

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Manchester Realty, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. 12-1161-HT-CSS
)	
Cleveland Thermal Steam Distribution,)	
LLC,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On April 4, 2012, Manchester Realty, LLC (Manchester), filed a complaint against Cleveland Thermal Steam Distribution, LLC (Cleveland Thermal), alleging violation of statutory and contractual duties relating to the provision of steam energy services. Manchester alleges that it owns and manages two office buildings, for which steam energy is the principal source of heat and is the only source of heat for domestic hot water; that Cleveland Thermal has provided steam utility services to the two office buildings since at least November 14, 2007, through a steam services contract entered into by the parties (steam services contract); that Cleveland Thermal was required to submit its fuel cost information to the Commission on a monthly basis by both Commission order and the steam services contract; that Cleveland Thermal failed to establish a docket for the submission and review of its fuel cost information to the Commission until April 2011, at the earliest; and that, consequently, the Commission was not provided the opportunity through established procedures to review the fuel costs of Cleveland Thermal.

Manchester further alleges that the fuel adjustment rider (FAR) charged by Cleveland Thermal to Manchester has

increased dramatically since the execution of the steam services contract; that the FAR charges are unreasonable and contrary to law; that the FAR charges are invalid due to Cleveland Thermal's failure to comply with the Commission order and the steam services contract; that Cleveland Thermal failed to take reasonable steps to secure fuel at terms that should have been obtainable in the marketplace.

Manchester also alleges that, beginning in the winter of 2011-2012, Cleveland Thermal began to separate the billing of the two buildings owned and managed by Manchester for the purpose of measuring steam usage, which caused Manchester to lose the benefit of the lower rates available with higher usage. Manchester claims that this separation is contrary to the steam services contract.

Finally, Manchester alleges that, on March 26, 2012, one of the coldest days during the winter of 2011-2012, Cleveland Thermal disconnected steam service to the two buildings owned and managed by Manchester, which threatened the well-being of the commercial tenants and caused harm to Manchester.

Based on the preceding, Manchester requests that the Commission find that Cleveland Thermal failed to comply with the Commission order and the steam services contract; that the FAR charges assessed to Manchester are unreasonable, unlawful, and invalid; that the invoices issued by Cleveland Thermal in violation of the steam services contract are unreasonable, unlawful, and invalid; that Cleveland Thermal's conduct has violated Sections 4905.22 and 4905.56, Revised Code. Additionally, Manchester requests as relief that the Commission order Cleveland Thermal to immediately reconnect steam utility service to Manchester; that the Commission invalidate the unreasonable and unlawful invoices and FAR charges; that the Commission award appropriate damages in favor of Manchester; that the Commission award treble damages in accordance with Section 4905.61, Revised Code; and that the Commission order an award of the reasonable attorneys fees and costs incurred due to this action.

- (2) On April 16, 2012, Cleveland Thermal filed its answer denying the material allegations of the complaint. Cleveland Thermal admits that it provided steam service to Manchester for two office building in Cleveland, Ohio, from at least November 2007 until March 26, 2012, when Cleveland Thermal terminated service to Manchester. Cleveland Thermal avers that it terminated service to Manchester for failure to pay its bill. Cleveland Thermal also admits that it is required to submit its weighted average cost of fuel burned for central steam service as required in its tariff. Cleveland Thermal avers that it made the required submission to Commission Staff monthly through March 2011, and in a Commission-established docket since April 2011. Cleveland Thermal asserts that it had no duty to establish a docket for the submission of its monthly fuel information. Further, Cleveland Thermal asserts that it has complied with all applicable Ohio laws, Commission rules and regulations, its tariff, and the terms and conditions of the steam services contract, where applicable.

Cleveland Thermal set forth as affirmative defenses that Manchester has failed to make any legitimate claim that Cleveland Thermal has violated any law, rule, tariff, or contract requirements to support its complaint; Manchester has failed to state reasonable grounds for complaint against Cleveland Thermal as is required by Section 4905.26, Revised Code; and that Manchester has failed to state a claim for which relief can be granted.

- (3) 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 discussion. However, nothing prohibits any party

from initiating settlement negotiations prior to the scheduled settlement conference.

- (4) Accordingly, a settlement conference shall be scheduled for October 11, 2012, at 1:00 p.m., at the offices of the Commission, 180 East Broad Street, 12th floor, Hearing Room 1246, Columbus, Ohio 43215-3793. If it becomes apparent that the parties are not likely to settle this matter, the parties should be prepared to discuss a procedural schedule to facilitate the timely and efficient processing of this complaint.
- (5) Pursuant to Rule 4901-1-26(F), O.A.C., the representatives of the public utility 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. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

It is, therefore,

ORDERED, That the matter be scheduled for a settlement conference on October 11, 2012, at 1:00 p.m., at the offices of the Commission, 180 East Broad Street, 12th floor, Hearing Room 1246, Columbus, Ohio 43215-3793. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy Willey

By: Mandy L. Willey
Attorney Examiner

JRJ/sc

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8/29/2012 10:57:38 AM

in

Case No(s). 12-1161-HC-CSS

Summary: Attorney Examiner Entry scheduling a settlement conference on 10/11/12 at 1:00 p. m. at the offices of the Commission, 180 E. Broad St., 12th Flr., Rm. 1246, Columbus, Ohio. - electronically filed by Sandra Coffey on behalf of Mandy Willey, Attorney Examiner, Public Utilities Commission of Ohio