

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Direct	)	
Energy Business, LLC,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 14-1277-EL-CSS
	)	
Duke Energy Ohio, Inc.,	)	
	)	
Respondent.	)	

ENTRY

The attorney examiner finds:

- (1) On July 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 of 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, per Direct, is unjust and unreasonable and a violation of R.C. 4905.32 and R.C. 4928.35(C).
- (2) 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 development. 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 4928.35 and requests that the complaint be dismissed.

- (3) On October 31, 2014, Duke filed a motion to dismiss and a memorandum in support of the motion. Duke asserts that Direct is asking the Commission to give orders to PJM, which is beyond the Commission's jurisdiction. Duke also states that, because Direct is not an end use customer, it does not have standing to raise the complaint. Duke further suggests that Direct does not state a proper claim, as its complaint does not specify what tariff Duke violated or what customer received preferential treatment. For these reasons, Duke seeks to have the complaint dismissed.
- (4) On November 14, 2014, Direct filed a memorandum contra to Duke's motion to dismiss. Direct avers that Duke violated the supplier tariff that was filed with the Commission, through which the Commission would retain jurisdiction. Direct also asserts that because it was overcharged, other CRES providers were therefore undercharged, and thus received preferential treatment.
- (5) On November 21, 2014, Duke filed a reply to Direct's memorandum contra.
- (6) The attorney examiner finds there are reasonable grounds for the complaint, and denies the motion to dismiss. Direct's complaint alleges that Duke violated the Certified Supplier Tariff by failing to provide accurate metering data. The tariff was filed with and approved by the Commission, and the Commission maintains jurisdiction over charges based on such a tariff. *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 573 N.E.2d 655 (1991).
- (7) The attorney examiner finds that this case should be scheduled for a hearing beginning April 14, 2015, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, 11th floor, Columbus, Ohio, 43215-3793.

- (8) All discovery requests should be conducted in accordance with Ohio Adm. Codes 4901-1-16 and 4901-1-24.
- (9) Any party intending to present direct, expert testimony should comply with Ohio Adm. Code 4901-1-29(A)(1)(h), which requires that all such testimony to be offered in this type of proceeding be filed and served upon all parties no later than seven days prior to the commencement of the hearing.
- (10) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966).

It is, therefore,

ORDERED, That a hearing is scheduled for April 14, 2015, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-C, Columbus, Ohio 43215-3793, in accordance with Finding (7). It is, further,

ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Nicholas Walstra

---

By: Nicholas Walstra  
Attorney Examiner

jrj/vrm

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**1/13/2015 11:09:11 AM**

**in**

**Case No(s). 14-1277-EL-CSS**

Summary: Attorney Examiner Entry scheduling a hearing for April 14, 2015, at 10:00 a.m.; electronically filed by Vesta R Miller on behalf of Nicholas Walstra, Attorney Examiner, Public Utilities Commission of Ohio