

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of The K&D)	
Group, Inc. and Reserve Apartments, LTD,)	
)	
Complainants,)	
)	
v.)	Case No. 11-898-HT-CSS
)	
Cleveland Thermal Steam Distribution, LLC,)	
)	
Respondent.)	

ENTRY ON REHEARING

The Commission finds:

- (1) On February 18, 2011, The K&D Group, Inc. (K&D) and Reserve Apartments, LTD, filed a complaint against Cleveland Thermal Steam Distribution, LLC (Cleveland Thermal). On March 1, 2011, Cleveland Thermal filed its answer.
- (2) On May 11, 2011, Cleveland Thermal filed a motion to dismiss, arguing that K&D's complaint failed to state reasonable grounds as required by Section 4905.26, Revised Code. On May 31, 2011, K&D filed an opposition to Cleveland Thermal's motion to dismiss, to which Cleveland Thermal replied on June 9, 2011.
- (3) By entry issued on May 30, 2012, the Commission granted Cleveland Thermal's motion to dismiss K&D's complaint on the basis that K&D failed to set forth reasonable grounds for complaint as required by Section 4905.26, Revised Code.
- (4) On June 29, 2012, K&D filed an application for rehearing of the Commission's May 30, 2012, entry granting Cleveland Thermal's motion to dismiss.
- (5) Thereafter, on July 2, 2012, Cleveland Thermal filed a motion for an extension of the ten-day time period set forth in Rule 4901-1-35, Ohio Administrative Code, for filing a

memorandum contra. By entry issued on July 3, 2012, the attorney examiner granted Cleveland Thermal's motion.

- (6) By entry issued on July 18, 2012, the Commission granted K&D's application for rehearing for the limited purpose of allowing further consideration of the matters specified in the application for rehearing.
- (7) In its application for rehearing, K&D argues that the Commission's May 30, 2012, dismissal entry (dismissal entry) unlawfully and unreasonably found that the rates charged by Cleveland Thermal under its Fuel Adjustment Rider (FAR) from 2008 through 2010 were approved by the Commission. K&D argues that Cleveland Thermal did not make monthly filings with the Commission in accordance with its tariff and that Cleveland Thermal failed to submit its fuel procurement processes for annual review in accordance with *In re Cleveland Thermal Energy Corporation*, Case No. 97-522-HT-AIR, Opinion and Order (Oct. 15, 1998) (1998 Rate Case). Further, K&D argues that Cleveland Thermal's fuel charges and costs lacked any oversight for over ten years.

In its memorandum in support of its application for rehearing, K&D initially argues that, in order to be approved, fuel charges are required to be imposed in accordance with applicable tariffs and Commission orders, pursuant to Section 4905.22, Revised Code. Here, K&D argues that its special contract with Cleveland Thermal required "monthly rates to be increased each month by applying the FAR schedule contained in Sheet No. 16 of Cleveland Thermal's tariff." K&D states that its FAR tariff contained in Sheet No. 16 explicitly requires that "the weighted average cost of fuel burned for central steam service each month shall be ascertained by the Company and filed monthly with the Public Utilities Commission of Ohio." K&D contends that, in contrast to the Commission's findings in its dismissal entry, Cleveland Thermal did not file its fuel costs monthly with the Commission. K&D acknowledges that Cleveland Thermal provided the fuel costs to Staff for review but argues that this is not the equivalent of filing with the Commission, citing *In re Cincinnati Gas & Electric*, Case No. 00-681-GA-GPS, Entry (Mar. 2, 2005) at 5.

Next, K&D argues that the dismissal entry ignores the Commission's own intervening order regarding oversight of Cleveland Thermal's fuel charges and costs set forth in the 1998 *Rate Case*. K&D argues that the 1998 *Rate Case* required Cleveland Thermal to "comply with all Commission directives set forth in this opinion and order and adopt and implement the recommendations of the Staff as set forth in the staff report." 1998 *Rate Case*, Opinion and Order (Oct. 15, 1998) at 8. K&D points out that the 1998 *Rate Case* order further provided that Staff recommended that "the applicant's fuel costs be reviewed on an annual basis[.] * * * We agree with Staff and direct the applicant to fully comply with the recommendations and to include in the * * * 6-month report a description of its progress in implementing the staff's recommendations." *Id.* at 6.

- (8) In its memorandum contra, Cleveland Thermal responds that the fuel charges billed to K&D by Cleveland Thermal were approved by the Commission. Cleveland Thermal points out the Commission already considered these claims by K&D and rejected them. Specifically, Cleveland Thermal contends that the fuel charges were governed by the terms of the 2007 amendment to the special arrangement, which provided, in pertinent part:

e. Fuel Adjustment Rider. Company shall ascertain the weighted average cost of fuels burned by Company for steam utility service for each month (including all direct costs incurred by Company to place fuel at the point of burning in the boilers at plants in which steam is generated for sale under this Agreement) and may file that cost (expressed as cents per million BTU) with PUCO on a monthly basis. The Customer's rates shall be increased each month by applying the fuel adjustment rider schedule ratio (contained in Sheet 16 of the PUCO approved tariffs of Company) for each full 0.1¢ of the monthly cost of fuel per million BTU. In the event Sheet 16 is cancelled by the PUCO, the fuel adjustment rider will still apply.

Cleveland Thermal stresses that this fuel adjustment rider schedule ratio is the only part of Sheet 16 that is incorporated into its special contract with K&D. Further, Cleveland Thermal notes that the above Fuel Adjustment Rider language provides that the Company may file that cost with the Commission on a monthly basis but does not require that action. Additionally, Cleveland Thermal argues that, even if the monthly fuel cost provisions of Sheet 16 were applicable to the special contract, the Commission found in the dismissal entry that Cleveland Thermal did actually provide this information to the Commission for review and that the scope of any Staff review conducted on that information was outside of Cleveland Thermal's control.

Next, Cleveland Thermal contends that K&D is erroneous in its belief that the Commission's approval of Sheet 16 was conditioned on monthly filing of fuel cost information, as K&D cites no language or Commission order supporting this conclusion that the fuel charge mechanism is conditional upon monthly fuel cost filings with the Commission. Further, Cleveland Thermal notes that K&D has failed to explain why the fuel cost filing requirements in the tariff are applicable to the special contract, given that the tariff provision differs from the 2007 amendment, paragraph e, of the special contract.

- (9) As discussed in the dismissal entry, the Commission has found that the undisputed facts of this case demonstrate that: Cleveland Thermal provided K&D with steam energy service pursuant to a special contract executed in 2001 under Section 4905.31, Revised Code; the special contract was approved by the Commission in Case No. 02-2760-HT-AEC; and the agreement was amended in 2007 and approved by the Commission in Case No. 08-956-HT-AEC. As pointed out by Cleveland Thermal, as well as the Commission in its dismissal entry, the 2007 amendment to Cleveland Thermal and K&D's special contract specifically provides that "Company shall ascertain the weighted average cost of fuels for each month * * * and may file that cost * * * with PUCO on a monthly basis." Thus, the governing portion of the contract does not require Cleveland Thermal to file the costs on a monthly basis. Further, although K&D argues that provisions regarding filing contained within Sheet 16 itself are applicable, the Commission finds that the only portion of

Sheet 16 that is incorporated into the special contract between Cleveland Thermal and K&D is the fuel adjustment rider schedule ratio. This limited incorporation is further apparent given the language contained in the special contract providing that "in the event Sheet 16 is cancelled by the PUCO, the fuel adjustment rider will still apply."

Additionally, the Commission finds that, even if the monthly filing provisions of Sheet 16 were applicable to the special contract between Cleveland Thermal and K&D, Cleveland Thermal nevertheless complied with its obligation under the filing requirements, as it is undisputed that Cleveland Thermal provided monthly filings to the Commission Staff. Although K&D cites *In re Cincinnati Gas & Electric*, Case No. 00-681-GA-GPS, Entry (Mar. 2, 2005), for the proposition that filing with Staff is not equivalent with filing with the Commission, the Commission finds that the language in *In re Cincinnati Gas & Electric* concerns a public information/protective order and is not persuasive in this matter.

Finally, the Commission notes that, as discussed in the dismissal entry, Cleveland Thermal periodically filed the FAR charges with Staff as provided in the tariff and special contract, and that the scope of any review by Staff was not within the control of Cleveland Thermal. Consequently, K&D's argument that Cleveland Thermal's FAR charges lacked oversight appears to be directed at the sufficiency of Staff's review, which does not constitute reasonable grounds for complaint against Cleveland Thermal.

- (10) Therefore, the Commission finds that K&D has failed to demonstrate a basis for its claims that the dismissal entry was unlawful and unreasonable. Accordingly, rehearing should be denied.

It is, therefore,

ORDERED, that the application for rehearing filed by K&D be denied. It is, further,

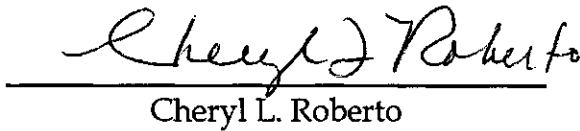
ORDERED, that a copy of this entry on rehearing be served upon all parties of record.

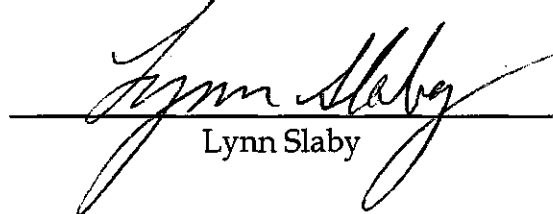
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser

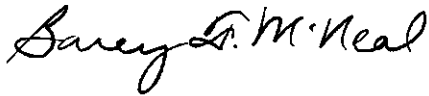

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