

1       BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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Giovanni DiSiena,               :

          Complainant,               :

5

          vs.                       : Case No.

The Cleveland Electric       : 09-947-EL-CSS

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Illuminating Company,       :

          Respondent.               :

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PROCEEDINGS

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before Henry H. Phillips-Gary, Attorney

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Examiner, held at the Public Utilities

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Commission of Ohio, 180 East Broad Street,

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Hearing Room 11-D, Columbus, Ohio, on Thursday,

14

September 16, 2010, at 1:00 P.M.

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Armstrong & Okey, Inc.

222 East Town Street, 2nd Floor

23

Columbus, Ohio 43215

(614) 224-9481 - (800) 223-9481

24

Fax - (614) 224-5724

25

- - -

1 APPEARANCES:

2 Jones Day  
3 By Mr. Grant W. Garber  
4 325 John H. McConnell Boulevard  
Suite 600  
Columbus, Ohio 43215-2673

5 On behalf of the Respondent.

6  
7 Mr. Giovanni DiSiena  
8 2172 West 101st Street  
Cleveland, Ohio 44102

9 Appearing on his own behalf.

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MARKED

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1 Thursday Afternoon Session,  
2 September 16, 2010.

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4 ATTORNEY EXAMINER: The Public  
5 Utilities Commission of Ohio has called for  
6 hearing at this time and place Case No.  
7 09-947-EL-CSS being in the matter of the  
8 complaint of Giovanni DiSiena versus The  
9 Cleveland Electric Illuminating Company.

10 My name is Henry Phillips-Gary  
11 and I am the Attorney Examiner assigned by the  
12 Commission to hear this case.

13 At this time we will take  
14 appearances on behalf of the parties. On behalf  
15 of the Company.

16 MR. GARBER: Yes, Your Honor. On  
17 behalf of the Company, Grant W. Garber from the  
18 law firm of Jones Day, 325 John H. McConnell  
19 Boulevard, Suite 600, Columbus, Ohio 43215.

20 ATTORNEY EXAMINER: And I just want  
21 to note for the record that the complainant is  
22 not present at this time. This hearing was set  
23 for today by entry issued on June 17th and the  
24 complainant was served by regular U.S. mail by  
25 the Commission's docketing department.

At this point in time it's about 1:15 and so we will go ahead and take a recess for 20 minutes just in case the complainant has been caught in getting here from out of town. And then we will go back on the record at 1:35. Thank you.

(RECESS TAKEN)

ATTORNEY EXAMINER: We will go back on the record and note we previously went on the record and Mr. DiSiena had not yet arrived, so we took a recess. He is now here so we will go ahead and proceed with the hearing.

Mr. DiSiena, if you would just basically make an appearance, state your name and your address so we have that for the record and the court reporter.

MR. DISIENA: Giovanni DiSiena, 2172 West 101 Street, Cleveland, Ohio 44102.

ATTORNEY EXAMINER: Okay. And actually let's go ahead and go off the record.

(DISCUSSION OFF THE RECORD)

ATTORNEY EXAMINER: We will go back on the record. Is there any preliminary matters before we start the presentation of the case that either party wishes to discuss?

1 MR. GARBER: No, Your Honor.

2 ATTORNEY EXAMINER: All right. Mr.  
3 DiSiena, if you would like to go ahead and start  
4 with your case. Did you want to testify today?

5 MR. DISIENA: Yes.

6 ATTORNEY EXAMINER: Well, before you  
7 testify we have to swear you in.

8 (WITNESS SWORN)

9 ATTORNEY EXAMINER: All right. And  
10 you have already given your name and address for  
11 the record. So if you want to go ahead and  
12 explain why you filed your complaint and  
13 the issues that you have with the Company.

14 MR. DISIENA: I want to go back to  
15 May 9th, I believe, if I am looking at this  
16 right. The May bill. But from May through, to  
17 make a long story short, from May through  
18 October I went from averaging \$30 a month to who  
19 knows, I mean it was 200, 300, 400. It was just  
20 ridiculous. So, now it's back down  
21 to normal. Other than that, I mean, I didn't  
22 add nothing to my house. I live by myself, I  
23 got no kids. Nobody stays at my house, all by  
24 myself.

25 I am never there. I am in and out

1 of town a lot. And all of a sudden I got this  
2 big bill. I am not an electrician, I am not a  
3 gas guy.

4 I had an electrician there, I had  
5 everybody there. And the last time we were here  
6 what I remember was -- the agreement was they  
7 would change the meter again.

8 MR. GARBER: Objection to the extent  
9 the complainant is referring to things that were  
10 discussed in settlement conference, that is not  
11 admissible. So a reference to an agreement, I  
12 think that is what he is referring to, some  
13 discussion is not going to be admissible.

14 ATTORNEY EXAMINER: Okay. Mr.  
15 DiSiena, the thing with that is --

16 MR. DISIENA: I can't say nothing.  
17 We are right back where we started.

18 ATTORNEY EXAMINER: Well, when the  
19 parties engage in settlement discussion those  
20 are not admissible.

21 MR. DISIENA: Unbelievable.  
22 Whatever. Do what you have got to do.

23 ATTORNEY EXAMINER: The objection  
24 will be sustained.

25 MR. DISIENA: It's one sided.

1                   ATTORNEY EXAMINER: This is your  
2 opportunity --

3                   MR. DISIENA: I made my point. I  
4 am not going to get nowhere here today. So  
5 another wasted trip.

6                   ATTORNEY EXAMINER: So, basically  
7 you have got copies of the bills; is that  
8 correct?

9                   MR. DISIENA: Yes.

10                  ATTORNEY EXAMINER: Would you like  
11 to introduce those into evidence?

12                  MR. DISIENA: Are we in court? Am I  
13 supposed to have a lawyer for this, or not?

14                  ATTORNEY EXAMINER: That is --

15                  MR. DISIENA: My prerogative;  
16 right? This paper says hearing. This paper  
17 don't say nothing about court. This paper says  
18 hearing. Just like last time I was here.  
19 Hearing. Hearing matter shall be held on this  
20 date. Hearing, not a court.

21                  ATTORNEY EXAMINER: All right.  
22 Let's go off the record.

23                  (DISCUSSION OFF THE RECORD)

24                  ATTORNEY EXAMINER: While we were  
25 off the record discussing the process through



1 which the complaint case is handled in terms of  
2 a settlement conference and the hearing and the  
3 procedures for a hearing, during that time Mr.  
4 DiSiena decided to leave and has left  
5 the hearing and is no longer present.

6 So, at this point in time I believe  
7 that concludes the presentation of his case  
8 since he has left. Go ahead.

9 MR. GARBER: Your Honor, if I may  
10 move to strike Mr. DiSiena's entire direct  
11 testimony since he didn't stay and was not  
12 subject to cross-examination.

13 ATTORNEY EXAMINER: Your motion to  
14 strike will be taken under advisement.

15 MR. GARBER: Thank you, Your Honor.  
16 Given that then, Your Honor, respondent would  
17 like to put on evidence.

18 ATTORNEY EXAMINER: Okay.

19 MR. GARBER: And proceed with it's  
20 case in chief.

21 ATTORNEY EXAMINER: Okay. I mean,  
22 recognizing that the burden lays with the  
23 complainant, but if you would like to proceed.

24 MR. GARBER: Sure. To the extent  
25 that evidence, 15 seconds or whatever it was

1 worth of evidence the complainant put in the  
2 record may not be stricken, then respondent is  
3 going to want to put on some evidence.

4 ATTORNEY EXAMINER: All right.  
5 Let's go off the record for a second.

6 (DISCUSSION OFF THE RECORD)

7 (RECESS TAKEN)

8 ATTORNEY EXAMINER: As I was  
9 stating before, the complainant was wanting to  
10 bring in evidence relating to settlement  
11 discussions. The Company objected, and that  
12 objection was sustained.

13 And at that point the complainant  
14 indicated while we were off the record  
15 explaining the procedural process, and during  
16 that time he indicated he was not interested in  
17 staying because he would not be able to bring in  
18 the information from the settlement discussions.  
19 And at that point the complainant left.

20 What we are going to do now, it's  
21 about 1:50, is we are going to take a recess for  
22 20 minutes just to see if the complainant  
23 returns and wishes to continue pursuing his  
24 case. If he does not then, once we come back on  
25 the record we will consider whether the Company

1 will put on its case at that point in time. So  
2 we will go off the record. Thanks.

3 (RECESS TAKEN)

4 ATTORNEY EXAMINER: I will note  
5 that it is about 2:12 and Mr. DiSiena has not  
6 returned. And we recessed about 20 minutes to  
7 see if he would come back, and he has not.

8 At this point in time, Mr. Garber,  
9 the Company wishes to present its case?

10 MR. GARBER: Yes, Your Honor. First  
11 we would like just for the record to make -- we  
12 have pending the motion to strike based on the  
13 failure for an opportunity for  
14 cross-examination. We would like to add to that  
15 a motion to dismiss for failure to prosecute to  
16 the extent that complainant didn't stay for much  
17 more than a couple of minutes. Evidently put  
18 very, very little evidence, if any, in the  
19 record, and again was not subject to  
20 cross-examination. We don't think that that  
21 remotely approaches his responsibility to  
22 prosecute his case. And so we would also make  
23 that second motion for that additional reason.

24 With that the Company also would  
25 like to call its witness, Robert Perkins.

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(WITNESS SWORN)

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ROBERT PERKINS

called as a witness on behalf of the Respondent,  
being first duly sworn, testified as follows:

ATTORNEY EXAMINER: You may  
proceed.

MR. GARBER: Your Honor, maybe I  
should have done this before we sworn  
the witness, but I don't know if you want to  
pre-mark these exhibits.

ATTORNEY EXAMINER: Sure.

MR. GARBER: I believe they have  
been labeled, but just for purposes of  
pre-marking them, we have CEI Exhibit A, which  
is the Mr. Perkins' pre-filed testimony.

CEI Exhibit B is a chart that is  
discussed in Mr. Perkins' pre-filed testimony  
that summarizes the relevant meter readings,  
bill amounts, and other bill and usage related  
information.

CEI Exhibit C is a screen shot from  
CEI's billing system.

CEI Exhibit D is meter test  
documentation for meter No. 717732.

1 CEI Exhibit E is correspondence from  
2 CEI to complainant.

3 CEI Exhibit F is a portion of ANSI  
4 standard C12.1.

5 CEI Exhibit G is a document that is  
6 entitled FirstEnergy Meter Calibration and  
7 Traceability.

8 And CEI Exhibit H is meter test  
9 documentation for meter No. 699505602.

10 So having pre-marked those exhibits,  
11 with Your Honor's permission, we will go to the  
12 direct examination of Mr. Perkins.

13 - - -

14 DIRECT EXAMINATION

15 By Mr. Garber:

16 Q. Mr. Perkins, please introduce  
17 yourself to the court.

18 A. My name is Robert Perkins, I am the  
19 Metering Manager for the Illuminating Company,  
20 which is a FirstEnergy Company. I have been  
21 with FirstEnergy for a total of 19 years.

22 Q. You have in front of you what we  
23 just marked as CEI Exhibits A through H. Do you  
24 recognize those documents?

25 A. Yes, I do.

1 Q. And can you tell me, let's just look  
2 at CEI Exhibit A, that is your pre-filed  
3 testimony?

4 A. Yes, it is.

5 Q. And was that testimony prepared at  
6 your direction?

7 A. Yes, it was.

8 Q. Do you have any changes to that  
9 testimony?

10 A. There is three changes. And they  
11 are all date changes. There is three locations  
12 where 2010 was put in the document and they need  
13 to be changed to 2009.

14 And that is on page 4, line No. 18.  
15 There is a reference to June of 2010. That  
16 should actually be June of 2009.

17 Q. And there is two references on page  
18 5, line item No. 2. There is a date marked June  
19 4th of 2010. That should be June 4th of 2009.

20 And then on page No. 5, line items  
21 No. 6 and 7 there is a reference to June 8th of  
22 2010. That should be June 8th of 2009.

23 Q. Subject to those corrections if I  
24 asked you the same questions that appear in your  
25 testimony today would your answers be the same?

1           A.     Yes, they would.

2           MR. GARBER: With that, Your Honor,  
3     respondent moves the admission of CEI Exhibits A  
4     through H.

5           ATTORNEY EXAMINER: Okay. One quick  
6     question. I just wanted to make sure with the  
7     date changes on page 5 of Exhibit A, you are  
8     referencing Exhibit E and Exhibit H, June 3rd,  
9     2010, that 2010, that one should be 2010?

10          MR. GARBER: Yes, Your Honor.

11          ATTORNEY EXAMINER: Okay. Just the  
12     other Junes in that were being changed. Okay.

13          MR. GARBER: That's correct.

14          ATTORNEY EXAMINER: Okay. So  
15     the Company has moved for admission of Exhibits  
16     A through H. And with no objection they will be  
17     admitted.

18                 (EXHIBITS HEREBY ADMITTED INTO  
19     EVIDENCE)

20          MR. GARBER: And at this time  
21     respondent closes it's case in chief. Or rests.

22          THE ARBITRATOR: Okay. All right.  
23     And in terms of a briefing schedule for this  
24     case, what I was going to do is I will issue an  
25     entry since the complainant is not here and the

entry will indicate the parties if they wish may  
file a brief by October 18th, 2010 with reply  
briefs, probably set that for a week later, for  
October 25th.

And are there any other matters to  
bring up at this point in time?

MR. GARBER: No, Your Honor.

ATTORNEY EXAMINER: Okay. Since at  
this point then I have no questions for the  
Company witness, so this hearing will be  
adjourned. Thank you.

(At 2:20 P.M. the hearing was  
concluded)

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# CERTIFICATE

I do hereby certify that the foregoing  
is a true and correct transcript of the  
proceedings taken by me in this matter on  
September 16, 2010, and carefully compared with  
my original stenographic notes.

\_\_\_\_\_  
Michael O. Spencer,  
Registered Professional  
Reporter.

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**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 09-0947-EL-CSS**

Summary: Transcript Transcript of Giovanni DiSiena hearing held on 09/16/10. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.