

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
WINDMERE SUBDIVISION,**

COMPLAINANT,

v.

CASE NO. 16-1575-EL-CSS

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on October 25, 2016

{¶ 1} Pursuant to R.C. 4905.26, the Commission has authority to consider a written complaint filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On July 14, 2016, Windmere Subdivision (Windmere or Complainant) filed a complaint in which it challenged Duke's rates for outdoor floodlighting. Windmere maintains floodlights that illuminate a wall at the entrance of a residential subdivision. Windmere also contests Duke's requirement that Windmere pay the cost to install electric service for unmetered floodlighting. According to Windmere, Duke believes that a commercial provision in its tariff provides the appropriate charges for Windmere's floodlighting.

{¶ 4} Windmere accuses Duke of violating its tariff by inappropriately applying the charges set forth in its tariff for Rate DM, Secondary Distribution Service-Small. According to Windmere, Rate DM is normally reserved for commercial installations with an average monthly demand of less than 15 kilowatts. Windmere emphasizes that the

floodlights are not a commercial use. The only reason Windmere finds for applying Rate DM is because the service is metered. However, Windmere contends that metering is unnecessary. Windmere believes that the subdivision developer established the account for electric service about 25 years ago and that a meter was arbitrarily installed at that time.

{¶ 5} Because the floodlights are an outdoor lighting system, Windmere argues that Rate UOLS, Unmetered Outdoor Lighting Electric Service, by definition, provides the appropriate tariff rates. For Windmere, the rates became a reason for inquiry when it realized that the average rate for two floodlights exceeded one dollar per kilowatt hour.

{¶ 6} Windmere points out that the charges in Duke's tariff for the monthly difference between Rate DM and Rate UOLS is \$18.02. Noting that the meter was installed approximately 25 years ago, Windmere calculates that \$5,406 reflects the overcharge for the 25-year period. However, Windmere is aware that rates have increased over the years. Applying a 20 percent discount to account for the rate increase, Windmere seeks a refund of \$4,300 from Duke.

{¶ 7} Windmere disputes Duke's requirement that it must bear the cost of removing the meter and connecting Duke's service. After consulting Duke's electric service regulations, Windmere concludes that it is Duke's responsibility to bear such costs.

{¶ 8} Citing difficulties with customer service relating to these matters, Windmere seeks a ruling requiring that Duke train its representatives concerning the applicability of its tariffs.

{¶ 9} As a remedy, Windmere seeks a finding that Duke has violated its tariff, that it should refund Windmere \$4,300, that Duke reimburse all expenses incurred in this action, that Duke correct all similar lighting situations, that it issue refunds to customers, that company representatives be trained concerning the applicability of tariffs, and that the company be required to file new tariffs with proper applicability provisions.

{¶ 10} On August 3, 2016, Duke filed an answer to the complaint. In its answer Duke alleges that the rate the Complainant seeks is not applicable to two ground-mounted floodlights. Duke contends that the rates charged are appropriate for two ground-mounted, metered floodlights. While admitting that the Complainant is receiving service under Rate DM, Duke denies that the Complainant is eligible for Rate UOLS.

{¶ 11} Duke admits that the Complainant should bear the cost of removing the meter and connecting to Duke's service. Duke notes that the Complainant's floodlight system is eligible for Rate DM or Rate GS-FL.

{¶ 12} Duke denies the accusation that it has overcharged the Complainant.

{¶ 13} On September 19, 2016, Duke filed a motion to dismiss the complaint on the grounds that the Complainant is a corporation and is not represented by an attorney-at-law authorized to practice in the State of Ohio.

{¶ 14} On September 23, 2016, Windmere filed a response to Duke's motion to dismiss. Windmere asserts that it is not a corporation. Nor is there a homeowners association. Windmere explains that the subdivision is a subdivided plot of land where each parcel is individually owned and occupied by a single-family dwelling. The lighting account is in the name of one of the residents. Windmere contends that the Commission's formal complaint procedure allows individuals to file a complaint without the assistance of legal counsel.

{¶ 15} 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.

{¶ 16} Accordingly, a settlement conference shall be scheduled for November 17, 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.

{¶ 17} 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.

{¶ 18} 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).

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That a settlement conference be held on November 17, 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,

{¶ 21} 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

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Summary: Attorney Examiner Entry scheduling November 17, 2016, settlement conference; electronically filed by Vesta R Miller on behalf of L. Douglas Jennings, Attorney Examiner, Public Utilities Commission of Ohio