

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

JUDY DEFRENCH,)	
)	
Complainant,)	CASE NO. 21-0950-EL-CSS
)	
vs.)	
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
)	
Respondent.)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY’S
MEMORANDUM CONTRA TO COMPLAINANT’S REQUEST OF COMPLAINANT**

Pursuant to Ohio Adm.Code 4901-1-12(B)(1), Respondent The Cleveland Electric Illuminating Company (“CEI”) respectfully requests that the Commission deny Complainant Judy DeFrench’s (“Complainant”) “Request of Complainant.” Pursuant to Ohio Adm.Code 4901-1-13(B), Complainant’s request for an extension of time to respond is untimely because she failed to submit her request before the deadline to respond expired. Moreover, she failed to demonstrate good cause for a second continuance.

I. BACKGROUND

On September 15, 2021, Complainant filed a Complaint against CEI alleging that she has a medical condition which, according to Complainant, warrants CEI waiving its Commission-approved smart meter opt-out fee due to her medical condition. She alleges that the failure to waive the fee violates the federal Americans with Disabilities Act.¹

CEI answered the Complaint on October 4, 2021 and denied that it discriminated against her by charging the smart meter opt-out fee. CEI noted that the smart meter opt-out fee (“Rider

¹ *In the Matter of Judy DeFrench v. The Cleveland Electric Illuminating Company*, PUCO No. 21-0950-EL-CSS, Complaint (Sept. 15, 2021).

AMO”) was authorized by the Commission in Case No. 20-0385-EL-ATA.² CEI’s tariff does not provide any ability for CEI to waive the charge based on an alleged medical condition.³

CEI filed and served its Motion to Dismiss on December 22, 2021 because, among other reasons, the Commission lacked subject matter jurisdiction over the Americans with Disabilities Act and had recently determined that Rider AMO was not discriminatory towards people with alleged health concerns.⁴

Pursuant to Ohio Adm.Code 4901-1-12(B)(1) and Ohio Adm.Code 4901-1-07(B), Complainant had 18 days after the service of the motion to file a memorandum contra. Accordingly, Complainant’s memorandum contra was due no later than January 10, 2022. She failed to respond or move to extend time by January 10, 2022.

On January 10, 2022, the Commission *sua sponte* granted Complainant nearly four additional weeks, until February 4, 2022, to respond to CEI’s Motion to Dismiss.⁵ Once again, she failed to submit any memorandum contra or a motion to extend the deadline by February 4, 2022.

On February 10, 2022, Complainant post-marked a letter to the Commission, requesting that the Commission extend the time for her to respond to CEI’s Motion to Dismiss as follows:

- Seven days from the date of the entry granting relief to allow for USPS delivery delays;
- Seven days to have the Commission respond to certain, unidentified, questions to allow Complainant to decide whether she will respond to CEI’s Motion to Dismiss;
- Eight weeks to draft her response to CEI’s Motion to Dismiss, if she chooses to respond;

² *In the Matter of Judy DeFrench v. The Cleveland Electric Illuminating Company*, PUCO No. 21-0950-EL-CSS, Answer (Oct. 4, 2021).

³ PUCO No 13, Sheet 128, 1st Revised Page 1 of 1.

⁴ *In the Matter of Judy DeFrench v. The Cleveland Electric Illuminating Company*, PUCO No. 21-0950-EL-CSS, Respondent’s Motion to Dismiss at 3-6, 8 (Dec. 22, 2021).

⁵ *In the Matter of Judy DeFrench v. The Cleveland Electric Illuminating Company*, PUCO No. 21-0950-EL-CSS, Entry ¶ 7 (Jan. 10, 2022).

- Seven days to allow delivery of her Memorandum Contra.⁶

In sum, she requests an additional eleven-week extension (in addition to the four-week extension already granted) to respond to CEI's Motion to Dismiss.

Complainant further requests permission to pose certain unspecified questions to the Attorney Examiner regarding the formal complaint process.⁷ Finally, she requests that the opt-out fee be placed in the disputed surcharge category so that she does not have to pay it, especially because her equal payment plan increased.⁸

II. ARGUMENT

A. Complainant's Motion Is Untimely

Pursuant to Ohio Adm.Code 4901-1-13(B), a motion for an extension of time to file a document "must be timely filed so as to permit the commission, legal director, deputy legal director, or attorney examiner sufficient time to consider the request and to make a *ruling prior to the established filing date*."⁹ Accordingly, any request for an extension of time must have been filed sufficiently in advance of the deadline to respond: February 4, 2022. Under no circumstances is a request to be made *after* the deadline to respond has been filed.

Complainant failed to post-mark her letter until February 10, 2022—6 days after the time for her to respond expired. Accordingly, her motion is untimely and must be denied accordingly.

B. Complainant Failed to Demonstrate Good Cause for Another Extension of Time

Pursuant to Ohio Adm.Code 4901-1-13(A), Complainant must demonstrate good cause to (a) accept an untimely filing, and (b) to enlarge the time to respond. She did not. Complainant

⁶ *In the Matter of Judy DeFrench v. The Cleveland Electric Illuminating Company*, PUCO No. 21-0950-EL-CSS, Request of Complainant at 4 (Feb. 22, 2022).

⁷ *Id.* at 4

⁸ *Id.* at 5-6.

⁹ Ohio Adm.Code 4901-1-13(B) (emphasis added).

makes conclusory and unsupported allegations that her medical condition prevents her from doing any non-work related activities every day except for a brief period on Sunday.¹⁰ This unsupported claim does not establish good cause.¹¹ Moreover, she failed to explain her delay to post-mark her request until February 10, 2022, when she admits that she received the Commission's Entry extending time for her to respond no later than January 18, 2022.¹² Accordingly, she failed to demonstrate good cause to both (a) file an untimely motion to continue, and (b) receive a second extension of time to respond to CEI's motion to dismiss.

C. Complainant's Request Violates the Commission's Prohibition Against *Ex Parte* Contact with the Attorney Examiner

Complainant seeks at least a week of her eleven-week extension to allow her to have certain questions about the process answered by the attorney examiner. Pursuant to Ohio Adm.Code 4901-1-09, "[a]fter a case has been assigned a formal docket number, no commissioner or attorney examiner assigned to the case shall discuss the merits of the case with any party to the proceeding or a representative of a party, unless all parties have been notified and given the opportunity to be present or to participate by telephone, or a full disclosure of the communication insofar as it pertains to the subject matter of the case is made." Complainant's request for *ex parte* contact appears to violate this provision.

D. Complainant is Not Entitled to Have Rider AMO Be Considered a Disputed Charge

Lastly, Complainant requests that the opt-out fee be considered a disputed charge so that her account will not go to collections for her nonpayment of the opt-out fee. A complainant is

¹⁰ Request of Complainant at 3.

¹¹ *State v. Davis*, 2013-Ohio-5015, ¶ 3 ("This court reasoned that it would be all too easy for an applicant to claim a medical excuse; thus, a medical claim must be supported by authenticated records substantiating the medical condition in order to show good cause."); *State v. Brown*, 2017-Ohio-2850, ¶ 4 ("Thus, a claim of medical incapacity without supporting records to substantiate the medical condition, e.g., prison medical records, is not sufficient to show good cause.").

¹² Request of Complainant at 3.

only authorized to avoid collections on amounts that are in “bona fide dispute.”¹³ This is not a bona fide billing dispute, but merely a Complainant seeking to avoid charges legally authorized by the Commission. When an electric utility charges the rates authorized by its tariff, those rates are the rates CEI is required by law to collect, and unless a stay is sought pursuant to R.C. 4903.16, CEI must collect those charges, even during the pendency of an appeal.¹⁴

Accordingly, because the Commission approved Rider AMO, and there is no dispute that CEI is charging Rider AMO pursuant to its tariff, Complainant is not entitled to have this fee be considered a “disputed charge.”

III. CONCLUSION

For the reasons set forth above, the Commission should deny Complainant’s Motion to Continue, and issue a decision on CEI’s unopposed Motion to Dismiss.

Respectfully submitted,

/s/ Christopher A. Rogers

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¹³ Ohio Adm.Code 4901:1-10-15(G); Ohio Adm.Code 4901:1-10-19(C); Ohio Adm.Code 4901:1-10-22(H).

¹⁴ *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257–58, 141 N.E.2d 465 (1957).

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CERTIFICATE OF SERVICE

On February 28, 2022, 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 on this 28th day of February 2022 to the Complainant at the following address:

Judy DeFrench
1156 East Miner Road
Mayfield Heights, OH 44124

/s/ Christopher A. Rogers
*Attorney for The Cleveland Illuminating
Company*

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

2/28/2022 4:00:13 PM

in

Case No(s). 21-0950-EL-CSS

Summary: Memorandum Memorandum Contra to Complainant's Request of
Complainant electronically filed by Mr. Christopher Rogers on behalf of THE
CLEVELAND ELECTRIC ILLUMINATING COMPANY