

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
DIRECT ENERGY BUSINESS, LLC,**

COMPLAINANTS,

CASE No. 14-1277-EL-CSS

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on April 10, 2019

I. SUMMARY

{¶ 1} The Commission finds that Direct Energy Business, LLC has established by a preponderance of the evidence that Duke Energy Ohio, Inc.'s failure to provide accurate readings of generation usage constitutes inadequate service.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On June 22, 2014, Direct Energy Business, LLC (Direct) filed a complaint against Duke Energy Ohio, Inc. (Duke). Direct states that it provides competitive retail electric services to SunCoke Energy, Inc. (SunCoke) and that Duke provides certified supplier services to Direct. Duke's services to Direct include metering customer load, which allows Direct to bill its customer, SunCoke, and for PJM Interconnection, Inc. (PJM) to bill Direct. Direct asserts that, from January 2013, to July 2013, Duke provided PJM with erroneous metering data, causing PJM to overcharge Direct. The incorrect data, per Direct, is a violation Ohio Adm.Code 4901:1-10-05(B) and (F). According to Direct, the charges from March 2013, to July 2013, were resettled, but the charges in January and February were not. Direct believes Duke is obligated to resettle with PJM on behalf of Direct and

Duke has failed to do so. Failing to do so, according to Direct, is unjust and unreasonable and a violation of R.C. 4905.32 and R.C. 4928.35(C).

{¶ 4} On August 13, 2014, Duke filed its answer to the complaint. Duke asserts that the Commission does not have jurisdiction over the issues in this case because the relevant issues deal with PJM's billing practices, which are regulated by the Federal Energy Regulatory Commission (FERC). Duke also avers that it did initiate resettlement with PJM, on behalf of Direct, even though it has no obligation to do so. According to Duke, it started the resettlement process but received no communication back from Direct, which hindered any progress. Duke also notes Direct failed to seek resettlement with PJM on its own behalf. Duke denies it violated Ohio Adm.Code 4901:1-10-05(B) and (F) or R.C. 4905.32 and 4928.32 and requests that the complaint be dismissed.

{¶ 5} Duke filed a motion to dismiss the complaint on October 31, 2014. A memorandum contra was filed by Direct on November 14, 2014, and Duke filed its reply on November 21, 2014. On January 13, 2015, the attorney examiner denied the motion to dismiss and set the matter for hearing for April 14, 2015.

{¶ 6} Thereafter, the attorney examiner granted multiple motions to continue the hearing and ultimately approved a request to suspend the procedural schedule on May 18, 2015. On January 5, 2017, the attorney examiner instructed Direct to file a status update. In a February 9, 2017 response, Direct indicated the negotiations were ongoing but a resolution with Duke has not been reached. Accordingly, the attorney examiner issued an Entry establishing a hearing for June 13, 2017.

{¶ 7} The hearing was held as scheduled on June 13, 2017. At the hearing, the parties stipulated to the submission of all exhibits, including prefiled testimony, and waived all cross examination. Initial briefs were filed on August 11, 2017, and reply briefs were filed on September 1, 2017.

{¶ 8} In conjunction with its September 1, 2017 reply brief, Duke filed a motion to strike portions of Direct's initial brief. Direct filed a memorandum contra on September 18, 2018, to which Duke replied on September 25, 2017.

III. DISCUSSION

{¶ 9} R.C. 4905.22 provides that every public utility shall furnish service and facilities that are adequate, just, and reasonable, and that all charges made or demanded for any service be just, reasonable, and not more than allowed by law or by order of the Commission.

{¶ 10} Pursuant to R.C. 4905.26, the Commission has authority to consider a written complaint 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.

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

{¶ 12} 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 cases such as this, it is the responsibility of the complainant to present evidence in support of the allegations made in the complaint.

A. *Motion to Strike*

{¶ 13} As discussed, Duke filed a motion to strike in conjunction with its reply brief. In its memorandum contra, Direct avers that Duke's motion lacks specificity and the motion does not expressly convey what Duke contends should be stricken. According to Direct, there is no separation from the reply brief and the motion to strike, as the filing conflates both arguments. Further, Direct states that Duke fails to provide any legal support for what should be stricken and why. In reply, Duke asserts that Direct's initial brief discusses Duke's billing relationship with a customer that is not a party to this matter

and involves circumstances that occurred after the relevant events in this proceeding. Duke claims the related comments would serve to bias the Commission.

{¶ 14} Dukes' motion to strike is denied. We agree with Direct that Duke's request lacks specificity as to what should be stricken from Direct's brief. However, in deciding the issues in this case, the Commission will properly consider all arguments raised and provide sufficient weight to all relevant evidence.

B. Background

{¶ 15} According to Direct, the relationship between Duke, as the provider of distribution services, and Direct, a certified supplier of competitive retail electric services (CRES), is dictated by the Certified Supplier Tariff (Supplier Tariff), which is filed with the Commission (Direct Ex. 4). The Supplier Tariff establishes the "basic requirements and coordination" between the two entities in order for suppliers to provide CRES to end-use customers. Direct states that, pursuant to the Supplier Tariff, Duke is responsible for maintaining all meters and associated equipment used for retail billing in the Company's service area. Part of this responsibility, asserts Direct, is two main tasks. One is providing accurate meter readings to the supplier in order for the supplier to bill its end-use customer. The other task is providing PJM with aggregate load data. PJM then uses that data to bill the supplier.

{¶ 16} Duke asserts that all entities that participate in PJM are subject to various tariffs filed with FERC, including the Open Access Transmission Tariff (OATT). Through the PJM process, Duke is considered a transmission owner and Direct is considered both a transmission customer and a load serving entity (LSE) that provides generation to end-use customers. LSEs are typically invoiced for their aggregate load based on two components, called settlements. Under Settlement A, Duke provides PJM with a daily estimate using elements such as weather and prior usage, and PJM bills the LSE on a weekly basis. Settlement B uses actual meter data for the period 60 days prior, and reconciles that with the previous data estimates under Settlement A. Duke avers this is PJM's only

documented process for billings and reconciliations. Duke notes, however, outside of Settlements A and B, there is an informal and voluntary process, Settlement C, that requires express agreement from all affected LSEs to go forward. (Duke Ex. 8 at 7-11.)

{¶ 17} SunCoke is a coke plant and cogeneration facility in Middletown, Ohio, in Duke's service territory. Prior to January 4, 2013, SunCoke received generation from Duke, as a default standard service offer customer. On January 4, 2013, SunCoke enrolled as a customer of Direct and thereafter received generation services from Direct. SunCoke is a large industrial customer that both requires a significant amount of energy and also produces a significant amount of energy. Partly because of this, Duke needs to do a manual calculation in order to construct SunCoke's bill. Additionally, SunCoke has a dual-billing arrangement where it received a bill for distribution from Duke and bill for generation from Direct. (Duke Ex. 8 at 2-5; Direct Ex. 2 at 5-6.)

C. Argument of Direct

{¶ 18} Direct contends that once SunCoke switched generation service from Duke to Direct, Duke ceased doing the manual calculation necessary to properly bill SunCoke. Direct avers that, after the January 2013 switch, SunCoke's usage appeared to be normal. However, states Direct, the invoice it received from PJM, based on reportage from Duke, indicated usage almost twice as high as expected. According to Direct, the discrepancy was discussed with Duke, but the Company initially failed to investigate the issue and continued to provide PJM with incorrect data. Direct explains it was not until May 2013 that Duke determined that SunCoke's meter data was being overstated because Duke was no longer doing the manual calculation that was necessary to calculate SunCoke's net usage. Further, states Direct, Duke did not ultimately correct the calculation until August 2013. Direct contends that, after the miscalculation was discovered, Duke went through PJM's Resettlement B process to correct the error. However, Direct notes that the Resettlement B process can only go back 60 days. Because Duke did not initiate resettlement until May 2013, Direct's invoices from January and February 2013 have not been corrected. Direct contends Duke attempted to correct the issue through Resettlement

C, but was unable get the necessary affirmative consents from the other LSEs. According to Direct, it paid PJM an excess of over \$1.6 million that cannot be resettled due to Duke's actions. (Direct Ex. 2 at 7-10, 12-13.)

{¶ 19} Thereafter, Direct states that when SunCoke renewed its contract in January 2014, the customer requested to switch to consolidated billing, where both generation charges and distribution charges would appear on the same invoice. Direct contends that Duke failed to include the generation charges on the first three month's bills. Direct states that, when confronted with the issue, Duke asserted it could not do consolidated billing for a customer such as SunCoke, reverted SunCoke back to dual billing, and issued a single bill for three months of generation. (Direct Ex. 2 at 10-12.)

{¶ 20} Direct contends that Duke failed to comply with Supplier Tariff and thus violated R.C. 4905.22, by failing to provide necessary and adequate service. Pursuant to Section 14.1 of the Supplier Tariff, Duke serves as the Metered Data Management Agent (MDMA) and is required to provide hourly load to PJM on behalf of Direct. Direct contends that it is implied that such data be accurate. According to Direct, Duke violated the Supplier Tariff when it provided PJM with inaccurate data. Further, Direct asserts Duke failed to efficiently and timely correct the mistake after it was identified. Direct avers that SunCoke's unique metering needs, which require manual calculations, do not justify Duke's failure to provide accurate meter readings. Direct notes that the Supplier Tariff requires Duke to own, furnish, install, program, calibrate, test and maintain all meters, and, notably, Duke was able to provide proper readings to SunCoke when Duke was providing SSO generation to SunCoke. (Direct Ex. 2 at 12-13.)

{¶ 21} Direct asserts Duke also violated Section 10.1 of the Supplier Tariff, and thus failed to comply with R.C. 4905.22, by failing to allow SunCoke to choose consolidated billing. Direct maintains that Section 10.1 allows consolidated billing, as long as the customer is receiving standard rates. According to Direct, Duke accepted SunCoke's request for consolidated billing, but then did not include any charges for three months

before ultimately informing Direct that SunCoke's account is not eligible for consolidated billing. Direct argues that it offered SunCoke a fixed volumetric price plan, which qualifies as a standard rate, and thus Duke was obligated to provide consolidated billing. (Direct Ex. 2 at 10-12.)

{¶ 22} Accordingly, Direct asks the Commission find that Duke violated the Supplier Tariff and thus did not comply with R.C. 4905.22, 4905.26, 4905.30, and 4905.32. Direct also asks that Duke be directed to pay Direct restitution for the over \$1.6 million it paid PJM that cannot be otherwise recovered, plus interest. Direct contends that while the Supplier Tariff says an MDMA, such as Duke, should be held harmless for any actions taken in the role of MDMA, Ohio Adm.Code 4901:1-10-02(G) prevents tariffs from having exculpatory language such as that.

D. Argument of Duke

{¶ 23} Duke submits that Direct's complaint is without merit for numerous reasons. Duke initially contends that its meters recorded accurate data and operated correctly. Duke avers that, while the manual calculation to compute the net usage was not completed, the meters functioned properly. Further, Duke maintains that Direct had the opportunity to review all data from Duke before it was submitted to PJM, but Direct voluntarily waived that right and thus assumed the risk (Duke Ex. 8 at 8). Duke additionally notes that, in the Company's role as MDMA, the Supplier Tariff expressly states that MDMA's should be held harmless for any actions performed as MDMA.

{¶ 24} Duke also states that it did not violate the Supplier Tariff. In serving as the MDMA, Duke asserts it receives no rates or charges. Further, Duke explains that it was not unjustly enriched in any amount, as it was not a part of the financial transaction between PJM and Direct. Regarding its meters, Duke maintains they functioned properly and complied with standards set forth in Ohio Adm.Code 4901:1-10-05(B) (Duke Ex. 8 at 5). Duke further asserts the complaints should be denied as Direct lacks standing. According to Duke, complaints brought under R.C. 4905.26 can only be brought by

customers against utilities. Duke maintains that Direct is not a retail customer of Duke and thus is without standing to bring a complaint. Duke continues, stating that, even if Direct has standing, the Commission cannot grant Direct its requested relief. Duke contends that the various resettlement options with PJM are a part of the OATT, which is approved by FERC and thus FERC's jurisdiction. Finally, Duke avers that the Commission is restricted from awarding monetary relief. Duke states that Direct's request for restitution is misplaced, as Duke was not unjustly enriched and Direct is not a retail customer of Duke. For these reasons, Duke asks that Direct's complaint be denied.

E. Replies

{¶ 25} In reply, Direct reiterates that Duke violated the Supplier Tariff and caused Direct to be overcharged by over \$1.6 million. Direct first asserts that it is no longer asking the Commission to order resettlement; Direct is asking that the Commission find Duke in violation of the R.C. Chapter 49 and direct Duke to pay restitution. Direct also affirms that it has standing to bring the complaint. According to Direct, R.C. 4905.26 does not limit complaints to just end-use customers; complaints may be filed by any person against a utility. Further, Direct maintains that pursuant to Supplier Tariff, Direct is a customer of Duke as it pays Duke for the provision of regulated service. Direct restates that Duke's metering practices violated the Supplier Tariff and resulted in inadequate service that harmed Direct. Direct contends that it is irrelevant if the meters were working properly because Duke handled the data inappropriately. Direct states Duke was able to accurately bill the usage when Duke was providing the generation, but ceased doing so when Direct was the generation provider. According to Direct, Duke therefore violated the Supplier Tariff by failing to provide accurate data to PJM.

{¶ 26} Duke responds that the issues in this proceeding are based on Direct's ability to resettle. According to Duke, in Direct's original complaint and in its case-in-chief, Direct's main objective was to get an order from the Commission directing all affected CRES providers to consent to resettlement. Duke contends resettlement is controlled by PJM and by tariffs filed with FERC and should be treated as a federal issue, outside of the

Commission's jurisdiction. Duke further maintains that, pursuant to the Supplier Tariff, Duke merely serves as an agent for Direct and is to be held harmless for its action. Therefore, Duke maintains it did not violate the Supplier Tariff. Such exculpatory language is appropriate, according to Duke, as the rule prohibiting such language, found in Ohio Adm.Code 4901:1-10-02, is limited to customer losses. Duke further notes that the current Supplier Tariff was approved by the Commission after Ohio Adm.Code 4901:1-10-02 went into effect, and, further, Direct was involved in that proceeding and did not object to the language in the tariff. Duke also reiterates its arguments that Direct is not a customer of Duke and accordingly does not have standing to bring a complaint. Even if Direct did have standing, Duke avers the Commission cannot grant monetary restitution.

IV. COMMISSION CONCLUSION

{¶ 27} To begin, the Commission observes that the underlying facts of the case are uncontroverted. SunCoke is a customer that both produces and consumes generation. Because of this, in order to determine SunCoke's net generation, Duke needed to do a manual calculation. Before January 4, 2013, when Duke was SunCoke's generation provider, the Company properly did the manual calculation. Once Direct became the supplier of generation, Duke no longer did the calculation. At issue is whether Duke's actions constitute inadequate service. (Duke Ex. 8 at 12-13; Direct Ex. 2 at 12.)

{¶ 28} Initially, we will examine whether the exculpatory language of the Supplier Tariff limits Duke's liability. Section 14.1 of the Supplier Tariff reads, in part, "The Company will be held harmless for any actions taken while performing Meter Data Management Agent responsibilities." As discussed by the parties, Ohio Adm.Code 4901:1-10-02(G) states:

No tariff of an electric utility shall incorporate exculpatory clauses that purport to limit or eliminate liability on the part of the electric utility to its customers or others as a result of its own negligence when providing a regulated service. No electric utility tariff shall incorporate provisions

which purport to establish liability on the part of the electric utility's customers for acts or failures to act involving an electric utility's facilities, which are beyond the control of the customer. Any contrary provisions in an electric utility's tariff now on file with the commission shall be eliminated.

In enacting this rule, the Commission stated the rule "codifies the Commission's longstanding policy and previous Supreme Court decisions that have held that a public utility cannot, through the use of an exculpatory clause, limit its liability for damages resulting from its own negligence when providing a required service." We went on, explaining that the rule "furthers the practice of the Commission in determining that exculpatory clauses included in tariffs for regulated services are neither binding nor relevant in Commission proceedings." *In re Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order at 6 (Nov. 5, 2008). Thus, the rule is explicit that such language is unenforceable, regardless of whether the Commission approved the tariff as a whole. Here, Duke is the designated MDMA and certified suppliers have no choice but to accept the accompanying services. Thus, it would be against public policy to hold Duke harmless for all actions taken while serving as the MDMA. Accordingly, we find the hold-harmless language in the Supplier Tariff does not exempt Duke from providing adequate service in its role as the MDMA.

{¶ 29} Next, we will address whether Duke complied with the terms of the Supplier Tariff. The Supplier Tariff, in Section 14.1, requires Duke, as the MDMA, to supply hourly load data to PJM in accordance with the OATT. It is not disputed that once SunCoke began receiving services from Direct, Duke ceased providing the necessary calculation in order to provide a true reading of usage to PJM (Duke Ex. 8 at 12-13; Direct Ex. 2 at 12). Once Direct identified that the usage calculations were likely incorrect, the parties appeared to work together to identify the cause of the miscalculation and to remedy the situation. PJM's Resettlement B process corrected the calculations from March 2013

onward. However, the initial miscalculations from January and February 2013 remain unresolved, despite Duke's attempt to initiate the Resettlement C process on Direct's behalf. (Duke Ex. 8 at 11-14; Direct Ex. 2 at 13.) While it appears Duke made a good faith effort to correct the issues, it is agreed that the meter readings Duke provided to PJM were inaccurate. As the Supplier Tariff explicitly says, Duke is to "supply hourly load data" to PJM, it is evident that Duke failed in this regard. Duke's argument that its meter readings were technically accurate and its meters were properly working is unpersuasive. While the outgoing meter readings may have been accurate, Duke was aware that additional steps were necessary in order to provide a true calculation of SunCoke's usage, as the Company was completing those calculations when it was the generation provider (Duke Ex. 8 at 5). Therefore, the Commission finds Duke did not fulfill its duties as the MDMA and violated the Supplier Tariff.

{¶ 30} We further find that Duke's violation of the Supplier Tariff, in this situation, constitutes noncompliance with R.C. 4905.22 and 4905.26. R.C. 4905.22, in sum, requires utilities to provide adequate service that is just and reasonable. R.C. 4905.26 similarly allows complaints for service that is in any way inadequate, unjust or unreasonable. Here, we determine that Duke's service was inadequate. As discussed, Duke's failure to provide accurate usage data violated the Supplier Tariff. A violation of the Supplier Tariff does not automatically demonstrate inadequate service, but it is indicative. In this situation, however, Duke was aware, prior to Direct's involvement, that in order to properly calculate SunCoke's usage, additional steps were necessary. While the calculation of SunCoke's usage is complex and perhaps atypical, Duke understood what was necessary and was capable of doing the calculation. Moreover, Duke was properly calculating SunCoke's usage up until Direct began providing generation. Duke Ex. 8 at 5. Although Duke was no longer the generation supplier, in its role as the MDMA for Direct, the Company maintained the obligation to properly ascertain SunCoke's usage and pass that data on to PJM. Accordingly, we determine that Duke's service was inadequate and in violation of R.C. 4905.22 and 4905.26.

{¶ 31} While the Commission finds Direct's complaint against Duke valid, we deny Direct's request for monetary damages. It is well established that the Commission lacks authority to award monetary damages to a complainant. Direct's request for damages pursuant to R.C. 4928.16 is misplaced. While R.C. 4928.16(B)(2) permits the Commission to award restitution in limited circumstances, they do not apply here. Under R.C. 4928.16, such a remedy is only applicable for violations of R.C. sections 4928.01 to 4928.15. Direct filed a complaint pursuant to R.C. 4905.26, and thereafter, specifically only alleged violations of R.C. 4905.22, 4905.30, and 4905.32 (Direct Br. at 8). Further, our findings are limited to R.C. 4905.22 and 4905.26. Accordingly, the Commission lacks jurisdiction to award monetary relief.

F. Motions for Protective Order

{¶ 32} As a final administrative matter, the Commission notes there are several motions for protective order still pending in this case. Specifically, Duke filed motions for protective order on April 14, 2014, June 12, 2017, and August 11, 2017 and Direct filed a motion on April 15, 2014, in which they allege certain information in their respective pre-filed testimony and post-hearing briefs constitute proprietary and trade secret information, including operational and financial data, business forecasts, electric demand and use and pricing information, and employment figures, the disclosure of which is prohibited by state law. R.C. 149.43; R.C. 1333.61(D). No memoranda contra were filed in response to any of the pending motions for protective order.

{¶ 33} The Commission initially notes that R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purpose of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 2000-Ohio-207, 732 N.E.2d 373. Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to protect the confidentiality of information contained in

a filed document “to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.” Moreover, Ohio law defines a trade secret as “information * * * that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 34} Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court in *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 1997-Ohio-75, 687 N.E.2d 661, we find that the operational information filed under seal in this docket contain trade secret information. Their release, therefore, is prohibited under state law. We also find that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Accordingly, we find that the six unopposed pending motions for protective order are reasonable and should be granted.

{¶ 35} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. The Commission finds that confidential treatment shall be afforded to the information filed under seal for 24 months from the date of this Opinion and Order. Until that time, the Docketing Division shall maintain, under seal, the information filed confidentially. Further, Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If a party wishes to extend its confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend the

confidential treatment is filed, the Commission may release the information without prior notice.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 36} On July 22, 2014, Direct filed a complaint against Duke alleging violations of the Supplier Tariff.

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

{¶ 38} On August 13, 2014, Duke filed its answer to complaint.

{¶ 39} An evidentiary hearing was held on June 13, 2017.

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

{¶ 41} The Commission finds that Direct has established, by a preponderance of the evidence, that Duke's failure to provide accurate readings of SunCoke's generation usage constitutes inadequate service.

VI. ORDER

{¶ 42} It is, therefore,

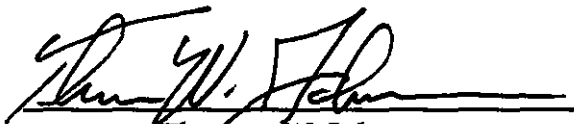
{¶ 43} ORDERED, That this matter be decided in favor of Direct, as Direct has established by a preponderance of the evidence that Duke's failure to provide accurate readings of SunCoke's generation usage constitutes inadequate service. It is, further,

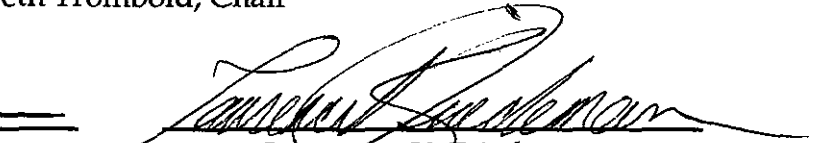
{¶ 44} ORDERED, That the motions for protective order filed by Direct and Duke be granted. It is, further,

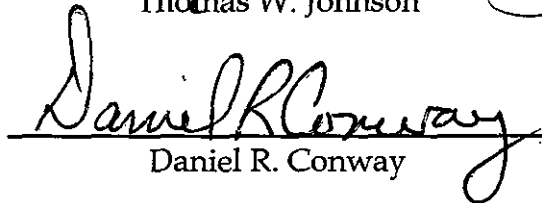
{¶ 45} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

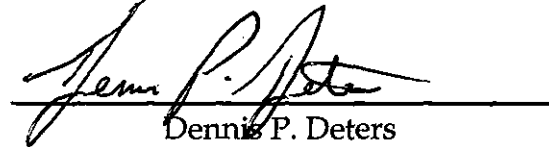
THE PUBLIC UTILITIES COMMISSION OF OHIO


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