

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the matter of the :  
:   
Complaint of Elegant :  
Autowash, Incorporated, :  
:   
Complainant, :  
:   
vs. : Case No. 12-1302-EL-CSS  
:   
Duke Energy Ohio, :  
Incorporated, :  
:   
Respondent. :

- - -

PROCEEDINGS

Before Mr. Jon Tauber, Hearing Examiner, at the  
Public Utilities Commission of Ohio, 180 East  
Broad Street, Columbus, Ohio, Hearing Room 11C,  
on Tuesday, August 20, 2013, commencing at 10:10  
a.m.

- - -

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- - -

1 APPEARANCES:

2 Ms. Elizabeth Watts and  
3 Ms. Amy Spiller  
4 Duke Energy Business Services  
5 139 East Fourth Street  
6 Cincinnati, Ohio 45202

7 On behalf of the Respondent

8 ALSO PRESENT:

9 Mr. Larry Oury, Complainant  
10 Representative.

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COMPLAINANT'S

DIRECT CROSS

Larry Oury

7 17

- - -

1 Tuesday Morning Session,  
2 August 20, 2013.

3 - - -

4 HEARING EXAMINER TAUBER: The Public  
5 Utilities Commission of Ohio has called for  
6 hearing at this time and place Case No.  
7 12-1302-El-CSS being in the matter of the  
8 complaint of Elegant Autowash, Incorporated,  
9 versus Duke Energy Ohio, Incorporated.

10 My name is Jon Tauber. I'm the  
11 Attorney Examiner assigned by the Commission to  
12 preside over this morning's hearing.

13 At this time I'll take appearances of  
14 any attorneys present.

15 MS. WATTS: Thank you, Your Honor.  
16 On behalf of Duke Energy Ohio, Amy Spiller and  
17 Elizabeth Watts, 139 East Fourth Street,  
18 Cincinnati, Ohio.

19 HEARING EXAMINER TAUBER: Thank you.  
20 And I understand there's a representative of  
21 Elegant Autowash here this morning?

22 MR. OURY: Correct.

23 HEARING EXAMINER TAUBER: If you  
24 could come on up. I'm going to call you up  
25 here. If you could please raise your right

1 hand.

2 (Witness sworn.)

3 HEARING EXAMINER TAUBER: If you  
4 want to bring your documents up, I don't know if  
5 you'd like them. You can just have a seat right  
6 here. Could you please state your name for the  
7 record.

8 MR. OURY: My name is Larry Oury,  
9 O-u-r-y.

10 HEARING EXAMINER TAUBER: What's your  
11 address, Mr. Oury?

12 MR. OURY: Business address?

13 HEARING EXAMINER TAUBER: Yes,  
14 please.

15 MR. OURY: It's 53 Grandin Road East,  
16 Maineville, Ohio 45039.

17 HEARING EXAMINER TAUBER: And you're  
18 here on behalf of Elegant Autowash?

19 MR. OURY: Correct.

20 HEARING EXAMINER TAUBER: Is Elegant  
21 Autowash a corporation?

22 MR. OURY: Yes, it is.

23 HEARING EXAMINER TAUBER: How is the  
24 corporation set up?

25 MR. OURY: It's incorporated in the

1 State of Ohio, a sub-S.

2 HEARING EXAMINER TAUBER: Are you a  
3 sole proprietor? Are there any others?

4 MR. OURY: I'm the sole owner.

5 HEARING EXAMINER TAUBER: Sole owner  
6 of Elegant Autowash?

7 MR. OURY: Yes.

8 HEARING EXAMINER TAUBER: And you  
9 understand -- have you received a copy of the  
10 entry dated February 20, 2013?

11 MR. OURY: Yes.

12 HEARING EXAMINER TAUBER: In that  
13 entry it indicated that in all cases in  
14 Commission proceedings, corporations must be  
15 represented by an attorney at law.

16 MR. OURY: I understand that.

17 HEARING EXAMINER TAUBER: And you  
18 choose not to have an attorney at law present  
19 today, correct?

20 MR. OURY: It is simply a matter of  
21 being able to afford one. I could not.

22 HEARING EXAMINER TAUBER: If you'd  
23 like the opportunity to have an attorney  
24 present, I can continue the hearing for 60 days  
25 if you'd like to consider an attorney; but

1 otherwise, because you don't have an attorney  
2 present, all I can allow you to do is testify  
3 this morning. I can't allow you to move  
4 evidence into admission; I can't allow you to  
5 make an appearance on behalf of the company, but  
6 I can allow you to make a statement.

7 MR. OURY: Okay. A statement is fine.

8 HEARING EXAMINER TAUBER: Are you  
9 sure? You have an opportunity to have an  
10 attorney and I can continue it if you like.

11 MR. OURY: I can't afford an  
12 attorney.

13 HEARING EXAMINER TAUBER: So you wish  
14 to proceed this morning?

15 MR. OURY: Sure.

16 HEARING EXAMINER TAUBER: So what  
17 we'll do, I'll allow you an opportunity to make  
18 a statement and then Ms. Watts will have the  
19 opportunity to cross-examine you on your  
20 statement. So with that, you can go ahead.

21 MR. OURY: Okay. Are you Elizabeth?

22 MS. WATTS: Yes.

23 MR. OURY: We were in the conference  
24 together. Okay. I am here simply because of  
25 the profound impact the generation charge has

1 had on my small business. The generation charge  
 2 has been very costly. My Duke bill, which only  
 3 includes delivery distribution, more than  
 4 doubled. Duke does not provide my electricity.  
 5 I purchase it from Constellation New Energy. At  
 6 the last meter read before the new generation  
 7 charge started, my Duke bill was \$296.79. And I  
 8 know you look at it on a kilowatt hour or kw  
 9 basis. That was .69 cents per kilowatt hour or  
 10 \$6.55 per kilowatt.

11 My first full monthly bill with the  
 12 generation charge increased to \$691.54. That's  
 13 18.9 cents per kilowatt hour, \$14.78 cents per  
 14 kilowatt. This represented 174 percent increase  
 15 in my kilowatt hour billing, or 125.5 percent on  
 16 a kw basis.

17 HEARING EXAMINER TAUBER: Would you  
 18 repeat that one more time?

19 MR. OURY: It was 174 percent  
 20 increase in per kilowatt hour, or 125 percent  
 21 increase in per kw.

22 HEARING EXAMINER TAUBER: Thank you.

23 MR. OURY: However you want to look  
 24 at it, it more than doubled what is already a  
 25 major expense item on my financial statement.



1 Now, I have handouts to illustrate those. I  
2 don't know if I can hand those out or not.

3 HEARING EXAMINER TAUBER:

4 Unfortunately you can't. I'm sorry.

5 MR. OURY: Okay. That's fine.

6 Electricity is a major expense to a car wash.  
7 Prior to the generation rider, it represented  
8 3.8 percent of my total cost structure.

9 HEARING EXAMINER TAUBER: Could you  
10 repeat that one more time. Sorry. The fans are  
11 back there.

12 MR. OURY: Electricity is a major  
13 expense for a car wash. It represented, this is  
14 prior to the generation rider, 3.8 percent of my  
15 total cost structure.

16 HEARING EXAMINER TAUBER: That's  
17 before the generation rider?

18 MR. OURY: That's correct. And  
19 that's all electric. That's demand, delivery,  
20 distribution. It became 4.3 percent of my total  
21 cost structure, and this is with decreasing kwh  
22 and kw. A dramatic jump in one major expense  
23 line required major changes in the way I  
24 currently operate, and that is why I have  
25 decreasing kwh and kw.

1 I'm a very small business. My total  
2 revenue in 2012 was \$284,494. If I annualize  
3 just the initial generation charge, which was  
4 \$353.73, and that's the first full month of the  
5 generation charge, so that was a meter read on  
6 February 15, so the prior month was a meter read  
7 on like January 15 and that was prorated. So  
8 this is the first full month. I mean, the next  
9 month it was even larger, but I'm just using the  
10 first full month. If I annualize that, that's  
11 \$4,244.76.

12 That number alone, and this is just  
13 an annualized generation charge, is greater than  
14 what I spend in my lobby food costs. This is  
15 all the purchases that people make, candy bars  
16 and cokes and crackers and that kind of thing.  
17 It's larger than my lobby products to get sold;  
18 that's all the air fresheners, Yankee candles,  
19 greeting cards, do-it-yourself type detail  
20 supplies. It was more than I spent on doing  
21 details. That includes replacing dual-action  
22 orbiters, extractor motors, all the product I  
23 use to detail cars. It's greater than my water  
24 bill. It's greater than my sewer bill. It's  
25 greater than my gas bill to heat my 6700 square

1 feet facility and a snow melt system. It's  
 2 greater than I spent on all the maintenance for  
 3 my building, my equipment, my detail equipment.  
 4 That's back-flow preventive testing, two snow  
 5 melt boilers, five large gas furnaces, three  
 6 smaller gas furnaces, lobby furnace, AC,  
 7 sprinkler system. It's more than I spent on  
 8 repairs to the building equipment, detail  
 9 equipment. I'm talking hydraulic motors in the  
 10 tunnel, water lines, hydraulic lines, 55 gallon  
 11 thing of hydraulic fluid that I had to  
 12 purchase. It's greater than I spend for  
 13 insurance. That's insurance on my building, my  
 14 autos, my umbrella. It's greater than my legal  
 15 professional, that's including my CPA, attorney  
 16 retainer. It's greater than I spend in software  
 17 maintenance. That's the software that runs my  
 18 car wash, anti-virus software, my credit card  
 19 compliance. It's greater than I spent in  
 20 supplies, and this is all my paper, copy  
 21 machine, printers. It's greater than I spent  
 22 for the telephone, T.V. and Internet  
 23 connection. It's greater than my Workers'  
 24 Compensation premium. It was greater than my  
 25 employee benefit expense, which includes my life

1 insurance. It's greater than three cell phones  
2 that I carry. It was greater than my electric  
3 bill from Constellation New Energy.

4 Now, all of those items I shop, I get  
5 to control; and the generation charge exceeds  
6 every one of them. It had a profound impact on  
7 how I'm able to do business.

8 My total payroll in 2012 amounted to  
9 about \$81,000. That's including myself. I get  
10 paid whatever is left over. I paid myself \$3400  
11 less in 2012 than I did in 2011. I run my  
12 washer, it is a 480 volt washer, after hours. I  
13 don't run it concurrently with any of my  
14 equipment running. I have turned equipment off  
15 in my tunnel. I don't use my tire cleaner  
16 except when I have got a whitewall tire. And I  
17 have had instances where people have questioned  
18 why pieces did not fire, didn't run when their  
19 car went through the wash. A third of my lobby  
20 lights are turned off. I have turned off my  
21 equipment booster pump. A booster pump  
22 maintains adequate pressure so that when I'm  
23 mixing the chemical that I am going to put on a  
24 car, that I get a proper mix. It does impact  
25 that mix. I do not run my outdoor lights at

1 all. They are turned off permanently. I have  
 2 turned off my tunnel lights. The only time I  
 3 turn on half of my tunnel lights is in the  
 4 wintertime when we're operating with both doors  
 5 down. I don't dry my towels. They air dry  
 6 now. We don't run the T.V., CD player, except  
 7 on usually a busy Saturday or Sunday and that's  
 8 primarily during college or NFL football games.  
 9 My AC is currently set at 78 degrees. I do get  
 10 complaints about how warm it is in the lobby.

11 I turn my air compressor off about 15  
 12 cars before we finish, so I'm just using the  
 13 residual air in the tank for the rest of the  
 14 day. My air dryer is turned off about 15  
 15 minutes before we close. I replace every  
 16 fluorescent bulb as it burns out with the new  
 17 T8s. I purchased a pressure regulator for my  
 18 air compressor so we now have reduced it from  
 19 150 pounds to 120 pounds. And I have made other  
 20 changes as well. But this is not how I would  
 21 prefer to operate my business, but it is the  
 22 only way I have been able to reduce this  
 23 generation charge and its impact on how I have  
 24 to operate.

25 I understand the components of the

1 generation charge. It's the load factor  
 2 adjustment is the reason I am here. You know,  
 3 I'm getting this information from the handouts I  
 4 got from Duke Energy during my conference, but  
 5 of the generation charge, the load factor  
 6 adjustment is about 80 percent. My opinion is  
 7 the load factor adjustment does not conform to  
 8 PUCO's mission to ensure that all residential  
 9 business consumers' access to adequate, safe,  
 10 and reliable utility service is at fair prices.  
 11 The structure of this LFA, which is a revenue  
 12 neutral rider to Duke, resulted in a very  
 13 significant expense on my financial statement to  
 14 the benefit of, and during the conference I used  
 15 the example of the Kroger down the street, and I  
 16 was told, yes, it does benefit their electric  
 17 bill.

18 MS. WATTS: Your Honor I move to  
 19 strike that statement as hearsay.

20 HEARING EXAMINER TAUBER: I will  
 21 strike the statement not because it's hearsay  
 22 but because it was something that's made in  
 23 settlement discussion because settlement  
 24 discussions are confidential and private, so if  
 25 we can avoid anything that was discussed in

1 settlement matters. You may proceed.

2 MR. OURY: Well, it does benefit a  
3 different group of Duke customers. I mean, what  
4 is the benefit to one customer is, in my  
5 opinion, a penalty to customers of my size. It  
6 is simply any -- for lack of another word, I  
7 just don't believe that the full impact of this  
8 load factor adjustment was made known during the  
9 approval process. I mean, I have read all of  
10 the letters. I have gone on line. I have  
11 watched on video of the various sessions that  
12 were hearings that were conducted. I don't  
13 believe it was fully understood that this load  
14 factor adjustment would have the kind of impact  
15 it had on customers my size. And I have talked  
16 to other car washes. I have talked to other  
17 businesses within Duke's territory, school  
18 districts. It's had a profound impact.

19 And my reason for being here is  
20 simply that I believe it needs to be corrected.  
21 That's all.

22 HEARING EXAMINER TAUBER: Thank you.  
23 Ms. Watts, do you have any questions?

24 MS. WATTS: I do. Your Honor, in the  
25 first instance I would move to strike the

1 Complainant's testimony here on the basis that  
 2 the parties were directed to pre-file testimony  
 3 in this docket pursuant to an entry issued by  
 4 the Attorney Examiner in February, and no such  
 5 testimony was filed, and so therefore, I'm  
 6 somewhat surprised and taken by surprise today  
 7 that the Attorney Examiner and the Bench has  
 8 allowed the Complainant to testify and put a  
 9 statement on the record. So I move to dismiss  
 10 on that basis.

11 Additionally, the Company reiterates  
 12 its motion to dismiss that was filed just last  
 13 week on the basis that the Complainant has  
 14 failed to state a complaint which sets forth any  
 15 unreasonable or unlawful rate on behalf of the  
 16 company. The company has applied a  
 17 Commission-approved rate and pursuant to the  
 18 Commission-approved tariff, and those rates and  
 19 tariffs were approved in Case No. 11-3549-EL-SSO  
 20 and the Complainant today has reiterated pretty  
 21 much the facts that are set forth in his initial  
 22 complaint. And I don't see any additional  
 23 allegation that would rise to the level of  
 24 something that the Commission can find in  
 25 violation of a rule or statute, so I would move



1 to dismiss on that basis as well.

2 HEARING EXAMINER TAUBER: Starting  
3 with your first motion to strike, I'm going to  
4 deny the motion to strike. The Commission will  
5 afford the appropriate weight to the testimony  
6 that's been given today, and also I'll point out  
7 in the February entry it stated that all parties  
8 should adhere to the schedule which includes  
9 direct expert testimony. The testimony today  
10 was factual testimony.

11 Regarding the motion to dismiss, I'll  
12 take that under advisement and the Commission  
13 will consider it.

14 MS. WATTS: Thank you, Your Honor.

15 HEARING EXAMINER TAUBER: Do you have  
16 any questions on cross-examination?

17 MS. WATTS: I do. I would like some  
18 brief cross-examination.

19 HEARING EXAMINER TAUBER: You may  
20 proceed.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Watts:

24 Q. Good morning, Mr. Oury.

25 A. Good morning.

1 Q. Am I pronouncing that correctly?

2 A. Oury.

3 Q. Okay. I'll get it right. Mr. Oury,  
4 can you tell me what your education has been.

5 A. I have a Bachelor's degree from UC in  
6 accounting, and an MBA from Xavier in accounting  
7 as well.

8 Q. Sir, have you ever worked for an  
9 electric utility company?

10 A. Never.

11 Q. Do you have any experience with rate  
12 structures?

13 A. Solely what I have learned through  
14 this process.

15 Q. And so that would largely be with  
16 respect to your own experience, correct?

17 A. Correct.

18 Q. And, sir, you were not a party to  
19 Duke Energy Ohio's standard service offer case  
20 which was 11-3549-EL-SSO; isn't that correct?

21 A. I guess so. I don't know what that  
22 is.

23 Q. Okay. Just to be clear, this is the  
24 only legal proceeding with respect to Duke  
25 Energy Ohio that you have been involved in,

1 correct?

2 A. Correct.

3 MS. WATTS: I don't have any  
4 additional questions. Thank you, Your Honor.

5 HEARING EXAMINER TAUBER: Thank you.  
6 Thank you, Mr. Oury. You may be excused.

7 HEARING EXAMINER TAUBER: Is there  
8 anything further before us this morning?

9 MS. WATTS: Just so that the record  
10 is clear, Your Honor, and I do understand you  
11 took the motion to dismiss, the second one,  
12 under advisement.

13 HEARING EXAMINER TAUBER: Correct.

14 MS. WATTS: We would reiterate that  
15 motion at the close of the cross-examination.

16 HEARING EXAMINER TAUBER: Thank you.  
17 We'll note that for the record and it will be  
18 under advisement. And seeing nothing further,  
19 we are adjourned. Thank you.

20 - - -

21 Thereupon, at 10:30 a.m. the hearing  
22 was adjourned.

23 - - -

24

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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter before the Public  
Utilities Commission of Ohio on August 20, 2013.

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Iris I. Dillion, Registered  
Professional Reporter.

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Summary: Transcript in the matter of Elegant Autowash, Inc. vs Duke Energy Ohio, Inc.  
hearing held on 08/20/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong &  
Okey, Inc. and Dillion, Iris I. Mrs.