

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
STAND ENERGY CORPORATION,**

**COMPLAINANT,**

**v.**

**CASE NO. 16-1037-TP-CSS**

**WINDSTREAM OHIO, LLC; WINDSTREAM  
NUVOX OHIO, LLC; AND WINDSTREAM  
COMMUNICATIONS, LLC,**

**RESPONDENTS.**

**ENTRY**

Entered in the Journal on July 29, 2016

{¶ 1} Pursuant to R.C. 4927.21, the Commission has authority to consider written complaints filed against a telephone company by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the telephone company that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Windstream Ohio, LLC; Windstream Nuvox Ohio, LLC; and Windstream Communications, LLC (collectively, Windstream or respondents) may be telephone companies as defined in R.C. 4905.03 and, as such, may be subject to the jurisdiction of this Commission.

{¶ 3} Stand Energy Corporation (Stand or Complainant) alleges that it is authorized by the Commission to act as a Competitive Retail Natural Gas Supplier and as a Competitive Retail Electric Supplier.

{¶ 4} For its complaint, Stand alleges that it entered into a customer service agreement with the respondents on May 5, 2011. The respondents agreed to provide

telephone and facsimile services to Stand. Stand alleges that the respondents are public utilities subject to regulation by the Commission.

{¶ 5} After being provided service, Stand alleges that it experienced intermittent problems with telephone and facsimile communications, such as extended outages and dropped calls. Stand accuses the respondents of failing to provide reasonable access to company representatives to address the service issues.

{¶ 6} Unsatisfied with Windstream's service, Stand canceled the automatic renewal provision in its contract, effective May 2014. Stand, however, continued with service on a month-to-month basis.

{¶ 7} Stand alleges that service issues continued. On January 12, 2016, Stand provided written notice, by certified mail, that it would terminate the month-to-month service contract.

{¶ 8} Notwithstanding timely written notice of cancellation, Stand alleges that Windstream delivered an invoice for \$634.83 to Stand for service during the period February 11, 2016, through March 10, 2016. Stand inadvertently paid the invoice. Stand points out that the invoice is for the period after the February 13, 2016 shut-off date issued by Windstream.

{¶ 9} According to Stand, Windstream acknowledged that service ceased effective February 13, 2016. Nevertheless, Windstream sent an invoice for \$624.55 to Stand for the period March 11, 2016, through April 10, 2016.

{¶ 10} Stand alleges that on April 18, 2016, Windstream sent an invoice to Stand for \$206.88 for service during the period March 22, 2016, through April 10, 2016.

{¶ 11} On April 28, 2016, Stand alleges that it received a disconnection notice, even though service had terminated on February 13, 2016.

{¶ 12} For relief, Stand seeks an order finding that service was effectively canceled on February 13, 2016, that it is entitled to a refund of the money inadvertently paid after February 13, 2016, and that Windstream cease to collect for services not rendered.

{¶ 13} On June 13, 2016, Stand moved for a default judgment against Windstream for failure to answer the complaint.

{¶ 14} On July 1, 2016, Windstream filed a memorandum contra Stand's motion for default judgment. Windstream asserts that it was not served a copy of the complaint. The respondents point out that the address on the letter serving the complaint is incomplete, does not include Windstream's statutory agent, and misspells Cleveland. Windstream speculates that service of the complaint may have failed. Windstream adds that the Commission does not have statutory authority to render a default judgment. For these reasons, Windstream urges the Commission to deny the motion for default judgment.

{¶ 15} On July 6, 2016, Windstream moved for leave to file answer instanter. Windstream explains, as it did in its memorandum contra default judgment, that it did not receive a copy of the complaint and was unaware of the Complainant's filing.

{¶ 16} Concurrently, with its motion for leave to file answer instanter, Windstream filed its answer. In its answer, Windstream denies the material allegations in the complaint. As a defense, Windstream asserts that it has satisfied the complaint by crediting the Complainant's unpaid balance.

{¶ 17} On July 8, 2016, Stand filed a response to the Windstream's answer. Stand rejects the notion that a credit of \$206.88 satisfies the complaint. Stand emphasizes that Windstream owes Stand a refund of \$634.83, which represents an inadvertent payment of a February 10, 2016 invoice. Stand urges the Commission to deny Windstream's motion to dismiss, find that the customer service agreement between the parties terminated on February 13, 2016, order Windstream to cease cramming charges into Stand's invoices, and refund all money paid by Stand for services after February 13, 2016.

{¶ 18} Rulings on pending motions shall be postponed. At this time, the attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Ohio Adm.Code 4901-1-26, any statement made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible in future proceedings in this case or be admissible to prove liability or invalidity of a claim. Nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference. An attorney examiner with the Commission's Legal Department will facilitate the settlement process.

{¶ 19} Accordingly, a settlement conference shall be scheduled for August 30, 2016, at 1:30 p.m., in Room 1246, at the offices of the Commission, 12th Floor, 180 East Broad Street, Columbus, Ohio 43215. If a settlement is not reached at the conference, the attorney examiner may conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.

{¶ 20} Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the Respondent shall investigate the issues raised in the complaint prior to the settlement conference, and all parties participating in the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties participating in the settlement conference should have with them all documents relevant to this matter.

{¶ 21} 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).

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That a settlement conference be held on August 30, 2016, at 1:30 p.m. in Room 1246 in the offices of the Commission, 12th Floor, 180 East Broad Street, Columbus, Ohio 43215. It is, further,

{¶ 24} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ L. Douglas Jennings

By: L. Douglas Jennings  
Attorney Examiner

jrj/vrm

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

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Summary: Attorney Examiner Entry scheduling August 30, 2016, settlement conference; electronically filed by Vesta R Miller on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio