

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

PCC AIRFOILS, LLC,

Complainant,

v.

**THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,**

Respondent.

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Case No. 16-2213-EL-CSS

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S
POST- HEARING REPLY BRIEF**

Carrie M. Dunn (#0076952)
Counsel of Record
Joshua R. Eckert (#0095715)
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Telephone: 330-761-2352
Facsimile: 330-384-3875
cdunn@firstenergycorp.com
jeckert@firstenergycorp.com

ATTORNEYS FOR THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY

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I. INTRODUCTION

In its initial brief, Complainant advances three main arguments in support of its position that CEI wrongfully denied Complainant's request for sub-transmission service and Rate GSU. Complainant also requests that the Commission order CEI to connect Complainant to the Company's sub-transmission system (or convert Complainant to primary service) and order CEI to reimburse Complainant for the difference between Rate GSU (or Rate GP) and Rate GS.¹ For the reasons set forth herein, and those previously set forth in the Company's Initial Post-Hearing Brief,² the Commission should: (1) reject all three of Complainant's arguments; (2) reject its request for reimbursement; and (3) find that CEI's denial of Complainant's request for sub-transmission service was appropriate under the Company's Tariff and Ohio law.

First, Complainant argues that the reason for CEI's denial of Complainant's request for sub-transmission service and Rate GSU was inappropriate under the Commission's Tariff. Complainant contends that "[n]othing in the tariff justifies denial of the requested migration to Subtransmission Service based upon there being 'no engineering reason to change.'"³ Complainant further contends that this is "an unwritten exception to the tariff known only to CEI" and that it constitutes an ambiguity in the Tariff that should be interpreted in Complainant's favor.⁴ Complainant, however, ignores the plain language of the Company's Rate GSU Schedule which states that Rate GSU is "[a]vailable to general service customers **requiring** Subtransmission service."⁵ This language is neither unwritten nor ambiguous. Complainant's failure to provide evidence of an engineering reason, or any reason whatsoever, **requiring** it to receive sub-

¹ See Post-Hearing Brief of PCC Airfoils, LLC ("Complainant's Brief"), at 6, 7-8.

² See The Cleveland Electric Illuminating Company's Initial Post-Hearing Brief ("Company's Initial Brief"). Defined terms used herein will have the same meaning as in the Company's Initial Brief.

³ Complainant's Brief at 4.

⁴ See *id.*

⁵ Tariff, Rate GSU Schedule.

transmission service means that Complainant does not qualify for Rate GSU. Accordingly, CEI's denial of Complainant's request for sub-transmission service and Rate GSU was proper.

Second, Complainant argues that Section V. of the Company's Tariff grants Complainant an unqualified right to choose the rate schedule it receives. This is also incorrect. As Complainant acknowledges, Sections V.A. and V.B. of the Company's Tariff do not give the customer a right to choose a rate schedule which it does not otherwise qualify for under the Tariff.⁶ In this case, as mentioned above, Complainant does not qualify for Rate GSU because Complainant does not require sub-transmission service. Thus, these sections are inapplicable here.

And third, Complainant argues that CEI is required to accept Complainant's choice of delivery voltage unless "there is a lack of adjacent lines or if [Complainant's] load is too small." Once again, Complainant is incorrect. To begin, CEI's Tariff places an obligation on the Company, not the customer, to choose the appropriate delivery voltage the customer should receive.⁷ Moreover, CEI's Tariff dictates that the Company's choice of voltage "will be based upon the availability of lines in the vicinity of the customer's premises and commensurate with the size of the customer's load." Here, secondary service is commensurate with the size of Complainant's load, evidenced by the fact that Complainant has been adequately served by secondary service for years.⁸ CEI, thus, has met its obligation to select the appropriate delivery voltage for Complainant.

Finally, Complainant's request for reimbursement should be denied. Even assuming the Commission finds that Complainant qualifies for sub-transmission service and Rate GSU (which

⁶ See Complainant's Brief at 5 ("As a customer, PCC Airfoils has the right to select the appropriate tariff rate *as long as it otherwise qualifies under the tariff.*") (emphasis added).

⁷ See Tariff, §IV.C ("Delivery voltage shall be specified by the Company and will be based upon the availability of lines in the vicinity of the customer's premises and commensurate with the size of the customer's load."); *see also* Tariff, Rate GSU Schedule, Rate GS Schedule, Rate GP Schedule, Rate GT Schedule ("Choice of voltage shall be at the option of the Company.").

⁸ See Philips Direct Testimony at 10:5-7.

it does not), and further assuming that §V. of CEI's Tariff is applicable (which it is not), the language of Section V.A. of CEI's Tariff specifies that no refund is to be made, except in limited circumstances that do not exist here. Moreover, there is no basis for any refund because Complainant has been and continues to be billed correctly pursuant to CEI's Tariff. Thus, Complainant's requested relief is improper under the Company's Tariff and should be denied.

Complainant's requested relief would also be inappropriate if the Commission determines Complainant should be placed on primary service. To begin, an order requiring CEI to place Complainant on primary service is unnecessary, since CEI has never denied Complainant primary service.⁹ Moreover, Complainant, and not the Company, made the business decision to pursue this action rather than be placed on primary service. The exception to Section V.A. of the Company's Tariff does not apply in circumstances where, as here, a customer makes a business decision not to pursue a certain rate schedule. Accordingly, the Commission should deny Complainant's requested relief.

II. ARGUMENT

A. Complainant Has Provided No Engineering Reason Demonstrating That It Requires Sub-Transmission Service.

Complainant argues that CEI's denial of Complainant's request for sub-transmission service and Rate GSU was improper because "[n]othing in the tariff justifies denial of the requested migration to Subtransmission Service based upon there being no engineering reason to change."¹⁰ Complainant is incorrect. CEI's Tariff plainly states that Rate GSU is "[a]vailable to general service customers *requiring* Subtransmission service."¹¹ As explained by Company Witness Philips, a change to sub-transmission service may be warranted if the customer is not adequately

⁹ See Spacek Direct Testimony at 11.

¹⁰ Complainant's Brief at 4.

¹¹ Tariff, Rate GSU Schedule.

served by secondary service or if there is some other justifiable engineering reason to make the move.¹² Otherwise, the customer *does not require* sub-transmission service and is, thus, not eligible for Rate GSU.

Here, Complainant does not contend that the electric service it currently receives (secondary service) is unreliable or inadequate in any way. Indeed, the only evidence in the record related to the reliability of Complainant's service indicates that Complainant's "needs for power and quality continue[] to be met by its current service, as it ha[s] been for years."¹³ Thus, Complainant's current electric needs indicate that it does not require sub-transmission service.

Company Witness Philips, however, explained that a change to sub-transmission service may still be warranted if some other justifiable engineering reason exists for the change. For example, "[a] customer's load characteristics may necessitate that they be moved to a higher-voltage system where they are less likely to cause objectionable power quality impacts, such as flicker, to other customers."¹⁴ But, as detailed in the Company's Initial Post-Hearing Brief, Complainant has not provided any evidence of another engineering reason requiring it to receive sub-transmission service. Since no engineering reason exists requiring a change to Complainant's delivery voltage and Complainant's needs for power and quality continue to be met by secondary service, there is no reason to conclude that Complainant *requires* sub-transmission service. Accordingly, CEI acted properly under its Tariff when it denied Complainant's request. Complainant has not met its burden to show otherwise.

¹² See Philips Direct Testimony at 5:10 – 6:16.

¹³ Philips Direct Testimony at 10:5-7.

¹⁴ *Id.* at 5:20-22.

B. CEI's Tariff Does Not Allow A Customer To Choose A Rate Schedule For Which It Does Not Qualify.

Complainant also argues that Section V. of the Company's Tariff grants the customer an unqualified right to choose the class of service it receives so long as there are adequate facilities adjacent to the customer's premises.¹⁵ This is also incorrect. As discussed in the Company's Initial Post-Hearing Brief, Sections V.A. and V.B. apply when there is an alternative rate schedule that is applicable to the customer's class of service.¹⁶ Here, that is not the case.

To begin, Complainant is not eligible for Rate GSU because Complainant does not require sub-transmission service. Rate GSU, thus, is not an alternative applicable rate schedule for Complainant. Further, Rate GSU is not applicable to the class of service Complainant currently receives, *i.e.* secondary service, because customers receiving adequate secondary service do not require sub-transmission service. Moreover, while Section V.B. of the Company's Tariff allows for the possibility of a potential change to the customer's class of service, it does not give the customer a right to receive a rate schedule for which it does not qualify. Here, Complainant is not eligible for Rate GSU and, therefore, Section V. of the Company's Tariff is inapplicable.

C. CEI Has The Obligation To Determine The Appropriate Service Voltage Under The Tariff.

Finally, Complainant argues that CEI is obligated to accept Complainant's choice of delivery voltage unless "there is a lack of available adjacent lines or if the customer's load is too small."¹⁷ This restriction, however, is found nowhere in the Company's Tariff. Rather, Section

¹⁵ See Spacek Direct Testimony at 9 – 10; *see also* Hearing Tr. 30:17-21, 34:9-13 (Spacek Cross); *see also* Complainant's Brief at 5 – 6.

¹⁶ See Company's Initial Brief at 11 – 13; *see also* Tariff, §V.

¹⁷ Complainant's Brief at 7. Complainant also argues that sub-transmission service is "commensurate" with the size of its load because CEI's Tariff states that: "Customers with demands in excess of twenty-five hundred (2,500) kW will *generally* be served at Transmission Service." Complainant's Brief at 3; *see also* Tariff, §IV.C. (emphasis added). While this may generally be true, that does not mean that it is in this case. Indeed, secondary service is commensurate with the size of Complainant's load here, evidenced by the fact that Complainant has been adequately served at secondary service for years. *See* Philips Direct Testimony at 10:5-7.

IV.C. of the Electric Service Regulations in the Company's Tariff states: "Delivery voltage will be specified by the Company and will be based upon the availability of lines in the vicinity of the customer's premises and *commensurate with the size* of the customer's load."¹⁸ Here, the evidence indicates that secondary service is commensurate with the size of Complainant's load. Complainant has been adequately served by secondary service for years.¹⁹

Moreover, Complainant's assertion that each customer has a right to choose its delivery voltage is simply incorrect. Rather, CEI has the obligation under the Company's Tariff to choose the appropriate service voltage for each customer.²⁰ This obligation is explicitly stated both in Section IV.C. of the Company's Tariff, referenced above, and in the rate schedules for Rates GS, GP, GSU, and GT.²¹ These provisions make sense. As detailed in the Company's Initial Post-Hearing Brief, the voltage a single customer is served at can have a significant impact on the quality and reliability of service for many customers in an area, and it is CEI that is responsible for the quality and reliability of every customer's service.²² Complainant's interpretation of the Tariff, however, would place these important decisions in the hands of individual customers that do not have a duty (or incentive) to consider the impact the decision may have on the reliability of other customer's electric service. Such a result is unreasonable, unworkable, and improper under the Tariff.

D. Complainant's Requests For Reimbursement Should Be Denied Pursuant To CEI's Commission-approved Tariff.

Complainant has made two primary requests for relief and one additional request for relief in the alternative: (1) Complainant requests that the Commission order CEI to connect

¹⁸ Tariff, §IV.C. (emphasis added).

¹⁹ See Philips Direct Testimony at 10:5-7.

²⁰ See Tariff, §IV.C.; see also Tariff, Rate GSU Schedule.

²¹ *Id.*; see also Tariff, Rate GS Schedule; see also Tariff, Rate GP Schedule; see also Tariff, Rate GT Schedule.

²² See Company's Initial Brief at 13 – 15.

Complainant to sub-transmission service; (2) Complainant requests that the Commission order CEI “to recalculate [Complainant’s] electrical service charges based upon Subtransmission Service rates from October 26, 2015 and repay the excess over charges actually paid by [Complainant] through the date that the actual Subtransmission Service rate schedule (GSUB) begins”; and (3) Complainant requests, in the alternative, that the Commission order CEI to place Complainant on primary service and provide Complainant with a similar refund for the difference between primary service and secondary service.²³ For the reasons set forth above, and in the Company’s Initial Post-Hearing Brief, the Commission should deny Complainant’s first request for relief. As set forth below, the Commission should also deny Complainant’s second and third requests for relief, pursuant to CEI’s Commission-approved Tariff.

1. Section V.A. of the Company’s Tariff forbids the refund of the difference between rate schedules except for limited circumstances which do not exist here.

Section V.A. of the Company’s Tariff states, in pertinent part, that: “No refund will be made representing the difference in charges under different rate schedules applicable to the same class of service except as required by law.”²⁴ Complainant, without citing to any authority or acknowledging this portion of the Tariff, requests that the Commission order CEI to provide Complainant with a refund for the difference between Rate GSU and Rate GS.²⁵ Even if the Commission determines that Complainant is eligible for sub-transmission service and Rate GSU (which it is not), and assuming that §V. of the Company’s Tariff is applicable (which it is not), the Commission should not order a refund in this case because such a refund is improper when the Company legitimately concluded that the customer is not qualified for a specific rate schedule.

²³ See Complainant’s Brief at 7 – 8.

²⁴ Tariff, §V.A.

²⁵ See Complainant’s Brief at 6, 7.

The above portion of Section V.A. of the Company's Tariff did not always include the language: "except as required by law."²⁶ Rather, this language was added to CEI's Tariff in 2009 when the Commission adopted CEI, Ohio Edison Company, and The Toledo Edison Company's recommendation that the exception be added "to ensure that the tariffs d[id] not conflict with *White Plastics*."²⁷

In *White Plastics Company, Inc. v. Columbus & Southern Ohio Electric Company*, the Commission held that Columbus & Southern Ohio Electric Company ("CSOE") had a duty, upon inquiry, to inform its customer that it was eligible for another rate.²⁸ In that case, the customer was eligible for two different rate schedules (one it was on and one it did not know about) based on the current class of service that it received.²⁹ However, the more favorable rate schedule of the two differed depending on the customer's usage.³⁰ Under those circumstances, the Commission determined it was unreasonable for CSOE to not notify its customer of the alternative rate schedule when the customer inquired regarding its high electric bills despite decreased usage.³¹

Relying on *White Plastics*, the Commission has subsequently ordered utilities to refund their customer if the utility acted unreasonably in failing to notify the customer of an alternative rate schedule for which it is applicable.³² Here, the circumstances surrounding CEI's denial of

²⁶ See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices, and for Tariff Approvals* ("2007 Rate Case"), Case No. 07-5515-EL-AIR, Opinion & Order, at 42 (Jan. 21, 2009).

²⁷ *Id.*

²⁸ See *In the Matter of the Complaint of White Plastics Company, Inc. v. Columbus & Southern Ohio Electric Company Relative to the Alleged Unjust and Unreasonable Rates Charged for Electric Service*, Case No. 83-0650-EL-CSS, Opinion & Order, at *14 (Sept. 25, 1984).

²⁹ *Id.* at *4-5.

³⁰ *Id.* at *5.

³¹ See *id.* at *9, *13.

³² See, e.g., *Crownover Lumber Company, Inc. v. Columbus Southern Power Company*, Case No. 91-1834-EL-CSS, Opinion and Order (Apr. 9, 1993).

Complainant's request for sub-transmission service differ significantly from *White Plastics* and its progeny.

Unlike in *White Plastics*, there is a genuine dispute in this case as to whether Complainant qualifies for sub-transmission service and Rate GSU under the Company's Tariff. As thoroughly discussed above and in the Company's Initial Post-Hearing Brief, Complainant is not eligible for sub-transmission service or Rate GSU because Complainant does not meet the pre-requisites for Rate GSU under the Company's Tariff, *i.e.* Complainant does not require sub-transmission service. Accordingly, CEI had no duty to Complainant as it relates to providing sub-transmission service because Complainant does not qualify for Rate GSU under the Tariff. Moreover, Complainant does not contend that CEI failed to adequately inform it regarding alternative applicable rate schedules. Indeed, the record demonstrates that CEI has acted reasonably in its response to Complainant's request for alternative applicable rate schedules by informing Complainant that a conversion to primary service was an option.³³ Accordingly, CEI should not be required to provide a refund to Complainant based on the Company's denial of sub-transmission service and Rate GSU.

2. CEI should not be required to provide a refund for requested service it did not deny.

Section V.A. also forbids a refund if Complainant decides to convert to primary service. As discussed above, Section V.A. operates to bar refunds for differences in charges between different rate schedules except in limited circumstances.³⁴ Those circumstances certainly do not apply here. To begin, CEI has never denied Complainant's request for primary service.³⁵ Rather, CEI informed Complainant that it would no longer be eligible for Rider BDC based on its proposed

³³ See Philips Direct Testimony at 11:13-15; *see also* Spacek Direct Testimony at 11.

³⁴ See Tariff, §V.A.

³⁵ See Spacek Direct Testimony at 11.

configuration for the primary service.³⁶ In this proceeding, Complainant provided a schematic to clarify its proposed configuration for primary service.³⁷ CEI has reviewed this proposed configuration and determined that it appears Complainant would remain eligible for Rider BDC if it converts to primary service.³⁸ And, as has been previously communicated to Complainant, CEI is willing to work with Complainant to facilitate this conversion and provide Complainant with the opportunity to take service under Rate GP, while maintaining BDC.³⁹ Accordingly, it is not necessary for the Commission to order CEI to place Complainant on primary service or Rate GP. The Company is willing to do so already.

Moreover, Complainant, and not the Company, made the business decision to pursue this action rather than be placed on primary service. CEI should not be required to refund a customer for the customer's business decision not to pursue an alternative rate schedule that CEI has informed the customer is applicable. Thus, the Commission should deny Complainant's third request for relief.

III. CONCLUSION

Complainant is correct, it does "ha[ve] the right to select the appropriate tariff rate as long as it otherwise qualifies under the tariff."⁴⁰ Complainant, however, fails to even address whether it qualifies for Rate GSU under the Company's tariff. As detailed herein, and in the Company's Initial Post-Hearing Brief, Complainant does not. Complainant has presented no evidence that it requires sub-transmission service, a pre-requisite for receiving Rate GSU. Accordingly, CEI's denial of Complainant's request for sub-transmission service and Rate GSU was appropriate under

³⁶ *Id.*

³⁷ *See* Blazunas Direct Testimony at 5:13-16.

³⁸ *See id.* at 5:17-19.

³⁹ *See* Philips Direct Testimony at 11:13-15.

⁴⁰ Complainant's Brief at 6.

the Tariff. Moreover, Complainant's requests for reimbursement are contrary to the Company's Tariff and should be denied.

For these reasons, and those set forth in the Company's Initial Post-Hearing Brief, Complainant has failed to meet its burden of proof in this proceeding, and CEI respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted,

/s/ Joshua R. Eckert

Carrie M. Dunn (#0076952)

Counsel of Record

Joshua R. Eckert (#0095715)

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

Telephone: 330-761-2352

Facsimile: 330-384-3875

cdunn@firstenergycorp.com

jeckert@firstenergycorp.com

*On Behalf of The Cleveland Electric
Illuminating Company*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing The Cleveland Electric Illuminating Company's Post-Hearing Reply Brief was served upon the following by electronic mail on this 23rd day of June, 2017.

David W.T. Carroll
Carroll, Ucker, & Hemmer LLC
dcarroll@cuhlaw.com

/s/ Joshua R. Eckert
An Attorney for The Cleveland
Electric Illuminating Company

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