

THE PUBLIC UTILITIES COMMISSION OF OHIO

Respondent.

Case No. 09-272-GA-CSS

ENTRY

The Commission finds:

- (1) On March 27, 2009, Mark Svinkin (complainant) filed a complaint with the Commission against East Ohio Gas Company d/b/a Dominion East Ohio (Dominion or respondent). In the complaint, Mr. Svinkin states, among other things, that, after receiving his Dominion bill for December 2008 in the amount of \$312.92, he requested that Dominion test his gas meter. The complainant further states that his meter was tested on February 6, 2009 at Dominion's facilities and that he was present for the meter tests. The complainant states that the meter tests were conducted using the Sonic Nozzle Auto Prover (SNAP)TM device and the test results were 0.8, 0.6, and 0.6. According to Mr. Svinkin, the meter tests reveal that the meter overstated his gas consumption by 20 to 60 percent. Mr. Svinkin states that he paid half of his December 2008 bill and paid his bills in February and March 2009. Mr. Svinkin claims that Dominion overcharged him and requests that Dominion submit information regarding the source of its calculations to establish the accuracy of his meter and justification for the Dominion gas bills.
- (2) On April 16, 2009, Dominion filed its answer to the complaint. In its answer, Dominion admits that Dominion tested the meter which served Mr. Svinkin prior to January 29, 2009 and that Mr. Svinkin was present at the testing. The respondent states that the meter tested within the three percent variability requirements stated in Section 4933.09, Revised Code. Further, Dominion

denies Mr. Svinkin's interpretation of the meter test results. Dominion agrees that the test readings were 0.8 percent, 0.6 percent, and 0.6 percent and states that such readings reflect the percent variation of the meter as compared to the baseline amount measured by the SNAPTM testing device. Dominion states that the test results are not the actual cubic feet measured through the meter. Therefore, Dominion denies that it has failed to establish the accuracy of the meter. Dominion reasons that the test readings of 0.6 percent to 0.8 percent are within the variability standards. Dominion also notes that Mr. Svinkin was not charged the \$40.00 meter test fee.

Dominion argues that the complaint fails to set forth reasonable grounds to sustain a complaint. Further, Dominion states that the company has at all times complied with Title 49 of the Ohio Revised Code, and the rules, regulations and orders of the Commission as well as the Dominion tariff. Dominion asserts that the statutes, rules, regulations, and tariff provisions bar Mr. Svinkin's claims. Finally, Dominion requests that the complaint be dismissed.

- (3) Mr. Svinkin filed a reply on May 1, 2009. Therein, he argues that statements made in the answer are untrue and lack basis or proof and reiterates his arguments as to the accuracy of the meter installed at his residence and tested by Dominion on February 6, 2009.
- (4) By entry issued April 23, 2009, a settlement conference was scheduled in this case for May 14, 2009. The conference was held as scheduled. However, Mr. Svinkin and Dominion were unable to reach a mutually agreeable resolution of the complaint.
- (5) On May 26, 2009, the Attorney Examiner issued an entry finding that the complainant had presented reasonable grounds to sustain a complaint. The May 26, 2009 entry also scheduled a hearing to commence on July 9, 2009.
- (6) On July 6, 2009, counsel for Dominion filed a motion for a continuance of the hearing, in order to facilitate the attendance of a witness who had several conflicts with the July 9 hearing date. Counsel for Dominion stated that he had contacted Mr. Svinkin regarding the request for a continuance of the hearing and that Mr. Svinkin indicated that he did not oppose the motion for a

continuance because he did not plan to attend the hearing. On July 7, 2009, the Attorney Examiner contacted Mr. Svinkin. During the conversation with the Attorney Examiner, Mr. Svinkin confirmed that he did not oppose the motion and would not be attending the hearing.

- (7) By entry issued July 7, 2009, Dominion's motion for a continuance of the hearing was granted and the hearing was rescheduled to commence on July 20, 2009, at 10:00 a.m., at the offices of the Commission.
- (8) Dominion filed the testimony of Charles C. Resnik on July 13, 2009.
- (9) On July 15, 2009, the Commission received a response to the July 7, 2009 entry from Mr. Svinkin.¹ In this response, among other things, Mr. Svinkin noted that the July 7, 2009 entry failed to include a summary of his response to Dominion's answer and that his request for access to a Dominion database had been denied. Further, Mr. Svinkin argued that the conference was not mediated fairly to facilitate the parties coming to a mutually agreeable resolution of the complaint and claimed that Dominion had attempted to prevent him from receiving information from the meter manufacturer. Finally, Mr. Svinkin noted that he had received a copy of Mr. Resnik's testimony but proffered that the testimony included false statements made under oath.
- (10) In the entries issued May 26, and July 7, 2009, Mr. Svinkin was informed that, in Commission proceedings, the complainant has the burden of proving the allegations made in the complaint and, therefore, the complainant must appear and present evidence at the hearing in support of the complaint. Further, the complainant was put on notice that, should he fail to appear, the Attorney Examiner might recommend to the Commission that the complaint be dismissed.
- (11) The hearing was held as rescheduled. Mr. Svinkin did not appear at the hearing. In light of the complainant's failure to appear at the hearing, Dominion requested that the complaint be dismissed, with prejudice, for failure to prosecute (Tr. 3-4).

¹ The response was docketed on July 20, 2009.

- (12) The Commission finds that the complaint should be dismissed for lack of prosecution. The Commission cannot render a decision based solely upon the allegations in a complaint and other pleadings. In a formal complaint case such as this, the party making the complaint must present evidence at a hearing to support the complaint. As Mr. Svinkin was informed, in complaint cases, such as this, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission*, 5 Ohio St.2d 189, 214 N.E. 2d 666 (1986). After receiving notice of the proceedings, the complainant refused to appear at the hearing. Consequently, the complainant has failed to carry his burden of proof and the complaint should be dismissed.

It is, therefore,

ORDERED, That the complaint is dismissed. It is, further,

ORDERED, That a copy of this entry be served upon Mr. Svinkin, Dominion and its counsel and all other interested persons of record.

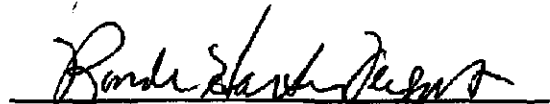
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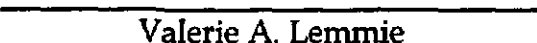
Alan R. Schriber, Chairman



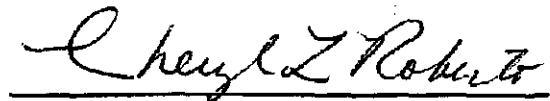
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

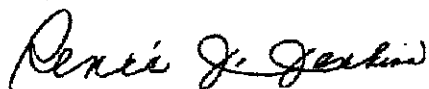


Cheryl L. Roberto

GNS/vrm

Entered in the Journal

AUG 19 2009



Renee J. Jenkins
Secretary