

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Sherry	)	
A. Wiley,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 10-2463-GE-CSS
	)	
Duke Energy Ohio, Inc.,	)	
	)	
Respondent.	)	

OPINION AND ORDER

The Commission, considering the complaint, the evidence of record, the arguments of the parties, and the applicable law, hereby issues its opinion and order in this matter.

APPEARANCES:

Sherry A. Wiley, 5370 Aster Park Drive., Apt. 909, Hamilton, Ohio 45011, on her own behalf.

Eberly & McMahon, LLC, by Robert A. McMahon, 2321 Kemper Lane, Suite 100, Cincinnati, Ohio 45206, on behalf of Duke Energy Ohio, Inc.

OPINION:

I. HISTORY OF THE PROCEEDING

On November 1, 2010, Sherry A. Wiley (Ms. Wiley or complainant) filed a complaint alleging that Duke Energy Ohio, Inc. (Duke or company) wrongfully adjusted the bill for her utilities service. In the complaint, Ms. Wiley stated that, contrary to a prior agreement, Duke misapplied an Ohio Department of Development (ODOD) credit of \$271 to her bill. Ms. Wiley stated that, as a result, her electric service was disconnected from October 19, 2010 to October 21, 2010, and she was forced by the company to agree to pay \$95, plus her current monthly bill to restore service.<sup>1</sup> On November 17, 2010, Duke filed an answer denying all allegations in the complaint.

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<sup>1</sup> The record in this case reflects that Ms. Wiley's gas service was not disconnected (Tr. at 169).

A settlement conference was convened in this matter on February 14, 2011. The parties however, were unable to reach a settlement agreement. On February 24, 2011, the attorney examiner, in accordance with Rule 4901-9-01(E), Ohio Administrative Code (O.A.C.), ordered that Duke not disconnect the utility service of Ms. Wiley, during the pendency of this complaint, for failure to pay amounts in dispute in this proceeding, and scheduled this matter for hearing on May 12, 2011.

On February 25, 2011, Ms. Wiley filed a letter stating that the real reason for her complaint was wrongful disconnection and not bill payment. On March 7, 2011, complainant filed, among other pleadings, a request to amend her complaint and a brief statement amending her complaint in the same document. In an entry dated March 23, 2011, the attorney examiner, among other things, directed the complainant to file a more complete amendment to her complaint. Thereafter, complainant filed an amended complaint in which she included an allegation that her electric bills were not accurate and that the company reneged on another payment arrangement and improperly disconnected her electric service in March 2011. On April 4, 2011, Duke filed an answer denying the additional allegations.

A hearing was convened in the case on May 12, 2011. Subsequently, Duke filed its brief on July 14, 2011, and complainant filed a statement of the case on July 15, 2011.

## II. APPLICABLE LAW

Duke is a gas and electric company as defined by Section 4905.03, Revised Code, and a public utility by virtue of Section 4905.02, Revised Code. Duke is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 through 4905.06, Revised Code.

Section 4905.22, Revised Code, requires, in part, that a public utility furnish necessary and adequate service and facilities. Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law or that any practice affecting or relating to any service furnished is unjust or unreasonable.

In complaint cases before the Commission, the complainant has the burden of proving its case. *Grossman v. Public Utilities Commission* (1966), 5 Ohio St.2d 189, 190, 214 N.E.2d 666, 667. Thus, in order to prevail, the complainant must prove the allegations in its complaint, by a preponderance of the evidence.

### III. SUMMARY OF EVIDENCE

#### A. General

At the hearing, Duke's motion to have its 46 requests for admission (Duke Ex. O), previously served upon complainant on February 17, 2011, considered as having been admitted by complainant, because complainant failed to answer those requests for admission in compliance with Rule 4901-1-22, O.A.C., was granted (Tr. at 11, 150, 156-157.) Notwithstanding this ruling, the Commission's decision in this case will rest upon whether the complainant sustained her burden of proof based on the evidence submitted at the hearing and not whether Ms. Wiley responded to Duke's requests for admission.

Witnesses at the hearing included, Ms. Wiley testifying on her own behalf and Cynthia M. Givens, a customer relations supervisor for Duke, on behalf of the company. In addition, Lee A. Firich, operations manager for the Home Energy Assistance Program (HEAP) at ODOD, appeared after being subpoenaed by complainant and presented testimony.

#### B. Sherry A. Wiley

According to Ms. Wiley, on or about September 13, 2010, she faxed a letter that she had received from ODOD to Duke. The letter stated that a \$271 HEAP credit would be forwarded from ODOD to Duke to offset the balance of Ms. Wiley's account with the company. Ms. Wiley then telephoned Duke's Customer Service Department and informed the company's representative that the \$271 HEAP credit on her account would be forthcoming from ODOD. The complainant submits that, Duke's representative verified that the \$271 amount did appear in the company's computer system and that it would be applied to Ms. Wiley's account in about two weeks. According to Ms. Wiley, she was advised by Duke's customer service representative to disregard her October bill. Further, the representative told her that she would get another bill in two weeks, a reminder notice two weeks later, a disconnection notice in another two weeks; and then, 10 to 14 days later, a final disconnection notice. Ms. Wiley noted that this sequence of bills, reminder notices, and disconnection notices would end at sometime around Thanksgiving 2010, and would give her enough time to take care of the balance of her bill. She indicated that her telephone conversation with Duke's representative regarding the bills and notices from the company constituted payment arrangements for her utilities. However, Ms. Wiley believes that someone at Duke accessed the computer records of her account and erased all of the payment arrangements that she had made with the Duke's customer service representative. Subsequently, on October 19, 2010, Ms. Wiley's utility services were disconnected. (Tr. at 12-16, 42.)

On October 20, 2010, after visiting Duke's Lynn Street office, Ms. Wiley called the company and was informed that she could pay \$175 under the Commission's Winter Rules<sup>2</sup> to have her utility services restored. According to the complainant, she paid \$175 on October 21, 2010, and her utility services were turned on. She testified that, in spite of the payment arrangements that she had made with Duke's representative a month previously, her services were turned off, and she then was forced to pay two bills, her current bill, plus \$95 installments on her old bill of \$739.61. Ms. Wiley stated that, if the payment arrangements that she had made previous had been left intact, it would have saved her services from being disconnected. (Tr. at 18-22, 48-49, 50-52, 145.)

On November 8, 2010, Ms. Wiley, a veteran, went to the local Veterans Administration (VA) office to see if personnel at that office could assist in paying her utilities bill. Ms. Wiley stated that a VA representative, Casey James, telephoned Duke and spoke with a Duke representative named Carrie. According to Ms. Wiley, Mr. James was informed by Duke's representative that Ms. Wiley's bill was only \$25, which constitutes a reconnection fee for services that were reconnected on October 21, 2010, and that there was no outstanding balance on Ms. Wiley's account. However, Ms. Wiley's bill for September 20 to October 19, 2010, listed the amount due as \$739.61. As a result of the VA being informed that Ms. Wiley owed only \$25 on her utilities bill, her application for assistance from the VA was denied. (Tr. at 25, 28-29, 34, 41, 43.)

Ms. Wiley testified that her bills are not accurate statements of her account. She noted that there are amounts added that do not relate to anything on the bill (Complainant Exs. 1-11). Specifically, her May 2010, bill has \$93 added along with her current usage and a deposit of \$140. Later, another unaccounted-for \$47 was added, and she was separately charged a \$45 security deposit and a \$25 reconnection fee that were inclusive in the payment that she had to make in order to get her service restored. Ms. Wiley testified that her bills show that her old bill as being inclusive with her new bill, i.e., her old bill was not differentiated from her new bill. Ms. Wiley further stated that, when she and her family were home most of the time, from October through November 2010, and utilized appliances that used energy, her bill was low, about \$108. But when there was no one home, in November and December 2010, her bill went up to \$180. In addition, as another example of untruthful billing, Ms. Wiley noted that, when she was disconnected again by the company from March 23 to March 28, 2010, she was

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<sup>2</sup> See, *In the Matter of the Investigation into Long-Term Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 09-782-GE-UNC, Entry (September 23, 2009) (2009 WRO). In that entry, the Commission, in part, directed utilities to reconnect the services of those who have had their services disconnected for nonpayment, provided that the person seeking to have service restored does all of the following: 1) pays his/her arrearages, or cures any default under a standard payment plan, or pays \$175.00, whichever is less, 2) applies for the regular HEAP, and 3) enrolls in a standard extended payment plan, or the Percentage of Income Payment Plan (PIPP) program, or a plan offered by the utility.

billed for usage during that time period and her May 2010 bill also contained charges that were not accurate. (Tr. at 31, 35, 37, 39, 44-45, 65-66, 127-128, 141, 147-149.)

On cross-examination, Ms. Wiley testified that the \$47 and \$93 charges are reflected on her bill generated on June 22, 2010 (Duke Ex. 1, Att. C). She testified that she paid \$150 in June 2010, i.e., a deposit of \$140 (\$47 + \$93 = \$140), plus a \$10 payment toward her bill (Tr. 96-102). After making the \$150 payment, she did not make any payments in July, August, or September 2010. Other transactions with Duke in 2010 included a payment of \$175 under the 2009 WRO in October, a payment of \$100 in December, and a \$271 credit from HEAP reflected on her August bill. Further, there were disconnect notices on Ms. Wiley's May, September, October, and December 2010 bills. (Tr. at 100-117; Duke Ex. 1, Atts. B - I.)

In 2011, Ms. Wiley made no payments in January, a \$50 payment on her February bill, and payments totaling \$430 on her April bill. Her February and March 2011 bills contained disconnection notices. Ms. Wiley testified that she was given credit by Duke for all payments that she made and all credits that she received. (Tr. at 117-126; Duke Ex. 1, Atts. J - M.)

Ms. Wiley stated in her amended complaint that she was billed by Duke for the time she was disconnected, March 23 to March 24, 2010, and that she was charged twice for a security deposit of \$45 and a reconnection fee of \$25. However, on cross examination, Ms. Wiley testified that she had no evidence to support her claims that she was overbilled. (Tr. 127-134.)

C. Lee A. Firich

Mr. Firich testified that, once a person's eligibility is determined, the process of applying a HEAP credit depends on the type of payment that is to be made. If it is a direct credit to a utility company, ODOD will make a data file accessible to the company. Once the utility company's staff matches the file to their records, the company responds to ODOD with a data file stating that ODOD's files are accepted. ODOD's staff then waits until they receive an acceptance letter from the utility company's representative that allows ODOD to make the actual payment to the utility. (Tr. at 73.)

Mr. Firich testified that, in this case, ODOD's time line was as follows: Ms. Wiley's eligibility was determined on July 28, 2010, and, on the HEAP website, a \$271 credit for Ms. Wiley was posted; the eligibility information was processed through ODOD's computer on August 2, 2010; ODOD made Ms. Wiley's file with the eligibility information available to Duke on August 9, 2010; on August 20, 2010, the file was returned from Duke with an acceptance notice of the \$271 HEAP credit for Ms. Wiley; the acceptance letter from Duke's representative arrived at ODOD on November 12,

2010, and payment from ODOD to Duke was made on November 26, 2010. Once the company sent confirmation that the credit was made to Ms. Wiley's account, ODOD updated its records showing that the credit was received and the transaction was designated as being complete. (Tr. at 74-75, 80-81, 91-92.)

On cross examination, Mr. Firich testified that Duke's sending a letter back to ODOD in November 2010, did not mean that the company had not already credited Ms. Wiley's account. He stated that ODOD tells its clients to look for the payment on their bill between 30 and 60 days after the receipt of the notification letter, which would have been sent to Ms. Wiley around July 28, 2010. Mr. Firich testified that, based on Duke's billing and ODOD records, the \$271 HEAP credit was provided to Ms. Wiley by the company. (Tr. at 82-84.)

On redirect examination, Mr. Firich testified that ODOD made Ms. Wiley's data file available to Duke on August 9, 2010, and that, once ODOD makes the file available, and Duke verifies that the account belongs to the company, the company can start crediting the account. Therefore, when Duke sends the information back to ODOD, it is just a verification that the company has accepted those transactions as valid on accounts that they will credit. Duke does not tell ODOD when it actually makes the credit on the bill. The transactions are put on the bills depending on when the billing cycles fall, and that is why ODOD normally tells people to allow 30 to 60 days for the credit to actually show up on their bills. (Tr. at 85-87.)

Mr. Firich testified that, on November 12, 2010, Duke sent ODOD a letter stating that it had accepted every account on the file that ODOD had sent the company. Mr. Firich noted that, before ODOD can send a check to the company, it has to have that signed acceptance letter. However, that letter could have no bearing on when the company actually credited Ms. Wiley's bill. Mr. Firich stated that ODOD does not know when the company applies the credit to the account. (Tr. at 87-88.)

On recross examination, Mr. Firich testified that ODOD made the determination that Ms. Wiley was eligible for a \$271 HEAP credit on July 28, 2010. Then, on August 9, 2010, ODOD notified Duke of Ms. Wiley's eligibility. He noted that Ms. Wiley received a credit of \$271 during August 2010, which was listed on her bill, but ODOD did not pay the company for that credit until later in November 2010. (Tr. at 92.)

D. Cynthia Givens

Ms. Givens testified concerning the events and transactions that related to Ms. Wiley's account with Duke. Ms. Givens explained that Ms. Wiley has received both natural gas and electric services at the Aster Park account since she first established those services with Duke on April 3, 2010. At that time, Duke requested a deposit of \$140 from Ms. Wiley. According to Ms. Givens, Ms. Wiley could not pay the deposit at

once so Duke agreed to accept the deposit over time and entered into a payment arrangement relating to the deposit. That payment arrangement was referenced on Ms. Wiley's April bill. Ms. Givens testified that Ms. Wiley did not make any payments to Duke in response to her April bill. Accordingly, when Duke generated her next monthly bill in May 2010, Ms. Wiley owed a past due balance, late charges, charges for current gas and electric services, and the balance of the deposit. Although the balance due on that bill was \$320.97, Ms. Wiley only paid \$150 to Duke before the company generated the next monthly bill. Ms. Givens explained that the June and July bills reference the single payment of \$150 made by Ms. Wiley. Duke did not receive another payment or credit on Ms. Wiley's account after it sent the bill in July. According to Ms. Givens, by that time, Ms. Wiley had been approved for a HEAP credit in the amount of \$271. Duke generated the next bill in August 2010, which contained a reminder notice because Ms. Wiley had not made any payment in response to Duke's prior bills. (Duke Ex. 1 at 5-8, Atts. A-E.)

Ms. Givens further explained that, on September 21, 2010, Duke sent another monthly bill to Ms. Wiley. That bill contained a disconnect notice, in light of Ms. Wiley's continued failure to pay her utility bills. As set forth on that bill, the total owed by Ms. Wiley was up to \$615.40, and Ms. Wiley was required to pay \$287.79 by October 15, 2010, to avoid disconnection of her services. According to Ms. Givens, Ms. Wiley did not pay the required amount by the deadline, nor did she contact Duke to enter into a payment arrangement. Accordingly, Duke disconnected Ms. Wiley's utility services on October 19, 2010, for nonpayment after it had provided Ms. Wiley with the required 14- and 10-day notices in advance. By that time, Duke was ready to send another monthly bill to Ms. Wiley. That bill contained the final charges for Ms. Wiley's electric account that had been disconnected. The bill also contained another disconnect notice. Ms. Givens offered that Duke's billing system had generated the new bill on the standard date, and it included a reference to the possibility that Ms. Wiley's account may already have been disconnected for nonpayment of the required amount of \$478.50, which is what had happened the prior day. (Duke Ex. 1 at 5-8, Atts. F-G.)

According to Ms. Givens, Ms. Wiley contacted Duke on October 20, 2010, concerning her disconnected account, at which time Duke's customer service representative explained to Ms. Wiley the following options to have her services reconnected: pay the disconnection amount; invoke the 2009 WRO; or provide an appropriate medical certification. Ms. Givens testified that Ms. Wiley did not take any action, at that time, in order to reconnect her services; further, Ms. Wiley did not actually invoke the 2009 WRO until she contacted Duke the following day, October 21, 2010. As explained by Ms. Givens, at that point, Ms. Wiley was required to pay \$175 down, which she did, as reflected on her utility bill. That bill also reflects the payment arrangement for the balance of \$739.61. However, Ms. Givens submitted that Ms. Wiley failed to pay her monthly bills in a timely manner. According to Ms. Givens, the only payment made by Ms. Wiley during this time was \$100 in December 2010, even though

the amount due was \$697.95; this was even after Ms. Wiley was given a credit for the prior payment plan. Ms. Givens noted that the December bill contained another disconnect notice, because Ms. Wiley had breached the payment plan that she and Duke set up when she invoked the 2009 WRO on October 21, 2010. As such, the payment plan was accelerated and Ms. Wiley owed \$780.11 by January 12, 2011, followed by \$979.70 by February 17, 2011, as she continued to use and not pay for gas and electric services. (Duke Ex. 1 at 9-11, Atts. H-J.)

Ms. Givens explained that the past due amount owed by Ms. Wiley to Duke continued to increase as she failed to pay her monthly bills. The February bill contained another disconnect notice and further advised Ms. Wiley that she would be responsible for a reconnection charge and additional deposit of \$40 if her services were disconnected for nonpayment of \$730.11 by March 18, 2011. According to Ms. Givens, when Ms. Wiley ignored that notice, her March bill contained another disconnect notice, as well information about the mandatory reconnection charges, a deposit that had increased to \$50, and the minimum and immediate amount due of \$929.70, assuming her service had not already been disconnected. Ms. Givens stated that Ms. Wiley did not do anything in response to her receipt of the disconnection notices from Duke; rather, she waited until after Duke disconnected her services for nonpayment to contact the company. (Duke Ex. 1 at 12, Atts. K-M.)

Ms. Givens testified that, after Ms. Wiley filed her original complaint, she made only two partial payments to Duke: \$100 in December 2010 and \$50 in February 2011. Those partial payments did not cover Ms. Wiley's current usage of gas and electric since she filed her complaint, and her current usage and related bills were not in dispute in this case. According to Ms. Givens, before proceeding with disconnection, Duke included the required 14-day notice on the monthly bills sent to Ms. Wiley and sent a 10-day notice to her residence. Thereafter, Duke disconnected Ms. Wiley's services on March 24, 2011, for nonpayment. Ms. Wiley was told that she had to pay the past due charges of \$730.11, plus a \$25 reconnection fee and a \$50 deposit, for a total of \$805.11, in order to have her gas and electric services reconnected. Eventually, through the combination of credits and payment by Ms. Wiley totaling \$805, Ms. Wiley was able to bring her account current enough to have her gas and electric services restored as of March 28, 2011. (Duke Ex. 1 at 12, 17-18, Atts. I, K-L, N.)

According to Ms. Givens, Duke has no record of any phone call in which Ms. Wiley was told by Duke that she had until Thanksgiving 2010 to pay the balance due on her account. She noted that, had Ms. Wiley actually called in September 2010, the customer service representative would have noted her account history about the call, the issues discussed, and the terms of the payment plan. Duke also would have sent a letter to Ms. Wiley to document that payment plan. However, Ms. Givens stated that there are no records within Duke of any such telephone call or payment plan. Moreover, noting Ms. Wiley's claim that she was told in September that her HEAP

credit would be applied toward her account, Ms. Givens testified that the HEAP credit of \$271 had already been applied before Duke generated Ms. Wiley's monthly bill on August 20, 2010, at least three weeks before her alleged telephone call to the company. Ms. Givens testified that Ms. Wiley's August bill references the \$271 HEAP credit, and reflects that Ms. Wiley had already received the HEAP credit long before mid-September. (Duke Ex. 1 at 13, Att. E.)

Ms. Givens asserted that the history of Ms. Wiley's account refutes the allegations that Duke: failed to bill her in a proper manner; disconnected her gas and electric services because she issued one or more subpoenas in this case; or lied to the VA about the amount that she owed. Ms. Givens stated that there is no evidence to support any of these claims and Ms. Wiley has never provided Duke with any evidence to support her allegations, either leading up to the filing of her complaint, as amended, or during the course of discovery in this case. According to Duke's records, Ms. Wiley has never contacted Duke to dispute her past bills, the gas and electric meters at her residence, the reads on her gas and electric meters, or high or unusual usage of utility services. Also, according to Duke's records, all of the meter reads set forth in the bills accurately measure or estimated, as in the case of January 2011, Ms. Wiley's usage of gas and electricity at her residence during the time in question. According to Ms. Givens, Duke disconnected Ms. Wiley's utility services for one reason, she failed to pay her bills. Ms. Givens stated that none of Duke's representatives lied to the VA or Ms. Wiley about information relating to her account and Duke's account notes for Ms. Wiley contain no evidence to support that claim. (Duke Ex. 1 at 15-17, Atts. A-M.)

On cross examination, Ms. Givens testified that Ms. Wiley's June bill shows that: the amount due from the previous bill was \$320.97, which included the deposit and current charges for the previous and current bill; the company received Ms. Wiley's payment of \$150; the late charge was \$2.56; and the balance was \$173.53. Ms. Givens testified that, in essence, all Ms. Wiley paid toward the current charges was \$10, because she had an unpaid deposit of \$140, and she paid \$150. With \$10 of the \$150 payment going toward her current charges, Ms. Wiley still owed \$173.53 in current charges. Ms. Givens explained that the amount due from the previous bill, \$320.97, included the \$140 deposit. Thus, Ms. Givens explained that, after Ms. Wiley paid \$150, the company applied \$140 of it to the \$140 deposit due and \$10 toward her remaining balance; then, Ms. Wiley's current charges were added. At that point in time, June 22, 2010, Ms. Wiley owed \$354.58, all in current usage. (Tr. 177-178; Duke Ex. 1 at Att. C.)

Ms. Givens testified that, when Ms. Wiley's daughter called the company on August 27, 2010, she informed Duke that Ms. Wiley would be making a payment the following Monday, and the Duke's representative gave Ms. Wiley's daughter the locations of the company's pay stations. Ms. Givens testified that no payment arrangements were made during the call because Ms. Wiley's daughter was not a party

to the account and there was no agreement between Ms. Wiley and the company as a result of the call. (Tr. at 182, 184.)

Ms. Givens testified that Duke is not required, under its tariff, to send out reminder notices. She noted that the May 2010 bill contains a disconnection notice, not a reminder notice, and the disconnection notice was for the security deposit that had not been paid. Ms. Givens stated that Duke does not send out disconnection notices for utility charges until those charges are 65 days past due. If a security deposit is past due, a customer will get a disconnection notice the next month. Ms. Givens noted that the July 2010 bill contains no disconnection notice because Ms. Wiley paid her security deposit with her \$150 payment, so she was not in disconnect status at that time. On the other hand, the August 2010 bill contains a reminder notice because the company had received the \$271 HEAP credit to Ms. Wiley's account, and the September 2010 bill has a disconnection notice because Ms. Wiley was 60 days in arrears, in the amount of \$287.79. Ms. Givens explained that, when Ms. Wiley's services were disconnected in October 2010, the reason the October 2010 bill contains a disconnect notice is because the bill was prepared a day before Ms. Wiley paid \$175 under the 2009 WRO. Ms. Wiley noted that the \$175 payment shows up on the November 2010 bill and that Ms. Wiley was on a payment plan at that point, which was why the company was only asking Ms. Wiley to pay \$228.34 (\$95 + current charges + \$35 reconnection fee). The bill was rendered when Ms. Wiley was on a payment plan, so it did not contain a disconnection notice. (Tr. at 185-189; Duke Ex. 1 at Atts. B, D-H.)

Ms. Givens testified that, because Ms. Wiley did not pay her November bill, she was no longer on a payment plan when the December 2010 bill came out, and she was in default. Even though Ms. Wiley paid \$100 in December, her payment plan with the company did not exist at that time because she defaulted. The December bill, therefore, contained a disconnect notice. Ms. Givens further testified that the February 2011 bill reflected a disconnection amount of \$730.11, which was the amount of Ms. Wiley's account that was 60 days in arrears. At that time, the total balance owed by Ms. Wiley was \$1, 076.72, and the \$1, 076.72 included the disconnection amount of \$730.11. Thus, according to Ms. Givens, for January 2011 to the present, Ms. Wiley's bill included her "old bill" plus her "new", current charges, and she was not paying the current charges. Ms. Givens pointed out that, even though the February 25, 2011, entry in this matter directed the company not to disconnect Ms. Wiley, the entry also stated that Ms. Wiley had to pay the amount not in dispute, her current charges, and she did not pay those charges. (Tr. at 189-190, 196-198; Duke Ex. 1 at Atts. I, K.)

Ms. Givens testified that the March bill, which is the bill that was issued prior to Ms. Wiley's service being disconnected, lists a \$50 deposit, a \$25 reconnection fee, and \$730.11 in current charges for a total of \$805.11. Ms. Givens noted that the deposit amount increased to \$50 when the new bill was issued and that \$805.11 was the amount that she quoted to Athena Malley at Supports to Encourage Low-Income Families

(SELF). Ms. Givens testified that there is no record of anyone quoting a higher amount to Ms. Wiley. (Tr. 201-204; Duke Ex. 1 at Att. L.)

Ms. Givens testified that there is no record of Ms. Wiley calling Duke and taking issue with the amount of her December bill versus her November bill. Furthermore, Ms. Givens stated that there is no indication of Ms. Wiley calling the company to complain about the amount of a bill, only that she constantly questioned the \$271 HEAP credit and the fact that her service should not have been disconnected because of a payment plan. (Tr. at 213-215.)

#### CONCLUSION:

The issue for the Commission's consideration is whether Duke did not proceed according to an agreement with Ms. Wiley and misapplied the \$271 HEAP credit from ODOD. Ms. Wiley alleged that she was deprived of time to pay her utilities bill and, as a result, was disconnected. She also alleged that she was forced into a new payment plan in October 2010. The evidence of record demonstrates that the HEAP credit was received from ODOD and applied to Ms. Wiley's account in August 2010. Subsequently, ODOD actually paid Duke Energy the \$271 in November 2010. According to the witness from ODOD, each step of this transaction occurred as usual in the normal course of the application, receipt, and payment of a HEAP credit (Tr. at 73-75, 80-88, 91-92). The Commission has found no evidence in the record of this case which substantiates any verbal payment arrangement between Ms. Wiley and Duke, with regard to the application of the HEAP credit to her account or the time period within which Ms. Wiley had to pay her bill. There is also no evidence that anyone at Duke lied to a VA representative and caused Ms. Wiley's application for assistance from the VA to be denied, or that Ms. Wiley was forced to pay an amount that she did not owe in order to have her service restored.

The Commission notes that the September 2010 telephone call, the call in which Ms. Wiley testified that she contacted Duke to inform the company that the \$271 HEAP credit would be forthcoming, occurred after Duke had issued Ms. Wiley's bill on August 2010. That bill, listing the \$271 HEAP credit, notified Ms. Wiley that the HEAP credit had already been received by the company. We make no pronouncement on Ms. Wiley's testimony on this point, except to observe that, because her August bill listed the HEAP credit as being applied to her account, the telephone call to Duke Energy in September, in order to advise the company about the credit, was belated.

Ms. Wiley also alleged that she was not accurately billed by Duke and that the company reneged on another payment arrangement and improperly disconnected her electric service in March 2011. With regard to these issues, the evidence of record demonstrates that complainant had, at times, defaulted on payment plans with Duke. While she did pay some amounts, she did not pay enough each time to cover her usage,

and did not make the majority of her required monthly payments. Complainant's unpaid balance, thus, was carried forward to the succeeding months, and with her current usage charges, increased her utility bills. According to the record, complainant's account balance by March 2011 was \$1,247.76, which was partly due to the build up of the unpaid portions of her preceding months' utility bills (Tr. at 110-124; Duke Ex. 1 at 4-12).

Moreover, the Commission finds that there is no evidence on the record that supports Ms. Wiley's allegation that she was charged twice for a security deposit or any other fee, that she was charged for electric service during a two-day period when her service was disconnected, or that the current charges on her November 2010 bill, \$108, were disproportionately greater than the current charges on her December 2010 bill, \$180. With regard to complainant's assertion that she was charged for electric service when the service was disconnected, we note complainant's bill reflects a charge from March 22, 2010 to March 24, 2010, as a result of complainant's gas usage, which was not disconnected (Tr. at 169). With regard to complainant's assertion that her usage was less in December, but that her December bill increased, we would merely observe that, with the onset of cold weather, a utility bill involving gas or electric heat in December might be expected to be greater than the same bill a month previously in November.

Furthermore, the Commission can find no evidence of record supporting complainant's contention that she was improperly billed or disconnected. Duke, on the other hand, presented credible evidence applicable to the over-all complaint that the HEAP credit was properly applied, that complainant defaulted on her payment plans with the company, and that the disconnections of complainant's service in October 2010, and March 2011, were done properly and in accordance with the applicable tariff provisions for nonpayment of her bills.

A review of the evidence on the record leads us to agree with Duke's calculations of complainant's bills. The evidence, in fact, shows that complainant received disconnection notices and that the sole reason for her disconnections was nonpayment. Therefore, given the evidence presented by the parties at hearing, the Commission concludes that the complainant has not met her burden of proof that Duke provided inadequate or unreasonable service, in contravention of the Ohio Revised Code, the company's tariff, or the Commission's rules and regulations. Accordingly, this complaint should be dismissed.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a public utility and a gas and electric company as defined by Sections 4905.02 and 4905.03, Revised Code. Thus, Duke is subject to the jurisdiction of this Commission

under the authority of Sections 4905.04 through 4905.06, Revised Code.

- (2) Section 4905.22, Revised Code, requires, in part, that a public utility furnish necessary and adequate service and facilities.
- (3) On November 1, 2010, as amended, Ms. Wiley filed a complaint alleging that Duke wrongfully adjusted the bill for her utilities service and improperly disconnected her electric service.
- (4) On November 17, 2010, and April 4, 2011, Duke Energy filed answers denying the allegations in the complaint, as amended.
- (5) A settlement conference was convened in this matter on February 14, 2010. The parties, however, were unable to reach a settlement agreement at the conference.
- (6) A hearing was convened on May 12, 2011, at the offices of the Commission.
- (7) Based on the record in this proceeding, the complainant has failed to sustain her burden of proof regarding the allegations in the complaint, as amended, including her allegations that Duke improperly applied the \$271 HEAP to complainant's account or that Duke improperly disconnected her utility service for nonpayment.


It is, therefore,

ORDERED, That, consistent with this opinion and order, Ms. Wiley failed to satisfy her burden of proof and this complaint be dismissed. It is, further,

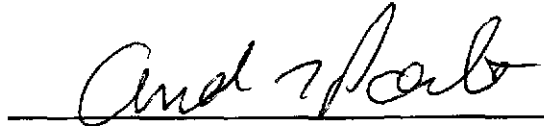
ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Paul A. Centolella

  
Steven D. Lesser

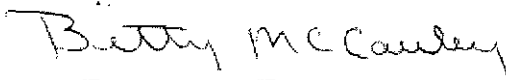
  
Andre T. Porter

  
Cheryl L. Roberto

KKS/dah

Entered in the Journal

**OCT 12 2011**



Betty McCauley  
Secretary