

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Meropi Steve)	
)	
Complainant)	
)	Case No. 21-0247-EL-CSS
v.)	
)	
Ohio Edison Company)	
)	
Respondent)	
)	
)	

**OHIO EDISON COMPANY’S MEMORANDUM CONTRA COMPLAINANT’S
MOTION TO COMPEL**

Pursuant to O.A.C. 4901-1-12(B)(1), Ohio Edison Company (“Ohio Edison”) respectfully requests that the Commission deny Meropi Steve (the “Complainant”)’s Motion to Compel and issue an Entry dismissing the above-captioned Complaint, with prejudice.

1. The Motion to Compel should be denied because the Complaint is unreasonable as a matter of law.

As Ohio Edison explained in its Motion to Dismiss, under Ohio law, when the Commission approves a utility’s tariff, it tacitly agrees that the provisions of the tariff are both just and reasonable.¹ Once the Commission approves the provisions of the tariff, the utility must charge all customers the rates set forth in the tariff, as exempting select customers from the approved tariff charges and rates would constitute discriminatory treatment, in violation of R.C. 4905.35.² In 2020, the Commission approved Rider AMO and affirmed that it’s opt-out provisions are neither

¹ *In the Matter of the City of Reynoldsburg v. Columbus Southern Power Company*, Case No. 08-846-EL-CSS, Opinion and Order at 14 (Apr. 5, 2011).

² *In re Complaint of Reynoldsburg*, 134 Ohio St.3d 29, 40-41, 979 N.E.2d 1229 (2012).

unjust nor unreasonable.³ Complainant cannot overcome this conclusion of law. Pursuant to Ohio law, Ohio Edison must charge the rates set forth in its tariff, and Complainant's challenge of those Commission-approved rates and tariff provisions in a complaint filed pursuant to R.C. 4905.26 is unreasonable as a matter of law.

Given the Complaint's legal flaws, Ohio Edison does not believe that Complainant is entitled to *any* discovery in this proceeding – let alone the voluminous, irrelevant, overly broad and unduly burdensome discovery Complainant seeks in the Memo Contra.⁴ The Commission must deny Complainant's Motion to Compel.

2. The Motion to Compel should be denied because it seeks discovery that Complainant has not properly requested from Ohio Edison.

The Motion to Compel improperly contains new discovery requests, discovery requests that were previously and improperly propounded in Complainant's Memorandum Contra Ohio Edison's Motion to Dismiss, and discovery requests to which Ohio Edison has previously and properly replied. For each of these reasons, the Motion to Compel should be denied.

Under O.A.C. 4901-1-16 through 4901-1-25, parties in Commission proceedings must follow certain procedural rules when submitting any kind of discovery request in effort to minimize commission intervention in the discovery process.⁵ The Ohio Administrative Code dictates that discovery requests and responses be served upon and exchanged between the parties, but not filed with the Commission.⁶ Furthermore, the scope of discovery requests is limited to

³ See generally Rider AMO Case, PUCO Case No. 20-0385-EL-ATA.

⁴ Even so, Ohio Edison has continued to respond to all of Complainant's properly-served discovery requests in accordance with the Commission's Rules.

⁵ O.A.C. 4901-1-16(A).

⁶ O.A.C. 4901-1-18.

relevant, nonprivileged information and documents, which may be obtained by means of interrogatories, requests for production of documents, requests for admission, and by deposition.⁷

Because the Motion to Compel improperly contains new discovery requests, discovery requests that were previously and improperly propounded in Complainant's Memorandum Contra Ohio Edison's Motion to Dismiss, and discovery requests to which Ohio Edison has previously and properly replied, the Motion to Compel should be denied.

3. The Motion to Compel should be denied because it seeks voluminous, irrelevant, overly broad and unduly burdensome information from Ohio Edison.

Setting aside the procedural defects, the Motion to Compel should also be denied on substantive grounds. As Ohio Edison explained in its Motion to Dismiss, rather than seeking relief for alleged violations of law, Complainant is seeking exemption from the Rider AMO opt-out fee. However, neither Ohio Edison nor the Commission may grant Complainant the relief she seeks, because Rider AMO contains all the relief that is available to Complainant. If Complainant does not wish to pay the opt-out fee, Rider AMO allows for Complainant to have a smart meter installed instead. If Complainant does not wish to have a smart meter installed, Rider AMO allows Complainant to refuse the installation and instead pay a monthly opt-out fee. In promulgating O.A.C. 4901:1-10-05 and approving Rider AMO as consistent with that Rule, the Commission has conclusively decided that these are sufficient options to address consumer concerns like Complainant's.

Ignoring these fatal flaws with her Complaint, in the Motion to Compel, Complainant continues to pursue other legally flawed arguments and discovery related to Ohio Edison's operational expenses, alleged health effects of smart meters, and data privacy issues. But O.A.C. 4901:1-10-05 and Ohio Edison's Rider AMO make clear that these arguments are red herrings.

⁷ O.A.C. 4901-1-16 (B).

Again, Complainant has two choices: have a smart meter installed and avoid the Rider AMO opt-out fee; or pay the Rider AMO opt-out fee and avoid having a smart meter installed. Complainant's arguments in the Complaint and Motion to Compel are irrelevant given the clear remedies outlined in Ohio Edison's tariff and the Commission's Rules, and are therefore also overly broad and unduly burdensome. The Motion to Compel should be denied.

Conclusion

For the foregoing reasons, Respondent Ohio Edison Company respectfully requests that the Commission deny Complainant's Motion to Compel. Ohio Edison further requests an Order dismissing the Complaint with prejudice and granting Ohio Edison all other necessary and proper relief.

Respectfully submitted,

/s/ Kristen M. Fling

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CERTIFICATE OF SERVICE

On September 24, 2021, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record in this proceeding. A service copy has been sent by U.S. mail and electronic mail on this 24th day of September 2021 to the Complainant at the following address:

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/s/ Kristen M. Fling
Kristen M. Fling
One of the Attorneys for Respondent
Ohio Edison Company

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

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in

Case No(s). 21-0247-EL-CSS

Summary: Memorandum Ohio Edison Company's Memorandum Contra Complainant's Motion to Compel electronically filed by Ms. Kristen M. Fling on behalf of Ohio Edison Company