

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|-----------------------------------|---|-------------------------|
| In the Matter of the Complaint of |) | |
| Debbie Malloy, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 11-1947-EL-CSS |
| |) | |
| Duke Energy Ohio, |) | |
| |) | |
| Respondent. |) | |

ENTRY

The attorney examiner finds:

- (1) On April 1, 2011, Debbie Malloy (Ms. Malloy) filed a complaint against Duke Energy Ohio (Duke). According to Ms. Malloy, Duke contends that she is not paying her bills, and has notified her that disconnection of service may occur in April 2011 if she does not pay \$853.20. Ms. Malloy attached documents indicating current payments that she has made to Duke for electric usage during 2011.
- (2) The attorney examiner observes that copies of Duke bills attached to Ms. Malloy's April 1, 2011, complaint indicate a \$120.00 deposit assessed to her current account, as well as a \$733.20 balance transferred from a prior account. The attorney examiner further notes that on April 5, 2011, Ms. Malloy applied for rehearing in Case No. 10-158-EL-CSS, *In the Matter of Debbie Malloy v. Duke Energy Ohio* (Opinion and Order, March 9, 2011), in which the Commission determined that Ms. Malloy did not sustain her burden of proof in contesting that she owed \$733.20. Therefore, it appears to the attorney examiner that Ms. Malloy's April 1, 2011, complaint concerns the \$120.00 deposit assessed by Duke and Ms. Malloy's assertions of having made payments.
- (3) The attorney examiner finds that this matter should be scheduled for a settlement conference on a date to be determined in a future entry. The purpose of the 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 discussion. However, nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference. As is the case in all Commission complaint proceedings, the Complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.* (1966), 5 Ohio St.2d 198.

- (4) Pursuant to Rule 4901:1-18-10(C), O.A.C., a utility shall not refuse service to any customer for failure to pay an amount in bona fide dispute. Further, pursuant to Rule 4901-9-01(E), O.A.C., if a person filing a complaint against a public utility is facing termination of service by the public utility, the person may request that the Commission prevent the termination of service during the pendency of the complaint, for failure to pay amounts in dispute in this proceeding. However, nothing in this entry excuses Ms. Malloy from paying all amounts not in dispute.
- (5) The attorney examiner concludes that, while the outcome of Ms. Malloy's complaint is pending, Duke shall not disconnect electric service to Ms. Malloy's residence, and Ms. Malloy shall timely pay all amounts to Duke that are not the disputed \$120.00 deposit.

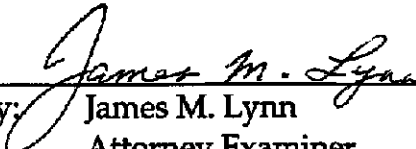
It is, therefore,

ORDERED, That, while the outcome of Ms. Malloy's hearing is pending, Duke shall not disconnect electric service to Ms. Malloy's residence, and Ms. Malloy shall pay to Duke all amounts that are not the disputed \$120.00 deposit. It is, further,

ORDERED, That the matter shall be scheduled for a settlement conference on a date to be determined in a future entry. It is, further,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO


By: James M. Lynn
Attorney Examiner

/dah ^{PD}

Entered in the Journal

APR 06 2011


Betty McCauley
Secretary