

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
CYNTHIA WINGO,**

COMPLAINANT,

V.

CASE NO. 16-2401-EL-CSS

**NATIONWIDE ENERGY PARTNERS, LLC,
ET AL.,**

RESPONDENTS.

SECOND ENTRY ON REHEARING

Entered in the Journal on March 14, 2018

I. SUMMARY

{¶ 1} The Commission grants the Complainant's application for rehearing of the January 17, 2018 Entry on Rehearing for further consideration of the matters specified in the application for rehearing.

II. PROCEDURAL HISTORY

{¶ 2} Pursuant to R.C. 4905.06, the Commission has general supervisory authority over all public utilities within its jurisdiction and may examine such public utilities and keep informed as to their general condition, to their properties, to the adequacy of their service, to the safety and security of the public and their employees, and to their compliance with all laws, orders of the Commission, franchises, and charter requirements. Under R.C. 4905.26, the Commission has authority to consider a written complaint against a public utility by any person or corporation regarding any rate, service, regulation, or practice affecting or relating to any service furnished by that public utility that is unreasonable, unjust, insufficient, or unjustly discriminatory or preferential. Further, the Commission may prescribe any rule or order that it finds necessary for protection of the public safety.

{¶ 3} On December 15, 2016, this complaint was filed on behalf of Cynthia Wingo (Complainant or Ms. Wingo) against Nationwide Energy Partners, LLC (NEP). According

to her complaint, Ms. Wingo rented a residential apartment in the Gateway Lakes Apartments in Grove City, Ohio (Gateway Lakes), for which NEP supplies or arranges for the supply of electric, water, and sewer service to Gateway Lakes residents. The complaint further asserts that NEP is an “electric light company” under R.C. 4905.03(C), a “water-works company” under R.C. 4905.03(G), a “sewage disposal system company” under R.C. 4905.03(M), and a “public utility” under R.C. 4905.02. The complaint requests, inter alia, that the Commission find NEP to be a jurisdictional public utility, and order that NEP refund the difference between the rates charged Ms. Wingo by NEP and a lawful rate, as determined by the Commission, subject to treble damages under R.C. 4905.61. NEP filed an answer on January 5, 2017, denying that it provides jurisdictional public utility services.

{¶ 4} Ms. Wingo was subsequently granted leave to amend her complaint to add Gateway Lakes Acquisition LLC (GLA) and Borror Properties Management, LLC (Borror), as the owner and property manager of Gateway Lakes, respectively; and to address the Commission’s recent decision regarding its jurisdiction over submetered arrangements in *In re the Commission’s Investigation of Submetering*, Case No. 15-1594-AU-COI, Second Entry on Rehearing (Jun. 21, 2017) (COI EOR). On September 29, 2017, NEP filed an amended answer and amended motion to dismiss the complaint for lack of jurisdiction.

{¶ 5} On November 21, 2017, the Commission issued a Finding and Order (Nov. 21, 2017 Order) granting NEP’s motion to dismiss the complaint, finding that the Complainant had failed to meet her burden of proof in alleging reasonable grounds for hearing as required by R.C. 4905.26.

{¶ 6} Applications for rehearing of the Nov. 21, 2017 Order were filed by the Ohio Power Company (AEP Ohio or Utility) and the Complainant on December 21 and 22, 2017, respectively.

{¶ 7} On January 2, 2018, NEP filed memoranda contra both applications for rehearing alleging, inter alia, that Ms. Wingo's application for rehearing was not timely filed in accordance with Ohio Adm.Code 4901-1-02(D)(4).

{¶ 8} On January 9, 2018, the Complainant filed a motion for leave to file a reply memorandum in support of her application for rehearing.

{¶ 9} On January 17, 2018, the Commission issued its Entry on Rehearing (1st EOR) granting further time to consider AEP Ohio's application for rehearing. The 1st EOR also granted Ms. Wingo's motion for leave to file a reply memorandum, but ultimately concluded that the Complainant's application for rehearing was not timely filed pursuant to R.C. 4901.10, 4901.13 and Ohio Adm.Code 4901-1-02(D)(4). Accordingly, the Commission found that it had no jurisdiction to consider Ms. Wingo's application for rehearing and it was, therefore, dismissed.

{¶ 10} On February 16, 2018, the Complainant filed an application for rehearing of the 1st EOR. NEP filed a memorandum contra on February 26, 2018.

III. DISCUSSION

{¶ 11} R.C. 4903.10 and Ohio Adm.Code 4901-1-35 provide that any party who has entered an appearance in a Commission proceeding may apply for rehearing of a Commission order with respect to any matters determined therein by filing an application for rehearing within 30 days after the entry of the order upon the Commission's journal.

{¶ 12} In her application for rehearing of the 1st EOR, Ms. Wingo lists a single assignment of error: that the Commission violated R.C. 4903.10 by refusing to exercise jurisdiction to consider her application for rehearing of the Nov. 21, 2017 Order on the merits. In support of her claim, she notes that her application for rehearing of the Nov. 21, 2017 Order was filed on December 21, 2017 at 5:47 p.m., and that R.C. 4903.10 provides that an application for rehearing must be "filed" within thirty "days" of the underlying order. The Complainant cites *Bohacek v. Ohio Bur. of Emp. Services* (8th Dist. 1983), 9 Ohio App.3d

59, syllabus ¶2, 458 N.E.2d 408, in contending that a document is “filed” when it is “received” by the tribunal, and *Greulich v. Monnoin*, 142 Ohio St. 113, 117, 50 N.E.2d 310, 149 A.L.R. 477, 26 O.O. 314 (1943), for the proposition that “day” means a full calendar day: “Fractions of a day are not generally considered in the legal computation of time, and the day on which an act is done or an event occurs must be wholly included or excluded.”. She contends that, as the Commission’s official records show that her application for rehearing of the Nov. 21, 2017 Order was “received” on the thirtieth “day” following the issuance of that order, the Commission has jurisdiction to consider her application.

{¶ 13} In its memorandum contra, NEP contends that Ms. Wingo is essentially arguing that the Commission’s electronic filing (e-filing) deadline should be 11:59 p.m. rather than 5:30 p.m. NEP notes that Ohio Adm.Code 4901-1-02(D)(4) provides “that any e-filed document received after five-thirty p.m. shall be considered filed at seven-thirty a.m. the next business day.” NEP asserts that R.C. 4901.13 authorizes the Commission to adopt and publish rules to govern its proceedings, and that administrative rules enacted pursuant to a specific grant of legislative authority are to be given the force and effect of law. *Doyle v. Ohio Bur. of Motor Vehicles*, 51 Ohio St.3d 46, 47, Syllabus ¶1, 554 N.E.2d 97 (1990).

{¶ 14} NEP further notes that when the Supreme Court of Ohio revised Rule 13 of the Rules of Appellate Procedure to allow for the adoption of e-filing systems, it required that local rules include provisions to specify the days and hours during which electronically transmitted documents will be received, and when such documents will be considered to have been filed. App.R.13(A)(2). NEP also notes the Court’s own rule, Supreme Court Rule of Practice 3.02(A)(3)(e), is virtually identical to the Commission’s in providing that “documents received after 5:00:00 p.m. local observed time in Columbus, Ohio through the E-Filing Portal shall not be considered for filing until the next business day.” Moreover, NEP cites *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 105 Ohio St.3d 1211, 2005-Ohio-1023, as an example where the Court has refused to accept appeals that failed to comply with the Court’s rules of practice.

{¶ 15} The procedural issue raised by the Complainant's e-filing of her application for rehearing of the Nov. 21, 2017 Order appears to be one of first impression. Accordingly, the Commission grants the Complainant's application for rehearing of the 1st EOR, as we find that sufficient reasons have been set forth to warrant further consideration of the matters specified therein.

IV. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the Complainant's application for rehearing of the 1st EOR be granted for further consideration of the matters specified therein. It is, further,

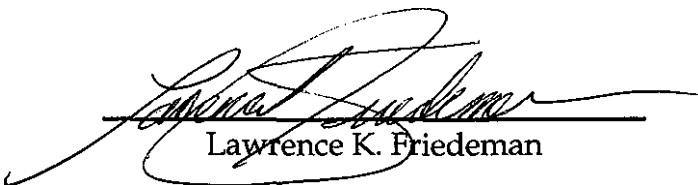
{¶ 18} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman

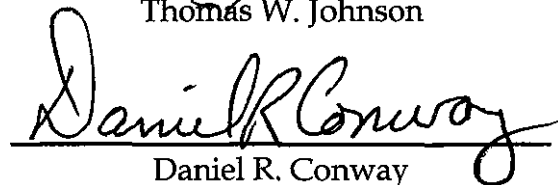
M. Beth Trombold



Lawrence K. Friedeman



Thomas W. Johnson



Daniel R. Conway

RMB/mef

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MAR 14 2018

Barcy F. McNeal
Secretary