

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Isaac)	
Andrews,)	
)	
Complainant,)	
)	
v.)	Case No. 09-511-EL-CSS
)	
The Dayton Power and Light Company,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the testimony and exhibits presented in this matter, the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Isaac and Glenda Andrews, 3511 Wales Drive, Dayton, Ohio 45405, on their own behalf.

Edward N. Rizer, 1065 Woodland Drive, Dayton, Ohio 45432, on behalf of The Dayton Power and Light Company.

I. HISTORY OF THE PROCEEDINGS

On June 16, 2009, Isaac Andrews (Mr. Andrews) filed a complaint against The Dayton Power and Light Company (DP&L), in which he stated that he was "turn[ed] down to be heard" and "would like to appeal, and to be heard." Mr. Andrews provided no other allegations supporting the complaint.

DP&L answered the complaint on July 6, 2009, by asserting that its actions have been in compliance with all statutes, regulations, and tariffs.

The attorney examiner issued an entry on June 30, 2009, ordering Mr. Andrews to file an amended complaint to clarify the facts that constitute the complaint.

Mr. Andrews amended the complaint on August 21, 2009, by stating that in February 2009 he had received an electric bill for \$1,511 which was excessively high, given his prior electric usage.

DP&L responded with an amended answer on September 4, 2009. DP&L asserted that it had tested Mr. Andrews' electric meter and found it to be registering properly. DP&L also contended that an investigation of Mr. Andrews' home revealed that, aside from a natural gas furnace, the home "has electric cable heat, which was operating at that time" and that, when the cable heat was disconnected, Mr. Andrews' electric usage "immediately dropped to levels consistent with the prior year." DP&L concluded that the high electric bill was caused by use of the electric cable heat.

In a September 9, 2009, entry, the attorney examiner scheduled a prehearing conference for September 18, 2009. The parties met on that date and continued subsequent discussions and investigations into the complaint, but were unable to resolve the matter, and Mr. Andrews requested a hearing.

In a November 18, 2009, entry, the attorney examiner scheduled a hearing for January 14, 2010. Mr. Andrews contacted the attorney examiner on January 12, 2010, to request postponement of the hearing for several weeks. The attorney examiner then issued a January 13, 2010, entry that rescheduled the hearing date to February 11, 2010. The February 11, 2010, hearing was postponed because of inclement weather. By entry issued February 11, 2010, a March 12, 2010, hearing was scheduled. The hearing was conducted on March 12, 2010.

II. APPLICABLE LAW

DP&L is a public utility, as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission.

Section 4905.26, Revised Code, requires 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. The Commission also notes that the burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189. Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

III. SUMMARY OF THE TESTIMONY

Mr. Andrews' Position

Mr. Andrews' wife spoke on his behalf. According to Mrs. Andrews, on January 30, 2009, DP&L had sent a \$1,511 bill for the service period December 17, 2008, to January 20, 2009 (Tr. at 5; Andrews Ex. 1). Mrs. Andrews asserts that she and Mr. Andrews had never before received such a high bill, not even when using extra lights at

Christmas. Typically, she stated, their DP&L bills had never exceeded the \$200 to \$300 range (Tr. at 5, 20-21). As one possible cause of the high bill, Mrs. Andrews had asked herself whether a neighbor had attached a line to her home and was stealing power, but she concluded that the height of the Andrews' privacy fence would make such theft "impossible" (*id.* at 5, 36).

Upon receipt of the high bill, Mrs. Andrews examined the electric meter and found it to be spinning unusually fast. She turned off the main circuit breaker, made certain that appliances inside the home were operating normally, and turned the main breaker back on; but the meter continued to spin unusually fast. She then contacted DP&L for service (*id.* at 6, 21). According to Mrs. Andrews, the DP&L service technician took the meter off the wall, performed maintenance, and reattached the meter to the wall, whereupon the meter "slowed down tremendously" (*id.* at 7). After this visit by the technician, reports Mrs. Andrews, the meter did not spin as fast again (*id.* at 8).

At a later date, Mrs. Andrews added, other DP&L technicians arrived and disassembled a small heater in the bathroom wall. The technicians told Mrs. Andrews that, while doing so, they had found cable wires on the bathroom wall, indicative of electric cable heating (*id.* at 9-10). Mrs. Andrews contends that she then hired electricians to look for evidence of such heating, and she asserts that no evidence was found (*id.* at 10-12, 22-24). According to Mrs. Andrews, the home is heated by a gas furnace and a wood burning stove (*id.* at 16-17, 26).

Mrs. Andrews admitted that her gas bill had decreased to the \$70 to \$80 range during the time of the high electric bill, but she attributes the decrease in gas consumption to using the wood-burning stove (*id.* at 16-17, 26). In addition, she added, when she and her husband travel south during the winter, they decrease their gas usage by lowering the thermostat (*id.* at 18).

Upon examining Company Exhibits 2 and 3, which are photos of the circuit breaker box and labels for the circuit breakers, Mrs. Andrews admitted that several breakers are labeled "cable heat." However, she contends, while such a description may have been accurate when the home was built in 1955, it is no longer correct (*id.* at 10, 14-15).

Despite their disagreement with the bill in question, Mrs. Andrews stated that the bill was paid in full (*id.* at 27).

DP&L's Position

DP&L witness Paul Salyers, supervisor of the electric meter department, stated that, after the initial meter check by a service technician, a second test of the meter,

known as a calibration test, was conducted at the Andrews' home. According to Mr. Salyers, the calibration test confirmed that the meter was operating accurately, "well within the 2% margin of accuracy permitted by the PUCO" (*id.* at 29-30, 34, 49; Company Exhibit 1). Mr. Salyers contends that, if a meter tests accurately, the cause of the high electric usage cannot be traced to DP&L, nor is it DP&L's responsibility to determine what caused high electric usage (Tr. at 31, 34, 49). To the best of Mr. Salyers' knowledge, this particular meter's accuracy has never been questioned (*id.* at 44-45). Mr. Salyers confirmed that the December 17, 2008 to January 20, 2009 billing was based on an actual read (*id.* at 41-42).

Mr. Salyers observed that several circuit breakers at the Andrews' home were labeled "cable heat," making it a possibility, but not a certainty, that the use of electric cable heating in the home had caused the high electric bill (*id.* at 30-31, 38, 39). He added that, except for the technicians' discovery that wires from the bathroom baseboard heater were connected to a breaker labeled "cable heat," it is difficult to determine the presence of electric cable heating, because the cables are embedded in the ceiling plaster (*id.* at 32, 43).

IV. DISCUSSION AND CONCLUSIONS

As noted in Part II of this Opinion and Order, in complaint proceedings, the burden of proof is on the complainant. For reasons explained below, we find that there is insufficient evidence to support a conclusion that DP&L acted unreasonably, in violation of any tariff, rule, regulation, law, or accepted standard or practice in the electric utility industry, or that charges for Mr. Andrews' electric service have increased in violation of any tariff or law. Therefore, based on the record in this proceeding, Mr. Andrews has failed to sustain his burden of proof.

The Commission understands the Andrews' disbelief that they were responsible for the December 17, 2008 to January 20, 2009, electric bill, given their assertions that prior electric bills had been much lower (*id.* at 5, 20-21). Even DP&L witness Mr. Salyers asserted that, in the months following the December 17, 2008 to January 20, 2009, bill, the Andrews' electric usage returned to a lower level (*id.* at 32-33). However, while the Andrews contend that their home is heated by natural gas and a wood-burning stove instead of electric cable heat, they provided no evidence, aside from their testimony, to show that they are not responsible for the amount of electricity used, as indicated on Andrews Ex. 1 (*id.* at 10-12, 16-17, 22-24, 26; Andrews Exhibit 1). Furthermore, the Commission notes that DP&L's meter tests indicate that the meter was operating properly and that an actual read, not estimated read, was made for the December 17, 2008 to January 20, 2009 billing period (Tr. at 29-30, 34, 41-42, 49; Company Exhibit 1). In sum, while the cause of the high electric usage at the Andrews' home during December 17, 2008 to January 20, 2009 is unclear, the high usage cannot be traced to error on DP&L's part.

Thus, upon review of the record in this proceeding, the evidence does not support Mr. Andrews' assertions that DP&L's bill was inaccurate. Moreover, we find nothing in this record to indicate that the charges for Mr. Andrews' electric service have increased in violation of any tariff or state law, or that DP&L has acted unreasonably or in violation of the Commission's rules and regulations, state laws, or accepted standards and practices in the electric utility industry. Accordingly, lacking evidence demonstrating that DP&L has violated any rule, regulation, law, or acted unjustly or unreasonably, the Commission finds that Mr. Andrews has failed to sustain his burden of proof and the complaint should be dismissed.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) On June 16, 2009, as amended on August 21, 2009, Isaac Andrews filed a complaint against DP&L, alleging inaccurately high billing for the period December 17, 2008, to January 20, 2009.
- (2) On July 6, 2009, as amended on September 4, 2009, DP&L filed its answer. DP&L asserted that, in response to Mr. Andrews' concerns about the high electric bill, it tested Mr. Andrews' electric meter and found it to be operating properly. In addition, DP&L stated that Mr. Andrews' home has electric cable heat and that the use of the electric cable heat was apparently the cause of the high electric bill.
- (3) A settlement conference was held on September 18, 2009, and the hearing was conducted on March 12, 2010.
- (4) DP&L is a public utility, as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission.
- (5) In a complaint case, the burden of proof is on the complainant. *Grossman v. Public Utilities Comm.* (1966), 5 Ohio St.2d 189.
- (6) There is insufficient evidence to support a finding that charges for Mr. Andrews' electric service have increased in violation of any tariff or state law, or that DP&L has acted unjustly or unreasonably or in violation of any rule, regulation, or law, or that any practice affecting or relating to any service furnished was unjust or unreasonable.
- (7) Based on the record in this proceeding, Mr. Andrews has failed to sustain his burden of proof, and the complaint should be dismissed.

It is, therefore,

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

ORDERED, That a copy of this opinion and order be served upon all parties of record.

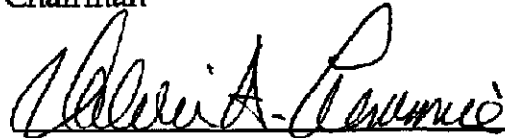
THE PUBLIC UTILITIES COMMISSION OF OHIO



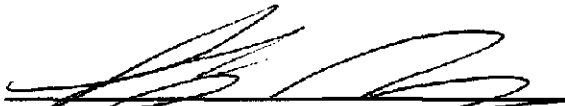
Alan R. Schriber, Chairman



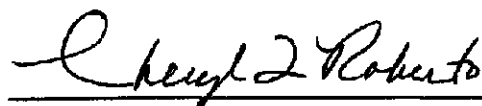
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JUL 29 2010



Renee J. Jenkins
Secretary