

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF CLEVELAND
METROPOLITAN SCHOOL DISTRICT,**

COMPLAINANT,

v.

CASE NO. 18-1815-EL-CSS

**THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,**

RESPONDENT.

ENTRY

Entered in the Journal on April 1, 2020

{¶ 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.

{¶ 2} The Cleveland Electric Illuminating Company (CEI or Company), is a public utility as defined in R.C. 4905.02. As such, CEI is subject to the Commission's jurisdiction.

{¶ 3} On December 7, 2018, the Cleveland Metropolitan School District (Complainant or CMSD) filed a complaint against CEI, alleging that the Company was providing inadequate service and proposing to charge unjust, unreasonable, and discriminatory costs related to CMSD's recent initiative to install its own transformation facilities to permit schools currently served by CEI to convert from secondary to primary service. Specifically, CMSD notes that bids it has received to install transformers at various school facilities to enable the conversion included an embedded estimate of CMSD's contribution toward the reconfiguration work required to be done by CEI, which CMSD had estimated around \$220,000, given recent charges to the Toledo Public Schools for similar work completed by CEI's sister company, The Toledo Edison Company (Toledo Edison). CMSD further states in its complaint that the actual contribution estimate provided by CEI

was \$314,000. CMSD adds that CEI has attempted to justify the significantly higher cost by arguing that a recloser would be necessary for each location, although Toledo Edison found that such equipment was not necessary to install for Toledo Public Schools' similar request, and that CMSD would be responsible to pay the total cost of reconfiguring the delivery arrangement, even though Toledo Edison, when utilizing identical tariffed Electric Service Regulations, calculated the required customer contribution in aid of construction at 40 percent of the estimated cost for Toledo Public Schools. Accordingly, CMSD maintains that CEI has committed violations of R.C. 4905.22, 4905.32, and 4905.35, and requests that the Commission direct the Company to propose a "fair and reasonable charge that reflects only the necessary costs it will incur in reconfiguring the delivery arrangements to the CMSD schools" and which is calculated in accordance with CEI's Electric Service Regulations.

{¶ 4} On December 19, 2018, CEI filed its answer to the complaint. CEI admits some basic factual allegations while denying any wrongdoing. For example, the Company admits that, due to the physical configuration of its distribution system, reclosers are required for interconnections of the kind proposed by CMSD and customers are required to pay for those reclosers. CEI further agrees that Toledo Edison and the Company are separate legal entities and adds that Toledo Edison is not a party to this proceeding. CEI, however, denies any allegation that the Company is not in compliance with Ohio statutes or its applicable tariffs. In addition, CEI sets forth several affirmative defenses.

{¶ 5} A settlement conference was scheduled and held on April 18, 2019; however, the parties were unable to settle this matter.

{¶ 6} A prehearing status conference was held on November 14, 2019, at which the parties indicated their interest to have a procedural schedule issued in this matter.

{¶ 7} By Entry issued November 25, 2019, the attorney examiner adopted the procedural schedule proposed by the parties. According to that schedule, parties were directed to file testimony by February 18, 2020, and the evidentiary hearing was set to commence on March 3, 2020.

{¶ 8} On January 9, 2020, the parties filed a joint motion requesting a 60-day extension of the procedural schedule due to counsel for Complainant experiencing serious health issues.

{¶ 9} By Entry issued January 13, 2020, the attorney examiner granted the joint motion and adopted a new procedural schedule proposed by the parties. According to that schedule, written discovery requests were permitted until March 13, 2020, parties were directed to file testimony by April 20, 2020, and the evidentiary hearing was set to commence on May 4, 2020.

{¶ 10} On February 28, 2020, Devin D. Parram and the law firm of Bricker & Eckler LLP filed a notice of substitution of counsel, substituting Mr. Parram for Barth E. Royer and the law firm of Barth E. Royer, LLC as Counsel of Record for Complainant. Counsel indicated that Adrian D. Thompson and Josh M. Mandel of Taft Stettinius & Hollister LLP would continue representing CMSD as co-counsel in this proceeding.

{¶ 11} On March 9, 2020, CEI filed a motion to continue the current procedural schedule and to schedule a prehearing conference to establish a new procedural schedule. CEI advised that initial counsel for Complainant, Barth E. Royer, passed away shortly after the January 13, 2020 Entry and that the procedural schedule was no longer workable for reasons related to this unfortunate circumstance. Consequently, CEI requested a prehearing conference be scheduled to establish a revised procedural schedule.

{¶ 12} By Entry issued on March 12, 2020, the attorney examiner granted CEI's motion for continuance of the current procedural schedule and scheduled a prehearing conference to establish a revised procedural schedule.

{¶ 13} A prehearing status conference was held on March 17, 2020, at which the parties indicated their interest to have a procedural schedule issued in this matter.

{¶ 14} Accordingly, the attorney examiner finds that the following procedural schedule is reasonable and should be established for this proceeding:

- a. Discovery requests (except as to notices of deposition) shall be permitted until October 16, 2020.
- b. Parties should file testimony by November 24, 2020.
- c. The evidentiary hearing shall commence on December 8, 2020, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 East Broad Street, 11th Floor, Columbus, Ohio 43215. Parties should register at the lobby desk and then proceed to the 11th Floor to participate in the hearing.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the procedural schedule set forth in Paragraph 14 be observed by the parties. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Matthew J. Sandor

By: Matthew J. Sandor
Attorney Examiner

NW/kck

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in

Case No(s). 18-1815-EL-CSS

Summary: Attorney Examiner Entry the following procedural schedule is established; discovery requests (except notices of depo) shall be permitted until 10.16.20; parties should file testimony by 11.24.20; evidentiary hearing will commence on 12.8.20 at 10:00 a.m. electronically filed by Mrs. Kelli C King on behalf of Matthew Sandor, Attorney Examiner, Public Utilities Commission of Ohio