

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Michael	)	
L. Nicholson,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 09-78-GA-CSS
	)	
The East Ohio Gas Company, dba	)	
Dominion East Ohio,	)	
	)	
Respondent.	)	

OPINION AND ORDER

The Commission, considering the evidence of record, the arguments of the parties, and the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Michael L. Nicholson, 715 Midlothian Blvd., Youngstown, Ohio 44502, on his own behalf.

Mark A. Whitt, Carpenter, Lipps & Leland, LLP, 280 Plaza, Suite 1300, 280 N. High Street, Columbus, Ohio 43215, on behalf of The East Ohio Gas Company, dba Dominion East Ohio.

OPINION:

I. Nature of the Proceeding

On January 29, 2009, Michael L. Nicholson (Mr. Nicholson, complainant) filed this complaint against The East Ohio Gas Company, dba Dominion East Ohio (Dominion or company). In the complaint, Mr. Nicholson, the operator of an insurance agency and a landlord in Youngstown, Ohio, stated that he wanted to enroll for gas supply service with MX Energy for a 36-month contract, at \$8.99 per Mcf, in 2005. Mr. Nicholson stated that his request for gas supply service with MX Energy was denied by Dominion because Dominion claimed that he was 60 days in arrears on his gas bill, even though he actually had paid his bills in full. Mr. Nicholson indicated that he would have saved \$4,055.13 (complainant's calculation of monthly cost savings multiplied by 36 months) by enrolling

with MX Energy. In addition, in his filing, Mr. Nicholson indicated his dissatisfaction with billing estimates from the company. Dominion timely filed its answer denying the allegations in the complaint. A settlement conference was held on March 25, 2009; however, the parties were unable to resolve this matter. A hearing was held on May 21, 2009. Mr. Nicholson testified on his own behalf. Dominion presented the testimony of a company supervisor, Margaret Callahan.

## II. The Issues

The issues in this case are whether the denial of Mr. Nicholson's application for enrollment with MX Energy was reasonable and whether Dominion properly issued bills based on estimated meter readings.

## III. The Law

Section 4905.26, Revised Code, requires, among other things, that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that:

any rate, fare, charge, ... or service rendered, charged, demanded ... is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by said public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained....

Dominion is a natural gas company, as defined in Section 4905.03(A)(6), Revised Code, and a public utility by virtue of Section 4905.02, Revised Code. Therefore, Dominion is subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code. Further, in complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d (1966).

The statutory obligation of a public utility relative to the service and facilities it must provide is set forth in Section 4905.22, Revised Code, which states, in pertinent part, that:

[e]very utility shall furnish necessary and adequate service and facilities, and every public

utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respect just and reasonable.

With respect to the billing issue in dispute in this case, Rule 4901:1-13-04(G), Ohio Administrative Code (O.A.C.), provides, in pertinent part, that:

(G) Meter reading.

(1) Each gas or natural gas company shall obtain actual readings of its customer meters at least once every twelve months. At a minimum, each company shall make reasonable attempts to obtain actual readings of its customer meters every other month, except where the customer and the company have agreed to other arrangements. Meter readings taken by electronic means (i.e., automated meter reading equipment) shall be considered actual readings. While remote meter index equipment readings may be used by a company, they do not qualify as actual meter readings. When billing customers based on estimated usage, the gas or natural gas company shall calculate the amount due using the applicable rate(s) in effect during each period of estimated usage.

IV. Background

Complainant operates an insurance agency from property located at 715 E. Midlothian Blvd. (hereinafter "property") in Youngstown, Ohio. Complainant owns the property and rents space to various commercial tenants. Complainant's property is rated as a commercial account, and contains four gas furnaces and a gas water heater. All of the gas usage on the premises is registered by one meter (Tr. at 19-22).

On December 20, 2004, Dominion billed complainant \$367.17 for gas used at the property. Complainant paid a portion of the bill, \$200.00, with \$167.17 remaining in arrears. On December 23, 2004, complainant applied for enrollment with MX Energy. During the application process, Dominion billed the complainant \$539.78 (\$372.61 for current usage and \$167.17 for the arrearage) on January 24, 2005, for gas used at the property. Complainant made no payment on this bill. Thereafter, on February 22, 2005, Dominion rejected the complainant's application for enrollment with MX Energy. Dominion next billed the complainant \$675.68 (\$135.90 for current usage and \$539.78 for

the December and January arrearages) on February 26, 2005.<sup>1</sup> On March 7, 2005, complainant paid the full amount of the February 2005 bill (Tr. at 23-27; Dominion Exhibit 1 at 5-6).

#### V. Summary of the Evidence

Complainant testified that, at the time he attempted to enroll with MX Energy, he had received three bills in a row based on estimated usage and that, when he received a bill based on an actual reading, he paid the bill in full and received a credit back for the amount that Dominion had overestimated. Complainant testified that his account was not in arrears, as the billing credit he received demonstrated, and that he was billed for gas that he did not use. Complainant stated that, when he receives a bill based on an actual meter reading, he makes an actual payment (Tr. at 14-19).

With regard to his December 2004 bill from Dominion (Dominion Exhibit 1.3), complainant testified that the listed amount of \$367.17 was not his actual bill. Complainant stated that he did not know what his bill was, and neither did Dominion, because the bill was an estimate. He estimated that he owed \$200.00 on the December 2004 bill and paid that amount. Complainant agreed that he did not make any other payments to Dominion until March 2005. Complainant, however, testified that he did not owe Dominion any payments and that he actually had a credit coming from Dominion. Further, complainant testified that he received bills for gas usage at his property based on estimates and that he sometimes would estimate and pay only the amounts that he believed were actually owed on the estimated bills (Tr. at 24-26, 30).

Complainant testified that, when he was informed that his application to enroll with MX Energy had been denied, he requested a statement of his account (Complainant Exhibit 1; Dominion Exhibit 1.8) from Dominion (Tr. at 27). Complainant maintained that the blank spaces for February 18, 2005, and February 25, 2005, in the "Acct Balance" column on the statement of his account, shows that he had an account balance of zero when he applied for enrollment with MX Energy (Tr. at 36-39, 41-42).

Ms. Margaret Callahan, supervisor of Dominion's Akron Call Center, testified that it takes one or two billing cycles for an Energy Choice Program<sup>2</sup> enrollment to be

---

<sup>1</sup> On February 22, 2005, Dominion sent the complainant a bill for \$321.05, which was based on an estimated meter reading. Thereafter, Dominion received a customer reading via telephone. The charges for February 2005 then were revised from \$321.05 to \$135.90, to reflect the customer reading, and Dominion mailed the complainant both the original and the revised February 2005 bills (Dominion Exhibit 1 at 5-6).

<sup>2</sup> Dominion's Energy Choice Program allows eligible customers to purchase natural gas from a Competitive Retail Natural Gas ("CRNG") supplier. Customers who wish to buy gas from a CRNG supplier continue to receive their delivery service from Dominion under Dominion's Energy Choice

completed (Dominion Exhibit 1 at 4). Ms. Callahan testified that Dominion denied Mr. Nicholson's application to enroll with MX Energy in February 2005 because he was 64 days in arrears on his December 2004 bill. She testified that Mr. Nicholson did not pay his December 2004 bill in full until March 7, 2005. Ms. Callahan stated that, because of the arrearage, Mr. Nicholson was ineligible to participate in Dominion's Energy Choice Program<sup>3</sup> (Dominion Exhibit 1 at 4-5, 7).

Referring to the statement of Mr. Nicholson's account (Complainant Exhibit 1; Dominion Exhibit 1.8), Ms. Callahan stated that the blank spaces for February 18, 2005, and February 25, 2005, in the "Acct Balance" column on the statement, merely reflect that the corresponding transactions to the left of the blank spaces did not result in a new bill being issued. She noted that the presence of a blank space on the statement does not mean that the account was not in arrears or that the account balance was zero. She testified that the complainant's account balance on February 18, 2005, and February 25, 2005, was \$675.68 (Tr. at 36-38; Dominion Exhibit 1 at 7-8). Ms. Callahan stated that Dominion mails statements of accounts to customers only at their request and that Dominion informs customers of their account balances and payments due by monthly billings (Tr. at 40-41).

Ms. Callahan testified that Dominion's tariff, in effect during the time period covered by Mr. Nicholson's complaint, requires the company to use its best efforts to obtain an actual reading of a customer's meter once every 12 months. Ms. Callahan testified that actual readings were obtained by Dominion for the complainant's property on March 11, 2004, July 20, 2004, February 10, 2005, March 16, 2005, and December 15, 2005 (Dominion Exhibit 1 at 8-9; Dominion Exhibit 1.9).

## VI. Discussion and Conclusion

As noted above, complainant ostensibly filed this complaint to dispute his exclusion from Dominion's Energy Choice Program. Complainant, however, also indicated in his filing that he had experienced a problem with billing estimates. Later, at hearing, complainant stated that his complaint related to the company's practice of issuing bills based on estimated usage. Complainant explained he did not owe money for a large percentage of the gas that was billed to him using the estimated usage. Complainant argued that, at the time the bills were rendered by Dominion, he did not owe the company a portion of those bills because he always received a credit back from Dominion, for the

---

Transportation Service ("ECTS") Tariff. Ms. Callahan testified that Dominion earns a profit on the delivery, and not on the supply, of natural gas (Dominion Exhibit 1 at 3, 8).

<sup>3</sup> The eligibility criteria for customers to participate in Dominion's Energy Choice Program are: (1) The customer must have purchased or otherwise arranged to receive all natural gas requirements from a qualified CRNG supplier, and (2) the customer must have no arrears for 30 days or more or, if eligible, be on a current payment plan to discharge an arrearage. Dominion noted that the complainant's account is a commercial account and, therefore, is not eligible to be placed on a payment plan (Dominion Exhibit 1 at 4).

amount that was overestimated, when he made a payment after the meter actually was read. Complainant argued that his requested enrollment in Dominion's Energy Choice Program should not have been denied because he did not pay money that he did not owe.

The issuance of some bills based on actual meter readings and some bills based on estimated usage is a standard practice used by gas utilities in this state. As set forth in Rule 4901:1-13-04(G)(1), O.A.C., the Commission has determined that each gas company is required to obtain actual readings of its customer meters at least once every 12 months. In this case, the evidence shows that Dominion's tariff (Dominion Exhibit 1.9 at Section II, No. 15) also requires the company to obtain an actual meter reading at least once each full calendar year. In Mr. Nicholson's situation, actual readings were obtained from the meter on the complainant's property twice in 2004 and three times in 2005, on March 11, 2004, July 20, 2004, February 10, 2005, March 16, 2005, and December 15, 2005. Dominion obviously has complied with the annual meter reading provision of Rule 4901:1-13-04(G)(1), O.A.C, and its own tariff. Therefore, we do not find Dominion's actions in reading the complainant's meter to be a violation of either our meter reading rule or the company's tariff provision.

The Commission also would observe that, as specified in the company's tariff, a customer's bill is due for payment 14 days after the date of mailing to a customer (Dominion Exhibit 1.9 at Section II, No. 12). Thereafter, any overbilling that is a result of estimated usage eventually is balanced out with an actual reading. This approach has been considered and adopted by the Commission in its promulgation of administrative rules. Therefore, the Commission will not condone the payment, by Mr. Nicholson, of only his estimate of what he thinks he might owe, when he determines that he is being billed based on estimated usage.

Concerning the complainant's account, Dominion witness Callahan testified that, from December 2004 to March 2005, the complainant's listed account balance was never zero. The account always contained an arrearage during that period (Dominion Exhibit 1 at 5-7). Clearly then, the complainant's practice of paying only a portion of his bills that were based on estimated usage, i.e., the part of the bill that he believed he actually owed, lead to the arrearage in his account and a subsequent denial of his application to enroll with MX Energy. The arrearage remaining in his account from previous billing periods caused the account to exceed the eligibility requirements for Dominion's Energy Choice Program in February 2005.

Finally, we note that Rule 4901:1-13-04(G)(1), O.A.C., also states that: "At a minimum, each company shall make reasonable attempts to obtain actual readings of its customer meters every other month . . . ." We interpret this language to mean that a company should work toward obtaining actual readings of its customer meters every other month. In this case, aside from the previously noted actual readings in 2004 and

2005, there was no evidence offered at hearing with regard to attempts Dominion might have made to obtain other actual readings of the complainant's meter on a bimonthly basis. While one actual reading per year is the minimum meter reading requirement under Rule 4901:1-13-04(G)(1), we believe that the company should be working to reduce the time interval between actual meter readings for all its customer meters. Therefore, we direct Dominion to file a report in this docket, within 30 days of this proceeding, on its internal procedures that are designed to comply with the bimonthly meter reading goal. Upon receiving this information, we will evaluate what, if anything, may be required of Dominion with regard to this issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On January 29, 2009, Michael L. Nicholson filed a complaint with the Commission.
- (2) On February 17, 2009, Dominion filed an answer denying the allegations in the complaint.
- (3) On March 25, 2009, a prehearing conference was held in the case. The parties, however, were unable to resolve their differences at the conference.
- (4) On May 21, 2009, an evidentiary hearing was held in this matter. The complainant testified on his own behalf and Dominion presented the testimony of one witness.
- (5) In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d (1966). Complainant has not met his burden of proving the allegations in the complaint that the denial of his application for enrollment with MX Energy was unreasonable and that Dominion improperly issued bills based on estimated usage rather than actual meter readings.
- (6) Dominion should file a report in this docket, within 30 days of this proceeding, on its internal procedures that are designed to comply with the bimonthly meter reading goal.

ORDER:

It is, therefore,

ORDERED, That this complaint be denied. It is, further,

ORDERED, That Dominion file a report of compliance with the directive set for Finding (6) within 30 days of the date of this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

---

Alan R. Schriber, Chairman

---

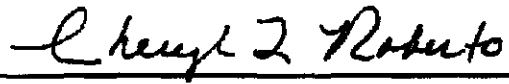
Paul A. Centolella



Valerie A. Lemmie

---

Ronda Hartman Fergus



Cheryl L. Roberto

KKS/vrm

Entered in the Journal

SEP 30 2008



Renee J. Jenkins  
Secretary