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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

PETER J. WIELICKI,

Complainant,

v.

THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,

Respondent.

Case No. 10-2329-EL-CSS

RESPONDENT THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S
POST-HEARING REPLY

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THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY

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Complainant's post-hearing filings are notable for what they do not say. At hearing and on brief, the Company conclusively demonstrated that there was no "agreement" for partial payment of the August 2006 Bill, and Complainant's tender of a restrictively-endorsed check thus was not in "good faith." For example, there is no evidence in the Company's records of *any* phone calls or communications during the time when Complainant alleges that he called the Company, much less any evidence of an agreement for partial payment. (*See* CEI Br., p. 12.) The restrictively-endorsed check he allegedly sent to pay the August 2006 Bill was sent and received *before* the alleged phone "agreement" occurred. (*See id.* at 13.) Although Complainant claims that he was told to send his check to a "Customer Service Manager," there is no Company employee with that title. (*See id.*) Although he claims that the Company agreed to partial payment "on the spot," in a single phone call, this simply does not make sense and is inconsistent with the Company's usual investigation and meter-testing procedures in response to a high bill complaint. (*See id.*) And notably, none of Complainant's purported letters mentioned the

alleged phone call, the terms of the alleged “agreement” or anything else about the August 2006 Bill. (*See id.* at pp. 15-16.)

In his post-hearing filings, Complainant has utterly failed to address this evidence. He has never attempted to explain the stark inconsistencies between his version of events and the undisputed evidence. He has never presented any corroborating details regarding his alleged phone calls. In fact, despite the Company’s detailed rebuttal of his allegations on brief, Complainant’s reply does not even *mention* the alleged agreement, much less explain why his testimony regarding it should be believed. There simply was no “agreement” for partial payment of the August 2006 Bill, and Complainant’s testimony to the contrary is not true. He has not acted in “good faith,” and the Complaint should be dismissed.

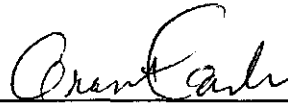
Moreover, Complainant’s post-hearing filings warrant two corrections. First, Complainant repeatedly argues that the Company “admitted” that it cashed his restrictively-endorsed check. (Complainant’s Post-Hearing Br., pp. 4, 5 (“Respondent admits that it negotiated the check”).) That is not true. As witness Deborah Reinhart testified, the Company has confirmed that it negotiated a check in August 2006 in the amount of \$109 but cannot verify that this check was restrictively-endorsed. (*See Tr.*, 60:13-22 (Reinhart Cross).) In fact, Complainant has failed to present any copies of negotiated checks or any other credible evidence that any restrictively-endorsed check was cashed by the Company. (*See CEI Br.*, pp. 11.)

Second, Complainant alleges that the Company has “mislead” the Commission regarding the limitations period contained in R.C. 1303.16(D). (*See Complainant’s Reply*, p. 2.) But Complainant cites the wrong portion of that statute, and the statutory language he discusses is irrelevant. As explained in the Company’s initial brief, Complainant’s accord and satisfaction claim falls within the default three-year limitations period contained in R.C. 1303.16(G)(3) (not

subsection (D)). (CEI Br., pp. 8-9.) Specifically, even assuming that Complainant sent restrictively-endorsed checks to the Company (and there is no credible evidence that he did), he filed the Complaint more than three years after the last of those checks was allegedly sent, in August 2007. (*See id.*) By any measure, his claim was not brought within the applicable limitations period, and it should be dismissed for that additional reason.

Dated: May 20, 2011

Respectfully submitted,



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THE CLEVELAND ELECTRIC ILLUMINATING
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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 20th day of May, 2011:

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