

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of the)
City School District of the City of)
Cincinnati,)

Complainant,)

v.)

Duke Energy Ohio, Inc.,)

Respondent.)

Case No. 10-2824-EL-CSS

ENTRY

The attorney examiner finds:

- (1) On November 26, 2010, the City School District of the City of Cincinnati (School District) filed a complaint against Duke Energy Ohio, Inc. (Duke) alleging that Duke, in providing electric service to all-electric modular classroom facilities utilized by the School District, billed the School District at a less than optimal rate. Specifically, the School District asserts that it was billed for electric usage in its modular classrooms under the rate for secondary distribution service-small (Rate DM) or the rate for service at a secondary distribution voltage (Rate DS), instead of the rate for electric space heating (Rate EH), which the School District asserts has resulted in overcharges of at least \$511,765. In support of its claim, the School District asserts that Duke should have known, for various reasons, that the modular units qualified for Rate EH and should have assisted the School District in the selection of the more favorable rate. Since the School District's discovery of the availability of Rate EH, it states that Duke has been charging it pursuant to Rate EH and has provided some refunds for billing differences regarding specific modular units. Therefore, the School District requests that it be refunded all overcharges and be reimbursed for its expenses in bringing this complaint.
- (2) On December 13, 2010, Duke filed its answer to the complaint, stating that it believes the School District has failed to assert reasonable grounds for complaint. Further, Duke argues that, at all

relevant times, it has provided reasonable and adequate service in accordance with all applicable rules, regulations, and tariffs.

- (3) At this time, the attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Rule 4901-1-26, Ohio Administrative Code (O.A.C.), any statements made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits either party from initiating settlement negotiations prior to the scheduled settlement conference.
- (4) Accordingly, a settlement conference shall be scheduled for January 20, 2011, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Room 1246, Columbus, Ohio 43215-3793. If a settlement is not reached at the conference, the attorney examiner will conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.
- (5) Pursuant to Rule 4901-1-26(F), O.A.C., Duke shall investigate the issues raised in the complaint prior to the settlement conference and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties attending the settlement conference should bring with them all documents relevant to this matter.
- (6) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.* (1996), 5 Ohio St.2d 189.

It is, therefore,

ORDERED, That a settlement conference be scheduled for January 20, 2011, at 10:00 a.m., at the offices of the Commission. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Katie L. Stenman
By: Katie L. Stenman
Attorney Examiner

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/dah

Entered in the Journal

DEC 27 2010

Reneé J. Jenkins

Reneé J. Jenkins
Secretary