

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

C. RICHARD SMITH)	
)	
COMPLAINANT,)	CASE NO.: 10-340-EL-CSS
VS.)	
)	POST TRIAL BRIEF
OHIO EDISON COMPANY,)	
)	
RESPONDENT)	

Now comes Complainant C. Richard Smith, by and through counsel, and files his Post Trial Brief, pursuant to the Hearing Attorney's order.

On February 23, 2011, the hearing was conducted and a great deal of the evidence was presented through the playing of the tape recorded telephone conversations of C. Richard Smith and various representatives of Ohio Edison. Carlos Vidal, an employee of the contact center located in Akron, Ohio testified as to the authenticity of the recordings and that the tape recordings were retrieved from the business records of Ohio Edison Company. Throughout the telephone conversations, C. Richard Smith consistently provides the same information to Ohio Edison.

The first telephone call to Ohio Edison occurred on September 10, 2008. C. Richard Smith informed Ohio Edison Company of the following:

1. He had recently purchased the real property located at 1930 Mahoning Avenue near the corner of Comstock and Mahoning Avenue in Warren, Ohio at Sheriff's Sale.
2. The real property has been empty for several years.
2. He wants to place electrical service in his name.
3. His mailing address is 7051 Kinsman-Nickerson Road Kinsman, Ohio 44428.
4. His telephone number is (330) 876-7984.
5. Vagrants have been living in the property and the power is on.

Initially, the representative of Ohio Edison was Shawntee Tucker. Ms. Tucker was given Mr. Smith's mailing address and telephone number by asking Mr. Smith to verify his address with "US". When Mr. Smith informed Ms. Tucker that the power on, she stated that the power should not be on. Ms. Tucker stated that according to our system the power should have been off for three years. Ms. Tucker advised Mr. Smith that he needed to have the property inspected; that she would transfer Mr. Smith to new service upgrade, and that they would let you know everything you need to get that in your name.

Mr. Smith was transferred to Tilwanna Jennings. C. Richard Smith provided Ms. Jennings the following information:

1. He recently purchased the real property located at 1930 Mahoning Avenue at the corner of Comstock and Mahoning Avenue in Warren, Ohio.
2. There is power on at the breakers.
3. There is evidence that vagrants had been living there.
4. The previously lady said that I would need to have the property inspected.

Ms. Jennings advised Mr. Smith that Ms. Tucker was correct; that the property needed to have a safety inspection as there has not been any active person paying the bills for three years. Ms. Jennings stated that a safety inspection was necessary and that Ohio Edison has to receive that in order to turn the power on. Mr. Smith and Ms. Jennings then discussed how Mr. Smith would go about having a safety inspection completed. Mr. Smith was instructed to contact the City of Warren Building Department. Warren City would need to inspect the property and make certain everything is up to code and that there are no hazardous conditions. Ms. Jennings stated that "once they fax that information over to us we can go ahead and turn on the power." Ms. Jennings could place an order for Mr. Smith today, but power would not be turned on until the

inspection was received. Once the inspection was received Ohio Edison would schedule it to be turned on, but the order would not be scheduled until Ohio Edison received the inspection. This conversation ended with Mr. Smith stating that he would have to contact the City of Warren and then call Ohio Edison back.

Mr. Smith made a telephone call on September 10, 2008 and spoke to two representatives and was instructed that he needed to have the property inspected. On November 5, 2008, Mr. Smith again called Ohio Edison and spoke to two representatives. Mr. Smith first spoke to Kathleen Fox.

During his telephone conference with Ms. Fox, Mr. Smith advised her that he lived in Kinsman, Ohio; that he had purchased a property in Warren, Ohio, and that he had called several months and was told by Ohio Edison that he needed to have the property inspected. Since that time, the City of Warren had been paid a fee; an inspection had been conducted; Mr. Smith was instructed to make some repairs, and that the repairs had been inspected and approved by the City of Warren. At that time the Building Inspector had advised Mr. Smith that he was going to call Ohio Edison and tell them to turn on the power. Mr. Smith again advised Ms. Fox that the power had never been shut off at 1930 Mahoning Avenue.

Ms. Fox brought up the account for 1930 Mahoning Avenue on her computer; advised Mr. Smith that Ohio Edison had received an inspection report from the City of Warren, but that no application was made for service. Mr. Smith stated that he thought he had done that. Mr. Smith then stated that he has been waiting for someone to come read the meter and send him a bill. Ms. Fox stated that Mr. Smith had not been sent a bill because the account was not in his name. Mr. Smith was then transferred to Dawn Partello.

Mr. Smith again explained the situation, this time to Dawn Partello. Mr. Smith purchased

the property at 1930 Mahoning Avenue; it had been out of service for 3 years; Mr. Smith contacted the City of Warren Building Inspector; Mr. Smith paid a fee; the Inspector inspected the electrical service; Mr. Smith was instructed to improve the electrical service; the Inspector inspected and approved the improvements; the Inspector Mr. Smith that he would contact Ohio Edison to turn the electrical service on. Mr. Smith further informed Ms. Partello that he had contacted Ohio Edison once before and informed Ohio Edison that electrical service was on at the premises.

Mr. Smith stated to Ms. Partello that he had been using the electrical service and that he thought he had taken care of everything to have the electric meter read and the bill sent to him. Mr. Smith then states “since that has not happened I would like to do that right now.” Ms. Partello advises Mr. Smith that he has not used that much electricity since all of that happened and it may have even been Ohio Edison’s mistake as to why service was never shut off. Ms. Partello then states that the electrical inspection has been received and that they had to put the order into the system just so the inspection was tied to that account. Ms. Partello states that she shows a note that the inspection was received and approved.

Then Ms. Partello states: “now as far as getting the service started after the inspection is done what we are going to have to do. Everything looks ok. As far as getting the service started. Now any usage that has been used of course you would be responsible for for recently. Now I looked at it and its only 100 to 200 kilowatt hours and that is for the last month.” Mr. Smith then explains the few power tools that he has operated, and Ms. Partello continues: “It should not be much but you will have to pay for that usage. Now what I am going to do is get all that noted. And I’ll get you over to our new service department they are the ones that handle the inspection. They will be able to tie the inspection and the order together and then go ahead and

get the service put in your name for you.”

In response to Ms. Partello’s statement, Mr. Smith inquires: “You going to do that? You have my address? Your going to send the bill to my home address? To which, Ms. Partello responds “Yeah, they’ll put that in but I believe it is the Kinsman Nickerson Road. Correct? Yeah, they’ll have that information because you already have the account for that one.”

At this point Mr. Smith and Ms. Partello begin talking over each other. Mr. Smith says Ok, while Ms. Partello says “Just let them know that you want it to go to your home address.” Mr. Smith repeats Ok several times as Ms. Partello states I will transfer you now.

Mr. Carlos Vidal testified in his direct testimony, at pages 12 and 13, lines 9 through 22, and lines 1 through 9, as follows:

Q29. Did Ohio Edison initiate service at 1930 Mahoning Avenue for Complainant as a result of this call?

A29. No. Again, because Complainant had not provided the specific information required to initiate new service, Ohio Edison did not issue an upgrade notification, and service was not initiated.

Q.30. What happened next?

A.30. As described by Ohio Edison witness Rick Padovan, Ohio Edison began recording usage through the meter at 1930 Mahoning Avenue in October 2008. Because there was no active service account at that property during that time, the usage was unauthorized, and Ohio Edison witness Rick Padovan removed the meter on January 27, 2009. As further explained by Mr. Padovan, when he removed the meter, he discovered that the meter base was broken, likely as the result of prior tampering with the meter.

Q31. Was Complainant informed in advance that power to the 1930 Mahoning Avenue was

going to be disconnected?

A31. Yes. On January 7, 2009, Ohio Edison sent Complainant a “Dear Occupant” letter indicating that service was being used at the property but that no one had applied for service there. The letter indicated that Complainant had until January 21, 2009 to contact Ohio Edison or else Ohio Edison would initiate termination of service. The letter was sent to 1930 Mahoning Avenue. Because over two years have passed since this letter was sent, Ohio Edison no longer has a copy of the letter. However, Ohio Edison Exhibit H is the form that was used for that letter. Contact log notes reflecting the mailing of this letter and deadline for Complainant’s response are reflected on the page labeled OE 28 in Ohio Edison Exhibit F.

Mr. Smith testified that he did not receive the January 7, 2009 letter. In fact, Mr. Smith testified that other than a few advertisements that were stuck in the mailbox, no mail was ever delivered to 1930 Mahoning Avenue in Warren, Ohio. The direct testimony of Rick Padovan identifies the meter work notification and work request notification documenting the work performed on January 27, 2009 in removing the electrical meter as Exhibit J. Those exhibits, despite the previous contacts by C. Richard Smith still indicate that the account was in the name of Joseph C. Page. Most likely any “dear occupant” letter was similarly addressed to Joseph C. Page.

Throughout the hearing, it appeared that Ohio Edison was attempting to establish that the Electrical Service had been tampered with and that Ohio Edison was justified in terminating service as a result of the tampering. Tampering is defined as:

OAC 4901:1-10-01(Z) “Tampering” means to interfere with, damage, or by-pass a utility meter, conduit, or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so far as to reduce the amount of utility service that is registered on or reported by the meter. Tampering includes the unauthorized reconnection of a utility meter, conduit, or attachment that has been disconnected by the utility.

Mr. Padovan testified that a yellow seal indicates that service had been disconnected and that he had found a broken yellow seal and therefore someone tampered with the seal. Of course, tampering means to interfere with, damage, or by-pass a meter. The meter was properly registering usage and therefore this portion of the definition was not met. Further, the contacts made by C. Richard Smith advising Ohio Edison that the electrical service was on should negate any suggestion that the meter had been by-passed. Ohio Edison then relies upon the broken yellow seal to demonstrate that service had been disconnected and therefore an “unauthorized reconnection of a utility meter that has been disconnected by the utility” had occurred. In order to demonstrate this definition of tampering, Ohio Edison must ask the hearing officer to infer that Ohio Edison followed internal procedures and the existence of a broken yellow tag establishes tampering.

In addition, the Ohio Administrative Code provides that the Electrical Utility may disconnect service “for safety reasons” in certain circumstances. OAC 4901:1-10-20(B) provides:

- (1) An electric utility may disconnect service for safety reasons without prior notice to a customer in either of the following circumstances:
 - (a) The electric service meter, metering equipment, or associated property was damaged, interfered or tampered with, displaced, or bypassed.
 - (b) A person not authorized by the electric utility has reconnected service.

Mr. Padovan’s testimony established that Ohio Edison did not disconnect the electrical service to 1930 Mahoning Avenue for safety reasons. In September and again in November Mr. Smith informed Ohio Edison that electrical service was on at the premises when Ohio Edison records indicated that service should not be on. Further, Ohio Edison noted usage on the meter at a vacant premises for four (4) months October, November, December 2008, and January 2009, before terminating electrical service. Accordingly, Ohio Edison did not disconnect the electrical

service for safety reasons due to tampering.

Further, Ohio Edison sent a “Dear Occupant” letter to the address of 1930 Mahoning Avenue giving notice that service would be terminated at this address unless Ohio Edison was contacted. Unfortunately, the letter was most likely addressed to Joseph C. page, and the letter was never delivered to the premises. Based upon the above, Ohio Edison should not be allowed to rely upon apparent tampering and safety concerns to justify the termination of service. Nor should Ohio Edison be allowed to rely upon the undelivered letter addressed to Joseph C. Page as notice to C. Richard Smith that he needed to contact Ohio Edison to establish service at 1930 Mahoning Avenue Warren Ohio.

Ohio Edison argues that it complied with the requirements set forth for disconnecting service due to tampering or use on vacant meter. However, OAC 4901:1-10-02(F) provides that at best this merely establishes a rebuttable presumption that Ohio Edison is providing adequate service. This presumption was rebutted by the evidence presented. C. Richard Smith made repeated contact with Ohio Edison stating that he wanted to place the electrical service in his name, and he advised Ohio Edison that he owned the property at 1930 Mahoning Avenue in Warren, Ohio, that his mailing address was 7051 Kinsman-Nickerson Road Kinsman, Ohio 44428; that his telephone number was (330) 876-7984, and that electrical service was on. During the first call he was advised that a safety inspection was first required.

Mr. Smith had the electrical service inspected and the inspection report was transmitted to Ohio Edison by the City of Warren Building Inspector. Mr. Smith thought he had completed the application for new electrical service, but contacted Ohio Edison again when he did not receive a bill. During this second telephone call, he again made clear the purpose of his call and the Ohio Edison representatives appeared to have noted all the information on his account.

Without any further notice to C. Richard Smith and despite all the contact information he provided Ohio Edison, electrical service to 1930 Mahoning Avenue was disconnected in the middle of winter.

Mr. Smith thought the telephone conference had concluded and that Ms. Partello was going to have the bill sent to his home address. From a close listening to the tape recorded telephone conversation it appears that Ms. Partello had not completed the new service application but was instead about to transfer Mr. Smith to that department. If Mr. Smith had any misunderstanding of the required information to establish new electrical service, then the summary of his rights and obligations required to be given pursuant to OAC 4901:1-10-12 would have corrected any such misunderstanding. OAC 4901:1-10-12 provides: Each electric utility shall provide to new customers, upon application for service, ***, a written summary of their rights and obligations under this chapter. OAC 4901:1-10-12(B)(5) requires Ohio Edison to provide C. Richard Smith “an explanation of what each applicant must do to receive service from that electric utility”.

Ohio Edison and Mr. Vidal assert that C. Richard Smith did not establish residential service because he did not provide all the required information. Ohio Edison asserts that C. Richard Smith did not establish residential service because he did not make an application for new residential service. According to the testimony of Carlos Vidal, Mr. Smith was required to provide specific and detailed information in order to make an application for new electrical service. At pages 7 and 8 of his direct testimony, Mr. Vidal provides testimony as to the detailed information that Mr. Smith was required to give Ohio Edison in order to establish new service. According to Mr. Vidal, there are at least 8 items of information that Mr. Smith must provide to Ohio Edison in order to establish new service.

C. Richard Smith and OAC 4901:1-10-12(B)(5) posit that upon his application for service, Mr. Smith should have received a summary of his rights and obligations that should have advised him of what was required to receive service at 1930 Mahoning Avenue. As a direct and proximate result of Ohio Edison's failure to provide the summary, there was a disconnect between C. Richard Smith's request for service at 1930 Mahoning Avenue and what Ohio Edison required of him before establishing service at 1930 Mahoning Avenue.

Based upon the repeated contact with Ohio Edison, the Commission should find that C. Richard Smith established residential service and that Ohio Edison could not disconnect the electrical service at 1930 Mahoning Avenue. If C. Richard Smith established residential service then Ohio Edison was required to comply with the notice requirements of OAC 4901:1-18-05. The disconnection occurred between the months of November and April and therefore Ohio Edison was further required to make personal contact with C. Richard Smith at least ten (10) days prior to electrical service being disconnected. OAC 4901:1-18-05(B). No such personal contact was provided to C. Richard Smith and the electrical services were disconnected to 1930 Mahoning Avenue Warren, Ohio in violation of the standards set forth by the State of Ohio.

Finally, C. Richard Smith was provided with a statement of his rights once disconnection occurred. A statement was left at the premises of 1930 Mahoning Avenue by Mr. Padovan when he removed the electric meter. Mr. Smith in compliance with the statement contacted Ohio Edison. Mr. Smith contacted Ohio Edison on January 30, 2009 and spoke with Delaney Johnson. On January 30, 2009, Mr. Smith was transferred to revenue protection and spoke to Alisha Allen. During these conferences Mr. Smith made a complaint. A complaint is defined as a customer/consumer contact when such contact necessitates follow-up by or with the electric utility to resolve a point of contention. OAC 4901:1-10-21(A).

Again on January 30, 2009, Mr. Smith contacted Ohio Edison and spoke to Nelson Rodriguez and Deb Jones. Again, during these telephone conferences he provided the history of the electrical service at 1930 Mahoning Avenue and again lodged a complaint. At some point during the telephone conference with Deb Jones, it was suggested that he speak with a supervisor. When a supervisor was unavailable, Mr. Smith was informed that a supervisor would call him back the following day. Mr. Smith testified that he did not receive a call from any supervisor.

On February 11, 2009, C. Richard Smith contacted Ohio Edison and spoke to Laura Miller. Again, he recounted the history of the electrical service at 1930 Mahoning Avenue in Warren Ohio. During this telephone conference Mr. Smith requested an appointment to meet with someone from Ohio Edison face to face. Mr. Smith was advised that no meetings would take place. Mr. Smith then requested a facsimile telephone number so that Mr. Smith could transmit documents proving his ownership and documenting his complaint. Mr. Smith identified during his testimony the documents that were transmitted by facsimile to Ohio Edison. This facsimile further documents C. Richard Smith's complaint. These documents were sent to Ohio Edison on February 12, 2009. Carlos Vidal in his direct testimony at page 14 line 3 acknowledges Ohio Edison's receipt of the facsimile transmission.

OAC 4901:1-10-21(B) mandates that each electric utility shall make good faith efforts to settle unresolved disputes, which efforts may include meeting with the customer/consumer at a reasonable time and place. OAC 4901:1-10-21 further provides specific time periods for the electric utility to provide status reports and investigate the complaints. However, C. Richard Smith was accused of tampering and required to pay tampering fees and penalties before electrical service would be restored to 1930 Mahoning Avenue in Warren, Ohio. Mr. Smith

sought the assistance of Ohio Consumer's Council; retained the services of Attorney George Gessner; and filed a complaint in the Court of Common Pleas. Ohio Edison made no effort to resolve the dispute and continued to insist that Mr. Smith pay the tampering charges until sometime after the complaint was filed with the Public Utilities Commission of Ohio. Only then was Ohio Edison willing to drop its demand for the payment of tempering and related investigation fees.

It cannot be said that Ohio Edison Company made a good faith effort to resolve the dispute with C. Richard Smith. Ohio Edison Company had at its disposal tape recorded conversations and computer print outs that should have clearly and easily established that C. Richard Smith was not attempting to steal electrical service; Mr. Smith did not tamper with any electrical service; nor did Mr. Smith attempt to benefit from any such tampering. Mr. Smith immediately notified Ohio Edison that the electrical service was on in a house that had been vacant. Mr. Smith attempted to have service placed in his name. In Ohio Edison's best case, a misunderstanding occurred and Mr. Smith mistakenly believed that he did everything necessary to place electrical service at 1930 Mahoning Avenue in his name. In the worst case scenario, Ohio Edison Company failed to properly document Mr. Smith's application for service; wrongfully disconnected service in the middle of winter, and then stonewalled Mr. Smith refusing to acknowledge Ohio Edison's mistake until he retained counsel and filed a complaint with the Public Utilities Commission of Ohio. Based upon the above, Ohio Edison should be found to have violated the rules and regulations governing the conduct of Electric Utility Companies in Ohio and C. Richard Smith should be granted authority to pursue damages in the

Common Pleas Courts of Ohio.

Respectfully submitted,

BRUCE M. BROYLES, CO.
A Legal Professional Association

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CERTIFICATE OF SERVICE

The forgoing post trial brief was served upon Grant Garber, Attorney for Respondent, of Jones Day, at P.O. 165017, Columbus, Ohio 43216-5017 Ohio 44446, by regular U.S. and by electronic mail to gwarber@jonesday.com mail on this 1st day of April 2011.

/s/ Bruce M. Broyles

Bruce M. Broyles

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Summary: Brief Post Hearing Brief of C. Richard Smith electronically filed by Mr. Bruce M Broyles on behalf of Smith, C. Richard Mr.