

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
KAREN PIERCE,**

COMPLAINANT,

v.

CASE NO. 21-833-EL-CSS

SMARTENERGY HOLDINGS, LLC,

RESPONDENT.

ENTRY

Entered in the Journal on September 30, 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. Additionally, pursuant to R.C. 4928.16, the Commission has jurisdiction under R.C. 4905.26, upon complaint of any person, 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} SmartEnergy Holdings, LLC (SmartEnergy) is an electric services company as defined in R.C. 4928.01 and is certified to provide competitive retail electric service under R.C. 4928.08. Accordingly, SmartEnergy is subject to the Commission's jurisdiction.

{¶ 3} On July 29, 2021, Karen Pierce (Complainant) initiated a complaint against SmartEnergy alleging that SmartEnergy improperly enrolled her in its electric service without her authorization.

{¶ 4} Pursuant to Ohio Adm.Code 4901-9-01(B), the answer to a complaint is due 20 days after the filing of the complaint, which was August 18, 2021. On August 27, 2021, SmartEnergy filed a motion for an extension of time to file its answer. No memorandum

contra was filed in response to the motion. The attorney examiner hereby grants SmartEnergy's motion.

{¶ 5} On August 27, 2021, SmartEnergy filed its answer to the complaint. In its answer, SmartEnergy states that it followed applicable rules and regulations regarding Complainant's electric account. Specifically, SmartEnergy states that Andrew Nichting, who represented being the spouse of Karen Pierce and an authorized decisionmaker for the electric account at the residence, called SmartEnergy in response to SmartEnergy's direct marketing regarding generation supply service at the residence. During that call, SmartEnergy contends that Mr. Nichting enrolled in a six-month fixed-rate electric plan at a rate of \$0.0580 per kWh with a contract start date of November 10, 2020. SmartEnergy states that it terminated the contract on February 14, 2021, for non-payment, and the total charges during the contract period were \$58.99. SmartEnergy also asserts the affirmative defense that Complainant failed to set forth reasonable grounds for the complaint, as well as other affirmative defenses.

{¶ 6} Consistent with the Commission's longstanding policy to encourage settlement discussions in complaint proceedings before it, the attorney examiner 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 this complaint. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits either party from initiating settlement negotiations prior to the scheduled settlement conference.

{¶ 7} Accordingly, a telephone settlement conference shall be scheduled for October 14, 2021, at 10:00 a.m. ET. At the designated time of the conference, the parties shall dial 614-721-2972 and enter access code 376 738 175# to join in the mediation event. If a settlement is not reached at the conference, the attorney examiner may conduct a discussion of procedural issues including possible stipulations of fact and potential hearing dates.

{¶ 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.

All parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues.

{¶ 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 SmartEnergy's motion for an extension of time to file its answer be granted. It is, further,

{¶ 12} ORDERED, That a settlement conference be scheduled for October 14, 2021, as provided in Paragraph 7. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

SJP/kck

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Case No(s). 21-0833-EL-CSS

Summary: Attorney Examiner Entry granting SmartEnergy's motion for an extension of time to file its answer be granted and scheduling a settlement conference for October 14, 2021, as provided in Paragraph 7.

electronically filed by Kelli C. King on behalf of Jacky St. John, Attorney Examiner, Public Utilities Commission of Ohio