, further, that at no time, did TE discriminate against Complainant. In addition, TE set forth in its answer several affirmative defenses.

{¶ 6} By Entry issued December 17, 2019, the attorney examiner found that the Original Complaint does not comply with Ohio Adm.Code 4901-9-01(B), which requires that complaints must contain a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought. The December 17, 2019 Entry directed Complainant to file, with 25 days, a more definite statement of the complaint, as required by Ohio Adm.Code 4901-9-01(B). Specifically, the Entry indicated that, at a minimum, Complainant should provide a clear and concise statement of the facts underlying the complaint, as well as the public utility service-related issue(s) involved. The Entry emphasized that the statement must explain, in detail, what specifically happened that gives rise to this complaint and should disclose which, if any, acts or omissions, on the part of TE, serves as the basis for the complaint. The Entry required that the more definite statement should spell out the form of relief Complainant is seeking. Finally, the Entry advised the Complainant that “his failure to timely file a more definite statement complying with the directives set forth” in the Entry “may lead to dismissal of his complaint.”

{¶ 7} The twenty-fifth day after issuance of the December 17, 2019 Entry occurred on Saturday, January 11, 2020. Under Ohio Adm.Code 4901-1-07, the deadline for the timely filing of a statement consistent with the attorney examiner’s directives extended until Monday, January 13, 2020.

{¶ 8} On January 15, 2020, Complainant filed, in an untimely manner, a one-page document which Complainant labeled as his “answer” to the December 17, 2019 Entry (hereinafter referred to as “Complainant’s More Definite Statement”), as well as another one-page document labeled as a “Motion to Continue” which included a memorandum in

support thereof. Complainant's More Definite Statement, filed January 15, 2020, in its entirety, reads:

Therefore complainant says, "that his complaint arises off of being forced to sign blank work order by respondent and or respondent's employee, sub-contractor. That this is not a policy of the respondent, Toledo Edison Company, and facilitates generating a claim of discrimination and over charge."

{¶ 9} On February 4, 2020, Respondent filed its response to the documents which Complainant filed on January 15, 2020. Respondent's February 4, 2020 filing includes a motion to dismiss this case. Among other things, Respondent argues that Complainant's January 15, 2020 pleading "suffers from the same defect" as the Original Complaint, in that it consists "of unintelligible statements that are incapable of being answered as drafted." Further, TE denies Complainant's statement in its entirety, and specifically denies: (1) that TE, its employee or any third party acting on its behalf forced Complainant to sign a blank work order; and, (2) that any action or inaction on TE's part amounts to a "discrimination" or "over charge" with respect to Complainant. Overall, TE contends that Complainant's statement does not comply with the directives of the December 17, 2019 Entry; fails to set forth reasonable grounds for complaint, as required by R.C. 4905.26; fails to comply with Ohio Adm.Code 4901-0-01(B); and fails to state a claim upon which relief can be granted. TE posits that Complainant has now had two opportunities to properly assert his complaint before the Commission but in each instance has failed to do so and, on that basis, avers that this case should be dismissed in its entirety.

{¶ 10} On February 13, 2020, the attorney examiner issued an entry which denied, in a dispositive manner, Complainant's January 15, 2020 motion for continuance. 19-1984, Entry (Feb. 13, 2020) at 6. In the same entry, the attorney examiner found that a settlement conference should be held prior to any ruling on TE's February 4, 2020 motion to dismiss. Such a settlement conference was held, as scheduled, on March 3, 2020, but it did not result in resolution of this matter by the parties.

B. Commission Conclusion

{¶ 11} Upon review of the record as a whole, the Commission finds that Complainant has ultimately failed to state reasonable grounds for complaint as required by R.C. 4905.26. Ohio Adm.Code 4901-9-01(B) states in pertinent part the complaints shall contain “a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought.” In our view, the Original Complaint, even as modified by Complainant’s More Definite Statement, fails to satisfy the requirements of either the rule or of the statute.

{¶ 12} It is impossible to decipher from the Original Complaint either the facts which constitute the basis of the complaint or the relief being sought by Complainant. For that reason, Complainant was appropriately directed by Entry issued December 17, 2019, to timely file a more definite statement of the complaint and of the relief sought. The Entry made plain that the more definite statement should include: (1) a clear and concise statement of the facts underlying the complaint; (2) a description of the public utility service-related issue(s) involved; and (3) the form of relief being sought. Entry (Dec. 17, 2019) at 2, 3. We find, in short, that Complainant’s More Definite Statement, filed in response to the December 17, 2019 Entry, besides being untimely, fails substantively to meet any of these three requirements.

{¶ 13} Complainant’s More Definite Statement does not explain the facts which constitute the basis of the complaint, nor does it iterate the form of relief Complainant seeks by bringing his complaint in this case. The statement sets forth, apparently for the first time in the case, an allegation that Respondent, or Respondent’s contractor, forced Complainant to sign a blank work order. This allegation, however dire, fails to explain the basis for the complaint nor does it, nor anything else filed by Complainant, explain the reason why the Commission should be recognized as the appropriate forum for hearing either this allegation, or the complaint considered as a whole. Quite to the contrary, the Complainant filed a one-page pleading that shows no effort to enumerate claims against TE. A review of the statement reveals only one repeated claim regarding the blank work order, which

contains no factual allegations underlying the claim. There is no basis to understand how Complainant was, if at all, coerced to sign a blank work order. Further, there is also no reason to understand what, if anything, the blank work order or the alleged coerced signing of it had to do with: (1) any policy of TE, especially since the more definite statement includes a denial that it does; (2) a claim of discrimination (3) a claim of overcharge, and/or (4) any utility service over which the Commission has jurisdiction. The Commission must ensure that the administrative process is fair and efficient. To this end, the Commission must ensure that parties conduct themselves in a manner that is fair and efficient. The clear presentation of claims is fundamental in administrative proceedings. A complaint must be sufficiently clear in its factual allegations to allow the Commission to determine matters relating to jurisdiction and reasonable grounds. In addition, factual clarity is required so that adverse parties may respond in a manner that will crystallize the issues for proper adjudication. The attorney examiner provided instructions to assist the Complainant in achieving the necessary level of clarity. Notwithstanding this additional opportunity, the Complainant has yet to establish reasonable grounds for complaint.

{¶ 14} Overall, despite providing an additional opportunity to clarify the claims alleged against Respondent, we find that the complaint and the subsequently filed statement fail to allege sufficient facts to comply with Ohio Adm.Code 4901-9-01(B). Consequently, we find that Complainant has failed to state reasonable grounds for complaint pursuant to R.C. 4905.26. Accordingly, taking into consideration the time and resources of the Respondent, the time and resources of the Commission, and the efficiency of the administrative process, this matter should be dismissed without prejudice.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That, for failure to state reasonable grounds for complaint, this matter should be dismissed without prejudice. It is, further,

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

COMMISSIONERS:

Approving:

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

DEF/kck

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1/13/2021 2:52:04 PM

in

Case No(s). 19-1984-EL-CSS

Summary: Entry granting the motion filed by The Toledo Edison Company, to dismiss this case on grounds that the complaint fails to set forth reasonable grounds for complaint. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio