

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Gail Lykins,)	
)	
Complainant,)	
)	
v.)	Case No. 15-298-GE-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On February 11, 2015, Gail Lykins (Complainant), acting as the personal representative of Dorothy Easterling and Estill Easterling (jointly, Easterlings), who are deceased, filed a complaint against Duke Energy Ohio, Inc. (Duke). Complainant asserts that, on November 4, 2011, Duke disconnected the Easterlings' gas and electric services at 11312 Orchard Street, Cincinnati, Ohio (property). Complainant further asserts that, as a result of the disconnection, the Easterlings died of hypothermia. Complainant alleges that Duke's disconnection of the Easterlings' gas and electric services, due to nonpayment, was improper under the special procedures that apply during the winter heating season. According to Complainant, the Easterlings had made a payment, prior to the disconnection, greater than one-third of their previous account balance. Complainant requests that the Commission determine whether Duke's disconnection of the utility services at the property failed to comply with the disconnection procedures and requirements set forth in Ohio Adm.Code 4901:1-18-06 and the winter heating season plan defined in Ohio Adm.Code 4901:1-18-05 and award compensation in light of Duke's actions.

- (2) On February 27, 2015, Duke filed an answer to the complaint. In its answer, Duke denies that it ever disconnected the gas service at the property. Duke further denies that it improperly disconnected the electric service at the property. Duke admits that it properly disconnected the electric service at the property on November 4, 2011, for nonpayment of consumed utility services, after providing all required and additional, voluntary notices to Estill Easterling, the customer of record. Duke denies that the 10-day notice requirement of Ohio Adm.Code 4901:1-18-06(B) applied to the disconnection of electric service at the property, because the electric service was disconnected only for the nonpayment of utility services incurred during August, September, and October 2011, as well as relevant late fees, and not for the nonpayment of charges incurred during the winter heating season. Duke notes that, although Ohio Adm.Code 4901:1-18-06(B) did not apply, Duke sent a final 10-day disconnection notice to Estill Easterling on October 19, 2011, and did not disconnect the electric service at the property until 16 days later. Duke also denies that Ohio Adm.Code 4901:1-18-05(B)(3) applied to the disconnection of the electric service at the property on November 4, 2011, because Duke did not disconnect the electric service for any unpaid bills that included usage occurring during the period of November 1 to April 15; the partial payment that Duke received on October 12, 2011, was made prior to the winter heating season; the disconnection notice included with the bill prepared by Duke on October 4, 2011, explained all payment plans, including those applicable during the winter heating season; and neither Estill Easterling nor any other authorized person on his account contacted Duke to enter into any payment plan.

Finally, Duke asserts a number of affirmative defenses, including that Complainant lacks standing, failed to state a claim upon which relief may be granted, and failed to state reasonable grounds for complaint, as required by R.C. 4905.26. Duke contends that it has complied with all

applicable statutes, rules, regulations, and tariffs. Duke concludes that the complaint should be dismissed.

- (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 Ohio Adm.Code 4901-1-26, 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 process. However, nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference.
- (4) Accordingly, a settlement conference shall be scheduled for April 16, 2015, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 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 Ohio Adm.Code 4901-1-26(F), 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 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. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

- (7) Moreover, Complainant should note that the Commission has no authority to award monetary damages. It is, however, within the jurisdiction of the Commission to determine whether a public utility has violated any specific statute, order, or regulation of the Commission. If the Commission finds a violation, a complainant may pursue damages before a court of common pleas in accordance with R.C. 4905.61.

It is, therefore,

ORDERED, That a settlement conference be scheduled for April 16, 2015, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 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/Sarah Parrot

By: Sarah J. Parrot
Attorney Examiner

JRJ/sc

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Case No(s). 15-0298-GE-CSS

Summary: Attorney Examiner Entry scheduling a settlement conference for 04/16/2015, 10:00 a.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 Sarah Parrot, Attorney Examiner, Public Utilities Commission of Ohio