

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
JEFFREY PITZER,**

**COMPLAINANT,**

**v.**

**CASE NO. 15-298-GE-CSS**

**DUKE ENERGY OHIO, INC.,**

**RESPONDENT.**

**ENTRY ON REHEARING**

Entered in the Journal on October 20, 2017

**I. SUMMARY**

{¶ 1} The Commission grants the applications for rehearing of the August 30, 2017 Opinion and Order for the purpose of further consideration of the matters specified in the applications for rehearing.

**II. DISCUSSION**

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric light company and a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 4} On February 11, 2015, Gail Lykins, acting as the personal representative of Dorothy Easterling and her son, Estill Easterling III (jointly, Easterlings), who are deceased, filed a complaint against Duke. Ms. Lykins, who is the daughter of Dorothy Easterling and the sister of Estill Easterling III, asserted that, on November 4, 2011, Duke disconnected the

Easterlings' gas and electric services at 11312 Orchard Street, Cincinnati, Ohio (Easterlings' property). Ms. Lykins further asserted that, as a result of the disconnection, the Easterlings died of hypothermia. Ms. Lykins alleged 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 Ms. Lykins, the Easterlings had made a payment, prior to the disconnection, greater than one-third of their previous account balance. Ms. Lykins requested that the Commission determine whether Duke's disconnection of the utility services at the Easterlings' 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 the Company's actions.

{¶ 5} On February 27, 2015, Duke filed an answer to the complaint, generally denying the material allegations of the complaint and asserting a number of affirmative defenses. In its answer, Duke denied that it ever disconnected the gas service at the Easterlings' property. Duke further denied that it improperly disconnected the electric service at the Easterlings' property. Duke admitted that it properly disconnected the electric service at the Easterlings' 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 denied that the ten-day notice requirement of Ohio Adm.Code 4901:1-18-06(B) applied to the disconnection of electric service at the Easterlings' 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 noted that, although Ohio Adm.Code 4901:1-18-06(B) did not apply, Duke sent a final ten-day disconnection notice to Estill Easterling on October 19, 2011, and did not disconnect the electric service at the Easterlings' property until 16 days later. Duke also denied that Ohio Adm.Code 4901:1-18-05(B)(3) applied to the disconnection of the electric service at the Easterlings' 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 asserted 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 contended that it has complied with all applicable statutes, rules, regulations, and tariffs and that the complaint should, therefore, be dismissed.

{¶ 6} A settlement conference was held on April 16, 2015. However, the parties were unable to resolve this matter.

{¶ 7} By Entry dated April 29, 2015, a hearing in this matter was scheduled to commence on August 25, 2015. Subsequently, in order to afford the parties additional time to complete the discovery process, the hearing was rescheduled on numerous occasions.

{¶ 8} On July 10, 2015, the attorney examiner granted a motion to amend the complaint to substitute Ms. Lykins' husband, Jeffrey Pitzer (Complainant), as the Complainant in this matter, given that Mr. Pitzer had been substituted as fiduciary of the Easterlings' estates in the Probate Court of Hamilton County, Ohio. Further, the attorney examiner granted a motion to intervene in this proceeding filed by the Ohio Consumers' Counsel (OCC).

{¶ 9} A prehearing discovery conference was held on November 10, 2015, in order to resolve a number of discovery disputes among the parties. During the prehearing conference, the attorney examiner granted Complainant's second motion to amend the complaint, which was filed on October 22, 2015, and directed Duke to file an answer to the amended complaint within 20 days. In accordance with the attorney examiner's ruling, Complainant filed the amended complaint on November 12, 2015, and Duke filed its answer to the amended complaint on November 20, 2015.

{¶ 10} In the amended complaint, which superseded the original complaint filed on February 11, 2015, Complainant, in his capacity as the personal representative of the estates of the Easterlings, alleged that, at all relevant times, Dorothy Easterling was Duke's customer with respect to the utility service provided at the Easterlings' property, because, consistent with Ohio Adm.Code 4901:1-18-01(G), the Company accepted her utility payments for several years after her husband, Estill Easterling II, died, which constituted a contract with the Company to purchase gas and electric service at the Easterlings' property. Complainant further alleged that, prior to September 2011, Dorothy Easterling had made timely payments to Duke for utility service at the Easterlings' property. According to Complainant, Duke disconnected the electric service at the Easterlings' property in November 2011, in violation of the Commission's disconnection notice requirements set forth in Ohio Adm.Code 4901:1-18-06(A), (A)(2), and (A)(5), as well as the special winter heating procedures in Ohio Adm.Code 4901:1-18-06(B). Complainant asserted that Duke also failed to comply with a number of directives ordered by the Commission for the 2011-2012 winter heating season. *In re Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC (2011 Winter Reconnect Order), Finding and Order (Sept. 14, 2011). Specifically, Complainant alleged that Duke violated the 2011 Winter Reconnect Order by failing to err on the side of maintaining service to the Easterlings' property, when there was a doubt as to whether the Company gave proper notification to Dorothy Easterling, and permitting disconnection under Ohio Adm.Code 4901:1-18-03; by disconnecting service, despite the fact that Dorothy Easterling had made a payment toward the past due balance; by failing to provide Dorothy Easterling with special notice of reconnection rights; and by failing to provide Dorothy Easterling with the availability of payment plan options. Complainant concluded that, as a result of Duke's actions in disconnecting service at the Easterlings' property, the Easterlings died of hypothermia.

{¶ 11} In its answer to the amended complaint, Duke generally denied Complainant's allegations and asserted a number of affirmative defenses. With respect to the allegations at issue, Duke denied that Dorothy Easterling was the Company's customer on any gas or electric

account at the Easterlings' property or that the Company had a contract with Dorothy Easterling. Duke admitted that the Company properly disconnected the electric service at the Easterlings' property on November 4, 2011, after timely providing all required notices. Duke also admitted that the *2011 Winter Reconnect Order* applied to the Company.

{¶ 12} A second prehearing discovery conference was held on January 14, 2016, in order to resolve a number of discovery disputes among the parties.

{¶ 13} The hearing in this matter commenced as rescheduled on February 1, 2016, and concluded on February 2, 2016.

{¶ 14} By Opinion and Order dated August 30, 2017, the Commission found that Complainant sustained his burden of proof with respect to his claim that Duke failed to comply with the disconnection requirements of Ohio Adm.Code 4901:1-18-06(B) and, with respect to all other claims, found that Complainant had not sustained his burden of proof.

{¶ 15} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 16} On September 29, 2017, Duke and OCC filed applications for rehearing of the August 30, 2017 Opinion and Order. Memoranda contra the applications for rehearing were filed by Duke and OCC on October 10, 2017. On that same date, Complainant filed a notice joining in the arguments raised by OCC in its memorandum contra Duke's application for rehearing.

{¶ 17} The Commission believes that sufficient reason has been set forth by Duke and OCC to warrant further consideration of the matters specified in the applications for rehearing. Accordingly, the applications for rehearing filed by Duke and OCC should be granted.


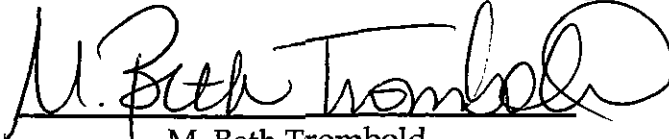
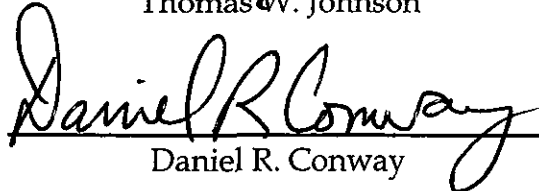
## III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the applications for rehearing filed by Duke and OCC be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

{¶ 20} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.


## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Asim Z. Haque, Chairman  
M. Beth Trombold  
Thomas W. Johnson  
Lawrence K. Friedeman  
Daniel R. Conway

SJP/sc

Entered in the Journal

OCT 20 2017

Barcy F. McNeal  
Secretary