

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
AFRIYE OWUSU,

COMPLAINANT,

CASE NO. 16-1733-EL-CSS

v.

DUKE ENERGY OHIO, INC.

## OPINION AND ORDER

Entered in the Journal on April 10, 2019

### I. SUMMARY

{¶ 1} The Commission finds that Complainant, Afriye Owusu, has carried the burden of proving that Duke Energy Ohio, Inc. failed to comply with its obligation, under Ohio Adm.Code 4901:1-18-07(B)(1), to timely reconnect Complainant's electric service.

### II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On August 16, 2016, Afriye Owusu (Complainant or Mr. Owusu) filed a complaint with the Commission against Duke Energy Ohio, Inc. (Duke, Company, or Respondent). The complaint alleges that, on March 3, 2012, Duke "failed to turn on the electrical power at the agreed-upon time" at Complainant's residence.<sup>1</sup>

{¶ 3} On September 6, 2016, Duke filed its answer in which it denies all of the complaint's allegations and sets forth several affirmative defenses.

{¶ 4} A settlement conference was held on January 12, 2017; however, the parties were unable to resolve this matter. A hearing was scheduled for and held on March 2,

---

<sup>1</sup> Complainant also alleges that he suffered an injury due to the lack of service. However, the Commission cannot award damages. *Lahke et.al. v. Cincinnati Bell, Inc.* 1 Ohio App.3d 114, 439 N.E.2d 928, 1 O.B.R. 420, ¶ 6.

2017. At the hearing, Mr. Owusu testified on his own behalf and Duke presented the testimony of its witness, Ms. Alicia Jones.

### III. APPLICABLE LAW

{¶ 5} Duke is a public utility and an electric light company, as defined in R.C. 4905.02 and 4905.03, and, as such, is subject to the jurisdiction of this Commission.

{¶ 6} 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.

{¶ 7} In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, in order to prevail in this matter, Complainant must prove the allegations in his complaint by a preponderance of the evidence.

{¶ 8} The Commission has issued on an annual basis guidance regarding reconnection of electric service during the winter season. The particular reiteration applicable in this proceeding, which involves an electric service disconnection occurring on February 29, 2012, is cited as *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC (*Winter Reconnect Order*) Finding and Order (Sept. 14, 2011). The Winter Reconnect Order allows residential customers who are disconnected or being threatened with disconnection the opportunity to pay a designated amount in order to have their service restored or maintained. As it applied in this particular case, the Winter Reconnect Order established that a residential customer whose service had already been disconnected would need to pay \$175 and possibly a reconnection fee of no more than \$36 in order to have service restored. The Winter Reconnect Order affects the minimum amount that residential customers who are

disconnected must pay in order to obtain service reconnection, but it does not impact the regulatory timeframes which govern the timing of reconnection. Those regulatory timeframes are prescribed in Ohio Adm.Code 4901:1-18-07.

{¶ 9} With regard to a service reconnection following upon a disconnection for nonpayment, Ohio Adm.Code 4901:1-18-07(A)(1) states, in part, that, for customers disconnected from service for ten business days or less, “upon payment or proof of payment \* \* \* the utility company may assess a reconnection charge and shall reconnect service by the close of the following regular utility working day.”

{¶ 10} Additionally, Ohio Adm.Code 4901:1-18-07(B)(1) states that, in situations where service is disconnected for nonpayment for no more than ten business days, in order to be guaranteed reconnection of service on the same day on which payment is rendered, “[t]he customer must provide proof of payment [in an amount sufficient to cure the payment default which has led to the service disconnection] \* \* \* to the utility company no later than twelve-thirty p.m.” The rule does not additionally require a customer to make an affirmative request for reconnection on the same day upon satisfying the requisite conditions. See *In the Matter of the Commission’s Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-1507, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, Case No .08-723-AU-ORD (08-723), Finding and Order (Dec. 17, 2008) at 45 (where the Commission modified the existing rule language which stated “the customer must provide proof of payment, and notify the company no later than twelve-thirty p.m. that reconnection of service is requested the same day” by eliminating the portion of the rule requiring that the customer actually request and notify the company of such a request for same-day reconnection to occur).

{¶ 11} However, the rules do afford a utility and its customers some flexibility in the reconnection of service on the same day. For instance, Ohio Adm.Code 4901:1-18-07(B)(2) states that, in situations where service is disconnected for no more than ten

business days, in order to be guaranteed reconnection of service on the same day on which payment is rendered, if the customer requests that reconnection occur after normal business hours, and such service is offered by the utility company, the utility company may require the customer to pay or agree to pay the utility company's approved tariff charges for after-hours reconnection. The utility company may collect this fee prior to reconnection or with the customer's next monthly billing.

#### IV. DISCUSSION

##### A. *Summary of Complainant's Testimony and Evidence*

{¶ 12} Mr. Owusu testified that the events that give rise to his complaint happened when he was a Duke customer living at an address where he no longer lives, namely, 5419 East Gate Drive, Fairfield, Ohio 45014. He arrived home from a business trip in Indiana at around 9:00 a.m. on the morning of Friday, March 2, 2012, and found the power at his apartment had been disconnected. (Tr. 11.) At that time, he called Duke and was told to go and make a payment and, after making the payment, to call back and report to Duke the receipt number associated with his payment (Tr. 26). Mr. Owusu testified that it was during this first call that Duke told him the amount that would need to be paid in order to restore service, but that he never received a disconnection notice (Tr. 33, 34). He went and made the payment at around 9:30 a.m. at a nearby gas station (Tr. 11, 27, 74). At hearing, Complainant provided a receipt, with a particular 13-digit receipt number, showing a payment of \$175.00 made to Duke Energy Ohio, at 10:41 a.m. on March 2, 2012, from an ATM located at the Forest Park Sunoco (Tr. 27-29; Complainant Ex. 1).

{¶ 13} Mr. Owusu testified that after making the payment, he called Duke back, as instructed, before 11:00 a.m. and informed them of the receipt number (Tr. 27, 37, 74). He testified that, during this second call, Duke told him "that someone will come and turn on the light within two or three hours," in other words, that this would happen sometime before 3:00 p.m. on March 2, 2012 (Tr. 11, 30, 48). Mr. Owusu went grocery shopping at 4:30 p.m., but upon his return about an hour later, or at least by 6:15 p.m.,

power was still not restored (Tr. 12, 30, 31). He did not go back out again that evening. At around 7:00 p.m., that evening, he fell asleep on his couch. (Tr. 12.) He woke up sometime after midnight without power (Tr. 12, 32).

{¶ 14} Mr. Owusu testified that, ultimately, power was not restored until the following day, March 3, 2012, at around 3:00 or 3:30 p.m. (Tr. 15, 40). However, when questioned by the attorney examiner, Mr. Owusu admitted that he was not sure what time of the day on March 3, 2012, Duke came and actually restored service since he was not home when it happened (Tr. 40).

{¶ 15} On March 3, 2012, Mr. Owusu left early in the morning, but not before calling Duke first (Tr. 40-42). He testified that, during that Saturday morning call, Duke indicated that "someone will pass by around 12:00, 1 o'clock and turn on the lights" (Tr. 42). During that call, Duke indicated that they would, in response to his request to have service restored, come out that day, even though it was a Saturday, and, as such, not a regular working day (Tr. 43, 48, 49). Regarding the actual time when service was restored, Mr. Owusu indicated "I think I came home around 3:30 [on Saturday, March 3, 2012] and saw that the light was on" (Tr. 15, 39, 40, 49).

{¶ 16} Mr. Owusu indicated that there was an oral agreement between the parties, reached over the phone during the Friday morning call when he reported the receipt number (Tr. 47, 48). He submits that Duke's end of the agreement was to restore power by the afternoon on March 2, 2012 (Tr. 30, 31, 39, 48). Mr. Owusu avers that Duke failed to meet this duty (Tr. 47-48, 68, 69). He believes that he did his part, by making the payment on Friday, March 2, 2012, and also timely reporting that payment to the Company before 12:30 p.m., on that same day; but that Duke failed to meet its obligation (Tr. 16, 32, 33, 47, 48).

**B. *Summary of Respondent's Testimony and Evidence***

{¶ 17} Duke's only witness was Alicia Jones, who serves Duke Energy Business Services LLC as a Customer Affairs Specialist. Duke Energy Business Services LLC is responsible for handling Respondent's customer service inquiries for three Midwest states, including Ohio. She indicated that her participation in this case began in September of 2016, when she was asked to research Duke's records regarding Complainant's service account. The stated purpose of her testimony is to respond to the complaint's allegations and to provide accurate information regarding Complainant's involved electric service account. According to Ms. Jones' testimony, the account was opened on April 26, 2011. She testified that after Mr. Owusu failed to timely pay his Duke utility bills on time and in full, the account was eligible for disconnection for nonpayment. Duke issued the required notifications and, thereafter, on February 29, 2012, disconnected the service for nonpayment. (Duke Ex. 1 at 1 - 4.)

{¶ 18} According to Ms. Jones' testimony, Mr. Owusu called Duke on the first day the service was disconnected, February 29, 2012. However, Duke didn't receive a payment until two days later on March 2, 2012. There is no company record now available which describes what specifically was discussed during the February 29, 2012 conversation. Duke does monitor such calls, but because its record retention obligations for calls made in 2012 have expired, no voice recording survives and, consequently, there is no way to know for certain what specifically was discussed during the February 29, 2012 phone call, nor during any other calls between the parties occurring in 2012. (Tr. 79, 80, 81.) Nevertheless, Duke claims to have records which show that, on the very day that his service was disconnected, February 29, 2012, Mr. Owusu did call Duke and on that call was advised to make a payment in the amount of \$175 (Tr. 81).

{¶ 19} On March 2, 2012, Mr. Owusu contacted Duke, and made a payment sufficient to restore service (Tr. 75). Ms. Jones testified that service was restored on March 3, 2012 at 12:16 p.m. (Tr. 76). Explaining the remainder of the account history,

Ms. Jones stated that the service was disconnected again for non-payment on May 30, 2012. Since that time, Mr. Owusu has had no service in his name and an outstanding balance remains on the account (Duke Exhibit 1, at 5.)

## V. CONCLUSION

### A. *Allegations Regarding Improper Disconnection*

{¶ 20} As an initial matter, the complaint in this case contains no allegation that the service disconnection that occurred on February 29, 2012 was improper. Yet, for the first time at hearing, Mr. Owusu initially testified that he never received any disconnection notice prior to the service disconnection. (Tr. 33, 35, 56-58.) However, later on in his testimony Mr. Owusu acknowledged that such a notice did arrive by mail at his home while he was away on a 13-day trip to Indiana, and the notice explained that he faced service disconnection if he failed to pay, by February 24, 2012, a past due amount of \$167.96 (Tr. 61, 65-67; Duke Ex. 2.) Based on these factors, and on the record considered as a whole, we conclude that Complainant has failed to substantiate that the service disconnection that occurred on February 29, 2012 was improper (Tr. 113). Moreover, as Duke suggests, we recognize that alleging improper disconnection for the first time during the evidentiary hearing was highly prejudicial as Duke was limited in its ability to adequately respond to such allegations at that time.

### B. *Doctrine of Laches and Records Retention Concerns*

{¶ 21} Noting that the complaint in this case was not filed until approximately five years after the occurrence of the events that triggered it, and claiming that Complainant did not pursue his present claims before the Commission during that window of time, Duke argues that the doctrine of laches<sup>2</sup> should apply in this matter, in such a way as to immunize Duke from the need to defend itself against Complainant's allegedly untimely

---

<sup>2</sup> Laches is an equitable remedy that might be applied where the party asserting it can show there has been an undue delay by an opponent party in asserting a legal right or privilege.

raised claims. Duke points out, in this regard, "the company's ability to defend against the claims is somewhat limited based on \* \* \* [the company's] policy not to maintain records<sup>3</sup> \* \* \* beyond the normal retention span" (Tr. 112). Duke emphasizes that, although it still has business records which document that telephone calls between the parties occurred on February 29, March 2, and March 3, 2012, because the records retention period recognized under Duke's policy has expired, the company no longer has recordings of these telephone conversations that it can monitor and, on that basis, Duke claims that it can no longer say one way or another what the nature of the calls were (Tr. 78-81).

{¶ 22} Given the Commission's statutorily defined jurisdiction, statutes of limitations and similar doctrines, such as laches, do not necessarily apply in Commission proceedings. As that is the case, the concerns of any public utility respondent having to defend itself against claims arising nearly five years before the filing of the complaint have to be balanced against the quality of the evidence presented by the complainant at hearing. *In re Complaint of State Alarm, Inc. v. Ameritech Ohio*, Case No. 95-1182-TP-CSS (*State Alarm*), Entry (Feb. 21, 1996) at 4.

{¶ 23} In the above-captioned proceeding, the complaint was filed four years, five months, and two weeks from the March 2, 2012 date on which Complainant made the payment for reconnection of his service. Ohio Adm.Code 4901:1-10-03 provides the Commission record retention rule applicable to electric utility companies. Subparagraphs (A)(1) and (A)(2) of that rule state, in pertinent part:

(A)(1) Unless otherwise specified in this chapter or in paragraph (A)(2) of this rule, the regulations governing the retention and preservation of

---

<sup>3</sup> Here, Duke is apparently referring to recordings it once kept, but no longer retains, of the telephone conversations between the parties, relevant to this case, that occurred in February and March of 2012.

electric utility records are set forth in the appendix to rule 4901:1-9-06 of the Administrative Code.

(A)(2) Unless otherwise specified in this chapter, each electric utility shall maintain, for three years, records that are sufficient to demonstrate compliance with the rules of this chapter. Failure to retain records, as required by this rule, sufficient to demonstrate compliance with the rules of this chapter shall give rise to a rebuttable presumption to the contrary.

{¶ 24} The appendix to Ohio Adm.Code 4901:1-9-06 sets forth the specific regulations that govern the preservation of records by electric public utilities subject to the jurisdiction of the Commission. The appendix includes a schedule that identifies the specific retention period that applies, respectively, for each of various types of record media.

{¶ 25} During the hearing, Duke consistently took the position that, because of Duke's record retention schedule, the recordings of the telephone calls received from the Complainant in 2012 no longer exist (Tr. at 78-81, 84, 86, 88-89, 93-94, 106, 112). While Ms. Jones never identified the medium upon which these types of recordings are kept in the regular course of business, we do note that the Commission's approved record retention schedules specifically require, at the very least, that records and reports of customers' service complaints be kept for a minimum of three years. Ohio Adm.Code 4901:1-9-06, Appendix at 14). Ms. Jones testified that Duke's policy is to keep for only approximately 12 months, the type of records by which the company is able to monitor calls that occur between Duke and its customers (Tr. 78-79.) Nevertheless, the fact that this case was filed after expiration of the three-year record retention period that should have applied to the pertinent 2012 calls, renders moot the issue of whether there has been any violation by Duke of the Commission's approved record retention schedules, as pertains to recordings of those particular calls. However, we also note that,

notwithstanding the record retention policies, there were apparently several ongoing civil actions pertaining to the complaint, as detailed below.

{¶ 26} Moreover, Duke's contention that Complainant failed to pursue his interests vis-à-vis Duke during the nearly five-year period preceding the filing of his complaint in this case, is undermined by a pleading filed in this case on September 6, 2016, in which Duke argued that Complainant had "habitually, persistently, and without reasonable grounds filed civil actions against Duke." Therefore, since Complainant appears to have attempted to bring this claim against Duke, his failure to do so in a more timely manner is excusable given two jurisdictional concepts. First, that the Commission, as a creature of statute that may exercise only that jurisdiction conferred by statute, nevertheless, has exclusive jurisdiction to make a determination as to whether a public utility has violated any specific statute, administrative code provision, or order of the Commission. *State, ex. Rel. Northern Ohio Tel. Co. v. Winter*, 23 Ohio St. 2d 6, 9, 260 N.E.2d 575 (1970). Second, that before a court of common pleas has jurisdiction to consider a claim seeking treble damages against a public utility for violation of a Commission rule or regulation, a specific public utility statute, or a Commission order, there must be a finding by the Commission that such a violation has occurred. See *Milligan v. Ohio Bell Tel. Co.*, 56 Ohio St. 2d 191, 194 383 N.E.2d 575 (1978). We will now move to the portion of our discussion where we analyze whether, based on the evidentiary record presented in this case, Duke committed a violation of Ohio Adm.Code 4901:1-18-07.

### **C. Ohio Adm.Code 4901:1-18-07**

{¶ 27} As we noted before, Ohio Adm.Code 4901:1-18-07(B) governs the circumstances under which a customer who has been disconnected because of nonpayment for ten business days or less is entitled to a guaranteed reconnection of service on the same day on which payment, in an amount sufficient to cure the involved payment default, is rendered. Ohio Adm.Code 4901:1-18-07(B)(1) specifies that, to be

entitled to this guarantee, the customer must provide the utility company with proof of such payment by 12:30 p.m. on the day of payment.

{¶ 28} While the testimony presented at hearing contains some inconsistencies in the underlying timeline of events, there are certain determinations we are able to make based on the evidence presented. Complainant, having been disconnected for nonpayment for less than ten days, phoned the Company at approximately 10:51 a.m., on Friday, March 2, 2012, to report a receipt number that serves as proof of the payment, in the amount demanded by the Company for service reconnection, that he had made just ten minutes earlier (Tr. 77). Duke witness Ms. Jones' testimony indicates that Complainant's service was disconnected for nonpayment on February 29, 2012, which is clearly less than ten days before the payment was made (Tr. 79). Complainant's Exhibit 1 provides reliable physical documentation that Complainant made a payment to Duke at 10:41 a.m. on Friday, March 2, 2012 (Tr. 29). Ms. Jones' testimony also indicates that the payment made and reported to the Company on March 2, 2012, was made pursuant to the Winter Reconnect Order applicable during 2011-2012 winter heating season. The record makes certain that the amount paid, \$175.00, was sufficient to restore the service that had been disconnected two days earlier, on February 29, 2012, because "it was within the guidelines of the winter rule revision that allows for a minimum payment of \$175.00 to restore service." (Tr. 75.) Ms. Jones' further testimony only amplifies that proof of payment occurred about ten minutes later, i.e., at approximately 10:51 a.m., on Friday, March 2, 2012, when Complainant phoned-in his payment receipt number (Tr. 11, 27-29, 36-37, 77, 81-82). Finally, the record is clear that service restoration in this case did not occur on the day of both payment and timely submission of proof of adequate payment, but rather, on the next day, at 12:16 p.m. on Saturday, March 3, 2012 (Tr. 76, 78). The record shows that Duke did reconnect Complainant's service after normal business hours, i.e., at 12:16 p.m. on Saturday, March 3, 2012, which was not a regular utility working day. The record also shows that, although Duke may have been in a position to assess a charge for the after-hours service reconnection it performed, it never actually did

so, and may have, as a courtesy, waived it. (Tr. 80, 98.) Thus, it is undisputed that Complainant satisfied the required conditions set forth in Ohio Adm.Code 4901:1-18-07(B)(1) and, as such, was in a position to be guaranteed same-day reconnection of his service. Yet, it is also undisputed that reconnection occurred not on the day of payment, but rather, on the following day.

{¶ 29} Accordingly, it appears that Complainant has made what essentially amounts to a prima facie showing that Duke has failed to comply with the requirements of Ohio Adm.Code 4901:1-18-7(B)(1).<sup>4</sup> Such a showing having been made, the burden of production of evidence shifts to Respondent, who, as a result, may prevail only upon production of such additional evidence as to demonstrate cause why the prima facie showing must be considered as less than dispositive, upon consideration of the record as a whole. *In the Matter of the Regulation of the Electric Fuel Component within the Rate Schedule of the Toledo Edison Company and Related Matters* Case No. 83-35-EL-EFC (Subfile A) (*Toledo Edison EFC*) Entry (Sept. 25, 1984) at ¶ 4.

{¶ 30} We note that Duke's witness erroneously stated in her pre-filed testimony that the company had 24-hours to reconnect service once proof of payment had been received.<sup>5</sup> However, Duke's main argument in this case seems to stem from and relate to the inability of Duke, or anybody else, to further monitor voice recordings which Duke no longer retains of the relevant 2012 phone calls between the parties. Duke apparently argues that this inability may affect the outcome in this case by making it no longer possible for the Commission to determine conclusively whether and, if so, when, Complainant may have made a request for after-hours service reconnection and/or for service restoration on a day that is not a regular utility working day. Duke implies that, but for the company's record retention policy, the Commission might be in a different,

---

<sup>4</sup> Broadly defined, and as used here, a prima facie showing is one that is, at first impression, legally sufficient to establish a fact or case unless disproved.

<sup>5</sup> *Winter Reconnect Order, Finding and Order* (Sept. 14, 2011) at 8.

and better, position than now exists, to determine whether the amount of time Duke had legally to reconnect Complainant's service in this case, should be considered as established under terms that the parties themselves may have agreed to during one or more of their phone calls, rather than under 4901:1-18-07(B)(1). (Tr. 100-102).

{¶ 31} While, as we noted in Paragraph 10 a customer is not required to make a request that same-day reconnection occur so long as he or she has satisfied the criteria in Ohio Adm.Code 4901:1-18-07(B)(1), we do recognize that a customer may request or work with a utility to schedule a mutually agreeable alternative time for reconnection and, thus, by doing so, waive the otherwise applicable reconnection deadline established in Ohio Adm.Code 4901:1-18-07(B)(1).

{¶ 32} Duke's position appears to be that the Commission should base its decision on the possibility that voice recordings, which now are clearly no longer available, might have shown whether the parties ever agreed to the reconnection time later than the otherwise applicable reconnection deadline. In other words, Complainant's prima facie showing should, in Duke's view, give way to the mere possibility, unsupported by any actual evidence of record, that the parties may have agreed to an after-hours reconnection that occurred at 12:16 p.m. on the day following the day of payment.

{¶ 33} We are not persuaded that Duke's theory overcomes the weight of the actual evidence that Complainant has presented, which supports a finding that Duke failed to comply with the applicable reconnection deadline in Ohio Adm.Code 4901:1-8-07(B)(1). It is not sufficient for Respondent in this case to simply assert that a mere possibility exists that additional circumstances might lead to a different conclusion when all evidence is considered and given due and appropriate weight.

{¶ 34} While claiming that voice recordings of the calls between the parties in 2012 no longer exist, Duke implies that, during one or another of these calls, the Complainant may have requested, and the parties may have agreed to, an after-hours service

reconnection. In this regard, Duke implies that the unproduced voice recordings should be considered as evidence that the parties may have reached their own agreement on a date and time for reconnection, as an alternative to Ohio Adm.Code 4901:1-8-07(B)(1). Duke never even attempts to identify in which of the particular calls the parties may have reached such an agreement, despite having notes to the conversation. For example, Ms. Jones testified that Duke has records that show that during the February 29th call, the exact payment amount due to prompt reconnection was discussed (Tr. 81). Duke offers no other evidence at all to suggest that, during the calls made on February 29th, March 2nd, or March 3rd, Complainant ever made a request for a later service reconnection or that a fee and/or waiver of the fee for such a service reconnection was discussed.

{¶ 35} We find the sworn testimony presented by Complainant to be persuasive in this case particularly in light of the fact that Complainant had returned home from a 13-day business trip and the fact that he waited for the majority of the day, in reliance on Duke's representations (Tr. 30).

{¶ 36} Duke emphasizes the call that took place on March 3, 2012, noting that service was remotely reconnected within 23 minutes after that call (Tr. 86, 88-89). However, this fact does not render our earlier findings inapplicable. In fact, based on the evidence of record, it seems as though Duke even exceeded the 24-hour reconnection timeframe set forth in the Winter Reconnect Order applicable to situations where notice of payment is made after 12:30 p.m.

{¶ 37} While the possibility does exist that the parties may have agreed to something other than a same-day-as-payment reconnection, based on the record considered as a whole, we find it more likely than not that such an agreement did not exist. Complainant has made what amounts to a prima facie showing that Duke failed to meet the requirements of Ohio Adm.Code 4901:1-18-07(B)(1). Upon consideration of the record as a whole, we find that the record fails to show whether Complainant ever made

a request to obtain, on an after-hours basis, any sort of reconnection other than the same-day-as-payment reconnection of his service which Duke was obligated to provide under Ohio Adm.Code 4901:1-18-07(B)(1). As noted above, whether affirmatively requested or not, same-day-as -payment reconnection is guaranteed by application of Ohio Adm.Code 4901:1-18-07(B)(1), so long as the terms of the rule provision are met, as we find that they were in this case.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 38} Duke is a public utility, as defined in R.C. 4905.02 and 4905.03 and, as such, is subject to the jurisdiction of the Commission.

{¶ 39} On August 16, 2016, Complainant filed a complaint against Duke.

{¶ 40} A settlement conference was held on January 12, 2017.

{¶ 41} A hearing was held on March 2, 2017.

{¶ 42} In a complaint case, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 43} Complainant has sustained his burden of proof in this complaint case, by demonstrating that Duke failed to timely reconnect Complainant's electric service on the same day on which Complainant satisfied the requisite conditions.

{¶ 44} The preponderance of the evidence supports a finding that Duke, by this failure, violated its obligation to restore service in the manner guaranteed under Ohio Adm.Code 4901:1-18-07(B)(1).

{¶ 45} Complainant has sustained his burden of proof, under R.C. 4905.26, to demonstrate that Duke acted in a manner that was unjust, unreasonable, or in violation of law or Commission rule.

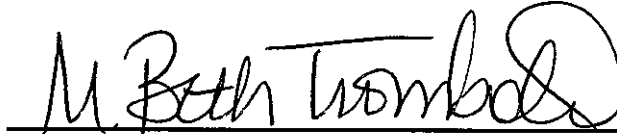
## VII. ORDER

{¶ 46} It is, therefore,

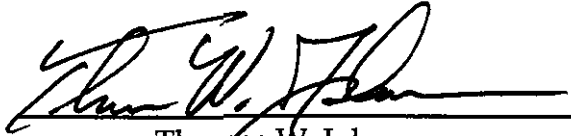
{¶ 47} ORDERED, That the above findings of fact and conclusions of law be observed. It is, further,

{¶ 48} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

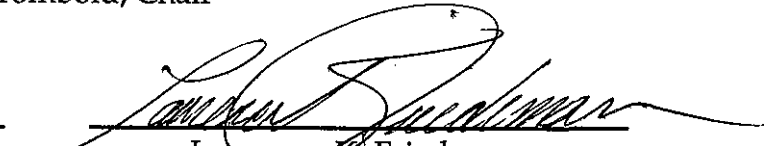
## THE PUBLIC UTILITIES COMMISSION OF OHIO



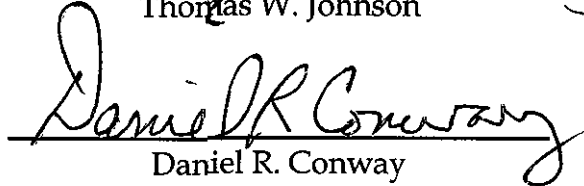
M. Beth Trombold, Chair



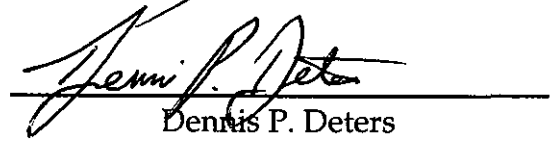
Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway



Dennis P. Deters

DEF/sc

Entered in the Journal APR 10 2019

Tanowa M. Troupe  
Secretary