

THE PUBLIC UTILITIES COMMISSION OF OHIO

OPINION AND ORDER

On April 24, 2009, Anthony and Grace Incorvia (complainants) filed a complaint with the Commission against East Ohio Gas Company d/b/a Dominion East Ohio (Dominion). In general, the complaint focuses on two primary issues: (1) the multiple gas leaks that have occurred on the property since April 2002 and (2) the complainants' claim that Dominion has refused to place the complainants on the Percentage of Income Payment Plan (PIPP). In addition, the complainants also allege that Dominion improperly disconnected their gas service and repeatedly sent out notices improperly threatening that the complainants' service would be disconnected.

The complaint states that the complainants moved into their present address, at 252 Lowrie Boulevard, Northfield, Ohio, in April 2002. The complainants state that, while moving into the premises, a gas leak was discovered in the kitchen. The complainants notified Dominion about the leak and were instructed to replace both the range and the gas dryer. According to the complainants, since purchasing and moving into the Lowrie Boulevard home, they have replaced not only the range and the gas dryer, but also the hot water tank. The complainants state that they had the new appliances professionally installed. The complainants also state that, on or about September 3, 2004, the gas lines in the home were replaced by a licensed plumber at a cost of \$1,093.28. The complainants claim that five days after replacing the interior gas lines they discovered a gas leak at the meter on the exterior of their house. Although the complainants state that Dominion replaced the meter, the complainants nonetheless maintain that the gas leaks and carbon dioxide made them sick and caused them to incur excessive medical expenses.

The complainants also allege that each month since April 2002, Dominion has sent them a disconnection notice and, furthermore, has refused to permanently place them on PIPP. The complainants claim that they have not had any household income since July 2008. According to the complainants, service to the residence was disconnected between December 5, 2008, and December 7, 2008.

On May 14, 2009, Dominion filed its answer to the complaint. In its answer, Dominion affirms that the company replaced the meter at the complainants' home on September 27, 2004. Dominion further states that it acted in accordance with all applicable laws, rules, and regulations both while responding to the complainants' PIPP applications and when connecting or disconnecting the complainants' gas utility service. Further, Dominion denies, for lack of knowledge, each of the remaining claims made in the complaint.

By entry issued May 29, 2009, a settlement conference was scheduled for June 23, 2009. The May 29, 2009 entry also explained that the attorney examiner had a better understanding of certain allegations made in the complaint after speaking with Mrs. Incorvia. As noted in the May 29, 2009 entry, Mrs. Incorvia represents that service to her home was improperly disconnected by Dominion on December 5, 2008, and was restored around 5:30 p.m. on December 7, 2008. The complainants also state that the gas leaks and carbon dioxide poisoning are their "chief complaint" despite the representation in the written complaint that their "chief complaint" is the regular disconnection notices and lack of enrollment in the PIPP program. The complainants assert that Dominion's negligent failure to replace the meter at their residence resulted in gas leaks and carbon monoxide levels that caused them to become ill and incur excessive medical expenses. With Mrs. Incorvia's clarification of the allegations included in the complaint, the May 29, 2009 entry also provided Dominion an opportunity to amend its answer, at Dominion's discretion, after the settlement conference.

The settlement conference was held as scheduled, but the parties were unable to resolve the dispute informally. Dominion did not file an amended answer.

On August 24, 2009, Dominion filed the direct testimony of Yvette Henderson (Dominion Ex. 1) which also included three exhibits which were attached to her testimony: Exhibit 1.1, Dominion's Standard Operating Procedures for leak and odor complaints - Inside, effective April 1, 2000; Exhibit 1.2, Dominion's Standard Operating Procedures for leak and odor complaints - Outside, effective April 1, 2000; and Exhibit 1.3, a chart of the Incorvias' service orders beginning April 23, 2002, through October 7, 2008. The chart lists the time the complainants called Dominion, the reason for the service call, the arrival and departure times of the responding technician, Dominion's conclusion and the action taken by the Dominion technician. On the same day, Dominion also filed the direct testimony of Roxie Edwards (Dominion Ex. 2) which includes Exhibit 2.1, consisting of eight pages of the customer service screen prints. The hearing was held on September 1, 2009. On October 5, 2009, Dominion filed its brief. The complainants did not file a brief.

II. Hearing

Procedural Motion

At the hearing, Dominion made a motion to dismiss the complaint with regard to Anthony Incorvia for failure to prosecute (Tr. 5). Dominion noted, as Mrs. Incorvia confirmed, that Mr. Incorvia, husband of Mrs. Incorvia, did not appear nor participate in the June 23, 2009 settlement conference, did not appear for his deposition with Dominion on July 20, 2009, or as rescheduled on July 29, 2009, and was not present at the hearing (Tr. 7).

We find that there is no need to address the merits of Dominion's motion to dismiss, as it is rendered moot by our determination that, as discussed below, the complaint should be dismissed because the complainants failed to prove the allegations of their complaint.

At the hearing, Mrs. Incorvia stated that she and her husband have experienced several gas leaks and/or faulty appliances inside their residence, as well as a leak at the meter. Mrs. Incorvia indicated that gas leaks caused her and her husband to become ill. Further, Mrs. Incorvia argued that Dominion improperly disconnected her service, repeatedly sends her disconnection notices, refuses to enroll her in the PIPP program or make other reasonable payment arrangements. At the hearing, Mrs. Incorvia also raised a new allegation that Dominion billed her for the gas services of other Dominion customers.

Gas leaks on the property

Mrs. Incorvia testified that she and her husband took occupancy of their Lowrie Boulevard home in April 2002 (Tr. 7). The complainants did not have the home inspected before it was purchased (Tr. 42-43). While moving into their new home, the complainants reported the smell of gas in the kitchen to Dominion (Dominion Ex. 1). According to Mrs. Incorvia, the movers assisting the complainants became ill as a result of the gas leak and had to leave (Tr. 13). After investigating, Dominion determined that the pilot on the stove was defective (Dominion Ex. 1.3; Tr. 38). Dominion recommended that the complainants repair the stove and the Dominion technician shut off the gas to the stove (Dominion Ex. 1.3; Tr. 38). The complainants subsequently replaced the gas stove (Tr. 13-14, 39; Complainants' Ex. 5).

From August 30, 2004, through September 10, 2004, the complainants contacted Dominion five times complaining of gas odor in the home and/or carbon monoxide symptoms (Dominion Ex. 1.3). Mrs. Incorvia testified that, during the September 3-6, 2004 Labor Day weekend, she and her husband were hospitalized in intensive care for 13 hours. She claimed that their illnesses were the result of a gas leak at their home. (Tr. 10.) Mrs. Incorvia testified that she had encephalitis and was on bed rest for eight months (Tr. 10, 16). Mrs. Incorvia requested that Dominion reimburse the complainants for their medical expenses. Mrs. Incorvia also requested that she be enrolled in the weatherization program. (Tr. 36.)

Mrs. Incorvia stated that, in September or October 2004, a carbon monoxide detector was installed at the property (Tr. 41-42). Under cross-examination, Mrs. Incorvia testified that, since its installation, the carbon monoxide detector has never indicated the presence of carbon monoxide in her residence (Tr. 42).

Mrs. Incorvia stated that, with each gas leak or carbon monoxide complaint to Dominion, the company responded within the hour (Tr. 38-39). On cross-examination, Mrs. Incorvia admitted that she understood that Dominion is not responsible for gas leaks that come from appliances or the gas lines located inside the customer's home (Tr. 42).

According to Dominion customer service records, gas service to the complainants' residence was shut off during a service call on Monday, August 30, 2004. Dominion was summoned to the complainants' residence because the complainants reported smelling odor in the basement. Dominion's technician found several leaks in the inside house lines in the basement, shut off the gas, and advised the complainants that they needed to repair the inside gas lines. Gas supply to the complainants' residence remained shut off until September 10, 2004, the Friday following the Labor Day weekend. (Dominion Ex. 1.3.)

Dominion's customer service records indicate that, during a service call on September 27, 2004, a gas leak was found in the gas meter installed on the exterior of the complainants' residence (*Id.*). The customer service records show, as Mrs. Incorvia confirmed during her testimony, that the gas meter was replaced (*Id.*, Tr. 34). Both parties agree that soon afterwards Dominion was again summoned to the complainants' residence because Mrs. Incorvia smelled gas when sitting in her enclosed front porch and, during that service call, a leak was found and repaired in the neighbor's outside gas meter (Dominion Ex. 1.3, Tr. 17-18).

Ms. Henderson, a supervisor of field metering services at Dominion, testified that meters are changed based on the life expectancy of the meter which can be in the range of 18-30 years (Tr. 54, 55). Ms. Henderson was not aware of any rule or guideline which required Dominion to periodically inspect installed meters (Tr. 57). According to Dominion's customer service records, the complainants complained about gas odors in their residence six other times after the leak in the neighbor's gas meter was repaired, but only one leak was discovered, and that leak was found on an inside gas line (Dominion Ex. 1-3).

PIPP or other affordable payment plans

The complainants assert that Dominion has refused to permanently enroll their household on PIPP or offer them an affordable payment plan. At the hearing, Mrs. Incorvia demonstrated an awareness of the standard payment plans offered by Dominion pursuant to Rule 4901:1-18-04, Ohio Administrative Code (O.A.C.). However, Mrs. Incorvia stated that the plans offered by the company just are not working out (Tr. 32-33). The complainants most recently attempted to enroll in PIPP on or about July 2009, but were determined to be ineligible (Tr. 43-44). Mrs. Incorvia admitted that the gas bill was not current, that she had not paid the gas bill for two months, and that she could not recall when her Dominion bill was last paid in full (Tr. 12, 45-46). The complainants have not disputed any of the charges on their Dominion bill (Tr. 46). However, Mrs. Incorvia claimed that a relative had been paying the gas bill in full each March or April and that a relative had written a letter to Dominion regarding the complainants' account and the circumstances of this complaint (Tr. 45-46).

Ms. Edwards, a customer relations support manager for Dominion, testified that all the disconnection notices sent to the complainants include information about the PIPP program and explained that the Ohio Department of Development (ODOD) is the administrator for the PIPP program (Dominion Ex. 2, at 4, Tr. 71, 84). She stated that ODOD electronically informs Dominion if a customer is eligible for PIPP and the customer is automatically classified as a PIPP customer by Dominion (Dominion Ex. 2, at 4-5, Tr. 71, 85). Ms. Edwards further testified that she assisted in scheduling an appointment for the complainants in July 2009 with the local community action agency charged with carrying

out the PIPP program. The witness stated that she was later informed by ODOD that the complainants were determined to be income ineligible for the gas PIPP program at that time (Dominion Ex. 2, at 5).

Disconnection of Service

According to Dominion's customer service records, gas service was disconnected at the Incorvias' home on August 4, 2008, for nonpayment (Dominion Ex. 1.3). During her testimony, Mrs. Incorvia agreed, after some thought, that service to the home could have been disconnected from August 4, 2008, to August 7, 2008 rather than December or in the middle of winter as she previously claimed in the complaint (Tr. 48). Mrs. Incorvia testified that this was a mistake on the part of Dominion and that it caused she and her husband inconvenience (Tr. 23-24). As Mrs. Incorvia recalls, her service was disconnected for more than 72 hours. However, Mrs. Incorvia testified that, when she contacted Dominion about being disconnected, "the lady [at Dominion] said she wanted to turn it on in less than 72 hours. I said no. I was busy with some other thing, and I couldn't do it. And so it was shut off by mistake." (Tr. 24.)

Ms. Edwards testified that the account as of the day her testimony was prepared had an outstanding balance of \$1,405.86, of which \$1,373.82 is the accumulated account delinquency (Dominion Ex. 2, at 3; Tr. 76). The complainants were on a payment plan with Dominion as of May 15, 2009. According to Dominion, the monthly payment was \$278.04 plus the current charges through November 2009. At the initiation of the payment plan, the outstanding balance was \$1,668.26. Ms. Edwards testified that the complainants paid \$415.00 on the account in June but had not made any more payments as of August 24, 2009. Ms. Edwards also stated that the complainants have been on three payment plans since April 3, 2007 and have failed to honor any of the plans. (Dominion Ex. 2, at 3.)

Ms. Edwards further testified that service to the complainants' residence was disconnected on August 4, 2008, for nonpayment. The July 2008 bill advised the complainants that their service could be disconnected as of July 31, 2008 if they did not pay or make arrangements to pay the past due amount. (*Id.* at 4.) Ms. Edwards testified that the complainants entered into a payment plan on August 5, 2008, to pay \$98.84 plus the current charges each month. However, the complainants did not honor the payment arrangements. (*Id.* at 3.)

Disconnection notices and bills for other customer's gas service

Mrs. Incorvia testified that she is aggravated by Dominion's constant issuance of a disconnection notice on her account and the threat or request for a security deposit if service is disconnected for nonpayment (Tr. 12, 31). Mrs. Incorvia also testified that she is

being incorrectly billed. The witness presented a letter dated March 21, 2009, addressed to a Marla A. Jolliff with the complainants' address (Tr. at 25-26, Complainants' Ex. 2).

III. Discussion

Section 4905.22, Revised Code, requires every public utility to furnish necessary service and facilities, and, with respect to its business, such instrumentalities and facilities as are adequate and in all respects just and reasonable. Section 4905.26, Revised Code, dictates that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable.

According to the complaint, the complainants allege that Dominion is responsible for the gas leaks at their residence and in particular for the medical problems they claim result from a gas leak during the 2004 Labor Day weekend. The complainants next allege that Dominion improperly refused to place them on PIPP or another payment plan. The complainants also allege that Dominion improperly terminated their gas service, repeatedly sent improper disconnection notices, and billed the complainants for the gas service received by another Dominion customer.

We find that the complainants failed to provide evidence supporting their claims that Dominion bears responsibility for the gas leaks at the complainants' residence and the medical problems the complainants allege resulted from the gas leaks. In her testimony, Mrs. Incorvia admitted that Dominion was not responsible for any leaks inside the complainants' residence (Tr. 42). According to Mrs. Incorvia's testimony, she and her husband had to be hospitalized during the September 3-6, 2004 Labor Day weekend. However, Dominion Ex. 1.3, which details the 17 service calls made to the Incorvia residence between 2002 and 2008, shows that, on Monday, August 30, 2004, Dominion turned off gas service to the complainants' residence due to leaks found in the inside gas lines located in their basement. At that time, Dominion informed the complainants that the inside gas lines needed repair. Gas service to the complainants' residence remained off until Friday, September 10, 2004. Dominion made service calls to the complainants' residence on Thursday, September 2, 2004, and Friday, September 3, 2004, responding to complaints of odor inside the house, but no gas leaks, carbon monoxide or odors were detected during these service calls. The gas remained shut off, and Dominion Ex. 1.3 represents that, on September 3, 2004, Dominion again informed the complainants of the need to repair the inside gas lines. The complainants did not rebut this evidence. The allegations in the complaint that repairs to the inside gas lines were completed before the 2004 Labor Day weekend gas leak is contradicted by Mrs. Incorvia's testimony. She testified that the repairs were made after she became aware of the leak. Further, Mrs. Incorvia's testimony that police officers responding to a call she made on the morning of

Sunday, September 5, 2004, were also unable to detect any natural gas odor supports Dominion's contention that gas service to the complainants' residence was shut off during the 2004 Labor Day weekend. Mrs. Incorvia conceded that Dominion was not responsible for gas leaks inside the complainants' residence, and since gas to the complainants' residence was shut off during the 2004 Labor Day weekend, the complainants have not proven that Dominion is responsible for the gas leaks at the complainants' residence, nor have the complainants demonstrated that Dominion bears any responsibility for the medical problems allegedly suffered by the complainants.

We also find that the complainants failed to meet their burden of proof to demonstrate that Dominion acted improperly by not enrolling the complainants in PIPP. Dominion correctly explained that it can only enroll a customer into PIPP, after a determination by ODOD that the customer qualifies for the program. The evidence presented showed that each time the complainants filed for PIPP, ODOD determined that they do not qualify. As Dominion had no control over whether the complainants qualified for PIPP, the complainants' contention that Dominion improperly refused to enroll them into PIPP is without merit. The complainants also failed to support their contention that Dominion should have offered them a payment plan, as the evidence presented at the hearing showed that the complainants defaulted, on four previous occasions, when placed on a payment plan by Dominion.

We next find that the complainants failed to prove that Dominion acted improperly when it terminated service to the complainants' residence. Mrs. Incorvia stated in her testimony that she could not remember the last time she and her husband had paid their gas bill in full. She also admitted that neither she nor her husband had disputed any charges on any bill received from Dominion. Dominion presented evidence showing that the complainants' account includes an accumulated arrearage and, as previously noted, that the complainants have failed to keep current on payment plans offered to them by Dominion on four separate occasions. This evidence was not rebutted by the complainants. Based on these facts, we also find the complainants' allegations that Dominion improperly sent them termination notices or improperly requested a security deposit to be without merit. The complainants did not introduce into evidence any of the alleged improper notices, and based on the substantial arrearages which accrued on the complainants' account, it was not improper for Dominion to notify the complainants that they risk the disconnection of their gas service due to nonpayment and that a security deposit would be required to reestablish service after a disconnection. Finally, the complainants failed to prove their claim that they were charged for gas service received by another Dominion customer. The Commission notes that Complainants' Ex. 2 is not a bill but a welcome letter from Dominion. The welcome letter, which is incorrectly addressed, details a Dominion customer's rights and responsibilities and who to contact for questions, concerns or complaints regarding gas utility service, service line ownership and maintenance, house line ownership and house line leaks. Complainants' Ex. 2, the

welcome letter, is not a bill or a request for payment. As such we find this aspect of the complaint to be without merit.

FINIDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The complaint was filed on April 24, 2009.
- (2) On May 14, 2009, Dominion filed its answer to the complaint, admitting that the company replaced the meter at the Incorvia residence but otherwise denying the material allegations set forth in the complaint.
- (3) Dominion is a gas or natural gas company subject to the jurisdiction of the Commission.
- (4) A settlement conference was held on June 23, 2009.
- (5) On September 1, 2009, the evidentiary hearing was held in this matter.
- (6) Dominion filed its brief on October 5, 2009. The complainants did not file a brief.
- (7) This matter is properly before the Commission, pursuant to Section 4905.26, Revised Code. In complaint proceedings such as this one, the burden of proof lies with the complainants. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d. 189.
- (8) The complainants failed to demonstrate that Dominion is not providing reasonable and adequate service as required pursuant to Section 4905.22, Revised Code.
- (9) The evidence presented does not show that Dominion improperly disconnected gas service to the complainants' home or failed to timely restore the gas service.
- (10) The complainants failed to demonstrate that Dominion failed to respond to their service requests or was responsible for the leaks experienced at the complainants' home. In particular, the complainants presented no evidence demonstrating that Dominion was in any way responsible for any medical problems allegedly suffered by the complainants.
- (11) Dominion has not acted to prevent the complainants' enrollment in the PIPP program.

- (12) Dominion has not sent improper termination notices or charged the complainants for the gas service to another Dominion customer.

It is, therefore,

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

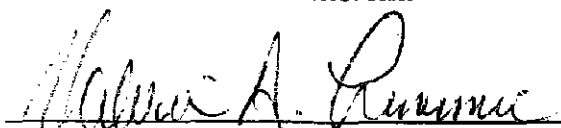
ORDERED, That a copy of this Opinion and Order be served upon the complainants, Dominion and its counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

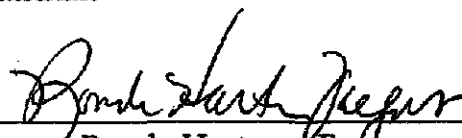


Alan R. Schriber, Chairman

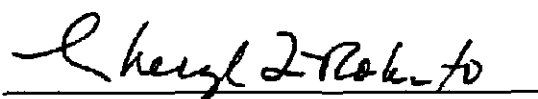
Paul A. Centolella



Valerie A. Lemmie



Ronda Hartman Fergus

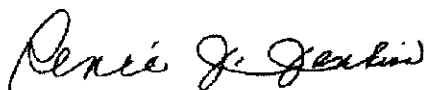


Cheryl L. Roberto

GNS/HPG/vrm

Entered in the Journal

DEC 09 2009



Renee J. Jenkins
Secretary