

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Bruce Snyder,)	
)	
Complainant,)	
)	
v.)	Case No. 13-2031-EL-CSS
)	
First Energy Solutions,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On October 2, 2013, Bruce Snyder (Mr. Snyder) filed a complaint against FirstEnergy Solutions (FES), alleging that on May 22, 2013, he applied online at the FES website for a \$.0536 per KWh rate for three years. He adds that he received a letter on May 30, 2013, which stated that FES had difficulty enrolling his account, and requesting that he contact FES. Mr. Snyder states that when he called FES on May 31, 2013, he verified with a service representative that the aforementioned rate offer was still valid, and that service would begin in June 2013. He also contends that during the May 31, 2013, call he confirmed with the FES representative that he was a Dayton Power & Light (DPL) customer. However, he emphasizes, his subsequent June-July 2013 DPL bill did not reflect the \$.0536 KWh rate.

Mr. Snyder states that he contacted FES again on July 29, 2013, and was informed that the problem would be corrected and that he would be enrolled as soon as possible. When this did not occur, he asserts, he called FES on August 5, 2013, and was informed that the offer that he had applied for was only available to Duke Energy Ohio (Duke) customers. He adds that eventually FES offered him a rate of \$.0594 per KWh, which he declined.

Mr. Snyder contends that FES agreed to \$.0536 per KWh on May 31, 2013, while knowing that he was a DPL customer. He seeks compensation for the additional expense of paying a higher KWh rate, as well as for (a) time invested while

attempting to resolve the matter, (b) telephone calls to FES, copying/ mailing costs, (c) travel to the Commission, (d) time off from work, and (e) breaking the electric service contract without his consent.

- (2) FES filed its answer on October 22, 2013. FES admits that Mr. Snyder applied for electric service at \$.0536 per KWh and that he was a DPL customer, but contends that rate was available only for Duke customers. FES adds that Mr. Snyder's application was rejected because he was not a Duke customer, and that he was informed of this by letter. FES admits that Mr. Snyder was offered a rate of \$.0594 per KWh, which he rejected, and asserts that Mr. Snyder "was offered reimbursement for lost savings."
- (3) By entry issued October 30, 2013, the attorney examiner scheduled a December 17, 2013, settlement conference. The parties participated in the conference but were unable to resolve matters.
- (4) Prior to the settlement conference, on November 19, 2013, FES filed a motion to strike all requests for money damages sought by Mr. Snyder in his complaint. FES contends that the Commission has no power to award money damages, nor does the Commission have power to ascertain and determine legal rights and liabilities. Rather, asserts FES, the Commission only has authority to determine whether there has been a violation of a tariff or Commission rules and orders. FES also argues that eliminating the request for money damages from the complaint will lessen the amount of discovery and narrow the issues in this proceeding.
- (5) In his memorandum contra the motion to strike, which Mr. Snyder served upon FES on December 2, 2013, and was docketed December 17, 2013, Mr. Snyder notes that FES had already offered to pay money damages when FES answered his complaint. He adds that in light of this, and because FES has said that it cannot offer him the \$.0536/KWh rate, he had few other options to resolve the complaint, so he proceeded with estimating his expenses and including the estimate in the formal complaint. As for FES's contention that eliminating the request for damages will lessen the amount of discovery, Mr. Snyder asserts that FES initiated the discovery process prior to

the settlement conference, earlier than necessary for discovery. Further, he contends, FES could have lessened the amount of discovery simply by reducing the number of discovery questions concerning his calculation of estimated costs.

- (6) Regarding FES's motion to strike Mr. Snyder's request for money damages, the attorney examiner first notes that the Commission's powers are limited by statute. Thus, while the Commission has authority to determine whether a public utility under Commission jurisdiction has complied with that utility's tariff, as well as Commission rules, regulations, and orders, Commission authority differs from a court of general jurisdiction that has authority to award compensatory and punitive monetary damages. To the extent that Mr. Snyder alleges that FES's service was inadequate and that that he has been harmed as a consequence, the compensation that he seeks is the equivalent of a request for damages, and thus is beyond the Commission's jurisdiction. As such, Mr. Snyder's request for monetary damages in this matter must be presented to a court of competent jurisdiction, if the service provided to Mr. Snyder is indeed found to be inadequate by the Commission. Accordingly, FES's request to strike statements in the complaint seeking damages is granted.
- (7) The attorney examiner further finds that Mr. Snyder has presented reasonable grounds for complaint. The date and time of the hearing shall be indicated in a future entry. 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 FES's motion to strike is granted. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ James M. Lynn

By: James M. Lynn
Attorney Examiner

jrj/vrm

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Case No(s). 13-2031-EL-CSS

Summary: Attorney Examiner Entry granting motion to strike; electronically filed by Vesta R Miller on behalf of James M. Lynn, Attorney Examiner, Public Utilities Commission of Ohio