

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
MEROPI STEVE AND GEORGE  
STEVENSON,**

**COMPLAINANTS,**

**CASE NO. 21-247-EL-CSS**

**v.**

**OHIO EDISON COMPANY,**

**RESPONDENT.**

**ENTRY**

Entered in the Journal on September 21, 2023

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

{¶ 2} Ohio Edison Company (Ohio Edison or Respondent) is a public utility as defined in R.C. 4905.02. Accordingly, Ohio Edison is subject to the Commission's jurisdiction.

{¶ 3} On March 16, 2021, Meropi Steve and George Stevenson (collectively, Complainants) initiated a complaint against Ohio Edison alleging that the roughly \$28.00 monthly opt-out fee from Ohio Edison's smart metering program is excessive and potentially unlawful. Complainants request that the Commission instead direct Respondent to allow customers wishing to opt-out the opportunity to read and submit their monthly meter readings without being charged a fee.

{¶ 4} On April 5, 2021, Respondent filed its answer to the complaint, denying many of the allegations set forth in the complaint and asserting several affirmative defenses.

{¶ 5} A settlement conference was held, as scheduled, on May 20, 2021. However, the parties were unable to settle the matter.

{¶ 6} Thereafter, by Entry issued July 20, 2021, the attorney examiner scheduled a prehearing conference to discuss the status of the case and procedural issues, including potential hearing dates.

{¶ 7} During the August 3, 2021 prehearing conference, George Stevenson notified the attorney examiner of an outstanding discovery dispute that would need resolved prior to the scheduling of a hearing. Additionally, Ohio Edison notified the attorney examiner of its intent to file a motion to dismiss, alleging, among other things, that George Stevenson may not be a proper complainant in this proceeding. As such, a hearing date was not discussed, and the attorney examiner advised the parties that she would take any filings resulting from the discussion during the conference under advisement.

{¶ 8} Following the prehearing conference, Ohio Edison filed a motion to dismiss on August 18, 2021. In support of its motion to dismiss, Ohio Edison argues that the complaint merely attacks a Commission-approved tariff and, thus, cannot lead to a finding that Ohio Edison's conduct is inadequate, unjust, or unreasonable when the terms of that tariff are followed. In fact, Ohio Edison claims that Commission precedent demonstrates that a customer's dislike of, or unwillingness to pay, an approved tariff charge does not support a showing that a utility provided inadequate service or acted in an unjust or unreasonable way, citing *In re the Complaint of Ned Bushong v. Ohio Power Company*, Case No. 18-1828-EL-CSS (*Bushong Case*), Opinion and Order (Oct. 7, 2020). Respondent suggests that if Meropi Steve is concerned with the installation of a smart meter at her home, the appropriate remedy of opting out and being charged the applicable fee is already contained in the tariff. Moreover, allowing Meropi Steve to read her own meter in lieu of paying the applicable charge, according to Ohio Edison, would violate Commission rules regarding

customer meters, notably Ohio Adm.Code 4901:1-10-05(I). Finally, Ohio Edison asserts that the complaint amounts to nothing more than a collateral attack on the Commission's order approving Ohio Edison's request to charge an opt-out fee to those customers who do not wish to have a smart meter installed. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Company*, Case No. 20-385-EL-ATA, Finding and Order (July 29, 2020). Ohio Edison argues this complaint should be dismissed because it does not allege anything new or different for the Commission's consideration. *In re the Complaint of Mark R. Weiss v. The Cleveland Elec. Illum. Co.*, Case No. 97-876-EL-CSS, Entry (Nov. 6, 1997). In Ohio Edison's motion to dismiss, Respondent only refers to Meropi Steve as the Complainant and omits referencing George Stevenson, let alone suggesting that he may be an improper complainant in this proceeding.

{¶ 9} Complainants filed a response to Ohio Edison's motion to dismiss on August 20, 2021, noting that it would be inappropriate for the Commission to dismiss this case, as Ohio Edison failed to follow the process outlined by Commission policies, and renewing their request that the Commission remove the opt-out charges to provide customers a real, unbiased choice as to whether to have an advanced meter installed at their home. Additionally, Complainants reiterate several arguments included in the complaint and include several questions directed at Respondent.

{¶ 10} In its reply, filed on August 27, 2021, Ohio Edison claims that Meropi Steve's memorandum contra only reiterates the flawed arguments raised in the initial complaint and, thus, argues the case should be dismissed for failure to state reasonable grounds for complaint and for failure to present facts or details demonstrating how Meropi Steve has suffered any prejudice or harm from the conduct of Ohio Edison. Additionally, Ohio Edison argues that the memorandum contra appears to amount to an improper discovery request, rather than a response to the motion to dismiss and should be disregarded for that reason. Nonetheless, Ohio Edison notes that it has responded to all properly served discovery requests in accordance with the Commission's discovery rules. Finally, Ohio Edison suggests that the memorandum contra includes new allegations beyond the scope of the

complaint, which should be disregarded as contrary to Ohio Adm.Code 4901-9-01(B). Even if the Commission accepts the new allegations as true, Ohio Edison avers that it should still be dismissed with prejudice.

{¶ 11} Thereafter, on September 9, 2021, Complainants filed a motion to compel requesting Ohio Edison answer a variety of questions that appear to be similar to those included in their memorandum contra the motion to dismiss.

{¶ 12} On September 24, 2021, Ohio Edison filed a memorandum contra Complainants' motion to compel, initially arguing that the motion to compel should be denied due to the fact that the complaint is unreasonable as a matter of law, as noted in its motion to dismiss. Further, Respondent contends that the motion to compel should also be denied because it improperly contains new discovery requests, discovery requests that were previously and improperly included in the memorandum contra the motion to dismiss, and discovery requests to which Ohio Edison has previously replied. Finally, Ohio Edison claims the motion to compel should also be denied as it seeks voluminous, irrelevant, and overly broad and unduly burdensome information from Ohio Edison.

{¶ 13} While the attorney examiner agrees with Ohio Edison that it is not appropriate to raise new allegations or claims for the Commission's consideration within memoranda contra or any responsive pleading, nothing contained in Ohio Adm.Code Chapter 4901-1 limits the power of the Commission to request additional filings to fully explore the issues raised in a Commission proceeding. *In re the Complaint of Suburban Natural Gas Co. v. Kalida Natural Gas Co., Inc.*, Case No. 92-1876-GA-CSS, Entry (Jan. 12, 1993). Thus, the attorney examiner will permit Complainants to amend their complaint, pursuant to Ohio Adm.Code 4901-1-06, in order to include any additional claims they wish to bring to the Commission's attention in this case. Although Complainants failed to make a formal request to amend the complaint, the attorney examiner does not believe that this is grounds for denying them the opportunity to do so at this time. At this stage of the proceeding, there is no prejudice to Ohio Edison by allowing an amendment of the complaint. *In re the*

*Complaint of Cincinnati Auto Shredder v. The Cincinnati Gas & Electric Co.*, Case No. 83-605-EL-CSS, Entry (June 29, 1983). The attorney examiner will allow Complainants until the close of business on October 20, 2023, to amend their complaint if they so choose. Ohio Edison will then have 20 days to file an amended answer. The motion to dismiss and motion to compel will be held in abeyance until after the new pleading cycle has concluded. Further, no additional discovery requests should be served during that time.

{¶ 14} As a final note, it appears that Ohio Edison has elected to omit George Stevenson's name from its pleadings, despite the fact that there is nothing filed in the record demonstrating that George Stevenson is not a proper complainant in this case, let alone a ruling from the attorney examiner stating so. Raising this allegation without any additional information during the prehearing conference is not a sufficient basis for omitting George Stevenson from the filings, as George Stevenson and Meropi Steve appear to have initiated this complaint together. Thus, George Stevenson should be recognized as a complainant to this proceeding unless and until Ohio Edison can produce information on the record showing why that is not appropriate and the Commission expressly directs that he be removed as a named party.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That Complainants be afforded an opportunity to amend their complaint, in accordance with this Entry. It is, further,

{¶ 17} ORDERED, That Ohio Edison be afforded the opportunity to file an amended answer within 20 days of any amended complaint. It is, further,

{¶ 18} ORDERED, That Ohio Edison's motion to dismiss and Complainants' motion to compel be held in abeyance until otherwise ordered. It is, further,

{¶ 19} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*/s/ Megan J. Addison*

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By: Megan J. Addison  
Attorney Examiner

GNS/mef

**This foregoing document was electronically filed with the Public Utilities  
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**in**

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

Summary: Attorney Examiner Entry affording the opportunity for complainants to amend their complaint and respondent to file an amended answer within 20 days of such filing; and holding the motion to dismiss and motion to compel in abeyance, as detailed herein. electronically filed by Ms. Mary E. Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio.