THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
I. SCHUMANN & COMPANY, LLC,

COMPLAINANT,

V. CASE NO. 17-473-EL-CSS

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on October 3, 2018

I. SUMMARY

{¶ 1} The Commission finds that Complainant has established, by a preponderance of the evidence, that The Cleveland Electric Illuminating Company's decision and underlying analysis to refuse Complainant's request to migrate to subtransmission service is unjust, unreasonable, and unduly prejudicial.

II. PROCEDURAL BACKGROUND

{¶ 2} The Cleveland Electric Illuminating Company (CEI or the Company), is a public utility, as defined in R.C. 4905.02, and, as such, is 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 February 16, 2017, I. Schumann & Company, LLC (Complainant or Schumann) filed a complaint against CEI alleging that CEI had unduly discriminated against Complainant by denying its request to take electric service under another rate

schedule. Specifically, Complainant claims that CEI has wrongfully refused to supply subtransmission service in accordance with its tariff despite having sufficient capacity to do so, in violation of R.C. 4905.22 and 4905.35(A), and requests that the Commission direct CEI to comply with its tariff and allow Complainant to take subtransmission service under General Service - Subtransmission (Rate GSU). Complainant also requests any additional relief necessary to ensure that CEI no longer discriminates against Complainant as to its request to take service under the Rate GSU tariff.

{¶ 5} On March 8, 2017, 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} The parties indicated that a settlement conference would not be necessary before proceeding to an evidentiary hearing, pursuant to Ohio Adm.Code 4901-9-01(G).

{¶ 7} A two-day evidentiary hearing took place starting on August 16, 2017, at which witnesses Scott Schumann, Lawrence Grady, and Vineet Kumar presented testimony on behalf of Schumann, and witnesses Denise Bellas, Jean Becks, 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 September 15, 2017, and September 29, 2017, respectively. Schumann and CEI filed timely initial post-hearing briefs. On September 26, 2017, the parties filed a joint motion for extension of time to file reply briefs, and the Attorney Examiner granted the joint motion of time to file reply briefs and directed the reply briefs to be filed by October 9, 2017. Schumann and CEI filed timely reply briefs on October 10, 2017, 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, 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} Schumann is in the business of supplying a wide range of alloys and products for foundry and mill applications and operates several electric and gas furnaces to manufacture alloys at its manufacturing facility located in Bedford, Ohio (Complaint at 1, Schumann Ex. 2 at 3-4; Schumann Ex. 3 at 2-3). Schumann requires and will continue to require large quantities of electricity in its manufacturing processes (Complaint, Ex. at 7). Complainant currently receives electric service under the Company's General Service Secondary (Rate GS) from an existing L-1-KK 13.2 kilovolt (kV) distribution circuit (Circuit) (Complaint at 2; Schumann Ex. 1 at 1-INT-001(a)). As noted in its complaint, Schumann claims that CEI has wrongfully refused to supply subtransmission service in accordance with its tariff and requests the Commission direct CEI to comply with its tariff and allow Complainant to take subtransmission service under Rate GSU. Schumann further requests that the Commission find CEI's restrictive policy and tariff unduly, unjustly, unreasonably, and unlawfully discriminate against Schumann, that CEI violated R.C. 4905.22 and 4905.35 by refusing to allow Schumann to take service under the GSU tariff subjecting Schumann to undue and unreasonable prejudice and disadvantage, and that CEI, in violation of its tariff, has acted unreasonably and unlawfully by refusing to allow Schumann to take service under the GSU tariff. Lastly, Schumann requests the Commission to provide any other relief

necessary that will ensure CEI does not discriminate against Schumann as to its request to take service under the GSU tariff.

{¶ 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. Subtransmission 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 pg. 4).[1] 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).

{¶ 12} Schumann initially alleges that CEI's consideration of the possible revenues it would lose when developing reasons to refuse Schumann's request for Rate GSU service was unreasonable and discriminatory, and for this reason alone, the Commission should order CEI to allow Schumann to connect to the subtransmission system and receive service under Rate GSU. Schumann contends that the record evidence supports this conclusion, and CEI's witness, Dean Philips, testified that it would be unreasonable for CEI to consider its lost revenue in the decision to deny or approve the service connection (Tr. Vol. II at 357).

{¶ 13} Schumann further alleges three additional arguments in support of a Commission order directing CEI to grant Schumann's request to migrate to subtransmission service: (1) Schumann qualifies for subtransmission service, (2) Schumann qualifies for Rate

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1 Secondary Service (Rate GS) is listed as having a nominal voltage of less than or equal to 600 volts, Transmission Service (Rate GT) is listed as having greater than or equal to 69,000 volts, and Primary Service (Rate GP) is listed as being at all other available voltages.

GSU because Schumann requires that particular rate schedule, and (3) the statements by the Company's rates department personnel support Schumann's interpretation of CEI's tariff.

{¶ 14} The Company, on the other hand, 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 subtransmission 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 subtransmission 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." In fact, CEI witness Philips testified that limiting access to the Company's subtransmission system to only those customers that require subtransmission service helps ensure that this system can continue to reliably serve its "critical backbone function" for all of the Company's customers. (Company Ex. 29 at 8.)

{¶ 15} 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 (Joint Ex. 1; Company Ex. 29 at 5-6). 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. 29 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. 29 at 6-7).

1. WHETHER SCHUMANN QUALIFIES FOR RATE GSU UNDER CEI'S TARIFF

a. Schumann's Arguments

{¶ 16} Under its first argument, Schumann avers that it qualifies for Rate GSU under CEI's Tariff for two reasons. First, because there are two 36 kV subtransmission circuits immediately next to Schumann's premises and commensurate with Schumann's current and potential load, Schumann qualifies for a delivery voltage under the subtransmission service class, pursuant to Part IV(C) of CEI's Electric Service Regulations. Second, Schumann asserts it qualifies for Rate GSU because it requires subtransmission service which is a condition under the Rate GSU schedule in CEI's Tariff.

{¶ 17} Specifically, Schumann states there is no dispute that the two 36 kV circuits have adequate capacity and are immediately adjacent to Schumann's premises referencing CEI witness Philips' admission to such in written interrogatories (Schumann Ex. 1 at 1-INT-001; Tr. Vol. II at 311). Although CEI's tariff provides that CEI will specify delivery voltage, Schumann argues that right of specification is expressly constrained and limited in CEI's tariff to two considerations: the availability of the lines and ensuring the delivery voltage is commensurate with the size of the customer's load (Joint Ex. 1, Orig. Sheet 22 at pg. 1). According to Schumann, both of these two considerations have been met. Ironically, Schumann asserts that CEI's mere offering of the alternative General Service - Primary (Rate GP) indicates that Schumann may be eligible for more than one service and admits that Complainant requires something other than its current service, as the tariff language specific to this rate schedule is also available to the "general service installations requiring" it and allows for CEI to determine the necessary voltage (Joint Ex. 1, Orig. Sheet 21 pg. 1). Moreover, although the Company claims its tariff requires it to use these factors to determine the appropriate service voltage a customer should receive based on the

customer's needs, subtransmissionSchumann argues the factors do not really evaluate the customer's needs at all (Company Ex. 29 at 5). Rather, according to Schumann, CEI's alleged policy is to place a customer on the lowest possible voltage unless there is an appropriate engineering reason requiring higher voltage, and the Company does not take into account the customer's concerns about more reliable service, capital investment, growth, additional employment, and taking service from the most economical rate schedule available in the Company's tariff to meet these needs (Tr. Vol. II at 300-301, 363-364). Such a policy, according to Schumann, is contrary to the Company's tariff. However, Schumann maintains that the evidence in this case shows that, even though Complainant should not be required to satisfy these balancing factors or demonstrate an engineering reason to show that it requires subtransmission service, it does so nonetheless.

{¶ 18} Schumann further avers that regardless of whether measured as of 2016 or today, Schumann's demand is larger than the loads of customers currently receiving Rate GSU service from subtransmission circuits R-11-NF-G-X and R-24-NF-G-X that are nearby Schumann's premises, and it is significantly larger than the median and mean loads of all approximately 135 customers being served from these circuits. Additionally, Schumann notes that a manufacturing plant expansion could lead to additional load increases. (Schumann Ex. 2 at 7; Schumann Ex. 1C at 0082, 0110; Schumann Ex. 1 at 2-RFA-014 through 2-RFA-019, 2-INT-017(b).) Furthermore, Schumann states that CEI's Tariff supports the conclusion that subtransmission service at 36 kV is commensurate with Schumann's load stating that CEI's Tariff provides that, "[c]ustomers with demands in excess of twenty-five hundred (2,500) kW will generally be served at Transmission Service" (Joint Ex. 1 at Orig. Sheet 4, page 4 of 21). Because 2,500 kW is commensurate with a delivery voltage of at least 69,000 volts, then Schumann's load would be commensurate with a delivery voltage of 36,000 volts, and therefore, Schumann argues that CEI should specify a delivery voltage of 36 kV. This is especially due to the fact that Mr. Weis suggests that Schumann "may have a right to be served by the higher voltage, if requested" (Schumann Ex. 1 at 0029).

{¶ 19} Under its second argument, Schumann avers that Rate GSU is available to it because it requires subtransmission service, stating that a 36kV delivery service will be more reliable and will provide Schumann with opportunities of capital investment and potential expansion. Schumann maintains that subtransmission service is more reliable and will have fewer costly and problematic electric service outages and interruptions compared to CEI's 13.2 kV distribution circuit, which result in significant costs for lost product and employee time (Schumann Ex. 2 at 6-7; Schumann Ex. 3 at 2-4; Tr. Vol. I at 74). Schumann states that its continuous manufacturing process and operation of heavy-duty industrial equipment require a reliable supply of electricity and further contends that 12 outages of over five minutes occurred on the 13.2 kV circuit serving Schumann from March 2015 to March 2017. In addition, CEI witnesses admitted that those outages do not include momentary interruptions (i.e., interruptions lasting less than five minutes), which require the same restart procedures for its manufacturing processes that the outages require (Schumann Ex. 1 at Schumann Set 1-INT-003; Schumann Ex. 2 at 6, 8, 10-11; Tr. Vol. II at 336). Since March 2017, Schumann claims the situation has not improved, citing at least 12 additional electric service outages or momentary interruptions to its facility (Schumann Ex. 2 at 6, 8, 10). Schumann believes that 36 kV delivery service will provide Schumann with more reliable service and reduce the instance of electric service outages and momentary interruptions based on the CEI witness Philips' statement that 36 kV circuits adjacent to Schumann's premises "have less outages – both momentary interruptions as well as sustained outages – than the 13.2 kV system that Schumann is currently on." (Tr. Vol. II at 343-44).

{¶ 20} Complainant also maintains that it requires 36 kV subtransmission service because such service will position Schumann for expansion of its business and plant. While Schumann does not cite to any current pending or proposed plans to expand its plant or related facilities, it believes that it could face capacity constraints, will continue paying higher electric service costs, and will still have numerous outages resulting in operational inefficiencies, if CEI does not migrate Schumann to subtransmission service. (Schumann Ex. 2 at 8-9; Tr. Vol. II at 305.) As CEI has not provided any details for how much or how

likely Schumann's load would have to increase to necessitate subtransmission service, Schumann argues that planning such future expansion has become increasingly difficult (Tr. Vol. II at 294-295, 303-304). Furthermore, pursuant to Ohio Adm.Code 4901:1-1-03(B)(2), Schumann argues CEI is required to consider whether Rate GSU would be the most economical service available to Complainant (Company Ex. 27 at 7).

{¶ 21} As a final point, Schumann contends that its interpretation of CEI's tariff is supported by statements made by CEI's Rates Department personnel, whom Company witness Philips also acknowledged were more knowledgeable than CEI's witnesses in this case (Tr. Vol. I at 194; Tr. Vol. II. at 316-17). Schumann contends that personnel in the Rates Department saw nothing in the CEI tariff preventing Schumann from receiving 36 kV service under Rate GSU. Specifically, in May 2016, Rates Department personnel reviewed Schumann's request for 36 kV service, and Santino Fanelli, the Director of CEI's Rates Department, indicated he was unsure about what tariff support CEI would have to deny Schumann's request. (Schumann Ex. 1 at Schumann 0029.) Furthermore, Schumann states that Rates Department employee Richard Weis even indicated that if the subtransmission line was available adjacent to the customer's facilities, "the customer may have a right to be served by the higher voltage, if requested." (Schumann Ex. 1 at Schumann 0029-0030). Lastly, given that various CEI employees made statements regarding at least the existence of some ambiguity in the tariff language, Schumann further avers that if the Commission likewise determines ambiguity exists, it must construe the ambiguity against CEI and in favor of Schumann, citing *Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 407, 575 N.E.2d 157 (1991). (Schumann Ex. 1 at Schumann 0082, 0110; Company Ex. 29 at 5; Tr. Vol. I at 202-203). Thus, Schumann reiterates that it fulfills the requirements set forth in CEI's tariff, thereby qualifying for subtransmission service.

b. CEI's Arguments

{¶ 22} Upon receipt of Schumann's initial request in September 2015, for a breakdown of its bill calculations and an overview of CEI's rate structure, Ms. Bellas testified that she met with Schumann and its consultant to explain the various CEI rates, specifically

Rate GP and GSU. Ms. Bellas added that Schumann would have to qualify for Rate GSU based on load and that Planning would determine if this was the case. (Company Ex. 25 at 3-4; Tr. Vol. I at 178-179, 186.) CEI states that Ms. Bellas met with Schumann again in January 2016, at which time she informed them that Schumann would need to contact the CEI call center and submit a formal request for subtransmission service (Tr. Vol. I at 186, 232-233). Although CEI notes that no formal request had been submitted, Ms. Bellas nevertheless contacted Planning and requested that Jean Becks review Schumann's informal request for subtransmission service (Company Ex. 25 at 4). Ms. Bellas testified that she notified Ms. Becks that Schumann did not have any specific plans for future expansion or to develop its undeveloped land, which was confirmed by Mr. Schumann at the hearing (Company Ex. 25 at 4; Schumann Ex. 2 at 9-10; Tr. Vol. I at 43).[2] Quite the contrary, CEI argues that Schumann's electric demand has decreased since 2015 due to measures it has undertaken to reduce its monthly peak demand and combining two meters into one (Schumann Ex. 2 at 7; Tr. Vol. I at 70, 91-92). In fact, CEI asserts Schumann has been able to operate its equipment at a higher demand to meet short-term growth opportunities with its current connection to the 13.2 kV circuit, citing Complainant's inability to identify any situation in which it was forced to refuse additional manufacturing work due to its electrical capacity (Tr. Vol. I at 39-40, 116).

{¶ 23} The Company also explains that Planning 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, including switching operations required to perform line

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2 CEI also indicated that upon receiving notice of any additional anticipated load due to plant expansion or new equipment, provided Schumann had the requisite information and specifications, CEI would evaluate Schumann's request at that time (Tr. Vol. II at 281-282, 294-295).

work (Company Ex. 27 at 5-6). When determining whether the current 13.2 kV circuit connection is, and would continue to be, sufficient for Schumann's load, Ms. Becks testified that she used the Company's load forecasting data management system to conclude that there were no capacity issues for Schumann's existing service and no other customers on the 13.2 kV circuit had experienced negative effects from Schumann's connection to that circuit; thus, Ms. Becks concluded that Schumann was adequately served from its existing distribution service (Company Ex. 27 at 6-7; Tr. Vol. I at 191-192; Tr. Vol. II at 290-294). At that point, CEI avers that Schumann was notified of the results from Planning's review of its request (Tr. Vol. I at 51). Notably, CEI claims that the review process and ultimate decision of the Company would have been the same, regardless if Schumann had submitted a formal request when directed to do so by Ms. Becks (Company Ex. 27 at 7; Tr. Vol. II at 281-282). CEI adds that the decision as to whether Schumann qualified for subtransmission service fell within the dominion of Planning, and not those within the Rates Department, contrary to Schumann's claims (Schumann Ex. 2 at 16-18; Company Ex. 27 at 7; Tr. Vol. I at 53-57, 193-194). Furthermore, CEI argues the 36 kV system is complex and operated at voltages that may not be safely worked while energized and, thus, maintains that the switch to 36 kV service may not be as advantageous to Complainant's operations as it presumes (Company Ex. 29 at 6; Schumann Ex. 1 at Schumann Set 1-INT-009, Page 9 of 58).

{¶ 24} Finally, CEI maintains that its decision to deny Complainant's request to migrate to subtransmission service was not only consistent with the unambiguous language of 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. (Tr. Vol. I at 39-43, 52; Company Ex. 25 at 4; Company Ex. 27 at 7; Company Ex. 29 at 7-8). Regardless if Complainant had such plans, the Company also emphasizes that the tariff requires that voltage be commensurate with the customer's current load, and not its potential load. Given the potential negative reliability impact the additional connection could have on the subtransmission system and the Company's other

customers, as it alleges every customer connection to its 36 kV system erodes or incrementally degrades the system, CEI contends that Schumann does not require subtransmission service (Schumann Ex. 1 at 1-INT-009; Schumann Ex. 2 at Ex. B; Company Ex. 29 at 8; Tr. Vol. II at 323). Further, as discussed in Company witness Philips' testimony, CEI claims it offered a reasonable alternative available under its tariff, i.e., moving to Rate GP, which would allow Complainant an opportunity for cost savings without risking decreased reliability for the Company's other customers (Company Ex. 29 at 10). 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. 29 at 5-6). In this case, CEI asserts that secondary distribution service is commensurate with the size of Complainant's load (Company Ex. 29 at 6). 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 its subtransmission and transmission system (Company Ex. 29 at 6-7). 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. 29 at 5-7).

{¶ 25} Accordingly, CEI maintains that the evidence indicate that Complainant, in addition to not currently requiring subtransmission service, does not plan nor is it making any changes to its electric load characteristics that would require it to migrate to subtransmission service in the near future.

2. WHETHER SCHUMANN IS RECEIVING ADEQUATE SERVICE UNDER SECONDARY SERVICE

a. Schumann's Arguments

{¶ 26} In addition to its argument about requiring subtransmission service, Complainant argues that the record supports and requires a finding that Schumann is not receiving adequate service under secondary service. Schumann avers that remaining at

secondary service has adversely impacted Schumann's operations, is unreasonable, and does not constitute adequate service as required by R.C. 4905.22. Specifically, Schumann's manufacturing process involves heating electric induction furnaces and utilizes gas furnaces that require electricity to operate around the clock during the production week (Schumann Ex. 3 at 3). Schumann witness Grady testified that after an electric service outage or interruption, Schumann's "maintenance employees have to work through a complicated restart which can take up to an hour or more * * * making each outage and restart very costly." (Schumann Ex. 1 at 6; Schumann Ex. 2 at 6-7; Schumann Ex. 3 at 4-5). As indicated above, there have been 12 outages lasting over five minutes occurring on the 13.2 kV circuit serving Schumann from March 2015 to March 2017, adding that each of the two 36 kV circuits only experienced one such outage in that same time (Schumann Ex. 1 at Schumann Set 1-INT-003, Schumann Set 1-INT-004). Schumann also claims that since March 2017, there have been at least twelve additional electric service outages or momentary interruptions to Schumann (Schumann Ex. 2 at 11). Along those same lines, Complainant claims that CEI has failed to provide any evidence demonstrating that Schumann will present additional risk to the system, citing the lack of any risk analyses, while adding that, in the event it is determined that the interconnection of Schumann would create additional risk, further design mechanisms would be sufficient to alleviate that additional risk (Tr. Vol. II at 319, 322, 327).

{¶ 27} Furthermore, Schumann states that even if it was allowed, or desired, to switch to Rate GP as recommended by CEI, it would still be taking service under secondary service and from the same low voltage distribution circuit, which remains inadequate for its intensive manufacturing electrical requirements (Tr. Vol. I at 209; Tr. Vol. II at 339; Schumann Ex. 1 at Schumann 0019; Schumann Ex. 2 at 20). Schumann maintains that migrating its manufacturing plant to subtransmission service will reduce Schumann's exposure to the outages and momentary interruptions frequently occurring on the low-voltage level distribution system and will ensure that Schumann has adequate electrical service to support its manufacturing operations (Schumann Ex. 2 at 21).

b. CEI's Arguments

{¶ 28} Without unnecessarily replicating all of its earlier arguments, CEI initially notes that Schumann never notified the Company that it was experiencing issues with its power quality before making its request to migrate to subtransmission service; rather, the first time the Company was notified of these alleged issues was nearly one year after Schumann's first inquiry, despite being served from CEI's distribution system for nearly 50 years (Company Ex. 25 at 3-5; Tr. Vol. I at 43; Schumann Ex. 2 at 10). While Schumann alleges that it experienced damage to equipment due to "numerous spikes and surges resulting from inconsistent incoming voltage to the facility," CEI contends that Complainant has failed to produce any evidence to establish that the alleged damaging voltage variations were caused by CEI (Complaint at ¶ 10). Rather, CEI notes that of the several outside electrical contractors who performed assessments on the electrical service and equipment at Schumann's facility, none of them analyzed the power quality of electricity delivered by CEI. Moreover, while these technicians found issues with the equipment at Schumann's facility, CEI claims they failed to conduct any assessment of the incoming electric service or determine the existence of voltage variations caused by CEI. (Tr. Vol. I at 43-46, 86-89.) Furthermore, after being notified of Schumann's allegations regarding voltage, CEI witness Bellas testified that a voltage graph was placed at Schumann's facility and at all times while the graph was in place, the registered voltage was within CEI's tariff allowance of plus or minus five percent (Company Ex. 25 at 5; Joint Ex. 1, Orig. Sheet 4, Page 3 of 21; Tr. Vol. I at 48). CEI adds that its tariff states the Company will not be liable for damage caused by variations in service characteristics and, in the event the customer is not satisfied with the supply voltage, the customer is expected to install a monitoring apparatus at the customer's expense (Joint Ex. 1 at Sheet 4, Page 3 of 21). Additionally, even though Schumann alleges there were many other momentary interruptions or outages that are not recorded by CEI in addition to the reported six outages and nine momentary interruptions since 2015, the Company argues that Schumann offers no evidence that these disruptions in power occurred or were caused by CEI (Schumann Ex. 1 at Schumann Set 1-INT-003, Att. 1; Schumann Ex. 2 at 11; Tr. Vol. I at 66). As such, CEI concludes that the evidence shows that

Schumann is adequately served from its current electric service, as it has been able to run its equipment at higher demand to meet short-term growth opportunities and its existing electric service was capable of handling that demand (Tr. Vol. I at 40). As noted before, without any evidence showing planned future growth or increased electrical needs, CEI maintains the position that Schumann is adequately served from the existing secondary service voltage. Furthermore, CEI asserts that simply because the subtransmission system is incrementally more reliable than the distribution system is immaterial to the determination of delivery voltage pursuant to its tariff, as such a result would allow any customer the ability to transition to the subtransmission system.

{¶ 29} Additionally, CEI avers that Schumann has not presented any evidence to show that its current electrical service negatively impacts other customers, thus, warranting a transition to subtransmission service. On the contrary, CEI notes the only evidence presented on this issue is the testimony of Company witness Philips, where he testified that the Company is not aware of any instance in which Schumann's current service has caused problems for other customers on the 13.2 kV system (Company Ex. 29 at 5; Tr. Vol. II at 319). CEI also asserts that when Ms. Becks evaluated Schumann's request, she considered the loading of the substation transformer from which Schumann receives service and, with the assistance of the Company's load forecasting data management system, determined that Schumann's current service connections allow for Schumann's load and are well below capacity (Company Ex. 27 at 6-7; Tr. Vol. I at 191-192). CEI argues that if there truly was a reliability issue with the distribution system, the most logical solution would be to fix the issue for all customers rather than move one customer to subtransmission system while disregarding any impact to other customers.

3. Whether CEI's Decision To Deny Schumann's Request For Rate GSU Service Is Unduly Discriminatory

a. Schumann's Arguments

{¶ 30} Schumann first argues that CEI may not "subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage." R.C.

4905.35(A). Schumann alleges that CEI has unreasonably prejudiced and disadvantaged Schumann by restricted access to Rate GSU service, in violation of R.C. 4905.35. See *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 207 (1994) (where the Court held that R.C. 4905.35 prohibits discrimination that lacks a reasonable basis). Instead, Schumann contends that CEI's decision to refuse Schumann's request to migrate to subtransmission service is merely revenue-driven, even though Company witness Philips testified to the fact that it would be unreasonable for CEI to consider its lost revenue in the decision to deny or approve the service connection (Schumann Ex. 1 at Schumann 0029-0030; Tr. Vol. II at 357-58). In support of this contention, Complainant raises three points: (1) despite the Company's policies requiring otherwise, CEI's customer support representative repeatedly denied Schumann's request for Rate GSU before discussing it with its Planning and Protection Department (Planning); (2) unusual steps were taken in order to find other "reasons not to allow" Schumann's request; and (3) CEI unfairly refused Schumann's request due to a manufacturing lack of need for 36 kV service while at the same time providing new 36 kV service to ten other premises despite having no evidence of any need for the majority of those new connections, including two in 2017.

i. Ms. Bellas failed to adhere to Company policy and report Schumann's request for Rate GSU to the appropriate department.

{¶ 31} As to its first argument, Schumann points to the testimony of Company witness Denise Bellas, who indicated in her direct testimony that Schumann first contacted CEI to explore upgrades to its electric service in September 2015 and forwarded the inquiry on to Jean Becks in Planning to further evaluate, consistent with Company policy (Company Ex. 25 at 3-4). However, Schumann notes that on cross-examination, Ms. Bellas stated that her discussion with Jean Becks did not occur until May 2016, approximately eight months later, with no discussions with Planning occurring before that time (Tr. Vol. I at 180-182). In fact, according to Schumann, during that approximate eight month period, Ms. Bellas repeatedly denied requests from Schumann to move to Rate GSU, including on March 30, 2016, in which she stated in an email responding to an energy consultant working with

Complainant "I have [met] with the customer on numerous occasions and they have been informed that based on current load of both meters, it DOES NOT warrant them going off the GSU rate" (Schumann Ex. 1 at Schumann 0019). Moreover, Schumann points out that after the consultant requested further justification for the denial, Ms. Bellas replied that Planning had determined that, based on Schumann's current loads, subtransmission service was not warranted (Schumann Ex. 1 at Schumann 0019). At that time, Schumann alleges that Ms. Bellas informed Mr. Weis, an employee in the Rates Department, that Planning had determined that Complainant did not have enough load to justify the migration to subtransmission service, although she had not yet contacted Planning (Schumann Ex. 1 at Schumann 0029-0030; Tr. Vol. I at 191-192). Schumann also asserts that Ms. Bellas discussed Schumann's request with Ms. Becks in Planning, but only at the direction of Mr. Hrdy (Tr. Vol. 1 at 184). As such, Schumann asserts that, even though it followed the process and directives provided by Ms. Bellas, it is clear from the timeline that the Company failed to follow its own procedure when responding to Schumann's request (Company Ex. 25 at 4).

ii. Mr. Hrdy's involvement with CEI's denial of Schumann's request was solely revenue-driven.

{¶ 32} Secondly, Complainant argues that the testimony of Ms. Bellas demonstrates that Mr. Hrdy is not normally involved in customer requests to change electric service, as he did not work in the Rates Department or in Planning; rather, Schumann contends that Mr. Hrdy only became involved after learning that Schumann had retained an energy consultant who was requesting that it be fed from the 36 kV line so it could take advantage of the GSU rate and expressed his concern that the consultant would encourage other similarly-situated customers to migrate to Rate GSU (Schumann Ex. 1 at Schumann 0029-0031, 0035; Tr. Vol. I at 184). Mr. Hrdy's actual email to CEI's engineering manager stated, in part, "I would like to protect our right to dictate the voltage with which we feed our customers. * * * I would like to get together with you and/or someone on your team (planning maybe?) who can give us some reasons not to allow this. My real fear is that this being a consultant they are going to dig up more customers that would benefit from going

on the GSU service." (Schumann Ex. 1 at Schumann 0035). Despite the previous statements from employees in CEI's Rates Department, Schumann argues that Mr. Hrdy attempted to contact managers in CEI's Engineering and Distribution Standards Departments to try to find some justification for refusing the request; however, Schumann asserts that such attempts were unsuccessful and only reaffirmed that CEI had no basis for refusing Complainant's request (Schumann Ex. 1 at Schumann 0029-0031, 0035, 0081-0082).

{¶ 33} At that point, Schumann maintains that Mr. Hrdy requested Ms. Bellas to discuss the matter with Jean Becks and asked Ms. Becks to put in writing the reasons for denying Schumann's request. The resulting email from Ms. Becks to Mr. Hrdy represents the only written document of which she is aware stating guidelines for customer eligibility for 36 kV service. (Tr. Vol. I at 184; Tr. Vol. II at 282-285.) Schumann also notes that a later email from Mr. Hrdy to CEI President John Skory and various directors discussed Schumann's request and was mostly concerned with the revenue impacts of its request (Schumann Ex. 1 at Schumann 0108-0111, 0122). Therefore, despite CEI assertions that Ms. Becks made the determination based on non-discriminatory and non-economic reasons, Schumann argues that the ultimate decision was already made, based on an unfair evaluation of the revenue impacts that would result by granting Complainant's request.

iii. Other new 36 kV connections were permitted without any showing they were required.

{¶ 34} Despite CEI's claim that it has a policy limiting delivery voltage to the lowest voltage available with adequate capacity unless a higher delivery is required for engineering reasons, Schumann maintains that, even if such a policy exists, it is not being administered fairly or consistently. Specifically, Schumann notes that, since 2015, CEI has provided new subtransmission service to ten premises, six of which CEI could not provide any justification as to why they were required to have such service (Schumann Ex. 1 at 4-INT-002, 4-INT-004, 4-INT-004 Att. 1; Schumann Ex. 5; Tr. Vol. I at 222-228). Schumann contends this is especially egregious given the fact that Schumann's load is significantly larger than both mean and median loads of CEI's other customers receiving 36 kV service and the revenue-

driven process that was undertaken in response to Schumann's request, as detailed above (Schumann Ex. 1 at 2-INT-017(b)).[3] Schumann also contends that if its load is not currently causing objectionable power quality impacts on the 13.2 kV system, then its load could not reasonably be determined to threaten reliability on the 36 kV system, which, according to CEI, can better accommodate customers with load characteristics more likely to cause such impacts. Furthermore, even if this policy was applied consistently, Schumann witness Vineet Kumar, an experienced electrical engineer and former utility system planner, testified that customers can be connected to subtransmission circuits "without unreasonably impairing system reliability" with the use of generally accepted methods and models for simulating power flow and calculating reasonable risks for various customers' connections. Mr. Kumar elaborates even further by stating that these methods provide a customer with a "list of options, the analysis of the system changes required to accommodate the customer's request, and detailed explanations of costs to be borne by the customer." (Schumann Ex. 4 at 3-4.) However, despite these methods being available, Schumann notes that CEI witnesses admitted that the Company has not studied, determined, or quantified any alleged incremental risk caused by customer connections and can point to no other study of any such risk (Tr. Vol. II at 292, 319, 321, 325). Furthermore, Mr. Kumar testified that, in his opinion, and based on his review of the tariff and documents produced in discovery, there are "no reasonable, reliable electrical engineering or system planning reasons" to prevent Schumann from migrating to subtransmission service, especially when CEI has not performed a feasibility study (Schumann Ex. 4 at 2, 7-8; Tr. Vol. I at 156-157). In fact, in his experience, Mr. Kumar could not recall a customer being denied subtransmission service (Schumann Ex. 4 at 5). Schumann also takes issue with CEI's argument that every individual customer connection incrementally degrades the subtransmission system since CEI leaves existing connections in place even if they are no longer required by customers (Company Ex. 27 at 4). As further evidence that system reliability was proffered as a last

[3] Schumann notes this comparative analysis does not include those customers taking service from the 11 kV subtransmission system, as the tariff requires the Company to consider whether subtransmission service is commensurate with the size of a customer's load when specifying delivery voltage.

effort to justify the Company's rejection of Schumann's request, Schumann asserts that Ms. Becks was not aware of how many customers could potentially be affected by Schuman's connection to the two subtransmission circuits at the time of her denial of Schumann's request or a week before the evidentiary hearing took place (Tr. Vol. II at 283-285, 296). Schumann states that all engineers involved in this proceeding agree that: customers can be, and have been, connected to subtransmission systems without unreasonable risk to system reliability; Schumann can physically be connected to a 36 kV circuit; and there is no evidence that doing so will reduce reliability of that circuit (Schumann Ex. 4 at 3, 6-7; Company Ex. 27 at 4; Tr. Vol. I at 152-53; Tr. Vol. II at 319, 322, 325-30).

{¶ 35} As a final matter, Schumann argues that CEI's distinction of "formal" and "informal" requests is evidence of CEI's discriminatory treatment of Schumann. Specifically, at the evidentiary hearing, Schumann refers to CEI witness Bellas' handling of Schumann's request for Rate GSU service. Schumann avers that CEI Witness Bellas stated Schumann's request was an "informal" request and not a "formal" request, and that her communications of express denials to Schumann on its request for Rate GSU service was because Schumann did not make the requisite "formal" request. (Tr. Vol. I at 175-183, 232-233.) Schumann states that at no point did Ms. Bellas instruct it to submit a formal request; rather, Complainant argues that she rejected the request on numerous occasions, as detailed above. Moreover, when Schumann's counsel contacted CEI's counsel on October 11, 2016, Schumann contends that that CEI's counsel did not advise that a formal request should be submitted but, instead, indicated that the request had already been reviewed by Planning and that it was determined Complainant should remain on the 13.2 kV circuit (Schumann Ex. 2 at Ex. C).

b. CEI's Arguments

{¶ 36} As noted earlier, CEI claims that it followed the same procedure for Schumann's request as it does for other customers making similar requests, as demonstrated by a recent request from PCC Airfoils, LLC, which happens to be the only other customer request to move to a higher delivery voltage received by CEI since 2012 (Company Ex. 27 at

5, 7). See *In re the Complaint of PCC Airfoils v. The Cleveland Elec. Illum. Co.*, Case No. 16-2213-EL-CSS (*PCC Airfoils Case*), Opinion and Order (June 20, 2018). While Schumann alleges that various emails sent by Mr. Hrdy, Mr. Weis, Mr. Fanelli, and other Company employees demonstrate a revenue-driven decision to reject Schumann's request to migrate to subtransmission service,[4] CEI again notes that these individuals had no authority to make the final decision as to Complainant's service voltage. That decision, according to CEI, rested with Ms. Jean Becks, who testified that she evaluated the several factors she considers in determining a customer's delivery voltage, none of which involved economic factors (Company Ex. 27 at 3-7). Additionally, the Company maintains that the electric load of other customers, including several schools and large commercial accounts, receiving subtransmission service is irrelevant, as the circumstances surrounding the need for these customers to be connected to the 36 kV system may vary substantially and is determined by the Company on a case-by-case basis (Company Ex. 29 at 7, 9; Tr. Vol. I at 51). In fact, the Company notes that many of these subtransmission customers are served off a much older 11 kV system (Company Ex. 29 at 7-9). Furthermore, as the Supreme Court of Ohio has held that under R.C. 4905.35(A) "discrimination is not prohibited per se but is prohibited only if without a reasonable basis," CEI contends that no violation of R.C. 4905.35(A) has occurred. *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 207, 638 N.E.2d 516 (1994) ("* * * [T]he mere fact that both Allnet and Ohio Bell are engaged in intraLATA interexchange market is not sufficient to prove unjust discrimination, as both companies differ in a myriad of ways[.]"). Here, CEI argues that Schumann was treated the same as similarly situated customers and has failed to present any evidence indicating otherwise. subtransmissionAccording to CEI, and contrary to Schumann's argument, the fact that the justification for other customers' connections to the subtransmission system was unavailable does not prove discrimination against Schumann and its request for connection (Tr. Vol. I at 228).

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4 Mr. Hrdy, Mr. Weis, and Mr. Fanelli did not testify during the evidentiary hearing.

{¶ 37} In response to several of Schumann's claims regarding the Company's consideration of lost revenue in its decision, CEI notes that Schumann has mischaracterized various evidence, including Mr. Philips' responses to hypothetical questions in which he indicated, hypothetically, that in the event CEI based its decision on the fact that CEI would lose revenue, he would find that decision, or any consideration of that information, to be unreasonable (Tr. Vol. II at 357-358). CEI continues to assert that revenue was not a basis for, or considered in, its decision to maintain Schumann on Rate GS. Additionally, CEI denies Schumann's assertions that various statements made Rates Department personnel show that Schumann should be able to receive subtransmission service, noting that none of these individuals conclusively stated that this should be the case; rather, CEI contends these employees were merely requesting additional clarification and indicating that Schumann may have the ability to migrate to such service (Schumann Ex. 1 at Schumann 0029). Also importantly, CEI notes that Schumann never made a formal request for subtransmission service to the CEI Call Center, even though it was directed to do so by Ms. Bellas, resulting in any perceived delay in the processing of Schumann's request. The analysis and resulting decision, according to CEI, would have nonetheless been the same. CEI adds that Schumann was not prejudiced since Ms. Becks did evaluate the informal request and determined that it did not qualify for subtransmission service. (Company Ex. 25 at 4; Company Ex. 27 at 2, 7; Tr. Vol. I at 175, 232; Tr. Vol. II at 281-282.)

{¶ 38} As a final matter, CEI argues that little, if any, weight should be given by the Commission to the testimony provided by Schumann witness Kumar. In support of this argument, CEI notes that Mr. Kumar acknowledged that he himself did not perform a feasibility study before making his recommendations in this case, although he criticizes the Company for not doing the same, and even conceded that he had not communicated with any of Schumann's employees or visited the facility in person (Tr. Vol. I at 156-159). Moreover, CEI argues that, during his employment with AEP Service Corp., the experience upon which he bases much of his testimony and recommendations, Mr. Kumar did not conduct a feasibility study without receiving from the customer existing load information,

projected loads for up to 15 years, and projection and control analysis of the customer's existing circuit protection devices, all of which he did not know if Schumann provided to CEI before making its request (Tr. Vol. I at 144-145, 156-157). Additionally, according to CEI, Mr. Kumar acknowledged at hearing that he would not be able to determine what a reasonable engineering reason would be to disallow Schumann from connecting to CEI's subtransmission service, absent a feasibility study (Schumann Ex. 4 at 4-5; Tr. Vol. I at 152). The Company also points out that the "best practices" referenced by Mr. Kumar during his time with AEP Service Corp. was not an industry standard and was not related to customer requests to connect to subtransmission service, but rather, was a reference document for requests regarding distributed generation (Schumann Ex. 4 at 4-5; Tr. Vol. I at 141-142). For all of the reasons noted above, CEI concludes that Schumann has failed to meet its burden showing that it was subjected to "any undue or unreasonable prejudice or disadvantage." R.C. 4905.35(A).

C. Commission Conclusion

{¶ 39} 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.

{¶ 40} The complaint presented by Schumann 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). 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.

{¶ 41} As a preliminary matter, the Commission recognizes that there appears to be little dispute between the parties that Complainant's request for subtransmission service was not denied on the basis of the availability of lines in the vicinity of Schumann's facility or the size of the customer's load. The real dispute in this case arises from Schumann's belief that, upon satisfying these two criteria, the tariff language provides it with the ability to switch to an alternative rate schedule containing more favorable terms. 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 subtransmission 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.

{¶ 42} We have already found the applicable tariff language to be unambiguous as to the requirements for qualifying for the Rate GSU rate schedule. *PCC Airfoils Case*, Opinion and Order (June 20, 2018) at ¶ 29 (where we noted that the tariff plainly states that Rate GSU is "[a]vailable to general service installations requiring subtransmission service" and that the "[c]hoice of voltage shall be at the option of the Company"). Therefore, the Commission must enforce the tariff as written.

{¶ 43} 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 the provision of this service. Similar to our findings in the *PCC Airfoils Case*, 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, despite the fact that CEI could point to no specific study conducted to evaluate the incremental increase in the degradation of the system upon the adding of customers to its subtransmission system (Tr. Vol. II at 299; Company Ex. 29 at 7-8, 10). Further, Company witnesses Philips and Becks testified that the Company utilizes the same balancing factors every time it must determine the appropriate service voltage for a customer (Company Ex. 27 at 5-6; Company Ex. 29 at 5-7). As we have previously held, the Commission recognizes that CEI's case-by-case approach for evaluating requests to be served from the subtransmission 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, as well as any other facts or circumstances the Company finds relevant in its analysis. *PCC Airfoils Case*, Opinion and Order (June 20, 2018) at ¶ 31.

{¶ 44} We continue to find that, upon receiving a request from a customer to connect to its subtransmission system, it is reasonable for an electric distribution utility to evaluate the incremental reliability risk and potential strain associated with connecting that customer to the subtransmission system, as well as the aggregate level of risk facing its distribution system, as a whole, before acting on the request (Company Ex. 29 at 7, 10). 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. Furthermore, by utilizing the various 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 such mitigating circumstances, we continue to find that the Company's general policy for determining the appropriate service voltage is reasonable. (Tr. Vol. I at 59-64; Company Ex. 29 at 9; Complainant Ex. 1 at 7, 11-12; Tr. Vol. II at 296.) However, the Commission can only come to this conclusion when

these factors and policy are applied fairly and consistently to all similar requests submitted to the Company, either formally or informally.

{¶ 45} CEI is quite correct that this proceeding is very similar as to the issues and underlying circumstances raised in the *PCC Airfoils Case*. In this case, the Company undertook an investigation, albeit delayed, to determine whether taking service under Rate GSU would be appropriate given the Complainant's current and expected electrical needs. However, the record evidence indicates that the Company's ultimate determination in this case, unlike that in the *PCC Airfoils Case*, was made without consideration of the Company's general policy for determining service voltage.

{¶ 46} Consistent with the Supreme Court of Ohio's holding in *Allnet*, discrimination under R.C. 4905.35(A) is not prohibited per se but is prohibited only if without a reasonable basis. Determining applicable rate schedules can be an inherently discriminatory process, in which some customers are allowed the opportunity to change to a particular rate while others are denied for requesting the same. See also *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 734 N.E.2d 775 (2000). Although CEI claims that it had a reasonable basis for its ultimate decision to maintain Schumann on the 13.2 kV system, as described in Ms. Becks' testimony, we agree with Schumann that the record evidence shows this basis was only proffered after the ultimate decision to deny the request had been made (Company Ex. 27 at 6-7; Tr. Vol. I at 191-192).

{¶ 47} The Company is correct that it came to the same result as the *PCC Airfoils Case*, which it alleges demonstrates the non-discriminatory nature of its decision as that case was the only other instance since 2012 in which a customer requested to move from the distribution to subtransmission system. However, the record demonstrates that Schumann's request was not handled similarly to other requests for service voltage re-evaluations and that the Company failed to afford due consideration to the facts and circumstances underlying Schumann's request. We have several specific concerns regarding CEI's handling of this request. First, despite the Company's assertions that

Schumann's informal request for subtransmission service was treated as if it had been submitted as a formal request,[5] Ms. Bellas testified that she did not contact Ms. Becks, or anyone else, in Planning until nearly eight months had passed from the initial meeting held in September 2015, or five months from the follow-up meeting held in January 2016 (Schumann Ex. 8; Tr. Vol. I at 177, 180-182, 186, 232; Tr. Vol. II at 277-279). Ms. Bellas also conceded that she did, in fact, write several emails during that time (January through May) in which she indicated that Schumann was not eligible for subtransmission service or Rate GSU, without advising Complainant it should submit a formal request for this service. In fact, in one such email dated March 31, 2016, she goes as far to say that Planning had already determined "that based on customer's current loads they do not warrant going off the subtransmission service." CEI provides no justification explaining why these emails were ever sent. Although the exact date(s) of Planning's investigation remains unclear from the record, there is sufficient evidence to show that Planning did not conduct any type of analysis regarding, or was even made aware of, Schumann's request before mid- to late-May 2016 (Schumann Ex. 8; Schumann Ex. 9; Schumann Ex. 10; Tr. Vol. II at 276, 282-285). The fact that Ms. Bellas' initial emails were made without any consultation from Planning or indication that a formal request was necessary to move forward in the process is unacceptable. Furthermore, we find her contradictory testimony to be quite damaging to not only her credibility, but also to CEI's arguments regarding the reasonableness of its process and decision in this case. Second, while the record shows that Schumann did not raise any reliability concerns with CEI before Ms. Becks conducted her analysis regarding Schumann's informal request in May 2016, the Commission notes that reliability of the requesting customer's electric service should be considered as a part of the Company's determination of whether the current service being provided to a customer is adequate. CEI does not deny that Schumann has been experiencing outages and momentary interruptions,

5 While Ms. Bellas' pre-filed testimony indicated that she treated this request the same as if it had been submitted formally, she also stated at the evidentiary hearing that she handled Schumann's request for Rate GSU subtransmission service differently than she would have handled it had they submitted a formal request (Company Ex. 25 at 7; Tr. Vol. I at 183).

or that these pose a problem for Schumann's industrial operations, and at the same time admits that the 36 kV circuits experience fewer outages and momentary interruptions than its 13.2 kV circuit (Tr. Vol. II at 343-344). Ms. Becks testified that, even though the reliability division of CEI maintains outage and momentary interruption information on a quarterly basis and was readily available, she did not look at such information to determine if Schumann was being adequately served. (Schumann Ex. 8; Tr. Vol. II at 285-290, 297-298, 300-301.) As such, at the very least, CEI should have reevaluated Schumann's request as of September 2016, at which time Ms. Bellas testified that she was made aware of the reliability concerns and ordered a voltage test to be conducted (Company Ex. 25 at 5; Tr. Vol. II at 285-286). Without a more comprehensive evaluation of Schumann's concerns, we find that there was not a sufficient basis for the Company to conclude that Schumann is currently receiving adequate service.

{¶ 48} Third, although CEI contends Planning is the sole arbiter for determining delivery voltage for these types of requests, several communications authored by Ms. Bellas and Mr. Hrdy seem to dictate the result of any eventual investigation that may have occurred, contrary to the Company's stated internal policy (Tr. Vol. I at 191-192, 196; Tr. Vol. II at 282-283; Schumann Ex. 1 at Schumann 0019, 0029-0031, 0035, 0082). Specifically, we note the May 10, 2018 email sent by Mr. Hrdy to CEI's engineering manager, where Mr. Hrdy indicates that he was attempting to come up with reasons to reject Schumann's request before any independent analysis was conducted by Planning or any other CEI department (Schumann Ex. 1 at Schumann 0035). Fourth, we find it extremely difficult to ignore the statements from Rates Department personnel, of whom several CEI witnesses testified are the most qualified to determine questions regarding tariff application, that indicate there is no apparent basis for denying Schumann's request. Rather, as many of these employees indicate in these communications, the evidence appears to show that this decision was primarily grounded in the prospect of maintaining the amount of revenue collected from Schumann. (Schumann Ex. 1 at Schumann 0029-0030, 0108-0111, 0122; Tr. Vol. I at 184, 194; Tr. Vol. II at 282-285, 316-317.)

{¶ 49} We are not convinced by the Company's argument that its internal policy for determining service voltage, which this Commission has already generally concluded to be a reasonable policy, was applied consistently in this case. Rather, it appears from the record evidence that this decision was made without consultation from Planning and the investigation conducted by Ms. Becks on or about May 24, 2016, was completed only to bolster the decision that already had been made to deny Schumann's request for subtransmission service. While we note Ms. Becks may be quite right that, based on the same information, she would have come to the same conclusion as that of her initial inquiry, we cannot be certain because the initial inquiry was not completed on an independent basis by Planning when the request was first submitted to CEI, and instead was conducted after the fact, inconsistent with the Company's alleged policy (Schumann Ex. 9; Schumann Ex. 10; Tr. Vol. II at 281-282). Nor are we persuaded by Mr. Philips' testimony as he was not involved with the investigation or resulting response to Schumann's request, did not conduct any independent analysis regarding the request, and was only made aware of the request in April 2017 (Tr. Vol. II at 313-317). Thus, for all of the aforementioned reasons, we find the Company's handling of this request and ultimate decision to reject Schumann's request for subtransmission service was unjust and unreasonable.

{¶ 50} Accordingly, the Commission finds that Schumann has established, by a preponderance of the evidence, that CEI's decision and underlying analysis to refuse Complainant's request to migrate Complainant to subtransmission service is unjust, unreasonable, and unduly prejudicial. Further, the Commission recognizes that our decision is limited to the particular facts and circumstances presented in this case and the Commission has not hindered the Company's future ability to exercise its authority over the extent and exposure of its system to maximize reliability for the entire distribution system in a consistent and reasonable manner. We would also mention that our decision today does not deviate from our earlier rulings in the *PCC Airfoils Case*; rather, we are affirming our belief that evaluations regarding requests such as Schumann's should be conducted in a reasonable manner.

D. Motions for Protective Order

{¶ 51} As a final administrative matter, the Commission notes there are several motions for protective order still pending in this case. Specifically, Schumann and CEI filed motions for protective order on August 3, 2017, September 15, 2017, and October 10, 2017, in which they allege certain information in their respective pre-filed testimony and post-hearing briefs constitute proprietary and trade secret information, including operational and financial data, business forecasts, electric demand and use and pricing information, and employment figures, the disclosure of which is prohibited by state law. R.C. 149.43; R.C. 1333.61(D). No memoranda contra were filed in response to any of the six pending motions for protective order.

{¶ 52} The Commission initially notes that R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43, and as consistent with the purpose of Title 49 of the Revised Code. R.C. 149.43 specifies that the term "public records" excludes information which, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State Univ.*, 89 Ohio St.3d 396, 399, 2000-Ohio-207, 732 N.E.2d 373. Similarly, Ohio Adm.Code 4901-1-24 allows the Commission to protect the confidentiality of information contained in a filed document "to the extent that state or federal law prohibits release of the information, including where the information is deemed * * * to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." Moreover, Ohio law defines a trade secret as "information * * * that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." R.C. 1333.61(D).

{¶ 53} Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court in *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 1997-Ohio-75, 687 N.E.2d 661, we find that the operational and financial data, business forecasts, electric demand and use and pricing information, and employment figures filed under seal in this docket contain trade secret information. Their release, therefore, is prohibited under state law. We also find that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Accordingly, we find that the six unopposed pending motions for protective order are reasonable and should be granted.

{¶ 54} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. The attorney examiner finds that confidential treatment shall be afforded to the information filed under seal for 24 months from the date of this Opinion and Order. Until that time, the Docketing Division shall maintain, under seal, the information filed confidentially. Further, Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If a party wishes to extend its confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend the confidential treatment is filed, the Commission may release the information without prior notice.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 55} On February 16, 2017, Schumann filed a complaint against CEI contesting CEI's reading of its tariff and refusal to switch Schumann from Rate GS to Rate GSU.

{¶ 56} 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.

{¶ 57} On March 8, 2017, CEI filed its answer, denying the material allegations contained in the complaint.

{¶ 58} An evidentiary hearing was held on August 16, 2017, and August 17, 2017.

{¶ 59} 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).

{¶ 60} The Commission finds that Complainant has established, by a preponderance of the evidence, that CEI's decision, and underlying process, to refuse to allow Schumann to migrate from Rate GS to Rate GSU is unjust, unreasonable, and unduly prejudicial.

V. ORDER

{¶ 61} It is, therefore,

{¶ 62} ORDERED, That this matter be decided in favor of Schumann as Complainant has established, by a preponderance of the evidence, that the Company's decision and underlying process to refuse to allow Complainant to migrate from Rate GS to Rate GSU is unjust, unreasonable, and unduly prejudicial. It is, further,

{¶ 63} ORDERED, That CEI take all of the necessary steps to migrate Schumann to subtransmission service as soon as practicable. It is, further,

{¶ 64} ORDERED, That CEI and Schumann's respective motions for protective order be granted, as directed in Paragraphs 51-54. It is, further,

{¶ 65} 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/LLA/mef

Entered in the Journal

OCT 0 3 2018

Barcy F. McNeal

Barcy F. McNeal
Secretary