

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
MONIQUE MAISENHALTER,

CASE NO. 21-816-EL-CSS

COMPLAINANT,

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on September 22, 2021

{¶ 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} Duke Energy Ohio, Inc. (Duke, or the Company) is an electric light company and natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such is subject to the jurisdiction of this Commission.

{¶ 3} On July 23, 2021, Monique Maisenhalter (Ms. Maisenhalter, or Complainant) filed a complaint against Duke. The complaint appears to be concerned with, among other things, whether and, if so, how, Ms. Maisenhalter, who claims to be disabled by electromagnetic field (EMF) sensitivity, may be accommodated, in such manner as to have her gas and electric service provided by Duke through use of electric analog electromechanical non-digital meters, without being charged smart meter opt-out fees which apply under Duke's Commission-approved tariff, and which she has been paying since August 2016, when she had analog meters of that type installed at her home. The complaint alleges that such smart meter opt out fees "are unlawful surcharges under the ADA/ADAA, FHA/FHAA, and state equivalent rules." Complaint seeks to be reimbursed for all opt-out fees she has paid since 2016. Moreover, the complaint also alleges that Duke

has, without appropriate notice or Complainant's consent, engaged in meter testing and/or meter inspection at her home. Additionally, Ms. Maisenhalter asserts that she has solicited from Duke, but never received, a written statement indicating that if the Company found her existing analog electromechanical non-digital meter to be inaccurate, it would be replaced with another meter of that same type. Complainant claims that, instead, Duke told her during a July 15, 2021 phone call, that the Company "didn't have any more analog electromechanical non-digital meters so [in such an event] it would be replaced with a digital opt-out meter." Beyond this, Complaint requests that Duke provide her "with the engineering schematics showing that the meters installed at her home "are purely mechanical meters, not a digital computer compiling data of some sort through electromagnetic means."

{¶ 4} On August 11, 2021, as amended on September 20, 2021, Duke filed its answer in which it admits some, and denies others of the complaint's allegations and sets forth several affirmative defenses. Among other things, in its answer, Duke admits: (1) that Complainant started service at her current address in August 2016; (2) that Complainant has been on the AMI [smart meter] opt out program as set forth in the Company's Commission-approved tariff; (3) that it has arranged with Complainant to test the electric meter at her property on November 21, 2021, as provided for Commission rule and, if that meter fails the test, to replace the meter with the requested analog meter. On the other hand, in its answer, Duke denies: (1) that its electric meters at Complainant's property have caused her any disabling health effects; and (2) that any fees or charges authorized by the Company's smart meter opt out service are unlawful under any statute or federal law or regulation; (3) that Complainant is entitled to be reimbursed for any opt out fees; and (4) that Complainant is entitled to "engineering schematics" of any meter owned by the Company or installed at her property. In its answer, Duke asserts that the Commission's approval of the Company's smart meter opt out service tariff demonstrates that the tariff is neither unjust nor unreasonable.

{¶ 5} The attorney examiner finds that this matter should be scheduled for a settlement teleconference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution in lieu of an evidentiary hearing. In accordance with Ohio Adm.Code 4901-1-26, any statements made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement teleconference.

{¶ 6} Accordingly, a telephone settlement conference call shall be scheduled for October 13, 2021, at 10:00 a.m. To participate in the teleconference, the parties shall dial (614) 721-2972 and conference code 967 499 975#.

{¶ 7} 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 teleconference, and all parties participating the teleconference shall be prepared to discuss settlement of the issues raised and shall have authority to settle those issues.

{¶ 8} 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).

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That a settlement teleconference be scheduled for October 13, 2021, at 10:00 a.m., as indicated in Paragraph 6. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Daniel E. Fullin

By: Daniel E. Fullin
Attorney Examiner

NJW/kck

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/22/2021 2:11:21 PM

in

Case No(s). 21-0816-EL-CSS

Summary: Attorney Examiner Entry ordering that a settlement teleconference be scheduled for October 13, 2021, at 10:00 a.m., as indicated in Paragraph 6. electronically filed by Kelli C. King on behalf of Daniel E. Fullin, Attorney Examiner, Public Utilities Commission of Ohio