

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

Now comes Complainant C. Richard Smith, by and through counsel, and files his Reply to the Post Trial Brief filed by Respondent Ohio Edison Company.

At the outset, C. Richard Smith must correct a misstatement in the Post Trial Brief that occurs at the third full paragraph on page 10 of the Post trial Brief, which states:

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 **did not receive** a statement of rights upon disconnection. The only statement that was left was a sticker placed on the meter based warning that the meter base was broken. It was this statement which C. Richard Smith referred to in his telephone conversation with Ohio Edison after the meter had been removed. Complainant's counsel incorrectly stated that Mr. Smith had received a statement of his rights.

Ohio Edison's primary argument is that Mr. Smith did not establish residential service, and therefore the Rules and Regulations for terminating residential service do not apply. Ohio Edison states that the hallmarks of residential service are easy to identify, but then has to piecemeal what it believes those hallmarks are through various portions of the Tariff and Administrative Code. From Ohio Edison's piecemeal hallmarks it is then asserted that residential service was not established.

However, residential service was established by C. Richard Smith. The Tariff of Ohio Edison filed pursuant to Order dated May 27, 2009, in Case No. 08-935-El-SSO, effective June 1, 2009, is found on the Ohio Public Utilities website. Section I of the Tariff, paragraph C, states that these Electric Service Regulations are a part of every service contract.

Section II, Paragraph A, in pertinent part, states:

Service Application: For each class of service requested by a customer, 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.

Section II, Paragraph B, states:

Acceptance of Application: When the application for service is accepted by the Company or service is supplied according to the provisions of the application, the application constitutes a service contract between the Company and the customer for the supply of electric services subject to these Electric Service Regulations.

Section II, Paragraph C, in pertinent part, states:

Service Contract: The service contract shall constitute the entire agreement between the customer and the Company.

In addition, the Tariff, at Original Sheet 10, filed pursuant to Order dated January 21, 2009, in Case No. 07-551-EL-AIR, describes Residential Service, and unlike other services Residential Service (RS) does not expressly require a written contract. A written contract is required for General Service-Secondary Service (GS), General Service-Primary Service (GP), General Service-Subtransmission (GSU), and General Service Transmission (GT). While Ohio Edison's tariff required a written contract in four (4) types of electrical services, the Tariff does not require a written contract with regard to the provision of Residential Service.

Mr. Smith contact Ohio Edison and made an application for electrical service at 1930 Mahoning Avenue in Warren, Ohio. In the initial telephone call, Ohio Edison representatives stated that service was not supposed to be on at that location and that the electrical service

needed to be shut off immediately. Mr. Smith explained the situation, and provided his mailing/ billing address to the Ohio Edison representatives. Ohio Edison had previously provided electrical service to the premises at 1930 Mahoning Avenue; Mr. Smith did not want to change the type of service; he simply wanted the service to be billed to C. Richard Smith at 7051 Kinsman-Nickerson Road Kinsman, Ohio 44428.

Ohio Edison states that a hallmark of residential service is the acceptance of the application for service by the utility company. However, the Ohio Edison Tariff states in the alternative (1) when application for service is accepted by the Company, or (2) service is supplied according to the provisions of the application. Here, Ohio Edison supplied services to the 1930 Mahoning Avenue in Warren, Ohio according to Mr. Smith's application. The application was "accepted" by Ohio Edison's conduct, and the application became the service contract between Mr. Smith and Ohio Edison.

The service contract is established by Mr. Smith's application for electrical service at 1930 Mahoning Avenue and Ohio Edison's provision of electrical service to 1930 Mahoning Avenue. Ohio Edison said that service was not supposed to be on at 1930 Mahoning Avenue, and that service would be turned off immediately. However, Ohio Edison did not immediately disconnect electrical service. Instead, Ohio Edison supplied electrical services to 1930 Mahoning Avenue pursuant to the application/ request of C. Richard Smith. Residential Service was established. Contrary to the assertions of Ohio Edison, C. Richard Smith did not unilaterally establish residential service. Complainant requested service; Respondent supplied service. Residential service was established by the conduct of both C. Richard Smith and Ohio Edison.

The language of the Tariff sets forth the process by which an individual can request electrical service, and Ohio Edison can supply the electrical service pursuant to the request.

Despite the language of the Tariff establishing a service contract based upon an application and supplying services according to the application, Ohio Edison argues that it is its internal policy provisions which establish a bright line test for when residential service is established.

According to Ohio Edison's position, if the utility company does not ask the proper questions, then the individual requesting electrical service never makes an "application". Without the "application" residential service is not established and Ohio Edison is free to act outside any Tariff or Regulation. This position leaves the individual at the mercy of the utility company. All of the steps that Ohio Edison asserts are missing are internal, known only to the utility company, and the individual is unaware of such requirements. If such internal unknown steps to the application process exist, then their existence violates OAC 4901:1-10-12. Each electric utility shall provide to new customers, \*\*\* an explanation of what each applicant must do to receive service from that electric utility". OAC 4901:1-10-12(B)(5). When C. Richard Smith called Ohio Edison on September 10, 2008 and expressed his desire to place the Electrical service for 1930 Mahoning Avenue in his name, Ohio Edison should have mailed him the information required by OAC 4901:1-10-12(B)(5).

In order to hide behind its internal procedures, Ohio Edison relies upon the cross examination of C. Richard Smith as an admission that he did not make application for service. This "admission" was the result of questions regarding voltage, appliances, type of heater that are allegedly part of the Ohio Edison "application" process. Again, if Ohio Edison required all of the information on which C. Richard Smith was questioned, then Ohio Edison should have mailed an explanation to C. Richard Smith pursuant to OAC 4901:1-10-12(B)(5).

Ohio Edison further argues that even if residential service was established, it had the right to discontinue the electrical service of C. Richard Smith during the prohibited winter months as

“tampering with the utility company equipment or theft of electricity has occurred.” R.C.

4933.121. However, Ohio Edison did not establish that tampering had occurred. R.C.

4933.18(B)(2) defines tampering as:

(2) “Tamper” 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 as to reduce the amount of utility service that is registered on the meter.

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. 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. However, unauthorized reconnection of a utility meter that has been disconnected, does not meet the definition of tampering as set forth in R.C. Chapter 4933.

Ohio Edison attempts to rely upon OAC 4901:1-10-20(B)(1)(a) and to argue that the disconnection was for “safety reasons”. Ohio Edison asserts that the electrical service was disconnected on or about January 27, 2009 for “safety reasons”. Ohio Edison was made aware that the power was on September 10, 2008. The electrical service was inspected and Ohio Edison was advised of the safety inspection on September 26, 2008. Ohio Edison was contacted again by C. Richard Smith on November 5, 2008, and again Ohio Edison was advised that the electrical service was on at 1930 Mahoning Avenue in Warren, Ohio. More than two months after this second contact, Ohio Edison asserts that the electrical service was disconnected for “safety reasons”.

Ohio Edison further relies upon OAC 4901:1-18-03(E)(3) to justify disconnecting the electrical service of C. Richard Smith. OAC 4901:1-18-03(E)(3) states:

(E) When a customer, consumer, or his/her agent does any of the following:

(3) Resorts to any fraudulent act to obtain electric, gas, or natural gas service, is the beneficiary of the fraudulent act, or tampers with the utility company's meter, metering equipment, or other property used to supply the service. \*\*\*.

Ohio Edison offered no evidence that C. Richard Smith resorted to any fraudulent act, was the beneficiary of a fraudulent act, or tampered with Ohio Edison's meter. C. Richard Smith repeatedly informed Ohio Edison that the electrical service for 1930 Mahoning Avenue was on. C. Richard Smith did not tamper with the meter, did not commit any fraud, and was not the beneficiary of any fraudulent act.

Ohio Edison further attempts to rely upon the cracked meter base as creating a dangerous condition justifying the disconnection of electrical service. However, the Ohio Edison representative testified that the alleged damage was not visible until the meter was removed. The Ohio Edison representative testified that the cracked meter base only posed a danger if the bare wire made contact with the metal housing. He testified that with the meter in place the cracked base was rigid enough to prevent a connection with the metal housing. Further, the Ohio Edison representative was not inspecting the meter when it was removed. The decision to disconnect electrical service was already made and the meter was being removed when the cracked meter was discovered. Ohio Edison argues the "safety reason", but the decision to disconnect electrical service had already been made.

Ohio Edison contends that if notice was required, then Ohio Edison provided advance notice that electrical service was being disconnected in its Dear Occupant letter which was mailed January 7, 2009. This letter does not comply with the requirements of OAC 4901:1-18-06, which in paragraph (A) requires a fourteen (14) day notice, followed by an additional ten (10) day notice as required by paragraph (B) (plus additional 3 days for mailing). The electrical service was disconnected on January 27, 2009, if not earlier. The electrical service was

disconnected only twenty (20) days after the Dear Occupant letter was mailed. The notice required by OAC 4901:1-18-06 requires twenty-seven (27) days notice when the notice is delivered by regular mail. If Ohio Edison intends to rely upon this notice, the electrical service should not have been disconnected until February 6, 2009.

Ohio Edison may dispute whether residential service was established at 1930 Mahoning Avenue in Warren, Ohio by C. Richard Smith. Ohio Edison may dispute whether C. Richard Smith made an application for electrical service. There is no dispute that C. Richard Smith is a customer or a consumer. Further, there can be no dispute that C. Richard Smith made a complaint as that term is defined by OAC 4901:1-10-21. Further, there can be no dispute that Ohio Edison failed to make a good faith effort to resolve the complaint. C. Richard Smith was accused of tampering and accused of stealing electricity. C. Richard Smith was then blamed for the broken meter base and informed that he had to replace the meter base. Even though Mr. Smith replaced the meter base, Ohio Edison still refused to reconnect electrical service to 1930 Mahoning Avenue until C. Richard Smith paid the tampering fees and investigation costs. Only after C. Richard Smith filed a complaint with the Public Utilities Commission did Ohio Edison drop its insistence that Mr. Smith pay the tampering fees and investigation costs. At no time did Ohio Edison enter discussions or attempt in good faith to resolve the issues regarding the damage to C. Richard Smith's property that resulted from the disconnection of electrical service.

Based upon the above, as well as the evidence presented at the hearing and the arguments presented in the post trial brief, 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. Residential

service was established by the conduct of the parties. C. Richard Smith made an application for electrical service during his telephone calls in September and November of 2008. Ohio Edison supplied electrical service in accordance with the application. Thereafter, Ohio Edison terminated residential service during the prohibited time frame without the required advanced notification. Ohio Edison was required to provide prior notice of disconnection as there was no evidence that C. Richard Smith had tampered with the Ohio Edison meter. Nor was there any evidence that a “safety reason” existed for the disconnection of electrical service. Ohio Edison was required to provide prior notice of disconnection, and the “Dear Occupant” letter did not comply with the required prior notice. C. Richard Smith made a complaint to Ohio Edison regarding the disconnection of electrical service and the resulting damage and Ohio Edison did not make a good faith effort to resolve the dispute.

Respectfully submitted,

BRUCE M. BROYLES, CO.  
A Legal Professional Association

*/s/ Bruce M. Broyles*

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#### CERTIFICATE OF SERVICE

The forgoing reply 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 [gwwgarber@jonesday.com](mailto:gwwgarber@jonesday.com) mail on this 15<sup>th</sup> day of April 2011.

*/s/ Bruce M. Broyles*

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Bruce M. Broyles



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