

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
FOREST HILLS SUPERMARKET, INC.,
D/B/A KONNIS FAMILY FOODS,**

COMPLAINANT,

v.

CASE NO. 18-785-EL-CSS

**THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,**

RESPONDENT.

ENTRY

Entered in the Journal on November 21, 2018

{¶ 1} 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.

{¶ 2} The Cleveland Electric Illuminating Company (CEI) is a public utility as defined in R.C. 4905.02. As such, CEI is subject to the Commission's jurisdiction.

{¶ 3} On May 2, 2018, Forest Hills Supermarket, Inc., d/b/a Konnis Family Foods (Complainant) filed a complaint against CEI and FirstEnergy Corp. (FirstEnergy). The complaint alleges that CEI wrongfully and unreasonably billed Complainant and/or did not provide accurate metering and charges CEI with violating, inter alia, R.C. 4905.22 and various provisions of Ohio Adm.Code Chapter 4901:1-10. For redress, Complainant asks that the Commission enter judgment against CEI in the amount of \$44,961.07 and seeks treble damages.

{¶ 4} On May 22, 2018, CEI filed an answer to the complaint. Therein, CEI generally denies any wrongdoing and explains that Complainant received the August 1, 2017 letter because CEI inadvertently charged service in connection with Complainant's meter to the wrong account. Further explaining, CEI states that, upon learning of the error, it billed

Complainant for Complainant's previously unbilled usage in accordance with Ohio Adm.Code 4901:1-10-23. Thus, CEI submits that it acted according to applicable law. The answer also sets forth several affirmative defenses.

{¶ 5} By Entry dated July 11, 2018, the attorney examiner scheduled a settlement conference to explore the remaining parties' willingness to negotiate a resolution of the complaint against CEI in lieu of an evidentiary hearing.¹ The parties engaged in settlement discussions over several months; however, to date, no resolution has been reached.

{¶ 6} The attorney examiner finds that this matter should be set for hearing. Accordingly, an evidentiary hearing will be scheduled for February 26, 2019, at 10:30 a.m., in Hearing Room 11-D at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215-3793. Additionally, testimony should be filed no later than February 15, 2019, in order to allow sufficient time for review and depositions prior to the hearing.

{¶ 7} 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).

{¶ 8} It is, therefore,

{¶ 9} ORDERED, That testimony be filed no later than February 15, 2019. It is, further,

{¶ 10} ORDERED, That an evidentiary hearing be scheduled for Tuesday, February 26, 2019, at 10:30 a.m., as stated in Paragraph 7. It is, further,

¹ The July 11, 2018 Entry also granted a motion to dismiss filed by FirstEnergy on May 22, 2018. Thus, only Complainant's complaint against CEI remains pending before the Commission.

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/*Patricia A. Schabo*

By: Patricia A. Schabo
Attorney Examiner

JRJ/hac

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Case No(s). 18-0785-EL-CSS

Summary: Attorney Examiner Entry setting date for testimony to be filed and scheduling evidentiary hearing electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission