

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
GREGORY P. WEAVER,**

COMPLAINANT,

v.

CASE NO. 18-1414-EL-CSS

**NORTH AMERICAN POWER AND GAS,
LLC,**

RESPONDENT.

ENTRY

Entered in the Journal on November 20, 2018

{¶ 1} 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. Additionally, R.C. 4928.16 extends the Commission's jurisdiction pursuant to R.C. 4905.26 to complaints regarding the provision by an electric services company subject to certification under R.C. 4928.08 of any service for which it is subject to certification.

{¶ 2} Respondent, North American Power and Gas, LLC (NAPG or Company), is an electric services company, as defined in R.C. 4928.01(A)(9). As such, NAPG is subject to the Commission's jurisdiction.

{¶ 3} On September 11, 2018, Gregory P. Weaver (Complainant) filed a complaint against NAPG. Complainant alleges that he entered into a contract with NAPG to provide electricity to his residence at a fixed rate for a period of six months. Further, he states that at the end of the fixed-rate contract he was automatically enrolled in a variable rate plan, with which his rate more than doubled in the first month and regularly increased each month thereafter until he requested termination of the contract in April 2018. Complainant alleges that he never received a notice of expiration of his fixed-rate contract and that NAPG

did not truly disclose all terms and conditions of his contract. As such, Complainant claims that NAPG's business practice is in violation of Ohio Adm.Code 4901:1-21-05, 4901:1-21-11, and 4901:1-21-12. As relief, Complainant seeks a formal apology and commitment to change business practices from NAPG; reimbursement of \$735.90, representing the profits allegedly gained by NAPG after the expiration of his fixed-rate contract; and reimbursement of his expenses in raising his complaint.

{¶ 4} On October 23, 2018, NAPG filed two documents: a motion for leave to file out of time and an accompanying answer. As to the first, NAPG states that the appropriate personnel was out of the office when the Commission forwarded the complaint and, therefore, was unable to engage counsel to respond prior to the expiration of the 20-day period for filing an answer. However, continues NAPG, it promptly engaged counsel to prepare and file the accompanying answer in addition to the motion for leave. NAPG also indicates that the Company reached out to Complainant to further discuss the matter and possibly settle the matter. Thus, NAPG requests that the Commission allow the Company to file its answer out of time.

{¶ 5} As for its answer, NAPG admits some basic factual allegations while denying any wrongdoing. For example, NAPG admits that Complainant entered into a contract with the Company for a supply of electricity at a fixed rate for a six-month period, from April 2017 through November 2017, after which time the contract would continue on a month-to-month basis at a variable rate if Complainant did not terminate the contract or take other action prior to the expiration of the initial six-month period. NAPG further agrees that Complainant terminated his contract in April 2018. NAPG, however, denies any allegation that the Company is not in compliance with Ohio statutes and affirmatively states that the Company sent Complainant notice in advance of the expiration of the six-month period. In addition, NAPG sets forth six affirmative defenses.

{¶ 6} The attorney examiner finds that NAPG's motion for leave to file its answer out of time is reasonable and should be granted. The attorney examiner additionally finds

that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of the complaint. As stated in Ohio Adm.Code 4901-1-26, any statement made in an attempt to settle this matter without the need for an evidentiary hearing is generally inadmissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. The parties, of course, remain free to initiate and pursue settlement negotiations prior to the scheduled settlement conference.

{¶ 7} Accordingly, a settlement conference shall be scheduled for January 3, 2019, at 1:00 p.m., at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215. All parties should register at the lobby desk and then proceed to the 11th floor in order to participate in the settlement conference. If a settlement is not reached at the conference, the attorney examiner may conduct a discussion of procedural issues including discovery deadlines and stipulations of fact.

{¶ 8} Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the public utility shall investigate the issues raised in the complaint prior to the settlement conference, and all parties attending the conference shall be prepared to discuss settlement of the issues raised. Each party must arrive with authority to settle this matter. In addition, the parties shall bring with them all documents relevant to the matter or necessary to facilitate settlement negotiations.

{¶ 9} As is the case 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).

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That NAPG's motion for leave to file out of time be granted. It is, further,

{¶ 12} ORDERED, That a settlement conference be held on January 3, 2019, at 1:00 p.m., as stated in Paragraph 7. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/*Patricia A. Schabo*

By: Patricia A. Schabo
Attorney Examiner

JRJ/hac

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Summary: Attorney Examiner Entry granting motion for leave to file out of time and scheduling a settlement conference electronically filed by Heather A Chilcote on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission