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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

C. RICHARD SMITH,

Complainant,

v.

OHIO EDISON COMPANY,

Respondent.

Case No. 10-340-EL-CSS

RESPONDENT OHIO EDISON COMPANY'S POST-HEARING BRIEF

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**I. INTRODUCTION**

Complainant C. Richard Smith ("Complainant") asks the Commission to find that Respondent Ohio Edison Company ("Ohio Edison" or "the Company") wrongfully terminated his residential service at 1930 Mahoning Avenue NE in Warren, Ohio ("Property"). To prevail, Complainant has the burden of proving that he established valid residential service from Ohio Edison and that Ohio Edison's disconnection of power to the Property was unlawful.

As set forth below, Complainant cannot meet this burden, for three reasons. First, because Complainant did not receive valid residential service from Ohio Edison, the rules regarding termination of residential service do not apply. *See* pp. 16-17, *infra*. The Commission is familiar with the usual indicia of an agreement between a customer and a utility for residential service: the approved connection or transfer of service to the customer by the utility, the designation of the individual as "customer of record" for the account, the creation of a unique account number for the customer at the service location and, subsequently, the sending and paying of routine monthly bills, among other things. Yet here, none of that occurred. *Id.* It is

undisputed that Complainant never received or paid a bill and never was assigned a service account for the Property. Nor did Ohio Edison connect or transfer service to the Property to Complainant. *Id.* In fact, the only reason Complainant had power was because a prior occupant had tampered with the meter. Ohio Edison never approved service to Complainant, and his usage was unauthorized and not pursuant to valid residential service. When Ohio Edison disconnected his power, it did so in order to stop that unauthorized, tampered service. Because there was no valid residential service at the Property, the Commission's termination rules do not apply.

Second, Complainant's communications with Ohio Edison did not separately establish residential service. Complainant attempts to prove an agreement for residential service by pointing to the two calls he made to Ohio Edison prior to disconnection. But as the recordings of those calls demonstrate, Complainant did not complete Ohio Edison's process for applying for electric service. *See pp. 17-25, infra.* In fact, during *both* of those calls, Ohio Edison attempted to guide Complainant through the application process. And *both* times, Complainant failed to follow through, either by declining Ohio Edison's offer to place a service order for him or by hanging up the phone before his call could be transferred to the appropriate representative. Complainant failed to provide the information Ohio Edison needed to put service in his name, despite repeated prompting by Company representatives. His communications did not establish residential service.

Third, Ohio Edison's disconnection of power to the Property was done in accordance with the Commission's rules regarding termination of service due to tampering. *See pp. 25-26, infra.* No party disputes that the meter at the Property had been tampered with, and no party disputes that this tampering left the meter base in an unsafe, broken condition. As such, even if

Complainant established residential service (which he did not), Ohio Edison's disconnection of power, even without prior notice, was lawful. *See* Rule 4901:1-10-20(B)(1)(a). Moreover, Complainant had prior notice of possible disconnection in two ways. From his very first call with Ohio Edison, Complainant was told that power should not have been on at the Property and thus was subject to disconnection. From that point, Complainant was on notice of the possibility of disconnection until service was put in his name. Moreover, nearly three weeks before removal of the meter, Ohio Edison sent a "Dear Occupant" letter to the Property, advising that unauthorized usage had been detected and requesting a follow-up phone call from the owner to avoid disconnection. Even if Complainant established a formal relationship for service with Ohio Edison, the Company followed the rules for termination of that service due to tampering.

As set forth below, the Commission should deny the Complaint and dismiss this case.

## **II. STATEMENT OF FACTS**

### **A. Ohio Edison's Procedures For Processing Applications For Residential Service**

Ohio Edison processes in-coming communications from customers, including phone calls and written correspondence, at its customer contact center. (OE Ex. A (Vidal Dir.), p. 1:21-22.) Many of these communications involve requests to initiate new service at a particular location. (*See id.* at 5:12-19.) Accordingly, some of Ohio Edison's contact center personnel, called the "New Service / New Install" team, are trained and required to follow written procedures regarding the processing of new service applications. (*See id.* at 7:1-11.) According to these procedures, the New Service representative is required to, among other things, verify the caller's identity, determine the creditworthiness of the individual (if necessary) and ask a series of questions regarding the type of electrical appliances the prospective customer expects to have in the home. (*See id.*; OE Ex. B, pp. OE\_83, 84.) After the phone application process is complete,

the Company representative is required to schedule the connection or transfer of service and to issue an “upgrade” order, which automatically creates a new service account and initiates the sending of monthly bills to the new customer of record. (*See* OE Ex. A, p. 7:12-17.)

Ohio Edison’s procedures also address more specific scenarios that may arise during a new-service call. For example, where a caller requests new residential service at a location where there has been no active account for longer than one year, Ohio Edison requires that the caller obtain an electrical inspection before service can be initiated. (*See id.* at 6:10-15.) Also, some new-service calls present more complicated issues, such as where there has been meter tampering or unauthorized usage at a location. Those calls are handled by other specially-trained representatives who serve on the “Advanced Move-In” team. (*See id.* at 7:7-11.)

**B. Service To The Former Customer At The Property And Ohio Edison’s Disconnection Of That Service**

The last time Ohio Edison provided authorized residential service to an active account at the Property was in April 2005. (OE Ex. A, pp. 8:22-9:3.) Specifically, between September 1999 and April 2005, Ohio Edison provided residential service to an account in the name of Joseph Page. (*Id.*; *see also* OE Ex. E, p. OE\_1.) On April 7, 2005, Mr. Page’s wife contacted Ohio Edison and requested that the account be closed. (*Id.*; *see also* OE Ex. E, p. OE\_17.) In response, Ohio Edison closed the account, issued a final bill for service and blocked the meter by placing plastic sleeves inside the meter to keep power from flowing into the house. (*Id.*; OE Ex. K, p. OE\_63.) The final meter read closing that account was taken at the Property on April 14, 2005. (OE Ex. I (Padovan Dir.), p. 7:6-9; OE Ex. L.)

**C. Complainant’s Calls To Ohio Edison Regarding Service At The Property**

Prior to Ohio Edison’s removal of the meter at the Property—the conduct Complainant disputes in this case—Complainant made two calls to Ohio Edison regarding service there: one



on September 10, 2008, and one on November 5, 2008. (Tr., 130:24-131:12 (Smith Cross) (admitting he made only two calls prior to removal).) As the recordings of those calls show (and as discussed below), Complainant did not remain on the line to provide the information required by Ohio Edison's application procedures, even after prompting by the Company's representatives.

**1. September 10, 2008 call**

Complainant's first call occurred on September 10, 2008.<sup>1</sup> During it, Complainant explained that he recently had purchased the Property, that vagrants apparently had been living there, that power was on and that he wanted to put service in his name. (Hearing Tr. ("Tr."), 12:6-9, 23-25.)<sup>2</sup> Based on this information, the Company representative, Shawntae Tucker, informed Complainant that an electrical inspection would be required (*id.* at 13:9-17) and transferred him to the New Service / New Install representative to process his request.

After the call was transferred to Company representative Tilwana Jennings, Complainant explained his situation, and Ms. Jennings offered to walk Complainant through the move-in process to "place an order"—an upgrade order establishing a new residential service account—so that service would be initiated once Ohio Edison received an inspection form. (*Id.* at 17:21-18:1.) Complainant declined this offer and did not complete the new service process. Instead, he indicated that he would arrange for an electrical inspection and call back. (*Id.* at 18:2-6.)

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<sup>1</sup> The September 10, 2008 call began with a communication between Complainant and Company representative Shawntae Tucker, which is located on the audio file labeled "Richard Smith\_9-10-08\_Agent 46388\_1\_.wav" on Ohio Edison Exhibit G. That call subsequently was transferred to Company representative Tilwana Jennings, and the recording of that follow-up conversation is located on the file labeled "Richard Smith\_9-10-08\_Agent Tilwana Jennings\_1\_.wav" on Ohio Edison Exhibit G.

<sup>2</sup> For ease of reference, citations to portions of the calls are to portions of the hearing transcript, where the court reporter transcribed the calls as they were played at hearing.

## 2. November 5, 2008 call

Complainant's next call occurred on November 5, 2008.<sup>3</sup> During that call, Company representative Kathy Fox indicated that although Ohio Edison had received a fax from the City of Warren inspector, the service had not been connected because, as a result of Complainant's not remaining on the line during the September 10, 2008 call, "no application was made here for service." (Tr., 20:11-12.) As a result, Ms. Fox indicated that the service account was "not in [Complainant's] name." (*Id.* at 20:17-19.) Ms. Fox then transferred Complainant's call to Dawn Partello. (*See id.* at 21:9.)

Following the transfer, Complainant recounted his situation, and Ms. Partello reiterated that even though Ohio Edison had received an inspection form, it was still necessary to "put the order in the system" to initiate service. (*Id.* at 23:9-11 ("[T]hey had to put the order in the system just for the inspection to be tied up to that.")) After indicating that Complainant would be responsible for paying the usage occurring after he purchased the home, Ms. Partello informed Complainant that she would have to transfer the call to the New Service department in order for him to complete his application:

Now, what I'm going to do is get all that noted and then I'll get you over to our New Service Department. They're the ones that handle the inspection. They will be able to tie the order and the inspection together and then go ahead and get the service put into your name for you.

(*Id.* at 24:5-10.) When Complainant asked that the bill be sent to his home address, Ms. Partello indicated that "they'll"—meaning the New Service personnel—"have that information . . . , so just let them know that you want it to go to your home address." (*Id.* at 24:22-23.) After

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<sup>3</sup> The November 5, 2008 call began with a communication between Complainant and Company representative Kathy Fox, which is located on the file labeled "Richard Smith\_11-5-08\_Agent Kathleen Fox\_1\_.wav" on Ohio Edison Exhibit G. That call subsequently was transferred to Company representative Dawn Partello, and the recording of that conversation is located on the file labeled "Richard Smith\_11-5-08\_Agent Dawn Partello\_1\_.wav" on Ohio Edison Exhibit G.

Complainant responded, "okay," Ms. Partello indicated, "[s]o I'll transfer you now." (*Id.* at 25:1-3.)

But there was no subsequent transferred call. (*Id.* at 25:5-7.) There is no further notation on the customer contact log and no further recordings of a call on that day. (*See* OE Ex. A (Vidal Dir.), p. 12:1-4.) Rather, it appears that Complainant hung up and did not remain on the line through the transfer. Specifically, Complainant's tone as the call ended suggests that Complainant thought that Ms. Partello would complete his application for service on her own (despite Ms. Partello's repeated indications that she was going to transfer him) and did not understand that Ms. Partello was attempting to transfer his call to another Company representative for that purpose. (Tr., 24:13-14 ("Are you going to do that? You have my address and all that?"); *id.* at 144:21-23 (Smith Re-Dir.) (later recalling that "[t]he second time I called, the lady told me that it was a mix-up and all that and she was going to take care of it."))

Notably, at no point during this call (or any others) do either of the Company's representatives mention or offer a "contractor's courtesy" or similar concept.<sup>4</sup> Further, during Complainant's September and November calls, he never indicated that the seal on the meter had been broken (even though he had observed the broken meter seal in September). (*Id.* at 131:12-18 (Smith Cross).)

#### **D. Unauthorized Usage At The Property**

Given that Ohio Edison had blocked the meter in April 2005 upon move-out of the prior occupant, the power should not have been on at the Property after that time. *See* p. 4, *supra*. Yet beginning in October 2008, after Complainant had purchased the property, Ohio Edison began

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<sup>4</sup> Complainant alleges that during his phone calls with Ohio Edison, the Company offered him a "contractor's courtesy," whereby (according to him) Ohio Edison agreed to let Complainant continue using power at the Property without paying monthly bills, with the Company intending to issue a final bill for all usage when his renovation work was complete. (*See* Am. Compl. dated Aug. 9, 2010, ¶ 12; Tr., 32:3-8.) As demonstrated below, nothing in any of those calls remotely suggests that Ohio Edison agreed to such an arrangement.

recording usage on the meter. At first, only a small amount of usage was recorded—20 kilowatt hours (“kWh”) between September 5 and October 6, 2008. (*See* OE Ex. M.) No additional usage was recorded between October 7 and November 3, 2008. (*See id.*) However, beginning with the meter read on December 5, 2008, Ohio Edison recorded larger amounts of usage, apparently associated with Complainant’s renovation work inside the property—92 kWh in the month preceding the December 5 read, and 145 kWh in the following month. (*See id.*) Given that the meter previously had been blocked, there is no dispute that this usage was not approved or authorized by Ohio Edison.

#### **E. Undisputed Evidence Of Meter Tampering**

The parties also do not dispute the reason why power was on: the meter had been tampered with prior to Complainant’s purchase of the Property. (Tr., 128:12-15 (Smith Cross) (“Q: Mr. Smith, you believe that the meter had been tampered with before you moved into 1930 Mahoning Avenue, correct? A: Yes.”).) Although Ohio Edison’s records show that the meter recorded no usage until after Complainant moved in, other evidence shows that power was being used in the home before that time that was not recorded by the meter. For example, Complainant testified that when he first entered the home in September 2008, he discovered that the power was on and observed evidence that vagrants had been living in the home, possibly for an extended period of time. (*Id.* at 128:12-129:2.) Further, Ohio Edison witness Rick Padovan testified that after he removed the meter, he discovered that the meter base was broken in a way that strongly suggested prior tampering and usage. *See* pp. 8-9, *infra*.

Thus, the evidence shows that vagrants, or someone acting on their behalf, tampered with the meter (breaking the meter base in the process) in such a way that it did not record usage. (*Id.* at 128:12-129:2.) Mr. Padovan has seen this kind of tampering hundreds of times before, and at hearing he explained how it could have been done: by placing “jumpers,” such as small nails,

paper clips or copper pipe behind the meter, a tamperer could cause power to bypass the meter—such that no usage is recorded—yet still flow into the house. (OE Ex. I (Padovan Dir.), pp. 2:12-14, 8:10-16; *see* Tr., 16:8-10 (Complainant reporting that vandals have “stripped some of the copper plumbing out of the building”).) When the vagrants vacated the property, they likely removed the jumpers and replaced the meter, allowing power to flow through (and be measured by) the meter before entering the house. Thus, it is undisputed that although power was being used at the Property for some time due to tampering, it was not recorded by the meter until after Complainant moved in.

#### **F. “Dear Occupant” Letter Sent To Complainant**

In order to determine the reason for the unauthorized usage, Ohio Edison sent a “Dear Occupant” letter to 1930 Mahoning Avenue on January 7, 2009.<sup>5</sup> (OE Ex. A (Vidal Dir.), p. 13:1-9; OE Ex. F, p. OE\_28 (reflecting contact log entry dated Jan. 7, 2009 reading “Dear Occupant Letter; Enter 10 days from today – 01/21/2009”<sup>6</sup>); OE Ex. H.) In that letter, Ohio Edison indicated that although its records reflected usage at the property, “no one has applied for electric service.” (OE Ex. H.) Ohio Edison thus requested that the occupant of the Property “apply for service” by contacting Ohio Edison at either a specified toll-free telephone number or through the internet. (*Id.*) The letter also advised that “[i]f you do not apply for service by January 21, 2009, we will have to initiate termination of service.” (*Id.*) Notably, although Complainant claimed at hearing that he did not receive this letter, he also conceded that through

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<sup>5</sup> Ohio Edison has been unable to retrieve a copy of the actual letter sent to the Property on January 7, 2009, which was a standard form letter. (OE Ex. A (Vidal Dir.), p. 13:5-6.) However, Ohio Edison Exhibit H reflects the form of that letter, and the customer contact notes reflect the specific information that it contained, including the date the letter was sent (January 7, 2009) and the date by which the Property owner or occupant (Complainant) needed to respond in order to avoid termination of service (January 21, 2009). (*See id.*)

<sup>6</sup> The “Dear Occupant” letter sent to the Property on January 7, 2009 reflected a “respond by” date of January 21, 2009, which was 14 days after it was sent, not “10 days,” as the contact log notes suggest. This apparently is because “10 days” from January 7 fell on a Saturday, and the following Monday was Martin Luther King, Jr. Day, a holiday.

the end of the year, he was at the Property “[t]wo or three times a week.” (Tr., 117:8-11.)

Because Ohio Edison did not receive a response to this letter, it dispatched Ohio Edison witness Rick Padovan to remove and re-block the meter.

### **G. Ohio Edison’s Removal Of The Meter Serving The Property**

On January 27, 2009, Mr. Padovan traveled to the Property to investigate the report of unauthorized usage. (OE Ex. I (Padovan Dir.), p. 4:8.) Upon examining the meter, Mr. Padovan first noted that the meter seal on the meter base had been cut.<sup>7</sup> This meant that someone had tampered with the meter. (*Id.* at 5:15-17; Tr., 130:15- 18 (Smith Cross).) Moreover, as Complainant testified, the break in the meter seal was not obvious because the seal had been “set in the groove of the meter so that you would have a hard time seeing that it was cut.” (Tr., 109:12-14 (Smith Dir.); *see* 129:14-18 (Smith Cross) (admitting that tamperer had replaced broken meter seal to make it appear as if it had not been cut).) In this way, the break in the meter seal was intentionally hidden by the tamperer so that it would not be readily apparent.

Next, Mr. Padovan opened the meter base, noting that the meter was turning. (OE Ex. I, p. 5:19-20.) Consistent with Ohio Edison’s practice in cases involving meter tampering, Mr. Padovan then removed the meter from the meter base. (*Id.* at 6:4.) As he pulled the meter away from the base, he noticed that one of the legs on the meter base was broken. (*Id.* at 6:4-5.) This was a dangerous condition that threatened the safety of those working on or near the meter. (*See* Tr., 136: 11-14 (Smith Cross) (acknowledging that providing service through a broken meter base is not safe); *id.* at 189:9-10 (Padovan Cross) (“I pull the meter for the safety of the public.”), 189:13-23 (Padovan discussing potential for arcing of electricity with broken meter base).) After

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<sup>7</sup> The “meter base” is the area where the meter attaches to the house and the point where power coming from the pole is pulled through the meter and into the house. (OE Ex. I (Padovan Dir.), p. 4:14-5:6.) The meter is secured and attached to the meter base by placing the meter in metal “jaws” that extend from the base. (*Id.*) Once secured, the meter base closes around and encases the meter itself, leaving a hole or opening to allow for the meter to be read without removing it from the base. (*Id.*)

removing the meter, Mr. Padovan placed a protective covering over the meter base and requested that an Ohio Edison line crew be dispatched to disconnect service to the Property at the pole. (OE Ex. I, p. 6:22-7:2.) Service was disconnected shortly thereafter.

#### **H. Complainant's Subsequent Communications With Ohio Edison**

Following removal of the meter, Complainant contacted Ohio Edison to dispute the disconnection of service. At no time did Complainant provide the information necessary to apply for service or pay for the unauthorized usage. Moreover, because Ohio Edison had discovered that Complainant's meter base was broken and Complainant thus was required to replace it, Complainant needed to arrange for a new inspection of the meter base. Complainant did none of these things.

##### **1. January 30, 2009 calls**

Following removal of the meter and disconnection of service, Complainant made two phone calls to Ohio Edison on January 30, 2009, first at 8:27 a.m. and again at 4:26 p.m. (See OE Ex. F, p. OE\_29 (reflecting time stamps of "08:27" for initial call and "16:26" for subsequent call.) During those calls, Complainant repeatedly made claims regarding what Ohio Edison representatives previously had told him that were mistaken.

##### **(a) Morning call**

During the morning call, Complainant spoke with two Ohio Edison representatives, Jaleia Johnson and Alicia Allen.<sup>8</sup> (Tr., 25:13-15, 35:18-20 (Vidal Live Dir.)) After Complainant recounted his purchase of the Property and removal of the meter, Ms. Johnson informed Complainant that it was his responsibility to repair or replace the broken meter base (*id.* at 27:5-

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<sup>8</sup> The morning call on January 30, 2009 began with a communication between Complainant and Company representative Jaleia Johnson, which is located on the audio file labeled "Richard Smith\_1-30-09\_Agent 42542\_1\_.wav" on Ohio Edison Exhibit G. That call subsequently was transferred to Company representative Alicia Allen, and the recording of that conversation is located on the file labeled "Richard Smith\_1-30-09\_Agent Alicia Allen\_1\_.wav" on Ohio Edison Exhibit G.

7, 19-21) and reiterated that although Ohio Edison had received an inspection release form, Complainant had not applied for service. (*Id.* at 31:6-9 (“Because according to the notes on here, they don’t have an order. They received an inspection but no order was in the system.”), 18-20 (“[The inspector] told us it was approved but you have to call in to place an order.”).)

Notably, in providing his background information to Ms. Johnson, Complainant indicated that an Ohio Edison representative previously had told him that the Company “would not be sending me a bill because I was renovating it, and when I got done with renovating it, they would send me a bill and there would be a . . . construction bill, or whatever.” (*Id.* at 32:3-8.) But as the recordings of the previous calls demonstrate, the Company representatives who spoke with Complainant said no such thing. Recognizing that Complainant would be required to settle payment for the unauthorized usage at his property before service could be restored (*see id.* at 34:1-5), Ms. Johnson transferred the call to Alicia Allen, one of Ohio Edison’s Revenue Protection representatives (*id.* at 33:18-25).

Following the transfer, Ms. Allen reiterated that because Complainant never followed through on his application for service, there was no active service account in his name at the property. (*Id.* at 48:6-10, 16-20.) Ms. Allen confirmed that it was Complainant’s responsibility to replace the meter base and indicated that he should contact Ohio Edison when this was completed. (*Id.* at 42:14-18.) After Complainant indicated that he would do so, he ended the call. (*Id.* at 51:25-52:3.)

**(b) Afternoon call**

At 4:26 p.m., Complainant again called Ohio Edison, speaking initially to Nelson Rodriguez.<sup>9</sup> Again, Complainant indicated that an Ohio Edison representative told him in

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<sup>9</sup> The afternoon call on January 30, 2009 began with a communication between Complainant and Company representative Nelson Rodriguez, which is located on the audio file labeled “Richard Smith\_1-30-09\_Agent Nelson



September 2008 that the Company would not bill him “until I called up and told them I sold the property[,] and they would send me the final bill.” (Tr., 55:20-24; *see id.* at 54:22-55:4.) And again, as the recordings show, no Ohio Edison representative ever made such a statement. After Mr. Rodriguez repeatedly explained that service was never placed in Complainant’s name (*see id.* at 59:16-17, 20-22, 61:24-25, 62:2-3, 65:13-15 (indicating that Company did not need to speak with the inspector, “[w]e needed to speak to you”), he transferred the call to Debbie Jones, an appropriate Revenue Protection representative. (*Id.* at 66:11-14.)

While speaking with Ms. Jones, Complainant again alleged, incorrectly, that Ohio Edison had allowed him to use the unauthorized power until after his renovations were complete. (*Id.* at 69:24-70:2.) During that call, Ms. Jones confirmed that Complainant would need to pay for that unauthorized usage before service could be restored. Complainant requested that a bill be sent to his address, but because there was no active account at the Property, no bill could be sent, and Ms. Jones thus suggested that Complainant could pay either over the phone or in person at an authorized remote payment agent. (*Id.* at 71:7-9, 11-13, 74:11-13, 75:13-16.) Complainant indicated that “more maintenance work” would be required at his Property before he needed service to be turned on.<sup>10</sup> (*Id.* at 75:2-4, 6-9.)

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(continued...)

Rodriguez\_1\_.wav” on Ohio Edison Exhibit G. That call subsequently was transferred to Company representative Deb Jones, and the recording of that conversation is located on the file labeled “Richard Smith\_1-30-09\_Agent Deb Jones\_1\_.wav” on Ohio Edison Exhibit G.

<sup>10</sup> Although Ms. Jones offered to have a supervisor call Complainant the next day, it does not appear that such a return call ever took place. (See Tr., 77:15-17.) The record does not indicate the reason for this. In any event, Complainant contacted Ohio Edison again on February 11, 2009.

## 2. February 11, 2009 call

Complainant called again on February 11, 2009.<sup>11</sup> The first representative who answered, Robert Marchesani, quickly recognized that he needed to transfer Complainant to a more specialized representative and transferred the call to Laura Miller. (See Tr., 80:2-6.) During the transferred call, after Complainant indicated that he was disputing payment of any usage that occurred prior to his move-in, Ms. Miller indicated that Complainant would have to follow a dispute process, which would require him to provide information reflecting when he purchased the Property. (*Id.* at 88:18-23, 92:8-10.) Complainant indicated that he would send a fax to Ohio Edison with that information and ended the call.<sup>12</sup> (*Id.* at 99:4-11.)

## 3. March 2, 2009 call

Complainant called again on March 2, 2009.<sup>13</sup> During that call, Company representative Anna Rodriguez verified the fax number to which Complainant had sent his previous fax and indicated that she would transfer him to another representative for more detailed discussion. (Tr., 103:3-8.) The contact log indicates that Company representative Kendra Gaiter took this call. (See OE Ex. F, last unnumbered page of exhibit.) The log also reflects that during that call, Ms. Gaiter noted Complainant's statement that he already had faxed documents to Ohio Edison, and she provided Complainant with a mailing address to which he could re-send them.

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<sup>11</sup> The February 11, 2009 call began with a communication between Complainant and Company representative Robert Marchesani, which is located on the audio file labeled "Richard Smith\_Call 1\_Agent Robert Marchesani.wav" on Ohio Edison Exhibit G. That call subsequently was transferred to Company representative Laura Miller, and the recording of that conversation is located on the file labeled "Richard Smith\_Call 2\_Agent Laura Miller.wav" on Ohio Edison Exhibit G.

<sup>12</sup> Although Ohio Edison's contact log reflects Complainant's statement that he would send a fax, the Company has been unable to locate that fax in its records. Ohio Edison has, however, located a copy of that document that was sent by mail in early March 2009, and its receipt of that document is reflected on the contact log. (See OE Ex. A (Vidal Dir.), p. 14:2-8; OE Ex. F, pp. OE\_30 (reflecting February contact), last unnumbered page of Ex. F (reflecting receipt of mail).)

<sup>13</sup> The first portion of the March 2, 2009 call, which reflects a communication between Complainant and Company representative Anna Rodriguez, is located on the file labeled "Call1\_1\_.wav" on Ohio Edison Exhibit G.

(*See id.*) Ohio Edison received those documents on March 5, 2009. (*See id.*) Although those documents reflected the same information Complainant already had provided to the Company over the phone, they did not include the load-specific information required in order to process an application. (*See* Complainant Ex. 1.) Moreover, by that time, Ohio Edison had discovered that Complainant's meter base was broken and thus required a new inspection of the repaired or replaced meter base. *See* p. 23, *infra*.

### III. ARGUMENT

Complainant alleges that by removing the meter serving the Property and disconnecting service, Ohio Edison violated the Commission's rules regarding disconnection of residential electrical service. (*See* Am. Compl. dated Aug. 9, 2010, ¶ 27.) Complainant bears the burden of proving this claim by a preponderance of the evidence. *See Ohio Bell Tel. Co. v. Pub. Util. Comm.* (1990), 49 Ohio St. 3d 123, 126; *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St. 2d 189, 190.

But as demonstrated below, Complainant cannot meet this burden. First, Complainant's service indisputably was unauthorized and resulted from tampering—it was not properly-initiated residential service—and accordingly the Commission's rules regarding termination of residential service do not apply. Second, Complainant's communications with Ohio Edison did not establish residential service. And third, even if residential service were established, statutes and the Commission's rules give utilities broad authority in disconnecting service for tampering, and Ohio Edison properly exercised that authority here.

Moreover, two other claims contained in the Complaint were abandoned at hearing: Complainant presented no evidence that Ohio Edison's disconnection of his service was done to remedy an unsafe vegetation condition, and there is no evidence of communications from

Complainant that were not properly documented by Ohio Edison. Complainant has not met his burden, and his complaint should be dismissed.

**A. Complainant's Service Was Unauthorized Service Resulting From Meter Tampering, Not Properly-Initiated Residential Service.**

Complainant argues that Ohio Edison violated the Commission's rules regarding termination of residential service (*see* Am. Compl. dated Aug. 3, 2010, ¶ 27), but those rules simply do not apply here because Complainant was not being provided with "residential service." The hallmarks of residential service are easy to identify (and are reflected in Ohio Edison's Tariff and the Commission's rules). Among other things, they include (i) the mutual agreement, by both the Company and customer, to abide by the Tariff and the Commission's rules (*see* Tariff, § II(B) (requiring Ohio Edison's "acceptance" of customer's application to initiate service); Rule 4901:1-10-01(A) (defining "applicant" as one who "requests or makes application for service")); (ii) the provision of monthly bills by Ohio Edison, and payment of those bills by the customer (*see* Tariff, § IV(A), (B); Rule 4901:1-10-22); (iii) agreement by the customer to take responsibility for his service account as the designated customer of record (*see, e.g.,* Tariff, § III (creditworthiness provisions), § IX(E) (customer liability for damage to Company equipment); Rule 4901:1-10-12(B)(2) (noting customer's responsibility to notify utility of changes in its equipment or usage)); and (iv) agreement by the Company to provide safe service at appropriate voltages (Tariff, § IV(A); Rule 4901:1-10-06 (requiring compliance with National Electrical Safety Code)).

By any measure, Complainant's use of power at the Property was not residential service. Complainant has never been the customer of record for electric service at the Property. (OE Ex. A (Vidal Dir.), pp. 14:9-15:2.) Because of this, Ohio Edison has never sent a bill for service to Complainant, and Complainant has never paid either a monthly bill or paid or otherwise settled

responsibility for his unauthorized usage at the Property. (Tr., 133:16-25 (Smith Cross) (also admitting that he never received a “welcome letter” from the Company).) Nor did Complainant ever provide the load and other Property-specific information required by Ohio Edison to determine that its transformers and other equipment would be appropriate for his service (despite Ohio Edison’s attempts to keep him on the line to do so). (See Tr., 137:14-138:16 (Smith Cross).) The last time Ohio Edison provided residential service to the Property was in April 2005, long before Complainant purchased it. See p. 4, *supra*. Complainant has never received residential service at the Property.

Rather, Complainant’s use of power was *unauthorized* service, available to him only as a result of meter tampering. Indeed, that much is undisputed. Complainant admits that Ohio Edison did not turn the power on after he purchased the Property; rather, the power was already on. (Tr., 12:6-9, 23-25.) He admits the reason why it was on: the meter at his Property had been tampered with. (*Id.* at 130:15- 18 (Smith Cross).) And consequently, his usage was not authorized or approved by Ohio Edison. Nor could Complainant allege otherwise, given that within the first few minutes of his first call to Ohio Edison, Complainant was informed that the power should not have been on. (*Id.* at 13:1-2.) Complainant’s use of power at the Property was not residential service. It was unauthorized, tampered service. Thus, there was no residential service to terminate—only the unauthorized use of power through a damaged meter base—and the Commission’s rules regarding residential termination do not apply. This case can (and should) be dismissed for that reason alone.

**B. Complainant’s Communications With Ohio Edison Did Not Establish Residential Service.**

Lacking the familiar (and Commission-required) indicia of residential service, Complainant ventures an unusual theory: that he unilaterally established residential service

through his phone calls and correspondence with Ohio Edison. This theory fails for two reasons. First, consistent with the Commission's rules, Ohio Edison's Tariff requires that the utility "accept" a customer's application in order to establish service. Here, Ohio Edison never accepted a service application from Complainant or otherwise approved him as a customer of record. Second, there is a good reason why Ohio Edison never accepted such an application: Complainant did not take the steps necessary to complete one. (Tr., p. 133:2-3 (Smith Cross) ("My testimony is no, I did not submit an application."); *id.* at 145:19-21.) At critical points during his phone calls with Ohio Edison, Complainant did not follow through, instead either insisting he would "call back later" or simply hanging up, even after prompting by Company representatives. Complainant did not receive residential service from Ohio Edison, and nothing about his communications with the Company changes that fact.

**1. Ohio Edison never "accepted" a service application from Complainant and did not approve him as the customer of record for the Property.**

Under the Commission's rules, there is a simple two-step process by which service is established: a prospective customer requests service by submitting an application, and the utility approves the service by accepting that application. *See, e.g.*, Rules 4901:1-18-01(A) (defining "applicant" as one "who *requests or makes application* with a utility company for any of the following residential services: electric, gas, or natural gas") (emphasis added), 4901:1-10-08(I)(2) (requiring electric utilities to provide "critical customers" with information regarding outages "within ten business days *after acceptance of their application*"); 4901:1-18-08(H) (noting that "[c]ompany *acceptance of new applications for service* to master-metered premises requires landlord/owner to provide . . . an accurate list [of individuals served at each unit]").

Ohio Edison's Tariff echoes this formulation, requiring that for any class of service (*e.g.*, residential service), "before such service is supplied by the Company, an accepted application

from the customer or other form of contract between the Company and the customer will be required.” Tariff, § 2(A) (noting that requirement of “accepted application” applies “to a change in the identity of the customer to be served”). The Company’s acceptance of such an application then brings the parties within the scope of the Tariff, which constitutes the service contract and contains the mutual rights and obligations between the Company and the customer. Tariff, § 2(B); *see id.* at § 2(D) (authorizing Company to refuse applications for reasons specified in Chapters 4901:1-10 and 4901:1-18 of the Ohio Administrative Code, which include provisions regarding tampering). Thus, residential service is established only if the customer applies for service and the Company accepts.

Moreover, as the evidence shows, there is no guesswork involved in determining whether Ohio Edison has accepted a customer’s application. Rather, Ohio Edison “accepts” service applications in an unmistakable way: by issuing an upgrade order to establish a new service account, which automatically designates the applicant as the customer of record and initiates a work order to connect service in the field. (OE Ex. A (Vidal Dir.), p. 7:12-17.) If Ohio Edison has taken these steps, it has agreed to provide residential service. If it has not, then there is no approved service. And this “bright line” approach makes sense. It allows for standardized treatment of customers and easy administration by the Company’s contact center representatives, and it leaves no doubt as to who is an approved customer and who is not.

Here, because Complainant did not apply for service, Ohio Edison took no steps to “approve” Complainant for service. It is undisputed that Ohio Edison never placed an order to establish residential service to Complainant. No upgrade notification was ever issued. Ohio Edison did not assign a unique account number or notification number to Complainant for service at the Property. (Tr., 138:17-25 (Smith Cross).) And Complainant was never designated

as the customer of record for service there. Ohio Edison never accepted a service application by Complainant, and under the Commission's rules and the Company's Tariff, Complainant was never approved for residential service.

Commission precedent agrees. In a case very similar to this one, an insurance company sued a gas utility on behalf of its insured, arguing that the utility unlawfully disconnected service to the insured without notice, and "with full knowledge that the weather conditions at that time (December 23, 1983) were extremely adverse and that there was a probability of severe property damage to the premises and its plumbing." *Nationwide Mut. Fire Ins. Co. v. The East Ohio Gas Co.*, No. 86-453-GA-CSS, Entry dated Apr. 29, 1986, ¶ 1, 1986 Ohio PUC LEXIS 1444, \*1. The Commission dismissed the case, holding that because "neither Complainant nor its insured were named customers at the Macon Avenue address at the time that the service there was disconnected," "[t]herefore, East Ohio had no duty either pursuant to this Commission's rules or pursuant to the Ohio Revised Code to give the Complainant or . . . its insured notice of the pending disconnection of service." *Id.* at ¶ 4, \*2. If there is no designated customer of record, there is no residential service, and there is no duty to notify of a pending disconnection.

Similarly, in *Sanders v. The Dayton Power & Light Co.*, No. 97-843-GE-CSS, a property owner complained that the disconnection of residential electric and gas service to a home was unreasonable, where the owner had no prior notice of the disconnection. The Commission disagreed, noting that the customer of the record at the home (a family friend) had requested cancellation of the service. *See Sanders*, Op. and Order dated July 15, 1999, pp. 2-5, 1999 Ohio PUC LEXIS 377, \*3-12; *see In re Complaint of Sanders* (2000), 88 Ohio St. 3d 1422 (granting motion to dismiss appeal ); *compare Beckford v. W.H. Dennis & Son Nat. Gas. Co.*, No. 84-596-GA-CSS, Atty Examiner's Rep., 1985 Ohio PUC LEXIS 596, \*6-7 (applying service termination



rules where Examiner found that complainant became a customer “once the gas company *accepted payment from the complainant* . . . and extended indefinitely the due date for a deposit while continuing to furnish gas service to the complainant”) (emphasis added).

Just so here. Ohio Edison did not establish a residential service account for Complainant at the Property, did not designate him as the customer of record, and never accepted an application for service by him. Complainant had no residential service at the Property.

**2. Complainant never completed the steps necessary to establish residential service.**

Ohio Edison never accepted a service application by Complainant; nor was there an application to accept. (Tr., p. 133:2-3 (Smith Cross) (“My testimony is no, I did not submit an application.”); *see id.* at 133:10-15 (Complainant never signed a contract for service).) In order to apply for service, and as instructed by Ohio Edison, Complainant was required to (i) provide information regarding the expected load and related characteristics of the service he needed at the Property; (ii) obtain a second inspection of the new meter base (after the first meter base was found to be broken); and (iii) pay or otherwise settle the amounts owed for unauthorized usage. To date, Complainant has done none of these things.

**(a) Complainant has not provided information regarding the type of load and other service characteristics at the Property.**

Ohio Edison is responsible for providing safe, reliable service at appropriate voltages, with proper electrical facilities. *See* R.C. 4905.22. One of the ways Ohio Edison meets this responsibility is by requiring prospective customers to provide, as part of an application for service, information regarding the expected load and other characteristics of the service they anticipate for the new location, including (i) the voltage of the service required for the location; (ii) the amps for the service; (iii) the phase of the service (*i.e.*, one or three phases); (iv) the kind of hot water source at the property (*e.g.*, gas or electric); (v) the size of the hot water source or

tank; (vi) the type heating source at the property and the associated load (*e.g.*, type of furnace); (vii) the type of cooling source at the property and the associated load (*e.g.*, the type of air conditioner); and (viii) a description of the major electrical appliances at the property. (*See* OE Ex. A (Vidal Dir.), p. 8:4-12; OE Ex. D (procedure document titled “AFS – Create a Reinstallation Notification”); Tr., 156:14-19 (Vidal Cross).) This is important information. Knowing the load characteristics helps Ohio Edison evaluate whether the transformers and other electrical facilities in place are adequate for the proposed service. (OE Ex. A, p. 8:15-19.) This is especially important where (as here) authorized service has been disconnected for an extended period of time. (*Id.*; Tr., 159:11-17 (Vidal Re-Dir.) (stating that the Company representative asks these questions so that “the planner/scheduler knows if our existing equipment will handle this additional load”).)

Here, there is no dispute that Complainant did not provide any of this information. (*See* Tr., 137:14-138:16 (Smith Cross).) And although Complainant objects that he was never asked to do so, there were at least two occasions—*prior* to removal of the meter—when Ohio Edison was trying to do just that. First, during the September 10, 2008 call, Company representative Tilwana Jennings specifically offered to walk Complainant through the move-in process to place an “order” for service, which would establish residential service upon receipt of an inspection release form. (*Id.* at 17:21-18:1.) Had Complainant agreed to do so—in a process that would have taken only a few minutes—Ms. Jennings would have, among other things, asked Complainant for the load-type information required by the Company’s procedures. Complainant, however, declined this offer, indicating that he would “call back.” (*Id.* at 18:2-6.)

During that next call, on November 8, 2008, Company representative Dawn Partello indicated that because it was necessary to “put the order in the system” to initiate service, she

was going to transfer Complainant's call to the New Service department to complete this process (including the load-type questions). Yet despite Ms. Partello's repeated statements that Complainant would need to speak to an additional Ohio Edison representative (*id.* at 24:5-10 (I'll get you over to our New Service Department"), 24:22-23 ("they'll have that information"), 25:1-3 ("So I'll transfer you now")), Complainant apparently misunderstood and hung up the phone (*see* Tr., 144:21-24 (Smith Re-Dir.) ("The second time I called, the lady told me that it was a mix-up and all that and she was going to take care of it. That's the way I remembered that call on November 5th.")). Ohio Edison repeatedly offered to guide Complainant through the application process, *before* the meter was removed. Complainant did not do so, his failure to do so is his responsibility alone and he cannot bear the burden of proving otherwise.

**(b) Complainant has not obtained an inspection of his new meter base.**

Before service can be initiated in his name, Complainant also must obtain an inspection of the new meter base he installed at the Property. Rule 4901:1-10-05(E) requires electric utilities to "verify that the installation of the meter base and associated equipment has either been inspected and approved by the local inspection authority or, in any area where there is no local inspection authority, has been inspected by an electrician." *See also* OE Tariff, § X(A) (requiring electrical inspection to account for "any changes in wiring on the customer's premises"). Accordingly, Ohio Edison has required that Complainant obtain an updated inspection to account for the new meter base. (*See* OE Ex. F, p. OE\_38 (customer notes indicating that "CUSTOMER MUST HAVE SERVICE INSPECTED BEFORE ISSUING RECONNECTION" (*original emphasis*)).) *See also* *Conrad v. Ohio Edison Co.*, No. 83-1573-EL-CSS, Op. and Order dated June 4, 1985, 1985 Ohio PUC LEXIS 155, \*14 (dismissing complaint and finding that disconnection of electrical service and requirement of inspection were

reasonable in light of, among other things, “theft of service and a tampered meter” and a “potential hazardous condition with the electrical wiring”). Complainant has never indicated that such an inspection has occurred.

**(c) Complainant has not paid for his unauthorized usage.**

Complainant also has not established residential service because he has not paid for, or otherwise arranged for settlement of, charges for his unauthorized usage. Where tampering and unauthorized usage have occurred, electric utilities are entitled to insist upon payment or other satisfactory settlement of charges related to that usage before service is re-connected. *See Locker d/b/a L.J. Properties v. Ohio Edison Co.*, No. 99-977-EL-CSS, Op. and Order dated Apr. 27, 2000, 2000 Ohio PUC LEXIS 398, \*18-20; Rule 4901:1-10-20(B)(2)(d).

Here, Complainant was repeatedly informed that he would be required to pay for the unauthorized usage that occurred at the Property since he purchased it.<sup>14</sup> (*See, e.g.*, Tr., 71:7-13.) And it is undisputed that Complainant has made no payments to Ohio Edison related to the Property. Residential service has not been established because Complainant has not paid or otherwise settled charges related to his unauthorized usage. Nor will it be established until Complainant does so, and under the Commission’s rules and precedent, this is reasonable.

One other aspect of Complainant’s approach to payment bears noting. During nearly all of his follow-up phone calls to Ohio Edison, Complainant indicated that a Company representative previously had agreed to allow him to use power at the Property but not pay for it until he sold the Property (*i.e.*, a so-called “contractor’s courtesy”). (*See, e.g.*, Tr., 32:3-8, 54:22-55:4, 55:20-24.) It is unclear where or how Complainant got this idea. It *is* clear, however, that it did not come from Ohio Edison. As the phone call recordings demonstrate, no Ohio Edison

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<sup>14</sup> Ohio Edison is not requiring that Complainant pay tampering charges. (OE Ex. A (Vidal Dir.), p. 14:11.)

representative said anything remotely like what Complainant describes. Ohio Edison never extended any kind of “contractor’s courtesy” to Complainant (indeed, Ohio Edison customer contact witness Carlos Vidal had never heard of the term (OE Ex. A, p. 12:7-8)), and Ohio Edison is in no way required to wait until after Complainant sells the Property in order to obtain payment for his unauthorized usage.

**C. Ohio Edison’s Disconnection Of Service To The Property Is Consistent With The Commission’s Rules Regarding Tampering.**

Moreover, even if “residential service” to Complainant was established (and it certainly was not), the Ohio Revised Code and the Commission’s Rules give broad authority to electric utilities to terminate such service where it is connected with meter tampering. For example, R.C. 4933.121 imposes certain limitations on an electric utility’s ability to disconnect residential service during the winter months (between November 15 and April 15), “unless tampering with the utility company equipment or theft of electricity . . . has occurred.” R.C. 4933.121(A); *see* R.C. 4933.18(A) (establishing that evidence of meter tampering is *prima facie* evidence of theft of service). Thus, the usual season-related restrictions on disconnection do not apply where there is tampering. Similarly, the Commission’s rules authorize electric utilities to disconnect residential service—without prior notice—where “[t]he electric service meter, metering equipment, or associated property was damaged, interfered with or tampered with, displaced or bypassed.”<sup>15</sup> Rule 4901:1-10-20(B)(1)(a) (where disconnection is for “safety reasons”); *see also* Rule 4901:1-18-03(E)(3) (authorizing termination of residential service where “customer, consumer, or his/her agent” “tampers with the utility company’s meter”); Ohio Edison Tariff

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<sup>15</sup> The Commission defines “tampering” as “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.” R.C. 4901:1-10-01(Z).

§ XI (E) (stating that with respect to “[u]nauthorized use of service,” Ohio Edison will comply with Chapters 4901:1-10 and 4901:1-18 of the Ohio Administrative Code).

Here, there is no dispute that the meter serving the Property was tampered with. (Tr., 128:12-15 (Smith Cross) Nor is there any dispute that the resulting damage left the meter base in a dangerous condition. (See *id.* at 136:11-14 (Smith Cross), 189:9-10 (Padovan Cross).) Thus, even if Complainant established valid residential service at the Property (which he did not), Ohio Edison was well within its rights to terminate that service—without prior notice.

Moreover, Complainant was (or should have been) well aware that, given the tampering, his power was subject to disconnection until he “cleared the tampering” and properly initiated service in his own name. From his first call with Ohio Edison, Complainant was informed (and himself admitted) that the meter serving the Property had been tampered with and that his usage was unauthorized. (Tr., 63:20-22.) Accordingly, in that first call, the Ohio Edison representative indicated that power should be disconnected at the Property. (*Id.*) Complainant knew that his power should not have been on. He simply cannot be heard to complain that the disconnection took him by surprise.

Moreover, Ohio Edison *did* provide advance notice of the disconnection. Because Complainant had not properly initiated service in his name, there was no active customer of record or mailing address associated with the Property. Accordingly, Ohio Edison sent a “Dear Occupant” letter to the service address, advising the occupant that the Company had detected unauthorized usage at the Property and that, barring a proper application for service, the power would be subject to disconnection beginning on January 21, 2010. (OE Ex. A (Vidal Dir.), p. 13:1-9; OE Ex. F, p. OE\_28; OE Ex. H; see Tr., 60:11-12 (Company representative Rodriguez correctly explaining during call that because of the theft of service, and given unsafe condition of

meter base, there was no requirement of advance notice of disconnection).) Complainant was repeatedly advised that his usage was unauthorized and that, unless he established service in his name, the power to the Property was subject to disconnection. And Ohio Edison's disconnection of that service was proper under the Commission's rules and its Tariff.

**D. Two Other Claims Appearing In The Amended Complaint Have No Record Support.**

**1. Complainant presented no evidence to support its claim that the disconnection of his service was related to a vegetation-induced outage.**

In his Amended Complaint, Complainant alleged that Ohio Edison disconnected his power in connection with its investigation of a vegetation-related electrical outage and that a tree limb on or near his Property had damaged an electrical service line. (*See* Am. Compl. dated Aug. 9, 2010, ¶¶ 21-23.) At hearing, however, Complainant presented no evidence regarding vegetation-related outages or the conditions of vegetation in the area. Complainant's allegations to that effect should be ignored.

**2. Complainant's claim regarding Ohio Edison's alleged failure to "record[] and document[]" his contacts with the Company has no record support.**

Complainant also alleged that Ohio Edison violated the Commission's rules by failing to properly record and document his contacts with the Company. (*See* Am. Compl. dated Aug. 9, 2010, ¶¶ 26-27.) These allegations are flatly contradicted by the record. At the outset of the hearing, Ohio Edison played eleven separate audio files containing recordings of Complainant's phone calls with the Company. (*See* OE Ex. G.) The existence and content of each of those phone calls also was noted on a customer contact log, consistent with the Company's procedures. (*See* OE Ex. F.) Complainant has presented no evidence of any phone calls that were not documented. (*See* Tr., 126:15-25 (Smith Cross) (last call occurred in March 2009).) Moreover,

the customer contact log reflects Complainant's faxing of his proof of ownership in February 2009 and the Company's receipt of identical written correspondence through the mail on March 5, 2009. (See OE Ex. A (Vidal Dir.), p. 14:2-8; OE Ex. F, pp. OE\_30 (reflecting February contact), last unnumbered page of Ex. F (reflecting receipt of mail).) Ohio Edison properly documented all of Complainant's contacts with the Company.

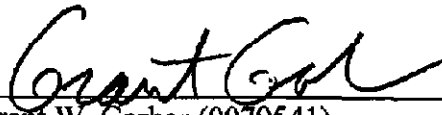
#### **IV. CONCLUSION**

For the foregoing reasons, Ohio Edison respectfully requests that the Commission deny the Complaint and dismiss this case with prejudice.



Dated: April 1, 2011

Respectfully submitted,



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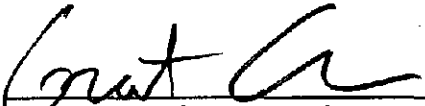
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ATTORNEYS FOR RESPONDENT  
OHIO EDISON COMPANY

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent by first class U.S. mail, postage prepaid, and e-mail to the following person this 1st day of April, 2011:

Bruce M. Broyles  
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\_\_\_\_\_  
An Attorney for Respondent  
Ohio Edison Company