

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Tiffany)	
Brooks,)	
)	
Complainant,)	
)	
v.)	Case No. 13-2093-GE-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On October 15, 2013, Tiffany Brooks (Complainant) filed a complaint against Duke Energy Ohio, Inc. (Duke). The Complainant alleged that Duke accused her of fraudulently using the identity of another to obtain electric service, that Duke disconnected her services, and that Duke required her to pay \$605 to reestablish service.
- (2) Duke filed an answer on October 31, 2013. Duke alleged that it conducted an investigation and concluded that the Complainant had fraudulently used the identity of another to obtain utility service.
- (3) Pursuant to an Entry issued January 31, 2014, the parties convened for a settlement conference on March 10, 2014. At the settlement conference, the parties were not able to reach an agreement.
- (4) In response to a request from the Complainant to prevent the disconnection of service during the pendency of the complaint, the attorney examiner issued an Entry on March 28, 2014. The Entry noted Ohio Adm.Code 4901-9-01(E) provides that, if a complainant is facing termination of service by the public utility, the complainant may request that the Commission prevent the termination of service during the pendency of the complaint. The Entry added that Ohio Adm.Code 4901-9-01(E) also provides that a person making a request for assistance

must agree to pay during the pendency of the complaint all amounts to the utility that are not in dispute.

- (5) The attorney examiner's March 28, 2014 Entry defined disputed charges as those charges incurred by the Complainant and billed by Duke, including fees, deposits, or other charges, on or before October 15, 2013, which is the date the complaint was filed. Amounts not in dispute were defined as those charges that were incurred by the Complainant and billed by Duke, including fees, deposits, or other charges, after October 15, 2013. Before ruling on the Complainant's request, the attorney examiner ordered Duke to file by April 4, 2014, a responsive pleading that sets forth the amounts that it asserts are not in dispute. For amounts that are not in dispute and owed by the Complainant, Duke was ordered to explain the payment options available to the Complainant during the pendency of the complaint.
- (6) Duke filed a responsive pleading on April 4, 2014, as amended on June 12, 2014. Summarizing the complaint, Duke states that the Complainant accused Duke of placing another person's bill on the Complainant's account at 5102 Ebersole Avenue in Cincinnati, Ohio, disconnecting the Complainant's services without notice, and then reconnecting service after requiring the Complainant to pay \$605 of someone else's bill. Duke emphasizes that the Complainant has never disputed any of her usage of gas and electricity that was billed to her, whether incurred before or after she filed the complaint on October 15, 2013.
- (7) Concerning disputed charges, Duke states that, in July 2013, it transferred \$610.29 of unpaid charges from an account in the name of Bernice Bryant to the Complainant's account because Ms. Bryant did not authorize the charges, did not live at the Ebersole address, and did not allow the use of her name and credit information to establish service at 5102 Ebersole. According to Duke, the Complainant disputes the transference of charges. Duke contends that the Complainant also disputes the sum of \$605, which Duke required from the Complainant for reinstatement of her services. Though disputed, the Complainant has already paid \$605. Duke applied this amount to the unpaid account that was in the name of Bernice Bryant but was used by the Complainant and Ms. Bryant's

granddaughter, Kemyah Bryant. Duke calculates that charges for gas and electricity total \$2,243 and are not in dispute. Duke concludes that the Complainant only disputes \$610.29. Based upon its analysis of disputed charges, Duke regards as arbitrary the Commission's date of October 15, 2013, as the demarcation between disputed and undisputed charges.

- (8) As ordered, in its response, Duke discussed the payment options available to the Complainant. Duke explains that the Complainant exercised her rights under the winter reconnect rule. She made a required payment of \$175 and entered into a six-month plan for payment of the undisputed balance of \$2,243.66.
- (9) As for disconnection, Duke emphasizes that it is entitled to be paid for the use of gas and electricity by its customers. It owes an obligation to other rate payers not to discriminate in favor of the Complainant. With the exception of the winter reconnect rule payment of \$175, Duke protests that the Complainant has not made a payment to Duke since July 12, 2013. The Complainant has lived at the Ebersole property for nine billing cycles without making a payment. This, Duke asserts, violates Ohio Adm.Code 4901-9-01(E), which requires the payment of undisputed bills during the pendency of the complaint.
- (10) Upon review of the complaint and Duke's response filed on April 4, 2014, as amended on June 12, 2014, the attorney examiner has the information necessary to determine the amount in dispute in this case; therefore, it is now possible to establish a date other than the date upon which the complaint was filed to determine the amount in dispute. Such a determination was not possible based upon Duke's answer filed on October 31, 2013.
- (11) As clarified, the attorney examiner finds that the only amount in dispute is \$610.29, which is not included in the undisputed balance of \$2,243.66.¹ In addition, it appears that the Complainant has entered into and is fulfilling the terms of a payment plan for the undisputed amount of \$2,243.66. Therefore, the attorney examiner finds that the sole issue in this case is whether the \$610.29 was appropriately transferred to the

¹ Duke attached a copy of the March 24, 2014 bill as Exhibit B to its response filed April 4, 2014.

Complainant's account and whether the sum of \$605, which Duke required the Complainant pay for reinstatement of her services, was appropriate. Accordingly, the attorney examiner will proceed with setting a date for the hearing in this matter, at which time the parties will be permitted to present evidence regarding the disputed amount of \$610.29, and the \$605 payment.

- (12) As for the undisputed amount of \$2,243.66, as shown in the bill issued March 24, 2014, during the pendency of this complaint, the Complainant must continue to comply with the payment plan she entered into with Duke, and must continue to pay all current charges on her bill. Should she fail to do so, the services may be subject to disconnection, as those charges are not subject to dispute in this case.
- (13) The attorney examiner finds that this case should be set for hearing. The hearing shall be scheduled for August 28, 2013, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, 11th floor, Columbus, Ohio 43215-3793.
- (14) All discovery requests should be conducted in accordance with Ohio Adm.Code 4901-1-16 to 4901-1-24.
- (15) Any party intending to present direct, expert testimony should comply with Ohio Adm.Code 4901-1-29(A)(1)(h), which requires that all such testimony to be offered in this type of proceeding be filed and served upon all parties no later than seven days prior to the commencement of the hearing.
- (16) 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, in accordance with finding (11), the sole issue in this case is the disputed amount of \$610.29, and the \$605 payment. It is further,

ORDERED, That, in accordance with the findings herein, the undisputed amount of \$2,243.66 is not a subject of this complaint and that, during the pendency of this complaint, the Complainant must continue to comply with the payment plan she entered into with

Duke, and must continue to pay all current charges on her bill, or the services may be subject to disconnection. It is, further,

ORDERED, That the hearing is scheduled, in accordance with finding (13). It is, further,

ORDERED, That discovery be conducted in accordance with finding (14). It is, further,

ORDERED, That any party intending to present expert testimony comply with finding (15). It is, further,

ORDERED, That a copy of this Entry be served upon the parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/ L. Douglas Jennings

By: L. Douglas Jennings
Attorney Examiner

sef/vrm

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Case No(s). 13-2093-GE-CSS

Summary: Attorney Examiner Entry scheduling August 28, 2014 hearing; electronically filed by Vesta R Miller on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio