THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
PCC AIRFOILS, LLC,

COMPLAINANT,

v. CASE NO. 16-2213-EL-CSS

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on June 28, 2018

I. SUMMARY

{¶ 1} The Commission finds that Complainant has failed to show, by a preponderance of the evidence, that The Cleveland Electric Illuminating Company has violated its tariff, Commission rules, or Ohio law by refusing to migrate Complainant to sub-transmission service.

II. PROCEDURAL BACKGROUND

{¶ 2} The Cleveland Electric Illuminating Company (CEI or the Company) is a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints 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.

{¶ 4} On November 16, 2016, PCC Airfoils, LLC (PCC Airfoils or Complainant) filed a complaint against CEI alleging that CEI had engaged in unfair and unjust billing practices, specifically arguing that CEI has wrongfully refused to migrate Complainant to sub-

transmission service, in violation of its tariff.[1] Alternatively, Complainant requests that the Commission order CEI to allow Complainant to take service under the General Service Primary rate (Rate GP) and continue to apply its Business Distribution Credit Rider (Rider BDC) to Complainant's distribution charges.

{¶ 5} On December 27, 2016, CEI filed its answer to the complaint, denying many of the allegations contained therein. Additionally, CEI raises several affirmative defenses, including, but not limited to, the following: Complainant fails to set forth reasonable grounds for complaint as required by R.C. 4905.26; Complainant fails to state a claim upon which relief can be granted; and CEI has complied with Revised Code Title 49, applicable rules, regulations, and orders of the Commission, and its tariffs.

{¶ 6} A settlement conference was conducted on February 10, 2017; however, the parties were unable to settle the matter.

{¶ 7} An evidentiary hearing took place on May 12, 2017, at which witnesses Michael Capek and Michael Spacek presented testimony on behalf of PCC Airfoils and witnesses Peter Blazunas and Dean Philips presented testimony on behalf of CEI.

{¶ 8} At the conclusion of the evidentiary hearing, the attorney examiner directed that initial post-hearing briefs and reply briefs be filed on June 16, 2017, and June 23, 2017, respectively. PCC Airfoils and CEI filed timely initial post-hearing briefs and reply briefs as directed by the attorney examiner.

III. DISCUSSION

A. *Applicable Law*

{¶ 9} R.C. 4905.26 provides the Commission with the authority to consider written complaints filed against a public utility by any person or corporation regarding any rate,

---

1 Although the entire Company tariff "P.U.C.O. No. 13: Schedule of Rates for Electric Service", effective May 1, 2009, was marked and admitted as Joint Exhibit 1, the pertinent pages discussed in this Opinion and Order are: Orig. Sheet 1, pg. 4; Orig. Sheet 21, pg. 1-3; Orig. Sheet 22, pg. 1-3.

service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory. As in all Commission complaint proceedings, the Complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

B. *Summary of Evidence and Party Arguments*

{¶ 10} PCC Airfoils is an airplane parts manufacturer with a production facility in Wickliffe, Ohio (Tr. at 8). Complainant currently receives secondary service from the Company's L-2-LI-G 13.2/7.62 kilovolt (kV) distribution circuit (Circuit) (Company Ex. 2 at 8). As noted in its complaint, PCC Airfoils claims that CEI has wrongfully refused to supply sub-transmission service in accordance with its tariff and requests the Commission direct CEI to comply with its tariff and allow Complainant to take sub-transmission service under General Service - Sub-transmission (Rate GSU). PCC Airfoil also asks the Commission to order CEI to reimburse Complainant any excess charges as a result of taking service under General Service-Secondary (Rate GS) since October 26, 2015 until service under Rate GSU actually begins. Alternatively, and only if the Commission finds in favor of CEI on the sub-transmission service rate schedule issue, Complainant requests that the Commission order CEI to approve Complainant's migration to Rate GP, retaining Rider BDC, and order CEI to recalculate PCC Airfoils' electric service charges based upon Rate GP from October 26, 2015, and repay the excess charges actually paid by Complainant until such time Complainant can take service under the Rate GP rate schedule, including the time necessary for any required engineering and construction modifications.

{¶ 11} The Company's Electric Service Regulations offer four different rate schedules to non-residential non-lighting customers: Rates GS, GP, GSU, and GT. The tariff also prescribes the nominal voltages for each type of service. Sub-transmission service is listed as having a nominal voltage of either "11,000 volts three wire and 36,000 volts three

wire"(Joint Ex. 1, Orig. Sheet 4 at 4).[2] Notably, the tariff also states that "[d]elivery 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." It is also noted that customers with demands in excess of 2,500 kW will generally be served at Transmission Service. (Joint Ex. 1, Orig. Sheet 4 at pg. 4.) Additionally, the tariff provides that Rate GSU is "[a]vailable to general service installations requiring Subtransmission Service. * * * Choice of voltage shall be at the option of the Company." (Joint Ex. 1, Orig. Sheet 22 at pg. 1).

1. WHETHER CEI WRONGFULLY REFUSED TO GRANT PCC AIRFOILS' REQUEST TO MIGRATE TO SUB-TRANSMISSION SERVICE AND, IF SO, WHAT REMEDIES ARE AVAILABLE TO COMPLAINANT

a. PCC Airfoils' Arguments

{¶ 12} PCC Airfoils initially argues that it has a right under CEI's tariff to migrate from Rate GS to Rate GSU, alleging that the applicable tariff page contains unambiguous language that shows that it is eligible to receive service under Rate GSU and that CEI has unreasonably withheld such service from Complainant (Joint Ex. 1, Orig. Sheet 22 at 1). PCC Airfoils noted the language of the tariff, highlighting that "[w]here two or more alternative rate schedules are applicable to the same class of service, the Company, upon request, will assist a customer in selecting an appropriate rate schedule to be applied." (Joint Ex. 1, Orig. Sheet 4 at 4).

{¶ 13} Complainant witness Spacek testified that "there is no question that CEI has facilities specifically including a 36kV line available and adjacent to the PCC airfoils premises [and] * * * a consistent demand in the neighborhood of 3,000 kW, which exceeds the 2500 kW load stated in the tariff" (Tr. at 38; Complainant Ex. 1 at 8). Company witness Philips confirmed that there are, in fact, two 36 kilovolt circuits, R-16-LY-G and R-17-LY-G,

---

2 Secondary Service is listed as having a nominal voltage of less than or equal to 600 volts, Transmission Service is listed as having greater than, or equal to, 69,000 volts, and Primary Service is listed as being at all other available voltages.

on the Company's sub-transmission service that run adjacent to Complainant's facility (Complainant Ex. 2 at 8). He claimed that the tariff restricts CEI only to ensuring that a customer's request for migrating to a different rate is possible given the location of the lines and adequacy of grid to sustain another attachment, adding that it may select the voltage but nothing else (Complainant Ex. 1 at 9). On cross examination, counsel for PCC Airfoils was able to elicit from Company witness Philips that the 3,000 kW load was no reason for objecting to allow PCC Airfoils to transfer to Rate GSU (Tr. at 41). Thus, according to Complainant, the only basis remaining upon which the Company could deny the transition to sub-transmission service would be the Company's limited ability to specify delivery voltage. Complainant asserts that the pertinent language of the tariff states "[d]elivery 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." (Joint Ex. 1 at Orig. Sheet 4 at pg. 4). As noted above, Complainant contends that CEI acknowledges that the Company's delivery voltage determination in respect to Complainant was not based on the availability of lines in the vicinity of Complainant's premises or the fact that its load was too small (Tr. at 42-43).

{¶ 14} Rather than providing a basis for denial in accordance with its tariff, PCC Airfoils argues that the Company denied its request to migrate to sub-transmission service by stating "there was no engineering reason" for allowing the migration (Tr. at 41-42; Company Ex. 2 at 10). While the Company claimed their voltage decision was the reason they denied PCC Airfoils' migration, Complainant notes this decision was based on neither the availability of lines near PCC Airfoils nor its load obligations (Tr. at 42-43; Company Ex. 2 at 8-9). PCC Airfoils states that nothing in the tariff justifies the denial of the requested migration to sub-transmission service on the basis of a lack of engineering reasons necessitating a change. In fact, by considering factors not explicitly listed in the tariff language, Complainant argues that CEI essentially admits to violating its tariff and the provision that lists the only permissible factors to consider when determining delivery voltage as the availability of lines in the vicinity of the customer's premises and the size of

the customer's load (Joint Ex. 1). However, even if such factors could be considered, PCC Airfoils argues that the reliability risk associated with connecting it to the existing sub-transmission system is highly exaggerated by Company witness Philips. PCC Airfoils also asserts that "require," as an undefined term in the tariff, should be given its common meaning and interpreted as allowing its financial concerns to be an acceptable "requirement" for sub-transmission service.

{¶ 15} PCC Airfoils again reiterates that if two or more alternative rate schedules are applicable for the customer, CEI, must assist the customer in selecting the appropriate rate schedule to be applied (Joint Ex. 1, Orig. Sheet 4 at 4). Thus, given the plain language of the tariff, Complainant asserts that, so long as it qualifies under the specified terms, it should be afforded the right to choose to migrate to sub-transmission service (Tr. at 33-34). Regardless, PCC Airfoils also asserts that if the Commission finds the tariff language to be ambiguous, it should be construed in favor of the Complainant as a matter of law. *Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 575 N.E.2d 157 (1991).

{¶ 16} PCC Airfoils states that it first applied to CEI for sub-transmission service on June 26, 2015, further arguing that if CEI had approved this request, Complainant would have been receiving service pursuant to Rate GSU since October 26, 2015 (Complainant Ex. 1 at 10-12). Complainant adds that, while it was not aggressively pursuing the request to change from secondary to sub-transmission service, the request was never withdrawn after that initial communication. Thus, Complainant requests that, if CEI is found to have unreasonably denied sub-transmission service to PCC Airfoils, the Commission order CEI to recalculate PCC Airfoils' electrical service charges based upon sub-transmission service rates from October 26, 2015 and repay the excess over charges actually paid through the date sub-transmission service begins. (Complainant Ex. 1 at 14.)

b. CEI's Arguments

{¶ 17} CEI argues that Complainant's reliance on the customer's ability to select the appropriate rate schedule, as set forth in the Company's tariff, is flawed for three reasons:

(1) the Complainant does not qualify for Rate GSU according to the plain language of the tariff because Complainant does not require sub-transmission service; (2) the Company's refusal to grant Complainant's request was appropriate and consistent with the Company's tariff and Commission rules, as CEI has the responsibility to determine the appropriate service voltage a customer should receive based on the customer's needs; and (3) the Company acted reasonably by denying Complainant's request when considering how the additional connection would add another point of possible failure on the sub-transmission circuit and could ultimately affect tens of thousands of customers. As such, CEI contends that it "exercises appropriate caution when it evaluates requests made without a justifiable engineering reason" (Company Ex. 2 at 7). In fact, CEI witness Philips testified that limiting access to the Company's sub-transmission system to only those customers that require sub-transmission service helps ensure that this system can continue to reliably serve its "critical backbone function" for all of the Company's customers (Company Ex. 2 at 7).

{¶ 18} CEI explains that each of the four different rate schedules for non-residential non-lighting customers are available to customers that require that level of service and satisfy the delivery voltage requirements (Tr. at 57; Joint Ex. 1; Company Ex. 2 at 3-4). The Company also explains that it takes several balancing factors into consideration when determining the service voltage required by a customer, including: the customer's load and power requirements; whether the Company's facilities in the area are adequate to serve the customer's needs; whether the customer's load characteristics are likely to cause objectionable power quality impacts to other customers; the potential impact the customer's connection may have on system reliability; and the impact the customer's connection will have on operations (Company Ex. 2 at 5-6). Additionally, unless a customer requires connection to a higher voltage circuit for one of these reasons, CEI typically recommends that customers be connected to the lowest voltage that meets the customer's needs that is available to the site in order to protect system integrity and ensure reliable service to its other customers (Company Ex. 2 at 6-7).

{¶ 19} Upon receipt of Complainant's request, CEI states that its engineers "reviewed the request and determined that there was no technical, engineering, or reliability reasons to switch [Complainant's] delivery voltage from the secondary to the sub-transmission system", thus, concluding that Complainant did not require sub-transmission service pursuant to the terms of the tariff (Company Ex. 2 at 9). CEI notes that its decision was communicated to Complainant on August 17, 2016 (Complainant Ex. 1 at 11-12, Exhibit 6). Further, CEI states that the Company reviewed the request a second time, upon Complainant's urging, and came to the same conclusion, acknowledging that PCC Airfoils was not making its request for an engineering reason, but rather, a solely financial one (Tr. at 14; Complainant Ex. 1 at 7). CEI contends that Complainant, at no point during their communications, indicate that it required sub-transmission service. In fact, CEI notes that Complainant has provided no evidence that its current service is unreliable or inadequate (Company Ex. 2 at 10). The Company further provides that Complainant has not presented any evidence that its current electric load characteristics cause objectionable power quality impacts for other customers, which may necessitate transitioning a customer to a higher voltage system despite the fact that it is adequately served at the current service voltage (Company Ex. 2 at 5). Moreover, CEI claims that PCC Airfoils fails to demonstrate that it plans to change its electric load characteristics, such as a facility expansion or significant equipment upgrade, which would require connection to a higher voltage system (Tr. at 14-16). Contrarily, CEI notes that all system upgrades currently planned have roughly the same electrical draw as the targeted equipment to replace and Complainant has stated that it will continue to implement energy efficiency measures at the facility; thus, CEI claims that Complainant is not contemplating making any changes that would require it to need sub-transmission service any time in the near future (Tr. at 17; Company Ex. 2 at 5).

{¶ 20} Further, CEI argues that its denial of Complainant's request was appropriate under the Company's approved tariff, applicable Commission rules, and Ohio law. In response to Complainant's arguments that the Company's tariff provides an unqualified right to choose the class of service it receives so long as there are adequate facilities adjacent

to the customer's premises, CEI initially contends that Section V.A. of the tariff does not apply to this case, as that customer's selection from alternative rate schedules "for the application or contract for service" discusses situations involving new customers or changes in service requiring a new contract for service. Regardless if this section applies, CEI claims that Complainant is still ineligible for Rate GSU because Complainant does not require sub-transmission service. Furthermore, the Company states that Rate GSU is not applicable to the class of service Complainant current receives because Rate GSU is only available to customers that require sub-transmission service. Much like the discussion of Section V.A., CEI also provides that Section V.B., which states "...a customer may change to an alternative applicable rate schedule," is equally inapplicable because Complainant is currently receiving adequate secondary service and does not require sub-transmission service. Finally, CEI contends that its tariff gives it the responsibility of determining the appropriate service delivery voltage, recognizing all of the various factors discussed earlier, including the potential negative impact of connecting a customer to the sub-transmission system. As noted in the tariff, "[d]elivery 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." (Joint Ex. 1; Company Ex. 2 at 5). In this case, CEI asserts that secondary service is commensurate with the size of Complainant's load (Company Ex. 2 at 10). In order to effectively address the needs of all of its customers, CEI contends that it should maintain its ability to exercise control over access to this system (Tr. at 56-57; Company Ex. 2 at 6-7, 10). Otherwise, by allowing every customer to choose its respective delivery voltage, CEI claims its ability to provide reliable service to all of its customers would be significantly hindered and its ability to ensure all of its customers receive "necessary and adequate service," as required by R.C. 4905.22, would be jeopardized (Company Ex. 2 at 5-7, 10-11).

{¶ 21} Finally, CEI maintains that, not only was its decision to deny Complainant's request to migrate sub-transmission service consistent with its tariff, Commission rules, and Ohio law, it was also reasonable under the circumstances. As noted earlier, the Company

asserts that Complainant's current service is "more than adequate to serve the customer's existing load and there is no proposed load increase that would cause this situation to change." (Company Ex. 2 at 11). Given the potential negative reliability impact the additional connection could have on the sub-transmission system and the Company's other customers, CEI contends that PCC Airfoils does not require sub-transmission service. Further, as discussed in Company witness Philips' testimony and addressed later in this Opinion and Order, CEI claims it offered a reasonable alternative available under its tariff that would allow Complainant an opportunity for cost savings without risking decreased reliability for the Company's other customers (Company Ex. 1 at 3, 5; Company Ex. 2 at 11; Complainant Ex. 1 at 14-16).

{¶ 22} In response to the request for reimbursement, CEI argues that the Company is prohibited from refunding the difference between rate schedules in this circumstance. As the Company notes, "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." (Joint Ex. 1 at Section V.A.). Moreover, CEI notes there is no basis for any refund because the Company was reasonable in charging Rate GS to PCC Airfoils over the duration of this proceeding.

2. WHETHER PCC AIRFOILS SHOULD BE PERMITTED TO MIGRATE TO RATE GP AND, IF SO, WHAT REMEDIES ARE AVAILABLE TO COMPLAINANT

{¶ 23} In the alternative, and only if the Commission finds in favor of CEI on the sub-transmission service rate schedule issue, Complainant requests that the Commission order CEI to approve Complainant's migration to Rate GP, retaining Rider BDC, and order CEI to recalculate PCC Airfoils' electric service charges based upon Rate GP from October 26, 2015, and repay the excess charges actually paid by Complainant until such time Complainant can take service under the Rate GP rate schedule after the required engineering and construction modifications. PCC Airfoils states that Company witness Blazunas essentially concedes that PCC Airfoils may migrate to Rate GP with the appropriate engineering and construction in accordance with the proposed configuration attached as PRB-3.

{¶ 24} Both parties are in agreement as to whether PCC Airfoils would be able to switch to Rate GP if the Complainant's requested relief for Rate GSU service was not granted. Although PCC Airfoils' witnesses claimed that it would cost them approximately the same amount to transition from Rate GS to Rate GP as it would to migrate to Rate GSU, they find the transition from Rate GS to Rate GP an acceptable alternative request (Tr. 14, 19-20). CEI has no objections to this request and would also apply Rider BDC so long as PCC Airfoils maintains their facility in accordance with the conditions of the tariff. The plan submitted to CEI by PCC Airfoils would qualify for Rider BDC under the current tariff provisions. (Company Ex. 1 at 5.) Therefore, there is no actual contention over this course of action and PCC Airfoils' request for Rate GP can easily be granted in the alternative. (Company Ex. 1 at 3, 5; Company Ex. 2 at 11; Complainant Ex. 1 at 14-16.)

{¶ 25} However, there is a dispute as to whether Complainant's request for reimbursement for the difference between primary service and secondary service is appropriate under these circumstances. CEI initially reiterates its argument that Section V.A. of the Company's tariff provides that "[n]o 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." (Joint Ex. 1). The Company also asserts that, even if the Commission determines Complainant is eligible for sub-transmission service and Section V of the Company's tariff is applicable, a refund is inappropriate because PCC Airfoils is not qualified for an alternative rate schedule. CEI specifically notes that the Commission added the exception in the tariff language allowing refunds "as required by law" in response to Commission precedent ordering refunds when a utility acts unreasonably in failing to notify the customer of an alternative rate schedule for which it is applicable upon an inquiry by the customer. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 07-5515-EL-AIR, Opinion and Order (Jan. 21, 2009) at 42; See *In re the Complaint of White Plastics Co., Inc. v. Columbus & S. Ohio Elec. Co.*, Case No. 83-0650-EL-CSS, Opinion and Order (Sept. 25, 1984) at *14. In this case, CEI asserts that Complainant was apprised of the possibility to switch to primary service in response to Complainant's

initial request for alternative applicable rate schedules (Company Ex. 2 at 11; Complainant Ex. 1 at 11). Although CEI initially informed Complainant that it would no longer be eligible for Rider BDC based on its proposed configuration, the Complainant provided a schematic to clarify the proposed configuration for primary service which would allow Complainant to remain eligible for Rider BDC (Company Ex. 1 at 5). Further, CEI argues that Complainant has never been denied the opportunity to switch to primary service; instead, the Company notes that Complainant pursued this action to be placed on Rate GSU (Complainant Ex. 1 at 11). Thus, the Company asserts that the exception to Section V.A. of the Company's tariff does not apply in these circumstances, where the customer elected not to pursue a particular rate schedule. However, CEI states that it is willing to work with Complainant to facilitate this conversion and provide Complainant the opportunity to take service under Rate GP, while maintaining Rider BDC (Company Ex. 2 at 11).

C. Commission Conclusion

{¶ 26} The statutory obligation of a public utility relative to the rates it charges is set forth in R.C. 4905.32, which reads as follows: "No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time." Consistent with R.C. 4905.30, and 4909.18, to become effective all tariffs must be approved by the Commission. On January 21, 2009, the Commission approved the tariff pages incorporating the Company's general service rate schedules at issue in this case. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 07-551-EL-AIR, et al., Opinion and Order (Jan. 21, 2009). As CEI's general service rate schedules have been approved by the Commission, a customer cannot receive service pursuant to a particular tariffed rate unless it meets the terms for service contained in the tariff. We agree with Complainant that in many circumstances a customer of a utility's service is expected and should be permitted to take advantage of the applicable rates and terms and conditions under the utility's offerings that are most favorable to the customer unless a Commission-approved limitation

expressly provides otherwise. However, in order to migrate to another rate schedule, the customer must qualify pursuant to the terms of the utility's Commission-approved tariff (Tr. at 62-63). Thus, pursuant to the tariff language, PCC Airfoils may not receive a rate for which it does not qualify.

{¶ 27} The complaint presented by PCC Airfoils is one of tariff interpretation. We agree with Complainant that, in construing a tariff, "[t]he meaning and effect of particular [tariff] provisions are to be ascertained from the words employed and the connection in which they are used, the subject matter, and the evident purpose of such provisions" and that any ambiguity should be construed against the utility. *Saalfield Publishing Co. v. Pub. Util. Comm.*, 149 Ohio St. 113 at 118, 77 N.E.2d 914 at 916-17 (1949); See also *Horning v. Columbus & Southern Elec. Co.*, Case No. 82-1209-EL-CSS, Opinion and Order (Jan. 31, 1984) at 4–5. This cannot occur, however, when the meaning of the tariff language is clear and only one reasonable interpretation exists and, in which case, the Commission must enforce the tariff as written.

{¶ 28} As a preliminary matter, the Commission recognizes that there is no dispute between the parties that Complainant's request for sub-transmission service was not denied on the basis of the availability of lines in the vicinity of PCC Airfoils' facility or the size of the customer's load (Tr. at 38, 41-43; Complainant Ex. 1 at 8-9; Company Ex. 2 at 8). The real dispute in this case arises in PCC Airfoils' belief that the tariff language provides it with the ability to switch to an alternative rate schedule containing more favorable terms, so long as it can satisfy these two criteria (Tr. at 33-34). In contrast, CEI argues that the tariff should be interpreted differently and maintains that Complainant has no unilateral right to switch to an alternative rate schedule when it has not shown it requires sub-transmission service, thereby qualifying for such service. CEI adds that the Company is entitled to determine the customer's delivery voltage and is not strictly limited to only considering the availability of lines in the vicinity of a customer's premises and the size of the customer's load in that determination.

{¶ 29} We do not find the language to be ambiguous as to the requirements for qualifying for the applicable rate schedules. PCC Airfoils cannot simply ignore that the tariff plainly states that Rate GSU is "[a]vailable to general service installations *requiring* sub-transmission service" and that the "[c]hoice of voltage shall be at the option of the Company." (emphasis added) (Joint Ex. 1, Orig. Sheet 4 at 4). Therefore, the Commission must enforce the tariff as written. Based on the evidence, we find that the existing facilities, voltages, and capacities in the area are adequate to serve Complainant.

{¶ 30} Furthermore, PCC Airfoils misinterprets Section V of the Company's tariff. As noted by CEI, the context of Sections V.A. and V.B. of the Company's tariff start from the assumption that a customer is eligible for more than one rate schedule. (Joint Ex. 1, Orig. Sheet 4 at pg. 4.) PCC Airfoils is not a new customer and cannot demonstrate that there has been, or will be in the foreseeable future, a change in the character or conditions of its electrical requirements. Moreover, Complainant does not qualify for more than one rate schedule and CEI is not willing to, or required to, allow PCC Airfoils to enter into a new service agreement for sub-transmission service until it can demonstrate that such service is required and provide some justification for CEI to reevaluate Complainant's delivery voltage, in accordance with the Company's tariff.

{¶ 31} As noted by CEI, a tariff states the terms and conditions under which the utility will serve its customers, and the responsibilities of both the company and the customer in this provision of this service. We are persuaded by Company witness Philips' testimony regarding the responsibility of determining the appropriate delivery voltage for each of its customers in order to ensure reliable service for all of its customers, in accordance with R.C. 4905.22. Furthermore, the Commission finds that the Company was acting reasonably when it conducted an investigation and considered a variety of balancing factors to determine the correct service voltage, recognizing that the Company will typically require connection to the lowest available voltage that meets the customer's needs in the absence of any of these mitigating circumstances. (Tr. at 59-64; Company Ex. 2 at 9; Complainant Ex. 1 at 7, 11-12.) Further, Company witness Philips testified that the Company utilizes the same

balancing factors every time it must determine the appropriate service voltage for a customer (Company Ex. 2 at 5). The Commission recognizes that CEI's case-by-case approach in evaluating requests to be served from the sub-transmission system is reasonable, especially its consideration of whether the customer is adequately served at its current service voltage or whether the customer's load characteristics cause reliability concerns for other customers on its circuit (Company Ex. 2 at 5-6, 10).

{¶ 32} While Company witness Philips did acknowledge that the increased exposure to the sub-transmission system caused by the additional equipment necessary to connect a customer to that system, such as poles, wires, and transformers, would be relatively small, the Company should be able to review requests to connect to the sub-transmission system to determine whether the circumstances warrant connection and, namely, if the incremental reliability risk can be effectively managed with existing controls on that system (Tr. at 66). As Company witness Philips noted in his testimony, the reasons why a customer may or may not be served from the sub-transmission system can vary depending on the facts and circumstances that existed at the time the customer's or premises' delivery voltage was determined by the Company (Company Ex. 2 at 9).

{¶ 33} Contrary to the testimony of Complainant witness Spacek, it is reasonable that, upon receiving a request from a customer to connect to its sub-transmission system, an electric distribution utility evaluate the incremental reliability risk and potential strain associated with connecting that customer to the sub-transmission system, as well as the aggregate level of risk facing its distribution system, as a whole, before acting on the request (Tr. at 33-34). The Company remains in the best position to recognize this risk and implement necessary controls to ensure safe and reliable service, as it is required to provide under R.C. 4905.22. Additionally, the Commission recognizes that denial of requests to connect to the sub-transmission system from customers that do not require such service arguably reserves the ability for the Company to accommodate future requests from customers actually requiring this service, which, depending on the circumstances, may require immediate migration. Mr. Philips even acknowledged that additional protections

to the system may be necessary in the event several qualifying customers were to migrate to the sub-transmission system at the same time, while also adding that the Company would still face an increased risk from the interconnection point (Tr. at 57, 66). As the 36 kV sub-transmission system serves the Company's substations, and could potentially expose tens of thousands of customers to additional reliability risk, we find that the Company has a legitimate interest in minimizing the exposure on that system (Tr. at 55-56). Ultimately, however, the Company's tariff is clear that a customer requires sub-transmission service to be eligible to receive service under Rate GSU. Complainant has made no such showing.

{¶ 34} There is no evidence that CEI made an arbitrary decision to deny Complainant's request; contrarily, the Company undertook a detailed investigation to determine whether taking service under Rate GSU would be appropriate given the Complainant's current and expected electrical needs. We find that the investigation, ultimate disposition of the request for sub-transmission service, and alternative recommendation to switch to Rate GP, was a reasonable response from CEI, and was in compliance with the Company's tariff, applicable Commission rules, and Ohio law.

{¶ 35} Accordingly, the Commission finds that PCC Airfoils has failed to demonstrate, by a preponderance of the evidence, that CEI was in violation of its tariff by refusing to switch PCC Airfoils from Rate GS to Rate GSU. As we have found that CEI appropriately responded to PCC Airfoils' request to receive sub-transmission service, it is not necessary for us to consider the request of Complainant for a refund of the difference in electric service charges it paid under Rate GS and those charges it would have paid had it been permitted to migrate to Rate GSU. Further, the Commission recognizes that its decision in this case preserves the Company's ability to exercise its authority over the extent and exposure of this system to maximize reliability for the entire distribution system in a consistent and reasonable manner.

{¶ 36} However, the Commission finds PCC Airfoils' alternative request to be served under Rate GP, while still receiving the benefit of Rider BDC, to be reasonable. We agree

that CEI offered a reasonable alternative available under its tariff that would allow Complainant an opportunity for cost savings without risking decreased reliability for the Company's other customers. Furthermore, the parties do not dispute that Complainant qualifies for this rate schedule or that it would remain eligible for Rider BDC, given the proposed configuration. (Tr. 14, 19-20; Company Ex. 1 at 3, 5; Company Ex. 2 at 11; Complainant Ex. 1 at 14-16.) Therefore, CEI is directed to assist PCC Airfoils with the migration to Rate GP as soon as practicable.

{¶ 37} There is an existing dispute, however, as to whether CEI should be directed to refund PCC Airfoils the difference between what it was charged under Rate GS and what it would have been charged if it had been receiving service under Rate GP. The Commission's powers are conferred by statute and its authority is thereby limited. While the Commission, unlike a court of general jurisdiction, cannot award compensatory and punitive damages, we have the authority to grant refunds in certain cases. *In re Ohio Gas Co.*, Case No. 82-95-GA-COI, Opinion and Order (Mar. 9, 1983); *Heaton v. Columbus & S. Ohio Elec. Co.*, Case No. 83-1279-EL-CSS, Opinion and Order (Apr. 16, 1985).

{¶ 38} In this case, we agree with the Company that a refund would be inappropriate. While we do have the authority to grant refunds in certain limited cases, the Commission, pursuant to Supreme Court of Ohio rulings, lacks the authority to order refunds of monies collected pursuant to valid rate schedules. *The Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 46 Ohio St.2d 105, 346 N.E.2d 778 (1976). In this case, CEI appropriately charged PCC Airfoils for electric service under Rate GS during the pendency of this proceeding, pursuant to its Commission-approved tariff. Complainant provides no evidence to persuade us otherwise. We agree with CEI that the request to switch to Rate GP was never denied upon determining that Complainant qualified for the rate schedule; instead, Complainant chose to initiate this proceeding and pursue the possibility of connecting to the sub-transmission system and taking service under Rate GSU. Furthermore, Section V.A. of the tariff also explicitly states that in no event shall refunds be due to the customer representing the difference in charges under different rate schedules applicable to the same class of service,

except as required by law. (Joint Ex. 1, Orig. Sheet 4 at pg. 4). Thus, the request that the Commission order a refund is not well made and should be denied.

{¶ 39} As a final matter, on October 25, 2017, PCC Airfoils filed a request for the Commission and attorney examiners to "take judicial notice of the evidence presented in the pending case *I. Schumann & Company, LLC v. The Cleveland Electric Illuminating Company*, Case No. 17-473-EL-CSS, to the extent relevant in this case, in particular the emails in evidence relating to CEI's consideration of the financial effect on CEI rather than the financial effect on its customer." CEI filed a memorandum contra PCC Airfoils' request on November 9, 2017, arguing that taking administrative notice of information outside of the evidentiary record would be improper at this stage of the proceeding.

{¶ 40} We agree with CEI that taking administrative notice of this information would be improper at this stage of the proceeding, especially when PCC Airfoils has not specifically identified the information it would like the Commission to consider from the other pending case. To permit otherwise would be highly prejudicial to the Company and inconsistent with Commission precedent in regard to our practice of taking administrative notice. This information should have been presented during the hearing for this proceeding. As noted in the January 18, 2017 Entry issued in this case, the Complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Regardless, the issue is moot as the Commission has rendered its decision in this proceeding.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 41} On November 16, 2016, PCC Airfoils filed a complaint against CEI contesting CEI's reading of their tariff and refusal to switch PCC Airfoils from Rate GS to Rate GSU.

{¶ 42} CEI is a public utility as defined by R.C. 4905.02, and an electric light company, as defined by R.C. 4905.03(A)(3), and, as such, is subject to the jurisdiction of the Commission.

{¶ 43} On November 29, 2016, CEI filed its answer, denying the material allegations contained in the complaint.

{¶ 44} A settlement conference was held on February 10, 2017, however, the parties were unable to resolve this matter, and a hearing was held on May 12, 2017.

{¶ 45} The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 46} The Commission finds that Complainant has failed to show, by a preponderance of the evidence, that CEI has violated its tariff, Commission rules, or Ohio law by refusing to allow PCC Airfoils to migrate from Rate GS to Rate GSU.

{¶ 47} CEI should assist PCC Airfoils with its migration from Rate GS to Rate GP as soon as practicable, in accordance with this Opinion and Order.

V. ORDER

{¶ 48} It is, therefore,

{¶ 49} ORDERED, That this matter be decided in favor of CEI as Complainant has failed to show, by a preponderance of the evidence, that the Company has violated its tariff, Commission rules, or Ohio law by refusing to allow Complainant to migrate from Rate GS to Rate GSU. It is, further,

{¶ 50} ORDERED, That CEI assist Complainant with its migration from Rate GS to Rate GP as soon as practicable, in accordance with this Opinion and Order. It is, further,

{¶ 51} ORDERED, That PCC Airfoils' October 25, 2017 request for the Commission to take administrative notice be denied. It is, further,

{¶ 52} ORDERED, That a copy of the Opinion and Order be served upon all parties in this proceeding.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

MJA/STD/mef

Entered in the Journal
JUN 28 2018

Barcy F. McNeal
Secretary