

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
Texler, Inc.,)
)
Complainant,)
)
v.) Case No. 01-1078-EL-CSS
)
Ohio Edison Company,)
)
Respondent.)

ENTRY

The Attorney Examiner, pursuant to the authority granted by Rule 4901-1-14, Ohio Administrative Code (O.A.C.), finds:

- (1) On May 7, 2001, Texler, Inc. (Texler, complainant) filed a complaint against Ohio Edison Company (OE). Texler alleges, among other things, that on November 11, 2000 electric service to Texler was disrupted and a power surge caused damage to the complainant when OE's utility crew hit underground distribution lines while relocating a utility pole. Further, the complaint states that OE denies responsibility for the service disruption and asserts that the Central Locating Service is at fault for failing to properly mark the line.
- (2) On June 28, 2001, OE filed its answer and a motion to dismiss. In its answer, OE admits that it is a public utility pursuant to Sections 4905.03(A)(4) and 4928.01(A)(7), Revised Code, as a supplier of electricity to consumers in Ohio. Further, OE admits that on November 11, 2000, an OE utility crew cut an unmarked OE three-phase underground cable while relocating a utility pole and electric service was disrupted to the complainant's manufacturing facilities in Macedonia, Ohio. OE also admits that it has denied responsibility for Texler's damage claims and asserts that the proximate cause of Texler's service interruption was the Central Locating Service's failure to properly mark the location of OE's underground facilities. OE also admits that it has settled its damage claim with the Central Locating Service for the cost incurred to repair the line and restore electric service to affected customers, including the complainant. In OE's motion to dismiss, OE notes among other things, that under Ohio law, Texler as a corporation must be represented by an attorney. OE further states that a non-attorney filed the complaint and, therefore, OE asserts the complaint should be dismissed.

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- (3) On October 10, 2001, a law firm representing Texler filed a notice of appearance. Counsel for Texler also filed a motion for stay of the proceedings and a memorandum in support of jurisdiction. Texler asserts that OE is ultimately responsible for marking its own lines and OE cannot circumvent its responsibility by contracting with a third-party to mark its lines. Further, Texler request that the Commission stay this proceeding for 90 days to allow the complainant to file an amended complaint or other pleadings or to pursue the action in common pleas court. In addition, the complainant asserts that the stay will allow the parties to further explore the possibility of settlement.
- (4) By entry issued November 2, 2001, Texler's motion for a stay was granted until January 14, 2002. Further, on February 12, 2002, Texler filed a request to extend the stay until March 15, 2002 to allow the parties to continue settlement discussions.
- (5) Given that the extended term of the stay has long since past, complainant's counsel is directed to contact the Attorney Examiner by December 5, 2002, indicating whether the complainant wishes to proceed with the case. If the complainant or complainant's counsel fails to contact the Attorney Examiner by December 5, 2002, the Attorney Examiner will recommend to the Commission that the complaint be dismissed.

It is, therefore,

ORDERED, That complainant's counsel comply with the directives in finding 5. It is, further,

ORDERED, That a copy of this entry be served upon Texler and its counsel, OE and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

By: Greta See
Attorney Examiner

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NOV 22 2002

A True Copy

Gary E. Vigorito
Gary E. Vigorito

CASE NUMBER: 01-1078-EL-CSS
CASE DESCRIPTION: TEXLER INC. VS OHIO EDISON
DOCUMENT SIGNED ON: 11/22/2002
DATE OF SERVICE: 11.22.2002

FILE

PARTIES SERVED

PARTIES OF RECORD

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