

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
MATTHEW A. SHAY against)	Case No. U-20831
DIRECT ENERGY SERVICES, LLC.)	
_____)	

At the January 21, 2021 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine Peretick, Commissioner

ORDER

On June 2, 2020, Matthew A. Shay (Complainant) filed a complaint against Direct Energy Business, LLC. On June 22, 2020, Mr. Shay filed an amended complaint, changing the company’s name to Direct Energy Services, LLC (Direct Energy or Respondent) and asserting a violation of the Consumer Standards and Billing Practices for Electric and Natural Gas Service (billing rules).¹ The Complainant alleged, among other things, that he had no knowledge of being a customer of Direct Energy and he believed that Direct Energy had overcharged him for natural gas over the course of many years. On September 9, 2020, the Respondent filed its answer to the complaint, arguing, in part, that the company’s actions were taken in accordance with the requirements of applicable statutes, rules, tariffs, orders, and the common law; that the “Complainant himself requested and signed up for Direct Energy’s services in 2011[;]” and that he failed “to review and

¹ Specifically, Mich Admin Code, R 460.122 (Rule 22). This rule addresses cycle billing.

respond to annual notices provided by Direct Energy following the expiration of [the] Complainant's fixed price contract." Direct Energy's response to the complaint, pp. 7-8.

On August 27, 2020, a prehearing conference was held via tele/videoconference before Administrative Law Judge, Kandra K. Robbins (ALJ). The Complainant, appearing in *pro per*, the Respondent, and the Commission Staff (Staff) participated in the prehearing conference, at which the ALJ stated that dispositive motions were to be filed not later than September 30, 2020, and responses to the motions were to be filed not later than October 9, 2020. 1 Tr 3.

On September 30, 2020,² the Respondent filed a motion for summary disposition (motion), arguing, in part, that the Complainant had failed to establish the existence of a disputed material fact and failed to state a claim upon which relief could be granted. Direct Energy's motion, pp. 1-9. Filed as Attachment 1 to the motion was the transcript of an August 3, 2011, recorded conversation between the Complainant and a Direct Energy representative wherein the Complainant confirmed his choice to enroll in Direct Energy's program for his natural gas supply for 12 monthly billing cycles at \$6.49 per 1,000 cubic feet (Mcf), after which he would automatically continue on a month-to-month basis, and that any expected price changes would be described to him in a letter mailed 60 days in advance of the change. The transcript states that if the Complainant did not respond to the price change notice, then he would be deemed to accept the new price for gas. The transcript reflects that the Complainant confirmed that he understood that the representative to whom he was speaking represented Direct Energy and not his utility and that he had been provided a copy of the written contract with terms and conditions set forth therein. The Complainant also confirmed, in the transcript, that he understood that he would receive a bill

² See, Proposal for Decision (PFD), p. 3, note 3.

from Consumers Energy Company (Consumers), but Direct Energy's name and price for gas would appear on the bill. Direct Energy's motion, Attachment 1, pp. 6-8. Attachments 6 and 7 to Direct Energy's motion consisted of generic copies of notices that Direct Energy asserted had been sent to the Complainant throughout the years since his enrollment.

On October 9, 2020, the Complainant filed his response in opposition to the Respondent's motion, arguing, in part, that he did not recall receiving either a letter from Direct Energy confirming the terms and conditions applicable to his purchase of gas, or receiving a written notice 60 days in advance of an increase in the price of gas above \$6.49 per Mcf. Further, the Complainant asserted that, if Direct Energy were a utility, its failure to produce the promised letters would be a violation of Mich Admin Code, R 460.10106 (Rule 6).³ Mr. Shay's response to Direct Energy's motion, pp. 1-2, 5.

Also on October 9, 2020, the Staff filed its response to Direct Energy's motion, indicating it did not oppose summary disposition because the Respondent is not a utility⁴ and, therefore, is not subject to the billing rules, and that the company had sufficiently responded to the Complainant's allegations that Direct Energy had failed to identify itself to the Complainant, had switched the Complainant's service without his knowledge, and that the Complainant did not have a contract with Direct Energy. Staff's response to Direct Energy's motion, pp. 1-3.

³ Refers to the Commission's Code of Conduct, which, as set forth in Mich Admin Code, R 460.10101, applies "to all utilities and alternative electric suppliers subject to the jurisdiction of the commission and the requirements of these rules under section 10ee of 2016 PA 341, MCL 460.10ee." MCL 460.10ee mandates that the Commission shall establish a code of conduct that applies to all utilities. Rule 6 addresses utility marketing practices.

⁴ Mich Admin Code, R 460.102b(m) of the billing rules defines a utility as "a firm, corporation, cooperative, association, or other legal entity that is subject to the jurisdiction of the commission and that provides electric or gas service."

On October 13, 2020, a motion hearing was held via tele/videoconference before the ALJ in which the Complainant, appearing with legal representation, the Respondent, and the Staff participated. The parties presented their positions to the ALJ as set forth in the Respondent's motion for summary disposition and the Complainant's and the Staff's motion responses; however, no sworn testimony was offered and no exhibits were admitted to the record. At the close of the motion hearing, the ALJ indicated that no decision would be issued from the bench and that she would review the language of the tariffs and issue a timely written decision seven days prior to the evidentiary hearing that was scheduled for October 27, 2020. 2 Tr 8-41. The ALJ issued her decision granting the Respondent's motion for summary disposition prior to October 27, 2020, and therefore, the evidentiary hearing did not proceed as scheduled. The record consists of 42 pages of transcript.

On October 19, 2020, the ALJ issued a Proposal for Decision (PFD) in which she found that, because the Complainant "is no longer contending that he was switched to Direct Energy services without his knowledge or consent or that the Company representative failed to properly identify themselves, there is no genuine issue of material fact regarding these claims." PFD, p. 9. The ALJ additionally found that the Complainant did not dispute the accuracy of the Respondent's transcript, and that the Staff agreed that the Complainant was no longer contending that Direct Energy switched his gas service without his knowledge or consent or that he was unaware that he was dealing with Direct Energy and not Consumers. PFD, pp. 8-9. The ALJ further found that, because Direct Energy was not a utility, the company is not subject to R 460.126a (Rule 26a) of the billing rules.⁵ She remarked that the Complainant "seems to agree that Direct Energy is not a utility, as he argues that 'if it was a utility it would be in violation of Rule 460.10106.'" *Id.*, p. 10.

⁵ Rule 26a addresses billing errors made by utilities.

Finally, the ALJ found that the Complainant did not establish that a breach of contract had occurred because he did not produce a contract containing the promises he alleged were violated or establish how Direct Energy's actions violated any statute or rule within the Commission's jurisdiction. *Id.*, pp. 10-11.

Exceptions were to be filed not later than November 9, 2020, and replies to exceptions were to be filed not later than November 23, 2020. No party filed exceptions or replies to exceptions.

The Commission has reviewed the PFD and finds the ALJ's analysis and conclusions to be well-reasoned and supported in the record. No exceptions were filed and, thus, the ALJ's findings and recommendations are unopposed. The Commission agrees with the ALJ that the Complainant did not establish a claim upon which relief could be granted and, accordingly, finds that the Respondent's motion for summary disposition should be granted and the complaint should be dismissed without prejudice.

THEREFORE, IT IS ORDERED that the complaint filed by Matthew A. Shay on June 2, 2020, as amended by his complaint filed on June 22, 2020, is dismissed without prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine Peretick, Commissioner

By its action of January 21, 2021.

Lisa Felice, Executive Secretary


PROOF OF SERVICE

STATE OF MICHIGAN)

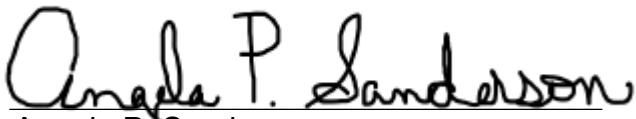
Case No. U-20831

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on January 21, 2021 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).



Brianna Brown

Subscribed and sworn to before me
this 21st day of January 2021.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-20831

Name	Email Address
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