

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Giovanni DiSiena,)	
)	
Complainant,)	
)	
v.)	Case No. 09-947-EL-CSS
)	
The Cleveland Electric Illuminating)	
Company,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the complaint filed by Giovanni DiSiena and the evidence admitted at the hearing, hereby issues its Opinion and Order.

APPEARANCES:

Giovanni DiSiena, 2172 West 101 Street, Cleveland, Ohio 44102, complainant.

Jones Day, by Grant W. Garber, 325 John H. McConnell Boulevard, Columbus, Ohio 43215, on behalf of The Cleveland Electric Illuminating Company.

OPINION:

I. BACKGROUND AND HISTORY OF THE PROCEEDINGS

On October 14, 2009, Giovanni DiSiena filed a complaint against The Cleveland Electric Illuminating Company (CEI), alleging that his electric bills recently increased from around \$30 per month to over \$200-\$300 per month. In his complaint, Mr. DiSiena states that he hired an electrician to inspect his residence but that the electrician found no problems. On October 30, 2009, CEI filed its answer, denying the material allegations of the complaint. CEI admits that complainant's average bills recently increased but asserts that the meter readings for Mr. DiSiena's residence have been accurate.

A settlement conference was held on December 16, 2009; however, the parties were unable to resolve the matter. On June 10, 2010, pursuant to Rule 4901-1-

29(A)(1)(h), Ohio Administrative Code (O.A.C.), CEI prefiled the testimony of its expert witness, Robert Perkins. After several continuances, an evidentiary hearing was held in this matter on September 16, 2010. CEI filed a post-hearing brief on October 18, 2010.

II. APPLICABLE LAW

CEI is a public utility by virtue of Section 4905.02, Revised Code, and an electric light company as defined by Section 4905.03(A)(3), Revised Code. CEI is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code.

Section 4905.22, Revised Code, requires, in part, that a public utility furnish necessary and adequate service and facilities. 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.

In complaint proceedings, the burden of proof lies with 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. DISCUSSION AND CONCLUSION

Mr. DiSiena attended the hearing held on September 16, 2010, but left shortly after he began presenting his case when the attorney examiner sustained an objection made by counsel for CEI (Tr. 7-9). During his testimony, Mr. DiSiena explained that from May through October 2009, his electric bill increased from an average of \$30 per month to approximately \$200-\$400 per month and then subsequently went back down to normal (Tr. 6). Mr. DiSiena then referenced an agreement allegedly made between the parties during the settlement conference (Tr. 7). At that point, counsel for CEI objected, on the grounds that settlement discussions are not admissible, and the attorney examiner sustained the objection (*id.*). At that point, Mr. DiSiena left the hearing and did not return (Tr. 7-9).

CEI subsequently moved to strike Mr. DiSiena's testimony, based on the fact that CEI was not able to cross-examine him, and also moved to dismiss Mr. DiSiena's complaint for failure to prosecute (Tr. 9, 11). CEI contended that the complaint should

be dismissed because Mr. DiSiena did not stay at the hearing for more than a couple of minutes, put little evidence into the record, and was not subject to cross-examination (Tr. 11). CEI argued that Mr. DiSiena failed to fulfill his responsibility to prosecute his case (*id.*).

In addition, CEI also introduced into evidence the pre-filed testimony of Mr. Perkins (CEI Ex. A); a two-page chart summarizing the relevant meter readings, bill amounts, and other bill and usage-related information (CEI Ex. B); a screen shot from CEI's customer billing system showing the details of Mr. DiSiena's account from October 28, 2008, through May 24, 2010 (CEI Ex. C); meter test documentation for meter number 717732 (CEI Ex. D); correspondence from CEI to Mr. DiSiena, dated June 3, 2010 (CEI Ex. E); a portion of the American National Standards Institute (ANSI) standards governing the accuracy of electric meters (CEI Ex. F); portions of the FirstEnergy metering standards and practices manual discussing meter calibration and traceability (CEI Ex. G); and meter test documentation for meter number 699505602 (CEI Ex. H).

In his testimony, Mr. Perkins indicated that, beginning with the bill dated May 29, 2009, and lasting through the bill dated October 27, 2009, a large increase in electric usage appeared on Mr. DiSiena's bills (CEI Ex. A at 2-3). Mr. Perkins stated that Mr. DiSiena's usage and bill amounts returned to normal levels beginning with the bill dated November 24, 2009, and have remained at normal levels since that time (*id.* at 3). According to Mr. Perkins, all of the bills at issue are based on actual meter reads (*id.*). Mr. Perkins explained that Mr. DiSiena complained shortly after receiving the May 29, 2009, bill, and, in response, CEI replaced Mr. DiSiena's original meter, meter number 717732, and installed a new meter, meter number 699505602, on June 4, 2009 (*id.* at 4-5). Mr. Perkins asserted that CEI replaced meter number 717732 and subsequently retired it because it was an older device (*id.* at 6). Mr. Perkins testified that tests performed by CEI on meter number 717732 after it was removed from service found that the meter was accurate and that testing by the manufacturer on meter 699505602, prior to delivery to CEI, also showed it to be accurate (*id.* at 5-6).

Mr. Perkins stated that, after Mr. DiSiena requested that CEI examine its electrical facilities at his residence in order to determine whether the elevated usage and high bills were caused by a problem with CEI's equipment, CEI inspected meter number 699505602 on January 23, 2010, and found no problems (*id.* at 6-7). CEI also tested complainant's usage at that time and found that the load was consistent with Mr. DiSiena's normal usage levels (*id.*). Mr. Perkins pointed out that the elevated usage at Mr. DiSiena's residence had ended by November 2009 (*id.*). Based on the fact that the elevated usage remained consistent for a six-month period and was measured

by two different meters, both of which were tested and proved accurate, and because a failing meter typically runs slow, not fast, Mr. Perkins concluded that Mr. DiSiena's elevated usage and high bills were not caused by a meter inaccuracy or any other problem on CEI's side of the meter (*id.* at 8). Mr. Perkins also contended that the high bills were not the result of a meter reading error, as the bills disputed by Mr. DiSiena were based on actual meter reads (*id.* at 8). Mr. Perkins stated that the initial higher reads in May and June 2009 were manually confirmed by the meter reader, as was the November 2009 read when complainant's usage returned to normal (*id.* at 8-9). Finally, Mr. Perkins noted that an electric customer is responsible for the electrical facilities on the customer's side of the meter (*id.* at 8).

The Commission finds that the evidence presented by Mr. DiSiena during the hearing merely restated the allegations raised in the complaint. Since Mr. DiSiena did not offer any additional evidence to support his allegations and did not rebut the evidence introduced by CEI demonstrating that CEI was not responsible for the increased usage, the Commission finds that Mr. DiSiena failed to satisfy his burden of proof. Accordingly, lacking evidence showing that the cause of the increased usage was in CEI's control or that CEI violated or failed to comply with statutory or regulatory requirements, the Commission cannot conclude that CEI has rendered the complainant inadequate service as contemplated by Section 4905.22, Revised Code. The Commission, therefore, finds that this matter should be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Giovanni DiSiena filed a complaint against CEI on October 14, 2009, alleging that that his electric bills increased from around \$30 per month to over \$200-\$300 per month during the period from May through October 2009.
- (2) CEI is a public utility as defined by Section 4905.02, Revised Code, and an electric light company, as defined in Section 4905.03(A)(3), Revised Code.
- (3) The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189 (1966).
- (4) There is insufficient evidence to support a finding that CEI rendered inadequate service as contemplated by Section 4905.22, Revised Code.

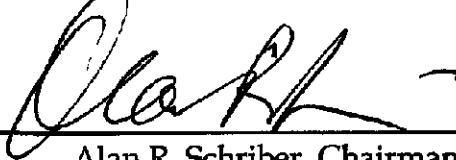
ORDER:

It is, therefore,

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

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

Paul A. Centolella



Valerie A. Lemmie



Steven D. Lesser



Cheryl L. Roberto

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Entered in the Journal
DEC 08 2010



Renee J. Jenkins
Secretary