

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Walter)
Reinhaus,)

Complainant,)

v.)

Duke Energy Ohio, Inc.,)

Respondent.)

Case No. 07-356-EL-CSS

ENTRY

The attorney examiner finds:

- (1) On March 30, 2007, Walter Reinhaus (Mr. Reinhaus, complainant) filed this complaint against Duke Energy Ohio, Inc. (Duke, company). In the complaint, Mr. Reinhaus stated that, in response to his claim for damages from a March 2, 2007 power surge, Duke referenced a rule that applies to a situation involving an interruption of power, not a power surge. Mr. Reinhaus stated that it is unreasonable that Duke should be allowed to reference inapplicable rules to settle claims and that the lack of an applicable rule shows that inadequate service has been provided. Mr. Reinhaus also requested that the Commission deliberate on whether Duke referenced an inapplicable rule in his case, and in other cases involving power surges, and determine if Duke is lacking adequate rules relating to such situations. In addition, Mr. Reinhaus requested that Duke's practices and rules be amended or changed if required.
- (2) Duke filed an answer and motion to dismiss on April 19, 2007. In its pleading, Duke stated that the complaint does not state reasonable grounds and requested that the case be dismissed. In the alternative, Duke requested that Mr. Reinhaus be directed to amend his complaint clearly setting forth the basis for complaint and the relief sought.
- (3) Mr. Reinhaus did not file a reply to Duke's answer and motion to dismiss.

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- (4) By entry dated June 15, 2007, the attorney examiner denied Duke's motion to dismiss, but granted the company's alternative motion to amend the complaint.
- (5) In the entry, Mr. Reinhaus was directed to clarify and explain the facts of the complaint and the relief being sought by June 22, 2007.
- (6) On August 13, 2007, Duke filed a second motion to dismiss in this matter. In the motion, Duke submitted that Mr. Reinhaus has failed to amend his complaint by stating reasonable grounds for complaint as required by Section 4905.26, Revised Code, and that this case should be dismissed.
- (7) On September 4, 2007, Mr. Reinhaus filed a document entitled "Formal Complaint Application." In his September 4, 2007 filing, Mr. Reinhaus restated his original complaint and included two additional paragraphs listing further issues. In the first additional paragraph, the issues mentioned are: property damage to Mr. Reinhaus' personal equipment as the result of a power surge, defective transformers in the Over-the-Rhine neighborhood in Cincinnati, Ohio, lack of covering on power lines, and a customer's difficulty in obtaining incident reports. In the second additional paragraph, Mr. Reinhaus stated his belief that it would be worth comparing maintenance data gathered from predominately poor neighborhoods and upscale neighborhoods to see if they receive the same level of service and replacement equipment, or if discrimination in providing service and replacing equipment exists.
- (8) On September 11, 2007, Duke filed an answer to Mr. Reinhaus' September 4, 2007 filing. In the answer, Duke stated that the company either generally denied, or was without sufficient knowledge to affirm or deny, the allegations in the complaint. Further, as affirmative defenses, Duke stated that the company breached no legal duty toward the complainant and at all times acted in accordance with its tariff, and all applicable laws and industry standards and that the company was not the proximate cause of any injury alleged by the complainant. Lastly, Duke renewed its motion that the complaint be dismissed for failure to set forth reasonable grounds for complaint and to deny the complainant's requests for relief.

- (9) Although filed past the deadline established in the June 15, 2007 entry in this case, the examiner believes that Mr. Reinhaus' September 4, 2007 filing should be considered an amendment to his complaint.
- (10) Section 4905.26, Revised Code, provides the Commission with jurisdiction over complaints against public utilities which allege that:
- "...any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained...."
- (11) As noted previously, a sentence in the first paragraph added to the amended complaint refers to Mr. Reinhaus' contention in the opening paragraph of his pleading that he suffered property damage as the result of a power surge. Viewed in the light of this additional information, it is not unreasonable to conclude that the basis of the complaint is a power surge experienced by Mr. Reinhaus in his neighborhood. As such, the examiner notes that, while an award of damages is not listed within the Commission's jurisdiction under Section 4905.26, Revised Code, service issues relating to the provision of electricity, in this case the alleged effects of a power surge, do appear to be jurisdictional under that code section.
- (12) The examiner believes that enough information has been presented by the complainant at this time to schedule this matter for a settlement conference.
- (13) Accordingly, this matter should be scheduled for a settlement conference on October 25, 2007, at 10:00 a.m., in hearing room

11-A, in the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.

- (14) The purpose of the settlement conference is to determine whether this complaint can be informally resolved. The parties should bring with them all documents relevant to this matter.


It is, therefore,

ORDERED, That Case No. 07-356-EL-CSS be scheduled for a settlement conference in accordance with Finding (13). It is, further,


ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Kerry K. Sheets
Attorney Examiner


Entered in the Journal

SEP 19 2007



Renee J. Jenkins
Secretary