

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
Gwendolyn Tandy,)
)
 Complainant,)
)
 v.) Case No. 14-1241-EL-CSS
)
 The Cleveland Electric Illuminating)
 Company and FirstEnergy Solutions)
 Corporation,)
)
 Respondents.)

ENTRY

The Commission finds:

- (1) On July 11, 2014, Gwendolyn Tandy (Complainant) filed a complaint with the Commission against the Cleveland Electric Illuminating Company (CEI). In the complaint, Complainant states that she opted out of the electric aggregation program offered by the city of Euclid on September 9, 2013. FirstEnergy Solutions Corporation (FES) is the competitive retail electric services provider for the city of Euclid's electric aggregation program. Complainant claims that it took nine months for FES to cancel her service with FES. In support of the complaint, the Complainant attaches an undated notice that her electric service has been disconnected and a confirmation letter from CEI dated July 25, 2013. The confirmation letter states, in part, that FES will be the Complainant's electric generation supplier commencing with the next scheduled meter reading on August 7, 2013. The Complainant states that the program was not a benefit to her, as the charges on her bill increased. The Complainant also argues the program amounts to fraud and theft.
- (2) On August 4, 2014, CEI filed its answer to the complaint and a motion to dismiss. In its answer, CEI states that it is without sufficient knowledge or information to admit or deny the Complainant opted out of the Euclid aggregation on September 9, 2013. CEI avers that the disconnection notice and

confirmation letter speak for themselves. CEI states that the Complainant was disconnected for nonpayment on May 30, 2014. Further, CEI asserts that the complaint is barred by *res judicata*, laches, waiver, and estoppel.

- (3) In its motion to dismiss, CEI requests that the complaint be dismissed with prejudice, as the claims are unrelated to CEI. CEI states that it did not receive or process any requests regarding the Euclid governmental aggregation program and the Complainant does not assert CEI had a role in providing the Complainant's electric service.
- (4) By Entry issued on August 5, 2014, the attorney examiner made FES a party to this proceeding and directed FES to file an answer, or other responsive pleading, to the complaint within 20 days of the issuance of the Entry.
- (5) On August 25, 2014, FES filed its answer to the complaint. In its answer, FES denies that the Complainant opted out of the Euclid aggregation program on September 9, 2013, but admits that the Complainant attempted to terminate her service with FES. FES states Complainant's service with FES was terminated on April 17, 2014, and the termination fee was waived. Further, FES states that it is without sufficient knowledge or information to admit or deny the remaining statements in the complaint or in the documents attached to the complaint.
- (6) Consistent with the Commission's policy in complaint cases, this complaint was scheduled for a settlement conference to facilitate the possibility of the parties resolving the issues raised in the complaint without the need for a hearing. By Entry issued on September 11, 2014, this complaint was scheduled for a settlement conference on October 7, 2014, at the Commission's offices.
- (7) The Commission notes that on October 1, 2014, the Complainant contacted the Commission to confirm the date and time of the conference. The assigned attorney examiner returned the Complainant's call and informed her of the date and time of the settlement conference in this matter.
- (8) On October 7, 2014, counsel for each of the respondents was present for the scheduled settlement conference. However, the

Complainant failed to appear for the settlement conference or to inform the attorney examiner, in advance, that she would be unable to appear.

- (9) On October 15, 2014, FES filed a motion to dismiss the complaint, with prejudice, for failure to set forth reasonable grounds to sustain a complaint and for lack of prosecution. In its motion to dismiss, FES states that in accordance with Ohio Adm.Code 4901:1-27-17, Complainant received the supplemental opt out notice on or after June 28, 2013. According to FES, the supplemental opt out notice informed the Complainant that she had 21 days to opt out of the program, including the process to opt out, and explained that participation in the governmental aggregation program guaranteed a 6 percent discount off CEI's price to compare. Further, FES states Complainant's claim that she attempted to opt out is irrelevant, as the Commission rules prescribe when a resident is eligible to opt out of the aggregation. FES contends that the Complainant could not have opted out on September 9, 2013, as the opt out period had elapsed.
- (10) Further, FES asserts that the Complainant is well aware of Commission procedures based on the number of complaints she has initiated. FES states that the Complainant did not notify counsel for CEI or FES that she would not attend the settlement conference on October 7, 2014. FES states that the Complainant's failure to appear waste the resources of the respondents and the Commission Staff. Accordingly, FES requests that the complaint be dismissed with prejudice.
- (11) On October 27, 2014, Complainant filed 24 pages asserting various allegations. In regards to the issues raised in this case, Complainant states that she disagrees with FES' motion to dismiss for failure to set forth reasonable grounds for a complaint and avers that the documents filed demonstrate otherwise.¹
- (12) On or about October 30, 2014, Complainant contacted the assigned attorney examiner claiming, among several other things, that she was unable to find an attorney to represent her in this matter. Pursuant to Entry issued November 6, 2014,

¹ The remaining 22 pages of the correspondence raise allegations in regards to another utility company.

Complainant was given until December 1, 2014 to secure counsel and for counsel to file an appearance in this case. Further, the Entry directed that if Complainant was unable to secure counsel, Complainant needed to contact the Commission to indicate whether she wished to continue with the prosecution of her complaint by December 1, 2014. The November 6, 2014 Entry also informed the Complainant that if she failed to contact the Commission by December 1, 2014, the assigned attorney examiner would recommend to the Commission that the complaint be dismissed for failure to prosecute.

- (13) The Commission grants the motions to dismiss the complaint. The Commission notes that this is the third complaint filed by the Complainant against CEI in less than 2 years, Case Nos. 12-2102-EL-CSS and 14-686-EL-CSS.²

On July 17, 2012, the Complainant filed a complaint against CEI alleging that her electric bills were inaccurate, account information provided to her was misleading, that CEI was not properly reflecting the payments made on her electric account, and that her electric account did not correctly reflect her enrollment in the Percentage of Income Payment Plan (PIPP) Plus program. After thoroughly considering all the evidence of record, the Commission ruled that the Complainant had failed to sustain the burden to substantiate any of the allegations raised in her complaint and dismissed the complaint. *In re Gwendolyn Tandy v. CEI*, Case No. 12-2102-EL-CSS (*Tandy v. CEI 1*), Opinion and Order (Mar. 6, 2013) at 1, 9. Thereafter, on January 13, 2014, the Complainant filed correspondence in the *Tandy v. CEI 1* docket, stating among numerous other things, that she "opted out of FirstEnergy charges September 6, 2013" and attaches the bill issued September 2013. However, the Complainant's statement was made after the Commission's decision was a final Order. *Tandy v. CEI 1*, Opinion and Order (Mar. 27, 2013); Entry on Rehearing (May 1, 2013).

- (14) On April 16, 2014, in Case No. 14-686-EL-CSS (*Tandy v. CEI 2*), among the over 130 pages filed by the Complainant, is the same

² In addition to the complaints listed, the Complainant also initiated two more complaints during the same period, Case Nos. 12-2103-GA-CSS and 14-795-GA-CSS.

notice of change of electric supplier filed in this proceeding. In *Tandy v. CEI 2*, the Complainant alleged, among other things, that CEI provided inaccurate bills, improperly transferred charges to her account, enrolled her in the PIPP Plus program without her consent, illegally disconnected her service, and denied her energy assistance. In *Tandy v. CEI 2*, the Complainant raised several issues regarding her electric service in September 2013. However, in *Tandy v. CEI 2*, the Complainant did not claim that she attempted to opt out of the electric aggregation program on September 9, 2013. After considering the allegations raised by the Complainant, the Commission concluded that the *Tandy v. CEI 2* complaint consisted of claims raised in *Tandy v. CEI 1* or was a consequence of the Commission's decision in *Tandy v. CEI 1* and was therefore barred from reconsideration under the doctrine of res judicata. *In re Gwendolyn Tandy v. CEI*, Case No. 14-686-EL-CSS (*Tandy v. CEI 2*), Entry (Jul. 30, 2014) at 2. No application for rehearing of the Commission's decision in *Tandy v. CEI 2* was filed and, therefore, the Order issued in the case is final.

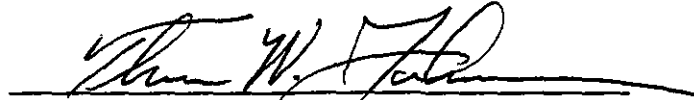
- (15) In the complaint at bar, the Complainant raises claims that could have been raised in *Tandy v. CEI 2*. In *Grava v. Parkman Twp.*, the Ohio Supreme Court held that it has long been the law of Ohio that an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995) (quoting *Rogers v. Whitehall*, 25 Ohio St.3d 67, 69, 494 N.E.2d 1387, 1388 (1986)). Accordingly, under the doctrine of res judicata, the Complainant's claim in the current proceeding is barred as to CEI. FES, however, was not a party to the Complainants' previous complaints.
- (16) The Commission also grants FES' motion to dismiss for lack of prosecution. The Complainant did not appear for the settlement conference and has not contacted the Commission to indicate her intentions to pursue this complaint. Accordingly, the Commission dismisses the complaint for failure to prosecute as to FES.

It is, therefore,

ORDERED, That the motions to dismiss the complaint are granted. It is, further,

ORDERED, That a copy of this Entry be served upon all persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

Lynn Slaby



M. Beth Trombold



Asim Z. Haque

GNS/dah

Entered in the Journal
DEC 10 2014



Barcy F. McNeal
Secretary