

FILE

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2009 JUL -6 PM 2:57

09-566-EL-css
Case Number

PUCO

Public Utilities Commission of Ohio
Attn: Docketing
180 E. Broad St.
Columbus, OH
43215

FORMAL COMPLAINT FORM

THOMAS M. POULTON

Customer Name

391 COPPER BEECH CT

Customer Address

CENTERVILLE

City

OH

State

45459

Zip

AGAINST

3103675779

Account Number

Customer Service Address (if different from above)

DAYTON POWER & LIGHT COMPANY

Utility Company Name

DAYTON

City

OH

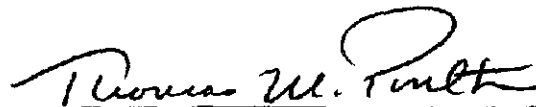
State

45401

Zip

Please describe your complaint. (Attach additional sheets if necessary)

PLEASE SEE ATTACHED



Signature

(937) 433-5052 (home)

(937) 297-9364 (office)

Customer Telephone Number

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician SM

Date Processed 7/6/09

BACKGROUND FACTS

1. The Complainant establish an account with the above-named utility ("DP&L") over 30 years ago.
2. The DP&L service at Complainant's current address was established over 10 years ago.
3. In September/October, 2008, Complainant received the regular monthly DP&L bill which included a \$291.00 item, labeled "Deposit." After looking through entire bill, Complainant discovered a statement on the third page, "You have been billed a deposit based on your credit history." There had been no prior notice of a pending deposit requirement.
4. Complainant responded on or about October 14, 2008 by letter to the Customer Service group stating the reasons why, as a long-term customer, Complainant's "credit history" is adequate and a deposit is unnecessary. (Copy of letter attached as Exhibit A)
5. Complainant received an unsigned response dated November 13, 2008, stating the deposit was permitted under "Ohio Revised Code (sic) 4901:1-10-14." (This is actually a citation to the Ohio Administrative Code.) (Copy of response attached as Exhibit B)
6. Complainant received a notice dated November 13, 2008, stating DP&L was holding a \$291.00 deposit against Complainant's account. DP&L had diverted Complainant's two most recent service payments to a deposit, causing Complainant's account to incorrectly show as past due. (Copy of Notice attached as Exhibit C)
7. Complainant responded with a letter on or about November 13, 2008, stating that OAC 4901:1-10-14(D) (prohibiting deposits after the initial 30 days of service has elapsed) and OAC 4901:1-10-14(G)(2) (the circumstances permitting DP&L to require a deposit after the initial 30 days of service has elapsed) applies to Complainant's account and that none of the listed three circumstances has existed with Complainant's account in recent history. (Copy of letter attached as Exhibit D)

8. Complainant received an undated and unsigned response stating a deposit was required for Complainant's account. (Copy of response attached as Exhibit E)

9. Complainant responded with a summary of Complainant's account for the past 12 months showing that none of the circumstances under OAC 4901:1-10-14(G)(2) existed during that period. (Response attached as Exhibit F)

10. Complainant received a notice of disconnection on December 26, 2008, showing Complainant's account as past due by the amount of the unauthorized deposit that DP&L established by inappropriately diverting Complainant's payments for monthly service. (Copy of notice attached as Exhibit G)

COMPLAINT NO. 1:

OAC 4901:1-10-14(D) is the section that applies to Complainant's account, and states: *"Unless otherwise provided in (G) of this rule, when an EDU fails to demand security within thirty days after initiation of service, it may not require security for that service."* (emphasis added)

This section of OAC then lists the three situations that permit DP&L to demand a deposit for an account after the initial 30 days of service has elapsed. Based on the prior 12-month history of Complainant's account, the only possible condition that DP&L could assert is OAC 4901:1-10-14(G)(2)(a) which permits a deposit to be required if the customer has *"Not made full payment or payment arrangements by the date on which the bill becomes past due for two consecutive bills."* However, a careful reading of this section of OAC supports Complainant's position. First, the subsection refers to "the bill." It does not state "the account" which is a fundamental and important difference. Per ORC 1.42 (which applies to the Ohio Administrative Code per ORC 1.41), words used in statutes and regulations *"...shall be construed according to the rules of grammar and common usage."* Therefore, by using the term "the bill" rather than "account", the rules of grammar and common usage dictate that the regulation refers to a single

bill being delinquent for "two consecutive bills." An analysis of Complainant's account shows that no single bill has even been 30 days past due, much less 60 days.

Even if the term "the bill" is not interpreted according to its common usage, further analysis of the wording of this subsection provides two necessary conditions that must both exist for the subsection to apply. The first condition is the bill or account must be "past due for two consecutive bills." Again, a review of the account show it as always being paid within 30 days of the due date. Since it cannot be late until the due date has passed, and it has always been paid within 30 days thereafter, it has not been delinquent for "two consecutive bills." The second necessary condition is, "Not made full payment ... *by the date on which the bill becomes past due for two consecutive bills.*" (emphasis added) This condition has never existed because the monthly bills have always been paid in full less than 30 days after the due date. DP&L has stated that OAC 4901:1-10-14(G)(2)(a) means any time an account is paid after the due date for two months in a row they can require a deposit. If this is the actual meaning, why is that simple and clear language not used in OAC 4901:1-10-14(G)(2)(a)? The answer is that DP&L's interpretation is not the intended interpretation of OAC 4901:1-10-14(G)(2)(a).

The tortured construction of the language by DP&L ignores the phrase, "Not made full payment or payment arrangements ..." As the Ohio Supreme Court recently confirmed in *Cheap Escape Co., Inc. v. Haddock, L.L.C.*, 120 Ohio St. 3d 493, 2008-Ohio-6323, 7, citing, *State ex. rel. Carmean v. Hardin Cty. Bd. of Edn.* (1960), 170 Ohio St. 415, 422, "It is axiomatic in statutory construction that words are not inserted into an act without some purpose." See, also *State ex rel. Bohan v. Indus. Comm.* (1946), 147 Ohio St. 249, 251 (courts must "accord meaning to each word of a legislative [sic] enactment if it is reasonably possible so to do"). Based on this statement by the Ohio Supreme Court, DP&L, and the Public Utilities Commission of Ohio, must give the phrase "Not made full payment or payment arrangements ...", full meaning and application when interpreting OAC 4901:1-10-14(G)(2)(a). When doing so, it is clear that the two necessary conditions that must be present to require a deposit have not existed in our recent account history.

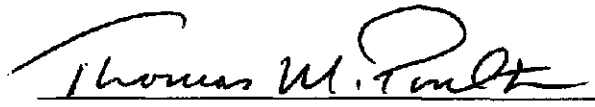
COMPLAINT NO. 2:

Knowing that I was disputing the payment of a deposit (a letter was also sent to several executives in addition to Customer Service), DP&L intentionally and wrongfully diverted my monthly service payments to create the deposit they were not authorized to charge. This has caused my account to appear to be past due. By intentionally and wrongfully diverting my monthly service payments to the unauthorized deposit, and causing my account to appear to be past due, DP&L has notified me of a disconnection after January 2, 2009. This appears to be an intentional attempt to force me to pay a deposit the DP&L knows, or should know, is in violation of OAC 4901:1-10-14(D) and (G).

REMEDIES SOUGHT

Complainant respectfully quests:

1. That DP&L be found in violation of OAC 4901:1-10-14(D) and (G);
2. That the deposit wrongfully withheld by DP&L be immediately paid to Complainant with interest at the judgment rate of interest set out in ORC 1343.03(B) (referencing ORC 5703.47);
3. That DP&L show Complainant's account as paid timely each month from September 2008;
4. That DP&L notify any credit reporting agency to which it has sent negative information about Complainant or Complainant's account that such information is incorrect, that Complainant has "paid as agreed" and that all negative information be removed; and
5. That DP&L be assessed treble damages pursuant to OAC 4905.61 as determined by the Commission to compensate Complainant for time and costs related to this matter.


Thomas M. Poulton, Complainant

Thomas & Susan Poulton

391 Copper Beech Ct Dayton, Ohio 45459

October 14, 2008

Customer Service
Dayton Power and Light Company
PO Box 1247
Dayton, Ohio 45401

Re: A/N 310675779 8

Imagine my surprise (initially anger) when I found a "Deposit Required" item on my monthly bill in the amount of \$291.00. After reading my bill several times, I found a vague explanation on the third page reading, "You have been billed a deposit based on your credit history." Without even challenging you use of the term "credit history", I am asserting that the deposit is inappropriate. This statement is based on several reasons:

1. My wife and I have been DP&L customers for over 25 years and our payment pattern has been the same for most of that period. Why are we suddenly a credit risk?
2. We own our home and have been at the same address for over 12 years, the deposit is not needed to insure we will continue to pay every month.
3. Unless it was buried somewhere in a prior statement, you did not provide me notice of your intent to request a deposit.
4. Other than paying late – and paying the requested late fee each time – DP&L has never lost one penny on my account.

I just mailed our current payment, less the "Deposit Required" amount and, based on the above factors, request that my account be adjusted to remove the requirement for a deposit. In turn, I will be more diligent about paying the account timely. Seems like a fair compromise.

Thank you for your consideration.

Thomas Poulton



Working for You Today And Tomorrow

November 13, 2008

Thomas M. Poulton
391 Copper-Beach Ct
Dayton, OH 45459

Account # : 3103675779 8

Dear Customer,

Dayton Power and Light is currently reviewing accounts that do not have security such as a deposit or Guarantor. Those that fall within the PUCO guidelines (Ohio Revised Code 4901:1-10-14) are billed a deposit. You have the option of securing a Guarantor in lieu of the deposit. The Guarantor must meet eligibility requirements and contact the Dayton Power and Light billing office.

In reviewing your account history, payments were received after the due date in 8 of the previous 12 months. At this time, we are unable to waive the deposit.

The security deposit is applied back to your account after establishing a prompt pay history by paying on time for twelve consecutive months.

We welcome customer questions and concerns and appreciate the opportunity to serve you. If you need further information, please call the office at 937-331-3900 or 1-800-433-8500.

Sincerely,
Customer Resource Center
Dayton Power and Light

EXHIBIT B

CERT # THE DAYTON POWER & LIGHT COMPANY
W4542

ACCOUNT NO. 3103675779

POSTED
DATE 11/13/08

SERVICE ADDRESS 391 COPPER-BEACH CT

This is to Certify THAT

THOMAS M POULTON
391 COPPER-BEACH CT
DAYTON OH 45459

\$291.00

HAS DEPOSITED
TO SECURE PAYMENT FOR ELECTRIC SERVICE TO THE ABOVE ADDRESS OR ANY OTHER
ADDRESS FOR WHICH SERVICES MAY BE ORDERED.

Thomas & Susan Poulton

391 Copper Beech Ct Dayton, Ohio 45459

November 23, 2008

Manager, Customer Resource Center
Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432

Re: A/N 310675779 8
391 Copper Beech Court, 45459

Imagine my surprise when I found a "Deposit Required" item on my October bill in the amount of \$291.00. After reading my bill several times, I found a vague explanation on the third page reading, "You have been billed a deposit based on your credit history." I immediately contacted Customer Service suggesting that the deposit requirement was inappropriate for several reasons:

1. My wife and I have been DP&L customers for over 25 years and our payment pattern has been the same for most of that period. Why are we suddenly a credit risk?
2. We own our home and have been at the same address for over 12 years, the deposit is not needed to insure we will continue to pay every month.
3. Unless it was buried somewhere in a prior statement, you did not notify me of your intent to request a deposit.
4. Other than paying late – and paying the requested late fee each time – DP&L has never lost one penny on my account.

I received a response stating that PUCO regulations permit the assessment of a deposit on my account. This statement prompted me to review the *Ohio Administrative Code*. Based on my review, I respectfully disagree with your power to assess a deposit against my account. My position is based on the following:

1. Recalling that the account at my current address is over 12 years old, the provisions of the OAC regarding deposits to establish service do not apply.
2. OAC 4901:1-10-14(D) is the section that applies to my account, and states: "*Unless otherwise provided in (G) of this rule, when an EDU fails to demand security within thirty days after initiation of service, it may not require security for that service.*" (emphasis added)
3. My account does not fit within the list of situations under OAC 4901:1-10-14(G)(2) for requiring a deposit after expiration of the initial 30 days of service. This can be substantiated by a review of my account.

Manager, Customer Resource Center
Dayton Power and Light Company
November 23, 2008
Page 2

To further compound the problem, I received a notification yesterday (copy enclosed) which states a deposit of \$291.00 has been made to my account. This means that my payments for service for the past two months were diverted to the deposit that DP&L does not have the authority to require, causing my account to show delinquent. Not only is this action in violation of the *Ohio Administrative Code*, I consider it an unethical business practice. Knowing that I was disputing the deposit requirement, and knowing I was still paying my monthly service bill timely, DP&L redirected my payments to their benefit.

I continue to hope to resolve the matter in a professional and non-confrontational manner, and hope that DP&L is also interested in doing so. I request that DP&L immediately "refund" the deposit, apply it to my service account, and remove all late charges and delinquency notations. I feel it is reasonable to expect these actions be taken by December 15, 2008. Otherwise, I will prepare a complaint to be filed with the Public Utilities Commission of Ohio for their assistance in resolving this issue, as well as considering other remedial actions to recover my deposit.

Thank you for your consideration and prompt action to resolve this issue.

Thomas Poulton

cc: Scott J. Kelly, SVP Service Operations
Douglas C. Kelly, General Counsel
Manager, Regulatory Compliance



Working For You Today And Tomorrow

Dear Customer,

A deposit has been required to secure your account. The Ohio Administrative Code provides in Section 4901:1-10-14 that an electric utility company may require a security deposit if the customer has

- 1.) not made full payment or payment arrangements by the date on which the bill becomes past due for two consecutive bills;
- 2.) received a disconnection notice for non-payment on two or more occasions during the preceding 12 months; or
- 3.) had service disconnected for nonpayment, a fraudulent practice, tampering or unauthorized reconnection during the preceding twelve months.

If a residential customer maintains a good payment record for one year, or two years for a business customer, the full deposit amount plus interest will be credited to the account.

A security deposit is required to ensure that unpaid bills do not become a burden for all customers. In lieu of a deposit a guarantor can be provided to secure residential accounts. In order to guarantee an account the party would need to be a DP&L customer who meets our credit requirements. A surety bond or guarantor can be used as security on business accounts.

We hope this information will be helpful to you and appreciate the opportunity to serve you.

Sincerely,

The Dayton Power and Light Company

EXHIBIT E



Working For You Today And Tomorrow

Dear Customer,

A deposit has been required to secure your account. The Ohio Administrative Code provides in Section 4901:1-10-14 that an electric utility company may require a security deposit if the customer has

- 1.) not made full payment or payment arrangements by the date on which the bill becomes past due for two consecutive bills;
- 2.) received a disconnection notice for non-payment on two or more occasions during the preceding 12 months; or
- 3.) had service disconnected for nonpayment, a fraudulent practice, tampering or unauthorized reconnection during the preceding twelve months.

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A security deposit is required to ensure that unpaid bills do not become a burden for all customers. In lieu of a deposit a guarantor can be provided to secure residential accounts. In order to guarantee an account the party would need to be a DP&L customer who meets our credit requirements. A surety bond or guarantor can be used as security on business accounts.

We hope this information will be helpful to you and appreciate the opportunity to serve you.

Response
↓

Had you taken the time to review my account, you would have seen that none of the three circumstances you list above has occurred on my account in the past 12 months. I've enclosed my summary of payments since August 2007.

1. No bill has been overdue by more than 12 days, other than the July bill which was paid 28 days past the due date – nowhere close to two consecutive bills. In any event, the bill was paid in full. #1 does not apply to the account, it uses the term "the bill" and contemplates a billed amount being unpaid for 2 months. Additionally, the qualifier is "not made full payment" and every bill has been paid in full.
2. No disconnection notice has been issued since each bill was paid in full.
3. The service has not been disconnected for non-payment.

This is my third attempt to rectify your violation of the Ohio Administrative Code. Three strikes and I head to local court. Why court instead of PUCO – a lot of local media coverage.

Thomas Poulton A/N 3103675779 8

POULTON ACCOUNT
A/N 3103675779 8

Due Date	Amt Due	Check No.	Check Amt	Check Date	Check Clear	Days Late or (Early)
8/7/07	211.29	5403	211.29		08/08/07	1
9/6/07			213.67		09/17/07	11
10/9/07	202.56	5426	202.56	09/26/07	09/28/07	-11
11/6/07	154.21	5447	156.52	11/09/07	11/15/07	9
12/6/07	184.63	5457	187.40	12/07/07	12/11/07	5
1/7/08	212.07	5467	212.07	01/04/08	01/07/08	0
2/6/08	267.87	5474	267.87	01/31/08	02/04/08	-2
3/6/08	293.92	5491	298.33	03/10/08	03/14/08	8
4/7/08	258.82	5510	258.82	04/14/08	04/17/08	10
5/6/08	212.40	5522	219.53	05/12/08	05/14/08	8
6/5/08	122.26	5532	124.09	06/13/08	06/16/08	11
7/7/08	155.25	5547	159.44	07/15/08	08/04/08	28
8/6/08	193.57	5556	191.71	08/15/08	08/18/08	12
9/5/08	202.09	5567	210.92	09/10/08	09/11/08	6
10/5/08		5582	172.60	10/14/08	10/16/08	11
11/6/08	156.34	5596	156.34	11/03/08	11/05/08	-1

My October and November payments were applied to the deposit in violation of the Ohio Administrative Code Sections 4901:1-10-14(D) and (G).

391 COPPER-BEACH CT
DAYTON OH 45459

ACCOUNT NUMBER
3103675779 8



Amount Past Due	Amount Paid
\$291.00	_____

|||||
THOMAS M POULTON
391 COPPER-BEACH CT
DAYTON OH 45459

Due Date
01/02/2009

0000031036757798900291000017500

PLEASE RETURN THIS PORTION WHEN MAILING PAYMENT SO ADDRESS SHOWS THROUGH WINDOW



The Dayton Power and Light Company

DISCONNECT NOTICE

12/18/2008

Working For you Today and Tomorrow

ACCOUNT: 3103675779 8
SERVICE ADDRESS: 391 COPPER-BEACH CT
DAYTON OH 45459

Dear Customer:

Our records indicate that your account balance is past due in the amount of \$291.00. Please pay this amount immediately to bring your account up to date. You will be eligible for disconnection after 01/02/2009. SEE ENCLOSED INSERT FOR PAYMENT PROCEDURES AND IMPORTANT TIMING RESTRICTIONS TO AVOID DISCONNECTION OF SERVICE. PLEASE GIVE THIS YOUR IMMEDIATE ATTENTION.

You may avoid disconnection by entering into a payment agreement on your past due charges by paying \$175.00. Please pay the exact amount to be set up on the one-third (1/3) payment agreement. For 2 months, you will pay one-third (1/3) of your total charges. When this agreement has expired, please call to make a payment agreement to pay the remaining charges. THIS OFFER WILL EXPIRE IF PAYMENT HAS NOT BEEN POSTED TO YOUR ACCOUNT BY 5:00 PM ON 01/02/2009.

You may qualify for reduced payments if you are eligible for the Percentage of Income Payment Plan. Please see reverse side for more information.

If your service is disconnected, you will be required to pay up to \$175.00 plus a reconnect fee.

PLEASE SEE REVERSE SIDE FOR OTHER IMPORTANT INFORMATION ABOUT PAYMENTS AND PAYMENT PROGRAMS YOU MAY BE ELIGIBLE TO RECEIVE.

If you are purchasing your electricity from another electric supplier, failure to pay those electric supplier charges could cause cancellation of your contract with your supplier, loss of those services, and a return to DP&L's standard offer.

The Dayton Power and Light Company
(937)331-3901

EXHIBIT G