

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

ALAN JONES,	)	
	)	
Complainant,	)	
	)	
vs.	)	CASE NO. 22-0016-EL-CSS
	)	
THE CLEVELAND ELECTRIC	)	
ILLUMINATING COMPANY,	)	
	)	
Respondent.	)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY’S RESPONSE IN  
OPPOSITION TO COMPLAINANT’S MOTION TO COMPEL DISCOVERY**

Pursuant to Ohio Adm.Code 4901-1-12(B)(1), Respondent The Cleveland Electric Illuminating Company (“CEI”) respectfully requests that the Commission deny Complainant Alan Jones’ (“Complainant”) Motion to Compel.

**I. INTRODUCTION**

Complainant’s Motion to Compel (“Motion”) should be denied because Complainant is seeking discovery that would not only invade the privacy of other CEI customers but also is untimely. CEI has provided Complainant with information as to when various meters were installed at his property dating back to 1965 and has provided the dates that various accounts have been active at the two addresses at issue. The usage data of other CEI customers at the subject addresses is not only private and confidential information of those customers but is also simply just one data point that by itself provides no determinative information related to Complainant’s claim. Additionally, Complainant seeks the names of CEI customers that had accounts at the duplex property over a long period of time even though Complainant already has that information because of his past status as the owner and landlord for the subject addresses. Finally, Complainant seeks information in several of the Interrogatories dating back to 2014 and that information is no

longer in CEI possession in accordance with CEI's record retention policy. Accordingly, the Commission should deny Complainant's Motion.

## **II. BACKGROUND**

### **A. Procedural History**

Complainant filed a Complaint against CEI on January 5, 2022, alleging that CEI overbilled his account as far back as at least 2016 through a mix metering situation at the duplex he owned. On January 25, 2022, CEI filed its Answer, in which it admitted, denied, or was without sufficient knowledge to ascertain the veracity of the substantive allegations in the Complaint. CEI has never disputed that a switched meter situation took place at the duplex once owned by Complainant. Instead, CEI disputed that time period of which Complainant is seeking damages related to alleged overbilling due to the switched meters at the duplex.

This case, after several continuances, is now set for a hearing in four days on Tuesday, August 29, 2023.

### **B. Complainant's Discovery Requests**

Throughout the course of this matter, Complainant has served CEI with no less than five separate sets of discovery requests. CEI has responded to each set of discovery requests and has maintained since its responses to the first set of discovery requests in May 2022 that Complainant is not entitled to information related to CEI accounts of other customers, including but not limited to their billing records, KWH usage, and other private and confidential information. After receiving CEI's first responses in May 2022, Complainant, although believing that the information related to CEI accounts of other customers is "key" to his case, did not seek an Order from the Commission compelling CEI to provide the requested information. Instead, Complainant waited over a year and served another set of discovery requests seeking largely the same information

previously sought and filed his “Expedited Motion to Compel” on the eve of the hearing. At issue in his Motion are five interrogatories that seek various forms of information for CEI customers that lived at the duplex dating back to 2014. Specifically, the following interrogatories are at issue in the Motion:

- INTERROGATORY NO. 17: What was the KWH usage by billing cycle for 2636 Hampshire Rd., Cleveland Heights from June 2014 to July 2016?
- INTERROGATORY NO. 18: What was the KWH usage by billing cycle for 2634 Hampshire Rd., Cleveland Heights from July 1, 2018, to August 11, 2021?
- INTERROGATORY NO. 19: What was the KWH usage by billing cycle for 2636 Hampshire Rd., Cleveland Heights from July 1, 2018, to August 11, 2021?
- INTERROGATORY NO. 20: For Meter Number 5311298913, from August 1, 2014, to August 3, 2020 who was the person/company billed for this meter number?
- INTERROGATORY NO. 21: For Meter Number 5311298913, from August 1, 2014 to August 3, 2020, what account numbers and date (Start/stop) were associated with this meter?

### **III. ARGUMENT**

#### **A. Complainant’s Failure to Comply with Ohio Admin. Code 4901-1-23(C)(3) Mandates Denial of His Motion.**

Complainant’s Motion fails because he did not provide the required affidavit setting forth the efforts which have been made to resolve any differences between him and CEI regarding the requested information.

In Commission proceedings, a party seeking a Motion to Compel must provide the following:

- (C) No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:
  - (1) A memorandum in support, setting forth:
    - (a) The specific basis of the motion, and citations of any authorities relied upon.
    - (b) A brief explanation of how the information sought is relevant

- to the pending proceeding.
- (c) Responses to any objections raised by the party or person from whom discovery is sought.
  - (2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto.
  - (3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.<sup>1</sup>

Complainant failed to comply with the requirements of Ohio Admin. Code 4901-1-23(C)(3), that requires that he provide an affidavit “setting forth the efforts which have been made to resolve any differences with the party or person from whom discovery is sought.” The purpose of this section is simple, as it allows the parties to meet and confer on any discovery dispute and ensures that Commission intervention is only needed when the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party from whom discovery is sought. The Complainant is seeking information that is not determinative of the ultimate issue and is also seeking information related to the identity of customers that had accounts at the duplex property over a long period of time even though Complainant already has that information because of his past status as the owner and landlord for the subject addresses. These are differences that may have been resolved prior to the filing of this Motion and the failure to comply with Ohio Admin. Code 4901-1-23(C)(3) alone justifies denial of the Motion.<sup>2</sup>

**B. Complainant Seeks Information that Would not only Invade the Privacy of CEI Customers and Disregard Their Privacy Rights, but the Information is not Determinative to Issues in the Complaint.**

Complainant seeks KWH usage data for CEI customers that have lived at the subject addresses dating back to 2014. This is not only impossible due to the lack of information dating

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<sup>1</sup> Ohio Adm.Code 4901-1-23(C).

<sup>2</sup> See *In the Matter of the Complaint of Brenda Fitzgerald and Gerald Fitzgerald v. Duke Energy Ohio, Inc.*, Case No. 10-791-EL-CSS, 2011 WL 1428223, Entry at ¶5 (April 4, 2011) (stating “a

back to 2014 based on CEI's record retention policy but would invade the privacy of CEI customers.

First, CEI, pursuant to its record retention policy, does not have information related to customer usage that is earlier than six years from today. This is in accordance with CEI's record retention policy and prevents CEI from even providing the requested information for a period earlier than August 2017.

More importantly, CEI is prohibited from sharing the customer energy usage data Complainant is seeking without the customer's written consent or electronic authorization or without a court or Commission order.<sup>3</sup> This is to protect a customer's privacy rights. Complainant has not provided a good cause to invade the privacy rights of CEI's other customers and instead simply says that the information is "needed for detailed discovery of incorrect billings due to mixed metering by FE."<sup>4</sup> Complainant alleges that the information is "expected to show changes in KWH usage and billings inconsistent with a continually occupied house or unoccupied house an historical usage and billing," but he does not provide any basis for that assertion.<sup>5</sup> In fact, Complainant does not provide anything more than a bare assertion of relevance, which should not overcome the strong interests of privacy of numerous CEI customers in their monthly KWH usage data.

Simply comparing KWH usage data of two separate accounts does not take into consideration the multitude of factors that can impact a property's KWH usage in a month. The

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ruling on the entire motion to compel, based on complainants' non-compliance with Rule 4901-1-23, O.A.C., would be justified at this point.")

<sup>3</sup> See Ohio Admin. Code 1901:1-10-12(F)(3).

<sup>4</sup> See Motion at ¶3.

<sup>5</sup> See Motion at ¶4.

lack of relevance, along with the request to invade the privacy of other CEI customer's, justifies the denial of Complainant's Motion.

**C. Complainant's Motion is Untimely and Should be Denied.**

As previously stated, throughout the course of discovery in this matter, CEI has maintained since its responses to the first set of discovery requests in May 2022 that Complainant is not entitled to information related to CEI accounts of other customers. Complainant waited until the eve of the hearing to seek an order from the Commission and should not be rewarded for his delay. Complainant alleges that information related to CEI accounts of other customers is "key" to his case but failed to take any steps necessary to communicate with CEI to resolve the dispute on the propriety of the discovery requests, nor did he seek Commission intervention to compel CEI to provide the requested information after receiving CEI's first responses in May 2022. Complainant provides no explanation for such a delay, nor does he provide the Commission with the background on his efforts to obtain the information requested through various other discovery methods dating back to early 2022. This delay and untimely request justify the denial of Complainant's Motion.

**IV. CONCLUSION**

For the foregoing reasons, CEI respectfully requests that the Commission deny Complainant's Motion to Compel.

Respectfully Submitted,

/s/ John W. Breig, Jr.

John W. Breig, Jr. (0096767)

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*Counsel for The Cleveland Electric Illuminating  
Company*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the forgoing was served by Email to  
Complainant on this 25th day of August 2023 at the following address:

Alan D. Jones  
410 Wakefield Run Blvd.  
Hinckley, Ohio 44233  
alanmichele@roadrunner.com  
*Complainant*

/s/ John W. Breig, Jr.  
John W. Breig, Jr. (0096767)  
*One of the Attorneys for The Cleveland Electric  
Illuminating Company*

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Summary: Response Response in Opposition to Complainant's Motion to Compel  
Discovery electronically filed by Mr. John W. Breig on behalf of The Cleveland  
Electric Illuminating Company.