

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
JUDY DEFRENCH,**

COMPLAINANT,

v.

CASE NO. 21-950-EL-CSS

**THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,**

RESPONDENT.

ENTRY

Entered in the Journal on November 4, 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} Respondent, The Cleveland Electric Illuminating Company (CEI or the Company), is an electric light company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02. As such, CEI is subject to the jurisdiction of this Commission.

{¶ 3} On September 15, 2021, Judy DeFrench (Ms. DeFrench or Complainant) filed a complaint against CEI in which she alleges, among other things, that: (1) she has a rare but recognized medical condition in which exposure to electromagnetic frequencies (EMF) causes her to experience disabling health effects, including head and chest pain, mental confusion, and physical exhaustion; (2) her disability meets criteria established in the Americans with Disabilities Act (ADA); (3) her home provides a safe refuge, which she needs in order to be able to function, from the debilitating effects of EMF exposure which she experiences during regular weekday employment; (4) in the area where she lives, CEI, her electric service supplier, is currently replacing existing meters with smart meters; (5) a

smart meter, if installed at her house, according to Ms. DeFrench, would constantly emit EMF which would cause her home to be medically unsafe and disabling to her; (6) CEI is authorized to provide smart meter opt-out service “to any customer who doesn’t want” a smart meter “for any reason” and any such customer “can keep their existing meter if they pay” a certain monthly surcharge “forever”; (7) the opt-out surcharge, according to Complainant, violates the ADA and, says Ms. DeFrench, “cannot be imposed * * * when opting-out is a reasonable modification required to accommodate my disability so that I can have access to electric service”; (8) the Commission, according to Complainant, has “determined opting-out is not a fundamental alteration” of CEI’s business; and (9) she cannot afford the surcharge. Ms. DeFrench further alleges that, to date, all efforts she has made to have CEI waive the opt-out surcharge in her situation, in light of her disability, have proven futile. By bringing her formal complaint, Ms. DeFrench seeks the Commission’s assistance in achieving such a result.

{¶ 4} On October 4, 2021, CEI 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, CEI admits: (1) that it provides electric service to Complainant; (2) that CEI is replacing traditional meters with smart meters, which emit, though not constantly, low levels of radio waves in short transmission bursts; (3) that the Commission approved CEI’s request to install smart meters with an option to opt-out of the installation with payment of a monthly fee of \$28.29; (4) that, in September 2021, it began charging Complainant its Commission-approved smart meter opt-out fee; and (5) that Complainant is requesting that the Commission approve waiving the \$28.29 monthly smart meter opt-out fee due to her alleged disability. On the other hand, CEI denies: (1) for lack of knowledge concerning Complainant’s alleged medical condition and symptoms, whether such symptoms are a result of exposure to EMFs; and (2) also for lack of knowledge, Complainant’s allegations regarding both her employment situation and her financial situation. Further, CEI also denies, among other things: (1) that installing a smart meter would be medically unsafe or disabling; and (2) that Complainant is entitled, under existing

Commission jurisprudence and CEI's Commission-approved tariff, to the waiver of surcharge relief she seeks. Further answering, CEI adds that certain of Complainant's allegations constitute legal conclusions which do not require a response, namely: (1) that her medical condition qualifies as a disability under the ADA; (2) that the opt-out provision is a fundamental alteration of CEI's business, and (3) that CEI is misinterpreting the Ohio Revised Code, the Ohio Administrative Code, and its own tariff. Finally, in its answer, CEI asserts, among other things, that: (1) various international government agencies have determined that there are no health risks from exposure to radiofrequency EMF from smart meters; and (2) CEI must follow its tariff as approved by the Commission.

{¶ 5} The attorney examiner finds that this matter should be scheduled for a settlement teleconference. The purpose of the settlement teleconference 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} Within her complaint, Ms. DeFrench purports to designate her friend, Susan Kretchmer (Ms. Kretchmer), to speak and act on Ms. DeFrench's behalf at such prehearing conferences and hearings as may come to be scheduled in this case. This purported designation is based on claims, set out in the complaint, that, not only because of her disability, but also because she "cannot financially afford to miss a day of work" and because of her rigid work schedule with no predictable lunch break, Ms. DeFrench "cannot travel to Columbus or be available at appropriate days/times for the prehearing conference and evidentiary hearing."

{¶ 7} Upon review of Ms. DeFrench's request regarding representation as well as the pertinent Commission rules and precedent, the attorney examiner finds that, under Ohio

Adm.Code 4901-1-08(D), any person, including any non-attorney, who retains the requisite settlement authority may represent Complainant's interests at any settlement conference or subsequent settlement negotiations which may occur in this case. The attorney examiner finds that Ms. DeFrench, in making her request for Ms. Kretchmer to represent her interests at the settlement teleconference, provides sufficient basis to demonstrate Ms. Kretchmer has such authority in this case.

{¶ 8} Accordingly, a telephone settlement conference shall be scheduled for November 19, 2021, at 10:00 a.m. In order to be connected to the teleconference, Complainant, and/or any persons with authority to settle issues on Complainant's behalf, as well as those participants to the teleconference representing CEI, shall dial (614) 721-2972 and conference code 408 325 518#.

{¶ 9} 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 in the teleconference shall be prepared to discuss settlement of the issues raised and shall have authority to settle those issues.

{¶ 10} 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).

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That a settlement teleconference be scheduled for November 19, 2021, at 10:00 a.m., as indicated in Paragraph 8. 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/Daniel E. Fullin

By: Daniel E. Fullin
Attorney Examiner

SJP/hac

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 21-0950-EL-CSS

Summary: Attorney Examiner Entry ordering that a settlement teleconference be scheduled for November 19, 2021, at 10:00 a.m., as indicated in Paragraph 8 electronically filed by Heather A. Chilcote on behalf of Daniel E. Fullin, Attorney Examiner, Public Utilities Commission of Ohio