

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Bruce Snyder,)	
Complainant,)	
v.)	Case No. 13-2031-EL-CSS
FirstEnergy Solutions Corp.,)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the complaint, testimony, arguments of the parties, the applicable law, and evidence of record, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Bruce Snyder, 4461 Powder Horn Drive, Beavercreek, Ohio 44113, pro se.

Laura McBride, Ulmer and Berne, 1660 West Second Street, Cleveland, Ohio 44113, and Scott Casto, First Energy Service Company, 76 South Main Street, Akron, Ohio 44308, on behalf of FirstEnergy Solutions Corporation.

OPINION:

I. History of the Proceeding

On October 2, 2013, Bruce Snyder (Mr. Snyder or Complainant) filed a complaint against FirstEnergy Solutions Corp. (FES), stating that on May 22, 2013, he applied online at the FES website for \$.0536/kWh for three years. The complaint states that on May 28, 2013, Mr. Snyder received an FES letter indicating difficulty enrolling his account, and on May 31, 2013, he called FES and confirmed with service representative Steve Hogan (Mr. Hogan) that (a) Mr. Snyder's electric distribution utility (EDU) was the Dayton Power and Light Company (DP&L), (b) the \$.0536/kWh offer was still valid, and (c) his service at \$.0536/kWh would begin as of his June 20, 2013 meter reading date.

The complaint further states that, when the \$.0536/kWh rate did not appear on his July 28, 2013 bill, Mr. Snyder called FES the next day. According to the complaint, Mr. Snyder was informed by an FES representative that he would soon be enrolled at \$.0536/kWh. When Mr. Snyder heard nothing more from FES, he called FES five times in August 2013, and was "accused of incorrectly entering names, zip codes, [and] account numbers" on his application, despite receiving a May 28, 2013 FES letter indicating that all such information had been entered correctly.

The complaint states that on August 5, 2013, FES representative Tuniqua Jennings (Ms. Jennings) informed him that \$.0536/kWh was only available to customers whose EDU was Duke Energy Ohio, Inc. (Duke), and that on August 31, 2013, FES service representative Fred Maurer (Mr. Maurer) contacted him, offering \$.0594/kWh for three years and reimbursement for paying more than \$.0536/kWh. The complaint states that Mr. Snyder never agreed to Mr. Maurer's offer, but subsequently he received a letter indicating that he was enrolled at \$.0594/kWh. Mr. Snyder then contacted Mr. Maurer to cancel enrollment at \$.0594/kWh. Finally, the complaint alleges, in September 2013 FES service representative Becky Pastier (Ms. Pastier) called, offering reimbursement for the difference between \$.0594/kWh and \$.0536/kWh for three years. Mr. Snyder seeks compensation for paying more than \$.0536/kWh, and for time invested in trying to enroll at \$.0536/kWh, in addition to the expenses of photocopying, mailing, and making telephone calls to FES.

FES filed its answer on October 22, 2013. FES admits to many of Complainant's assertions, but contends that that \$.0536/kWh was available only for customers whose EDU was Duke. According to FES, it never confirmed that Mr. Snyder's service would be billed at \$.0536/kWh starting in June 2013.

By Entry issued October 30, 2013, the attorney examiner scheduled a December 17, 2013 settlement conference. The parties met but were unable to resolve matters.

On November 19, 2013, FES filed a motion to strike Mr. Snyder's requests for money damages, asserting that the Commission has no power to award such damages. In a January 15, 2014 Entry, the attorney examiner granted FES's motion to strike.

By Entry issued February 18, 2014, the attorney examiner scheduled a May 15, 2014, hearing.

On March 4, 2014, Complainant filed a motion contending that the Commission should fine FES for not providing Staff with records of his calls within five days of Staff's request. On March 17, 2014, FES filed a memorandum contra, arguing that Complainant lacked standing to file such a motion. In reply, on March 23, 2014, Complainant asserted that FES's memorandum contra was not properly served upon

him. The attorney examiner issued an Entry on March 28, 2014, denying Complainant's motion, given that FES had simply made a typographical error in his address, and allowing him until April 8, 2014, to file a reply memorandum. Complainant filed two reply memoranda, on April 3, 2014, and April 9, 2014, respectively, asserting that his allegation of slamming should have resulted in records being provided to the Commission and to himself.

On May 2, 2014, the attorney examiner issued an Entry, ordering that if Complainant wished to address, at hearing, FES's failure to timely provide records to him, he must amend his complaint. Complainant did so on May 8, 2014, contending that his calls to FES constituted a "complaint" under Commission rules that require investigation and follow up within five calendar days. On May 9, 2014, FES filed a motion to continue the hearing, asserting that the amended complaint contained alleged violations previously unstated, and requesting more time to address the new allegations. In a May 13, 2014 Entry, the attorney examiner granted FES's continuance request. FES replied to the amended complaint on May 27, 2014, for the most part denying Complainant's allegations.

On July 8, 2014, the attorney examiner issued an Entry scheduling an August 18, 2014, hearing. The parties participated in the hearing on the designated date.

FES filed a brief on October 14, 2014. Mr. Snyder did not file a brief or a reply brief.

II. The Law

FES is an electric services company as defined in R.C. 4928.01(A)(9) and, as such, is subject to the jurisdiction of this Commission. In addition, pursuant to R.C. 4928.16(A)(1), the Commission has jurisdiction under R.C. 4905.26, upon complaint by any person regarding the provision of service by an electric services company. R.C. 4905.26 requires, among other things, that the Commission set for hearing a complaint whenever reasonable grounds appear that:

any rate, fare, charge * * * or service rendered, charged, demanded * * * is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished * * * is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained * * * .

In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.W. 2d 666 (1966).

III. Testimony by the Parties: Additional Background

A. Complainant's Testimony

According to Complainant, FES service representatives attributed his enrollment difficulties to several factors. First, he asserts, on May 31, 2013, Mr. Hogan said that Complainant's account number on the application was not the correct number of digits (Tr. at 29-30). Complainant contends that the application required an 11-digit account number, so he included a single number following the ten digit DP&L account number on his bill (Tr. at 22-24). Complainant states that Mr. Hogan ensured that 11 digits were present before resubmitting the application, but during subsequent conversations with FES's Deborah Ison (Ms. Ison) on July 29, 2013, and FES's Ms. Jennings on August 5, 2013, Complainant was told that the account number on the application should be ten digits (Tr. at 49, 167, 176, 178). Second, he states, FES's Lisa Manes (Ms. Manes) and Kim Dolly (Ms. Dolly) informed him on August 9, 2013, that his wife's name, which is associated with the DP&L account, was misspelled on the application (Tr. at 55-56, 192-193, 196). Complainant contends, however, that Ms. Ison misspelled his wife's name when she resubmitted his application (Tr. at 55-56). Finally, Complainant states, on August 9, 2013, Ms. Manes explained that he had incorrectly indicated Duke as his EDU on the application, and that \$.0536/kWh was only available to Duke EDU customers (Tr. at 207-208).

Mr. Snyder emphasizes that, during the two month period that began when he submitted his application and ended with his August 9, 2013 discussion with Ms. Manes, he was unsure if the \$100.00 termination fee in FES's contract was applicable, so he did not attempt to find another electric supplier (Tr. at 15, 17, 44, 46, 207-208, 210; Snyder Ex. 11 at FES contract). Mr. Snyder concedes that no FES representatives told him that he was subject to the termination fee, nor did he ask if the termination fee applied to him. However, he asserts, no FES representatives stated that the termination fee did not apply to him. (Tr. at 96-97.) Complainant adds that he received FES's contract, which specified terms and conditions and identified Duke as his EDU, several days after submitting his application, but he did not read the contract until September 2013 or October 2013 (Tr. at 93-96).

B. FES's Testimony

Matthew Green (Mr. Green), Manager of Retail Services Management, testified for FES. To enroll online from FES's website, Mr. Green explained, a "critical first step" consists of applicants entering their zip code, which provides a link to their EDU, or entering the name of their EDU. After EDU identification, available rate offers are

displayed; upon selecting an offer, applicants must provide information such as name, address, and EDU account number. Applicants are then transferred to a screen that displays a copy of the proposed contract, which contains terms and conditions, and a summary of information that applicants provided. Applicants must review and confirm such information and indicate their intent to enroll with FES before submitting the application. (Tr. at 106, 110-113; FES Ex. 1 at 2-3).

According to Mr. Green, Complainant accessed FES's website via the Commission website and submitted a request to enroll the account of Elizabeth Snyder (Mrs. Snyder) at \$.0536/kWh, which was available only to Duke EDU customers (FES Ex. 1 at 3; Tr. at 122). Mr. Green explained that FES's website specifically identifies the EDU to which each rate offer corresponds, and that Complainant apparently did not notice Duke indicated as the EDU for \$.0536/kWh (FES Ex. 1 at 4-5; FES Ex. 1, Att. MCG-1 and MCG-2; Tr. at 109-111, 145). Mr. Green contends that Complainant did not submit his zip code with the application, which would have indicated DP&L as his EDU; rather, Complainant added to his ten-digit DP&L account number a trailing "3" that that appears on his bill, thus submitting an 11-digit number, which is the same number of digits as for Duke EDU customers (Tr. at 117-119, 121, 145). When an online applicant clicks on "complete enrollment," Mr. Green added, the applicant is e-mailed an enrollment request confirmation and FES's terms and conditions, which indicate the applicable EDU (Tr. at 114-115, 119; FES Ex. 1, Att. MCG-3). Mr. Green notes that the enrollment request confirmation sent to Mr. Snyder on May 22, 2013, indicated Duke as the EDU (Tr. at 115; FES Ex. 1, Att. MCG-3).

Mr. Green stated that, after receiving Complainant's application on May 22, 2013, FES forwarded the information to Duke, which rejected the application as an "account not found" because it was not Complainant's EDU (Tr. at 124; FES Ex. 1 at 6). By letter dated May 28, 2013, FES notified Complainant of Duke's rejection. Mr. Green stated that rejections for "account not found" are common, and typically are caused by an applicant providing an incorrect account name, account number, or service address, rather than incorrect EDU identification. Consequently, asserts Mr. Green, Mr. Hogan focused on whether Complainant's account number was correctly submitted, and Ms. Ison focused on whether Mrs. Snyder's name was spelled correctly. (Tr. at 123-125; 130-131, 139-140, 151-152; FES Ex. 1 at 6-8.) Mr. Green is unaware of any other application being rejected because an EDU was misidentified, and he contends that the unique nature of Complainant's error caused FES's delay in recognizing the true reason that the application was repeatedly rejected (Tr. at 123-125, 129-130; FES Ex. 1 at 5-8). Thus, Mr. Green stated, it was not until August 2013 that Ms. Jennings, as well as Ms. Manes and Ms. Dolly, informed Complainant that \$.0536/kWh was only available to Duke EDU customers (Tr. at 140; FES Ex. 1 at 8).

According to Mr. Green, on August 16, 2013, Mr. Maurer contacted Complainant to apologize, offer \$.0594/kWh as the best rate for DP&L EDU customers, and discuss

reimbursement. Mr. Green asserts that Mr. Maurer believed Complainant had agreed to \$.0594/kWh and sent Complainant a confirmation letter. However, when Complainant e-mailed FES on August 19, 2013, to decline \$.0594/kWh, FES promptly cancelled enrollment before Complainant received an FES bill. (Tr. at 126, 133-134, 152; FES Ex. 1 at 8-9). FES adds that because Mr. Snyder had submitted an internet application for enrollment, his communications with FES reflect the efforts of Complainant and FES to "finalize his internet enrollment at appropriate and available price terms" (FES Br. at 11). FES contends that Complainant's situation is not one in which, as anticipated by Commission rules, "the parties' only communications were by telephone and/or Snyder's intentions were not documented otherwise in writing (electronically)" (FES Br. at 11). Therefore, concludes FES, Commission rules for telephone enrollment do not apply to Mr. Maurer's enrollment of Mr. Snyder at \$.0594/kWh, because discussions between Complainant and Mr. Maurer "constitute settlement discussions that fall outside the scope of the Commission's marketing rules" (FES Br. at 11-12).

Mr. Green explained that, in response to a request by Staff for recordings of calls between Complainant and FES, a compact disc (CD) of recordings was mailed to Staff on September 18, 2013 (Tr. at 127-128). Mr. Green did not indicate when Staff made the request. He did, however, add that on September 30, 2013, and October 30, 2013, Staff made two more requests to FES for such recordings; FES mailed additional CDs to Staff on September 30, 2013, and November 4, 2013, respectively (FES Ex. 1 at 10-11).

IV. Alleged FES Violations of Commission Rules; FES Responses; Commission Conclusions

A. Maintenance of Internet Enrollment Information

Ohio Adm.Code 4901:1-21-06(D)(3)(g)(vi) and (vii) requires that a competitive retail electric service (CRES) provider maintain, in retrievable form, information submitted by the customer on an electronic consent form. The information must include the customer's account number issued by the EDU and the customer's mailing address.

Complainant asserts that some of the information that he submitted with his application, i.e. his address and 11-digit account number, is not illustrated on various pages from FES's database (Tr. at 17-23; Snyder Ex. 2, pages 1 and 3).

Mr. Green contends that information on pages 1 and 3 of Snyder Ex. 2 illustrates various "snapshots or extracts" of information from the enrollment database, and that the information contained in any "snapshot" can vary depending on the inquiries made to the database. He adds that such a "snapshot" is not all the information associated with an applicant, but it is the "pertinent information" that FES needs. (Tr. at 115-117.)

Mr. Green explained that when FES forwards an application to Duke, the last digit in the account number is omitted at Duke's request; consequently, pages 1 and 3 of Snyder Ex. 2 contain a 10-digit account number for Complainant, even though Mr. Snyder contends that he submitted an 11-digit account number (Tr. at 142-144).

The Commission finds that that Complainant did not meet his burden of proof regarding this alleged violation. In so doing, we observe Mr. Green's remarks that the type of information obtained from the FES database will vary with the kind of inquiry submitted to the database. Indeed, we observe that Complainant's address is clearly included in the FES database, as illustrated on Snyder Ex. 1, page 3, even though it is not indicated on Snyder Ex. 1, page 1. Further, we note Mr. Green's explanation that, when an application is forwarded to Duke, Duke requests only ten digits of a customer's account number.

B. Whether Complainant's Calls to FES Constitute a Complaint that Requires a Status Report to Complainant

Ohio Adm.Code 4901:1-21-01(G) defines a "complaint" as "any customer/consumer contact when such contact necessitates follow-up by or with the supplier of electric service or electric utility to resolve a point of contention." In addition, Ohio Adm. Code 4901:1-21-08(B)(1) requires a CRES provider to investigate customer complaints and, within three business days after receiving the complaint from the customer, provide a status report to the customer.

Complainant contends that his call to Mr. Hogan on May 31, 2013, was a complaint, because the point of contention concerned his "account number and how it got in their [FES's] system" (Tr. at 36-37). Mr. Snyder adds that although Commission rules require a CRES provider to investigate complaints and provide a status report in a maximum three business days, Mr. Hogan did not re-contact him. Also, Mr. Snyder alleges, when Ms. Pastier called him on September 9, 2013, 17 days had elapsed after his August 16, 2013, conversation with Mr. Maurer; further, Ms. Jennings did not, after her conversation with Complainant on August 5, 2013, ensure that a follow-up call was made to him, as she had promised. (Tr. at 44-47, 54, 74, 183.)

FES asserts that when an enrollment request is rejected, there is no "point of contention," because both parties have the same goal, i.e. enrollment of the applicant with FES (FES Br. at 6-7; FES Ex. 1 at 6-7). In FES's opinion, if a CRES provider's inability to enroll a customer constitutes a complaint, then the provider "would be overwhelmed * * * and paralyzed by the need to provide * * * status reports and conduct 'investigations' for each such rejection" (FES Br. at 6-7). FES contends that an applicant cannot create a complaint that warrants follow-up just because the applicant is unhappy with available offers or would prefer another utility's offer (FES Br. at 6-7).

The Commission finds that Mr. Snyder has met his burden of proof for this allegation. It is not merely the rejection of Complainant's application that constitutes his complaint; rather, it is Complainant's repeated calls attempting to determine why he had not been enrolled at \$.0536/kWh, and FES's failure to provide updates after repeated resubmission of the application. When Complainant contacted Ms. Ison on July 29, 2013, he contended that, following his May 31, 2013 discussion with Mr. Hogan, he should have been enrolled at \$.0536/kWh. Although Ms. Ison indicated that she would re-contact Complainant "if there's a problem," she did not do so, despite her correction to the spelling of Mrs. Snyder's name and resubmission of the application. (Tr. at 172-173.) Next, after Ms. Jennings' conversation with Complainant on August 5, 2013, Ms. Jennings did not ensure that Complainant received a follow-up call, despite her statement that she would investigate compensation for Complainant's lost savings, in addition to obtaining \$.0536/kWh for him (Tr. at 183-185). Finally, in response to Mr. Snyder's informal complaint to the Commission, Mr. Maurer called Complainant on August 16, 2013, offering \$.0594/kWh and stating that he would investigate possible compensation, but he did not re-contact Complainant to finalize such details before enrolling Mr. Snyder at \$.0594/kWh (Tr. at 216, 226-228).

C. Providing, in Timely Manner, Recordings of Complainant's Discussions with FES Representatives

Ohio Adm. Code 4901:1-21-06(D)(2)(b)(iii) requires that a CRES provider that enrolls a customer by telephone must provide a copy of the audio recording to the customer or to Staff within three business days of a request.

Complainant asserts that because Ms. Pastier informed him that FES does not provide directly to customers CDs of such recordings, he had to obtain the CDs by having Staff make the request for him (Tr. at 76-78). He further contends that FES allowed 107 days to elapse from the time he alleged unauthorized enrollment at \$.0594/kWh to the time that FES provided CDs of his calls (Tr. at 66-67).

Mr. Green states that, in response to a request by Staff for such recordings, a CD was mailed to Staff on September 18, 2013. He did not indicate when Staff made the request. He added that on September 30, 2013, and October 30, 2013, Staff made two more requests to FES for such recordings; FES provided two additional CDs to Staff on September 30, 2013, and November 4, 2013, respectively. (FES Ex. 1 at 10-11.) FES contends that it timely cooperated with Staff to provide the requested recordings, and that, furthermore, Complainant lacks standing to enforce the applicable rule, given that the recordings were initially provided to Staff upon Staff's request (FES Br. at 13-14).

The Commission finds that Complainant did not sustain his burden of proof concerning the alleged violation. The record indicates that on October 1, 2013, or October 2, 2013, Complainant requested such CDs with Staff's help, and that the

recordings were received by Staff on November 6, 2013, and by Complainant on December 9, 2013 (Snyder Ex. 1; Snyder Ex. 25; Snyder Ex. 29). We realize that Complainant had to obtain many such CDs with Staff's help, given Ms. Pastier's position that FES would not provide the CDs directly to a customer (Snyder Ex. 21). Still, Mr. Snyder has no standing to assert that FES was tardy in providing such recordings to Staff; furthermore, because he did not request the CDs directly from FES, he cannot assert that FES did not timely provide the CDs to him. Similarly, we note Mr. Green's testimony that, in response to Staff's requests on September 17, 2013, September 30, 2013, and October 30, 2013, CDs were mailed to Staff on September 18, 2013, September 30, 2013, and November 4, 2013, respectively; again, however, Complainant lacks standing to allege that the CDs were not provided in timely manner (Tr. at 127-128; FES Ex. 1 at 10-11). Finally, although Snyder Ex. 8, page 1, is a November 27, 2013, FES letter to Complainant indicating the enclosure of two CDs, the record is incomplete regarding when, or by whom, the request for the CDs was made.

D. Enrollment of Complainant at \$.0594/kWh

Ohio Adm.Code 4901:1-21-06(D)(2)(a)(iv) requires that, to enroll a residential customer telephonically, a CRES provider must, before completion of the call, verbally ask for and receive the customer's acknowledgement that the customer wishes to enroll with the CRES provider. In addition, Ohio Adm.Code 4901:1-21-06(D)(2)(a)(vi) requires that the CRES provider verbally ask for and receive the customer's acceptance of certain terms and conditions of service, including but not limited to the length of the contract term, approximate service commencement date, or contract termination date.

Complainant emphasizes that he was never informed by any FES representative that he would be enrolled at \$.0594/kWh (Tr. at 63-66). By declining a \$.0594/kWh offer from Ms. Jennings on August 5, 2013, he asserts, he clearly indicated no interest in that rate, yet Mr. Maurer enrolled him at \$.0594/kWh on August 16, 2013 (Tr. at 10-11, 76; Snyder Ex. 7 p. 2). Complainant emphasizes that he never agreed to \$.0594/kWh; rather, he agreed only with Mr. Maurer's promise to re-contact him after their final conversation on August 13, 2013 (Tr. at 152; Snyder Ex. 19).

FES explains that Mr. Maurer contacted Complainant to apologize, offer \$.0594/kWh as the best rate available to DP&L EDU customers, and discuss reimbursement. FES believes that, during his final conversation with Mr. Maurer, Complainant had agreed to \$.0594/kWh; however, when Mr. Snyder contacted FES to cancel enrollment at that rate, FES cancelled the enrollment before Complainant was billed. (Tr. at 126, 133-134, 152; FES Ex. 1 at 8-9.) FES adds that because Mr. Snyder had submitted an internet enrollment application, discussions between Complainant and FES reflect efforts to "finalize his internet enrollment at appropriate and available price terms." FES contends that the circumstances of Mr. Snyder's attempted enrollment are not such that "the parties' only communications were by telephone and/or Snyder's

intentions were not documented otherwise in writing (electronically)," and that, therefore, the Commission's rules for enrollment solely by telephone are inapplicable to this complaint. (FES Br. at 11).

The Commission finds that Complainant has met his burden of proof in contending that FES improperly enrolled him at \$.0594/kWh. We disagree with FES's contention that Mr. Maurer's discussions with Complainant were an effort to finalize his internet enrollment, given that Mr. Snyder had attempted to enroll at a rate only available to Duke EDU customers, and Mr. Snyder had indicated during discussions with Mr. Hogan and Ms. Jennings his interest in \$.0536/kWh (Tr. at 162-163, 181-182). In addition, the record indicates that, during their final August 16, 2013 conversation, Mr. Maurer said to Complainant "I'll do my best to get you compensated fairly," and "\$.0594/kWh is the best we can get you on, and then we'll see if we can compensate you elsewhere, but I'll see what I can find for you," to which Mr. Snyder replied "Okay." Mr. Maurer then added "Well - we'll make it right as best we can, sir"; Mr. Snyder replied "Okay." (Tr. at 227-228.) Although FES asserts that the preceding conversation indicates Complainant's agreement to \$.0594/kWh, the Commission notes Complainant's contention that he was only agreeing with Mr. Maurer's remark to be re-contacted (Tr. at 152; Snyder Ex. 19). Indeed, because Mr. Maurer left unresolved the matter of compensation during their final conversation, it is doubtful whether Mr. Maurer's offer of \$.0594/kWh was actually accepted by Mr. Snyder (Tr. at 227-228). Finally, Mr. Maurer did not communicate to Complainant, or receive Complainant's acceptance of, information regarding the length of the contract term, approximate service commencement date, or contract termination date, as is required for telephonic enrollment (Tr. at 227-228).

E. Referring a Customer to the Commission When the Customer Alleges an Unauthorized Change to Another Supplier

Ohio Adm.Code 4901:1-21-08(C)(2)(b) requires that if a customer alleges that the customer's supplier was switched without the customer's authorization, the CRES provider must refer the customer to the Commission and provide the telephone number of the Commission's call center.

Mr. Snyder contends that FES did not, upon being notified by him of his unauthorized enrollment at \$.0594/kWh, provide him with the Commission's call center telephone number (Tr. at 66-67).

FES considers unfounded Mr. Snyder's assertion that it failed to refer him to the Commission after Complainant cancelled enrollment at \$.0594/kWh. FES asserts that Mr. Snyder had indicated at hearing that he had initiated an informal complaint at the Commission before speaking with Mr. Maurer. (FES Br. at 10.)

We find that Complainant did not meet his burden of proof for this allegation. FES's failure to refer Mr. Snyder to the Commission under such circumstances is a moot point, as Mr. Snyder had already contacted the Commission to make an informal complaint (Tr. at 97-98; Snyder Ex. 1).

F. Good Faith Effort to Resolve Disputes

Ohio Adm.Code 4901:1-21-08(B)(6) requires each CRES provider to make good faith efforts to resolve disputes.

Mr. Snyder contends that FES violated Commission rules by not acting in good faith while attempting to resolve the dispute. Among the examples he notes are FES's refusal to provide directly to him CDs of his conversations with FES representatives; FES's failure to provide such CDs in timely manner to Staff; FES's failure to refer him to the Commission upon his cancellation of unauthorized enrollment at \$.0594/kWh; and omission of his address and 11-digit account number from FES's database (Tr. at 31-36; Snyder Ex. 8).

FES argues that it demonstrated good faith through numerous prolonged discussions with Complainant to determine why he was not enrolled at \$.0536/kWh. FES also observes that it offered lost savings to Complainant and \$.0594/kWh to him as the lowest rate available to DP&L EDU customers (FES Br. at 15).

The Commission finds that Mr. Snyder did not meet his burden of proof concerning the lack of good faith allegation. We note that FES representatives Mr. Hogan, Ms. Ison, Ms. Jennings, Ms. Manes, and Mr. Maurer attempted to correct what they believed were errors on Complainant's application (Tr. at 162-164, 169-173, 185, 214, 222-223, 226-228). In addition, while Mr. Snyder initiated many calls to FES, Ms. Manes and Mr. Maurer initiated calls to Complainant (Tr. at 206, 216; Snyder Ex. 1 and Ex. 7.) We also take notice of Mr. Green's contention that when Complainant applied for a rate not offered to DP&L EDU customers, such an error had not been previously been encountered by FES, thus hindering discovery of the true reason why Mr. Snyder's application was rejected (FES Ex. 1 at 6; Tr. at 129-130). Further, upon being contacted by Mr. Snyder, FES immediately cancelled his enrollment \$.0594/kWh; therefore, Complainant was never billed at that rate (FES Ex. 1 at 9-10). Finally, as discussed above, Complainant had contacted the Commission with an informal complaint before he was enrolled at \$.0594/kWh, so it was a moot point that FES refer Mr. Snyder to the Commission regarding his objections to such enrollment (Tr. at 97-98; Snyder Ex. 1). In sum, while the process was undoubtedly frustrating for Mr. Snyder, we do not find that FES failed to act in good faith to resolve the dispute.

V. Discussion and Conclusion

The Supreme Court of Ohio has directed that the burden of proof in complaint proceedings before the Commission is upon the complainant. *Grossman v. Public Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966). With this in mind, as well as the provisions of R.C. 4905.26, we find that Complainant has met the burden of proof concerning his contention that FES did not provide, as required by Ohio Adm.Code 4901:1-21-08(B)(1)(a), a status report to him within three business days of receiving his complaint, and that FES did not comply with requirements for enrolling Complainant by telephone, as specified in Ohio Adm.Code 4901:1-21-06(D)(2)(a)(iv) and (vi). We further find that Complainant did not meet the burden of proof for his allegations that (a) FES did not properly maintain enrollment information submitted with his online application, as required by Ohio Adm.Code 4901:1-21-06(D)(3)(g)(vi) and (vii); (b) FES failed to provide, upon his request and within three business days as required by Ohio Adm.Code 4901:1-21-06(D)(2)(b)(iii), recordings of his conversations with FES representatives; (c) FES did not refer him to the Commission upon being notified that he did not authorize enrollment at \$.0594/kWh, as required by Ohio Adm.Code 4901:1-21-08(C)(2)(b); and (d) FES failed to act in good faith to resolve the dispute, as required by Ohio Adm.Code 4901:1-21-08(B)(6).

In light of our findings, within 60 days of issuance of this Opinion and Order, we direct Staff of the Commission's Reliability and Service Analysis section to audit FES's procedures and practices concerning handling of customer complaints. Staff and FES are directed to work together to address any issues raised in the audit. In addition, Ohio Adm.Code 4901:1-21-06(E) requires that if an EDU rejects a customer from enrollment, the CRES provider must notify the customer, within five business days of the EDU's rejection, that the customer will not be enrolled or enrollment will be delayed, along with the reason for the rejection or delay. Therefore, we also direct Staff to review FES's records to determine reasons why EDUs have rejected attempts to enroll with FES, the steps FES follows after such a rejection or delayed enrollment, and whether additional information is necessary to help FES better identify why rejection or delay occurs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 2, 2013, Complainant filed a complaint with the Commission.
- (2) On October 22, 2013, FES filed its answer.
- (3) On December 17, 2013, a prehearing conference was held; however, the parties were not able to resolve the complaint.

- (4) By Entry dated February 18, 2014, the attorney examiner found reasonable grounds for complaint and scheduled a hearing for May 15, 2014.
- (5) Complainant amended the complaint on May 8, 2014.
- (6) On May 9, 2014, FES requested a continuance of the hearing. The attorney examiner granted the request for continuance on May 13, 2014; FES filed its amended answer on May 27, 2014.
- (7) On July 8, 2014, the attorney examiner issued an Entry scheduling an August 18, 2014 hearing, at which both parties participated.
- (8) FES filed its brief on October 14, 2014. Complainant did not file a brief or reply brief.
- (9) In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Public Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).
- (10) Complainant has met his burden of proving that FES did not, within three business days of receiving his inquiries about not being enrolled at \$.0534/kWh, provide a status report to him, and that FES improperly enrolled him at a rate that he did not agree to.
- (11) Complainant has not met his burden of proving that (a) FES did not properly maintain, in its database, information that he submitted with his application; (b) FES did not, within three business days of receiving his request, provide copies of his recorded conversations with FES representatives; (c) FES failed to refer him to the Commission, despite being notified of his unauthorized enrollment at \$.0594/kWh; and (d) FES did not act in good faith while attempting to resolve the dispute.

ORDER:

It is, therefore,

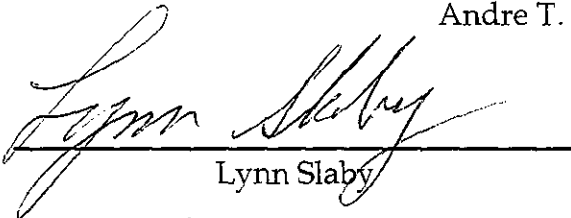
ORDERED, That within 60 days of issuance of this Opinion and Order, Staff proceed with an audit and review of FES as specified in Part V of this Opinion and Order. It is, further,

ORDERED, That a copy of this decision be served upon Complainant, FES, and any interested persons of record.

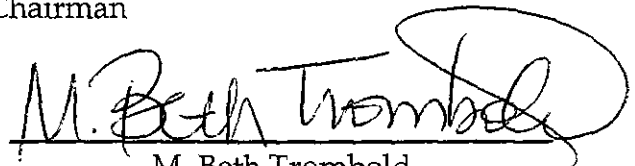
THE PUBLIC UTILITIES COMMISSION OF OHIO



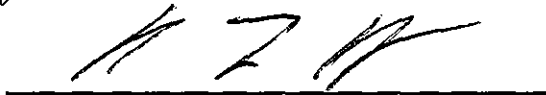
Andre T. Porter, Chairman



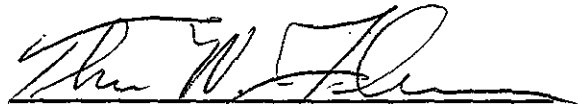
Lynn Slaby



M. Beth Trombold



Asim Z. Haque



Thomas W. Johnson

JML/sc

Entered in the Journal

JAN 20 2016

Barcy F. McNeal
Secretary