

FILE

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A LEGAL PROFESSIONAL ASSOCIATION

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October 26, 2011

Public Utilities Commissioner
Secretary of the Commission
Betty McCauley
180 East Broad Street
11th Floor
Docketing
Columbus, Ohio 43215

In Re: Public Utilities Commission of Ohio
Case No.: 10-340-EL-CSS
C. Richard Smith vs. Ohio Edison Company

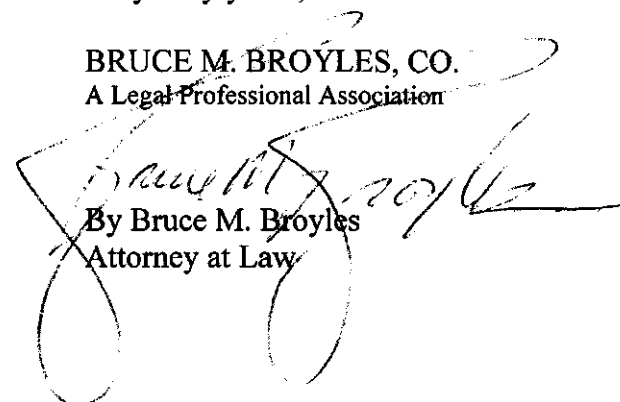
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Dear Ms. McCauley:

Pursuant to R.C. 4903.13 and O.A.C. 4901-1-36, I enclose a copy of the notice of appeal recently filed with the Ohio Supreme Court and the Ohio Public Utilities Commission.

Very truly yours,

BRUCE M. BROYLES, CO.
A Legal Professional Association



By Bruce M. Broyles
Attorney at Law

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
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IN THE SUPREME COURT OF OHIO

| | | |
|----------------------|---|--------------------------------|
| C. RICHARD SMITH | : | |
| | : | |
| APPELLANT, | : | On Appeal from the Ohio Public |
| VS. | : | Utilities Commission |
| | : | Case No.: 10-340-EL-CSS |
| OHIO EDISON COMPANY, | : | |
| | : | |
| APPELLEE, | : | |

NOTICE OF APPEAL OF C. RICHARD SMITH

BRUCE M. BROYLES, CO.
A Legal Professional Association
Bruce M. Broyles (0042562)
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Attorney for Appellant C. Richard Smith

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325 John H. McConnell Boulevard
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P.O. 165017
Columbus, Ohio 43216-5017

Attorney for Appellee Ohio Edison Company

NOTICE OF APPEAL OF C. RICHARD SMITH

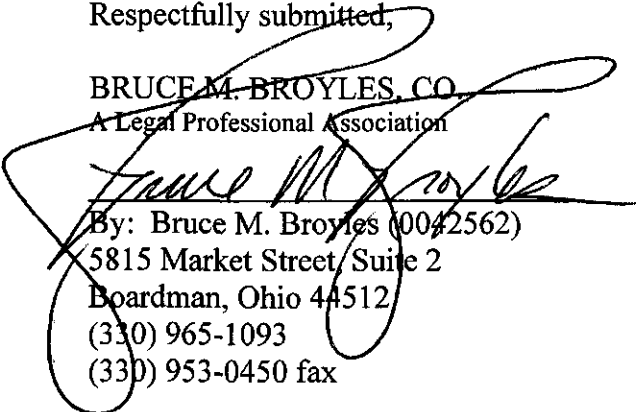
Appellant C. Richard Smith hereby gives notice of appeal to the Supreme Court of Ohio from the Opinion and Order of The Public Utilities Commission of Ohio Case No.: 10-340-EL-CSS on July 6, 2011, and from the Entry on Rehearing on August 31, 2011 denying the Application for Rehearing, copies of which are attached hereto.

The errors complained of and probable issues for review upon appeal are:

1. The Commission erred in finding that C. Richard Smith did not succeed in making an application for new service in his telephone calls on either September 10, 2008 or November 5, 2008.
2. The Commission erred in finding that (1) the "Dear Occupant" letter was sent to 1930 Mahoning Avenue, Warren, Ohio, and (2) that was all that was required prior to the disconnection of Electrical services to 1930 Mahoning Avenue.
3. The Commission erred in finding that both parties agreed that there was tampering in connection with the meter located at 1930 Mahoning Avenue, Warren, Ohio, as defined in OAC 4901:1-10-01(Z) and that there was no intent by C. Richard Smith to impede the correct registration of the meter.
4. The Commission erred in finding that Ohio Edison properly disconnected service without prior notice pursuant to O.A.C. 4901:1-10-20(B)(1)(a).
5. The Commission erred in denying the application for rehearing based upon a good faith belief of C. Richard Smith that the audio recordings of the telephone conversations between C. Richard Smith and Ohio Edison, that were played at the February 23, 2011 hearing, and submitted as Exhibit G, had been altered. The good faith belief was based upon the opinion of Arlo West of Creative Forensic Services, who identified thirteen (13) areas of concern.

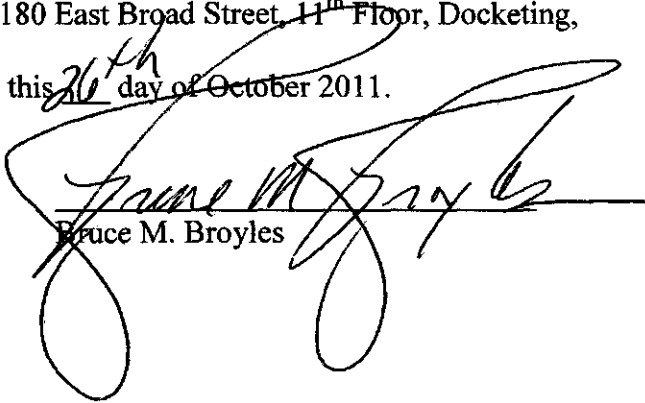
Respectfully submitted,

BRUCE M. BROYLES, CO.
A Legal Professional Association


By: Bruce M. Broyles (0042562)
5815 Market Street, Suite 2
Boardman, Ohio 44512
(330) 965-1093
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CERTIFICATE OF SERVICE

A copy of the forgoing notice of appeal was served upon Allison Haedt, Attorney for Respondent, of Jones Day, at P.O. 165017, Columbus, Ohio 43216-5017 Ohio 44446, and pursuant to R.C. 4903.13 and O.A.C. 4901-1-36, upon the Public Utilities Commissioner, Secretary of the Commission, Betty McCauley, 180 East Broad Street, 11th Floor, Docketing, Columbus, Ohio 43215, by regular U.S. mail on this ^{26th} day of October 2011.



Bruce M. Broyles

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|--------------------------------------|---|------------------------|
| In the Matter of the Complaint of C. |) | |
| Richard Smith, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 10-340-EL-CSS |
| |) | |
| Ohio Edison Company, |) | |
| |) | |
| 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.

APPEARANCES:

Bruce M. Broyles, 164 Griswold Drive, Boardman, Ohio 44512, on behalf of C. Richard Smith.

Jones Day, by Allison Haedt, P.O. Box 165017, 325 John H. McConnell Blvd., Suite 600, Columbus, Ohio 43215-2673, on behalf of Ohio Edison Company.

OPINION:

I. INTRODUCTION

The above-referenced complaint was filed on March 17, 2010. In the complaint, C. Richard Smith (Mr. Smith or complainant) stated that, on January 25 or 26, 2009, Ohio Edison Company (Ohio Edison or company) removed the electric meter from his property at 1930 Mahoning Avenue N.W., in Warren, Ohio (1930 Mahoning Avenue). Mr. Smith stated that Ohio Edison caused damage to his property by removing the meter and shut off the power supply, leaving his property to freeze up in winter weather. Mr. Smith stated that Ohio Edison accused him of tampering with the meter and stealing power. Further, Ohio Edison required him to pay penalty and fraud investigation fees before restoring power. Mr. Smith denied tampering with the meter and stealing power, and declined to pay any penalty or fraud fees. He requested that power be restored to his property and that he be awarded damages in this matter.

On April 6, 2010, Ohio Edison filed an answer denying the allegations in the complaint. Ohio Edison also stated that electric service to the complainant's property had been disconnected for non-payment, but that the company subsequently began recording usage on the meter. The company admitted that, because of tampering, Ohio Edison personnel removed the meter from the complainant's property and disconnected electric service at the power pole in January 2009. The company denied that it damaged complainant's property in any way.

On August 9, 2010, Mr. Smith filed an amended complaint. In this pleading, Mr. Smith related the following information:

In August 2008, Mr. Smith purchased at a sheriff's sale residential property located at 1930 Mahoning Avenue. In September 2008, he took possession of the property and inspected the premises. At that time, he found that the electrical service was still on to the residence at the circuit breaker box. A couple of days later, Mr. Smith contacted Ohio Edison and advised the company that the electrical service was on at the residence. An Ohio Edison representative then advised Mr. Smith that power to the vacant premises should have been turned off, that a service order to have electrical service disconnected would be requested, and that Mr. Smith would have to have the electrical service for the premises inspected before the service could be reconnected. After Mr. Smith's telephone call, however, the power remained on.

Mr. Smith subsequently had the premises inspected by an electrical inspector from the city of Warren, and he made needed repairs. The electrical inspector sent an inspection release form to Ohio Edison advising that the electrical service to the premises could be reconnected. In October 2008, Mr. Smith contacted Ohio Edison's 1-800 telephone number and asked that the billing address for the electrical service at 1930 Mahoning Avenue be changed to the address of his residence, 7051 Kinsman-Nickerson Road in Kinsman, Ohio (7051 Kinsman-Nickerson Road). During this telephone call, Mr. Smith informed Ohio Edison that the inspector had approved the electrical service, which Mr. Smith had been using, and that he had not received a bill for use of the service. Mr. Smith also informed Ohio Edison that it was his intent to renovate the residence and then put it up for sale, and that no one would be living at the residence. Mr. Smith, a contractor by trade, stated that Ohio Edison granted him a "contractor's courtesy," i.e., the power would be kept on during renovation, and that he would be billed for electrical service once a new owner took possession. Mr. Smith, thereafter, continued to renovate the property.

Mr. Smith stated that, on or about January 25, 2009, he found that Ohio Edison had removed the meter from the premises and left a warning on the residence not to use the electricity. He then contacted Ohio Edison and was advised that electrical service had been terminated because he was stealing electricity. Mr. Smith stated that he requested to speak with a supervisor during the telephone call, but no supervisor ever contacted him. Approximately one week later, Mr. Smith again contacted Ohio Edison by a 1-800

telephone number and was again told that he had stolen electricity and that he would be required to pay penalties and fraud charges. Mr. Smith then sent his concerns to Ohio Edison via facsimile transmission on February 12, 2009; however, Ohio Edison did not contact him regarding his concerns. Mr. Smith maintains that electrical service to his 1930 Mahoning Avenue property was terminated by Ohio Edison without warning or proper notification to him.

On August 24, 2010, Ohio Edison filed an answer to the amended complaint. In its answer, Ohio Edison stated that complainant contacted the company on or about September 10, 2008, and that Ohio Edison personnel advised complainant that an inspection would be required before service could be initiated at the 1930 Mahoning Avenue property. Ohio Edison stated that, on or about January 27, 2009, Ohio Edison personnel removed the meter located at the property because Ohio Edison had begun recording unbilled, unauthorized usage for that property beginning in December 2009. Ohio Edison stated that, during telephone calls from the complainant on January 30, 2009, and February 11, 2009, the company advised the complainant that tampering charges would be assessed and payment of those charges would be required prior to initiation of service at his 1930 Mahoning Avenue property. Ohio Edison stated that the company received a facsimile transmission from the complainant on or about February 12, 2009. Ohio Edison generally denied the remaining allegations in the complaint, and specifically denied that it extended a "contractor's courtesy" to the complainant. Further, Ohio Edison argued that the complaint should be dismissed because the complainant fails to set forth reasonable grounds for complaint and the Commission cannot award monetary damages.

The Commission finds that the complaint does allege claims that, if proven, would justify that relief be obtained from the company. While Ohio Edison is correct that the Commission may not award monetary damages in this particular case, that fact does not justify dismissal of the case. Therefore, Ohio Edison's request to dismiss the complaint should be denied.

A settlement conference was held in this matter on July 29, 2010; however, the parties were unable to resolve the complaint. Complainant's deposition was taken on February 11, 2011. An evidentiary hearing then was held on February 23, 2011. Both parties filed post-hearing initial briefs on April 1, 2011, and reply briefs on April 15, 2011.

APPLICABLE LAW

Ohio Edison is an electric light company as defined by Section 4905.03(A)(4), Revised Code, and a public utility by virtue of Section 4905.02, Revised Code. Ohio Edison is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, 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 proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189. Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

II. SUMMARY OF EVIDENCE

Joint Stipulation

At hearing on February 23, 2011, the parties submitted a stipulated agreement (Joint Exhibit 1). This document, entitled "Stipulations," was admitted into the record at the hearing. According to the agreement, the parties stipulate to the following facts:

- (1) On September 12, 2008, complainant C. Richard Smith obtained an electrical inspection permit from the city of Warren, permit number 208001239, and on that same day Warren City Inspector Tim Gallagher inspected the premises located at 1930 Mahoning Avenue.
- (2) On or about September 26, 2008, complainant C. Richard Smith informed the city of Warren that the required repairs were completed at 1930 Mahoning Avenue; Warren City Inspector Tim Gallagher inspected the premises, and informed respondent Ohio Edison that the premises were ready to have electric service reconnected by facsimile transmission.
- (3) Warren City Inspector Tim Gallagher would testify to the above and that he does not recall whether electrical service to the premises was on when he inspected the premises.
- (4) Richard Fellows of Alpha Omega Plumbing would testify that he was present at 1930 Mahoning Avenue, on September 22 and 23, 2008, to provide plumbing services and that, in providing those services, he used electric power tools inside the premises simply by plugging his tools into an outlet.
- (5) Daniel Miller, an East Ohio Gas Company customer service technician inspected the gas lines located inside the premises

located at 1930 Mahoning Avenue, in September of 2008, and prior to the October 10, 2008, Dominion East Ohio Welcome Letter. Mr. Miller would testify that he inspected the gas lines in the premises by using the residential electrical lights in the premises.

- (6) A representative of Howland Alarm Company would testify that a Howland Security System was installed at the premises located at 1930 Mahoning Avenue, and that the residential electrical service was on at the time of the installation.
- (7) Bill Everidge of Everidge Construction would testify that he repaired the front porch of the premises located at 1930 Mahoning Avenue, and that he used electrical power tools at the premises simply by plugging the tools into an outlet.
- (8) The tape-recorded telephone conversations between C. Richard Smith and Ohio Edison personnel, which are included on the CD marked as Ohio Edison Exhibit G, are authentic recordings of those conversations made at the time of the telephone conversations in the ordinary course of business by respondent Ohio Edison Company.

Telephone Calls

As evidence at the February 23, 2011, hearing, the parties played recorded conversations of six different telephone calls between complainant and the Ohio Edison personnel (Ohio Edison Exhibit G). Those telephone calls are summarized as follows:

- (1) On September 10, 2008, Mr. Smith contacted Ohio Edison representative Shawntae Tucker. During the telephone call, Mr. Smith informed Ms. Tucker that he had purchased the property at 1930 Mahoning Avenue, which a been vacant for some years, and that he wanted to put the electricity in his name. Mr. Smith gave Ms. Tucker his billing address and telephone number, and stated that vagrants had been living in the house and that the power was on. (Tr. at 11-12.)

Ms. Tucker stated that the power should not be on. She noted that, since Ohio Edison's system showed the power as being off for over three years, there was a tampering issue, and Mr. Smith would need an inspection before the power could be turned back on. Ms. Tucker further stated that the company could verify when Mr. Smith purchased the property so he

would not be held responsible. Ms. Tucker then transferred Mr. Smith's telephone call to another Ohio Edison representative, Tilwana Jennings. (Tr. at 13-14.)

When he spoke to Ms. Jennings, Mr. Smith repeated his name, gave the location of his recently purchased property, and stated that power was on in the house at the circuit breakers. He stated that vagrants had been living there and had removed some copper plumbing, but had not touched the electrical service. (Tr. at 15-16.)

Ms. Jennings confirmed that an inspection would be needed in order to turn on the power. Ms. Jennings informed Mr. Smith that a building inspector from the city of Warren would have to inspect the electrical service and, once the information from that inspection was faxed to Ohio Edison, an order to turn the power on could be scheduled. (Tr. at 16-18.)

- (2) On November 5, 2008, Mr. Smith contacted Ohio Edison representative Kathleen Fox. Mr. Smith stated his name, and told Ms. Fox that his residence was in Kinsman, Ohio, and that he had purchased a home in Warren, Ohio, that he was renovating. He further informed Ms. Fox that he had the property inspected and had made needed repairs. (Tr. at 19.)

Ms. Fox stated that Ohio Edison had received a fax from the city inspector, but that no application had been made for service (Tr. at 20).

Mr. Smith stated that he thought he had requested service and that he was waiting for someone to read the meter. He stated that he was calling back because no one had sent him a bill. (Tr. at 20.)

Ms. Fox then requested that Mr. Smith stay on the line, and she transferred his telephone call to another Ohio Edison representative, Dawn Partello (Tr. at 20-21).

Mr. Smith repeated his name and other information to Ms. Partello. He informed her about the purchase and inspection of his property, and about the power being on at the property and vagrants having lived there. He stated he would like to have the meter read and to have a bill sent to him. (Tr. at 21-23.)

Ms. Partello stated that the inspection had been received and approved and that Mr. Smith would only be responsible for recent usage, perhaps 100 to 200 kilowatt hours. Ms. Partello further stated that she would transfer Mr. Smith to the company's New Service Department, and Mr. Smith should let that department know he wanted the bill sent to his 7051 Kinsman-Nickerson Road address. Thereafter, the call concluded. (Tr. at 23-25.)

- (3) On January 30, 2009, Mr. Smith contacted Ohio Edison representative Jaleia Johnson. He gave Ms. Johnson his name and told her he was renovating the property at 1930 Mahoning Avenue. The reason for Mr. Smith's call was another call he had received from an alarm company notifying him that there was no power at the premises. He told Ms. Johnson that Ohio Edison had taken the meter off the side of the house and put a sticker on the base stating that the meter base was damaged. Mr. Smith asked Ms. Johnson if Ohio Edison was going to replace the meter that day because the water lines at the house would freeze and break. (Tr. at 25-27.)

Ms. Johnson stated that it looked like the company was charging Mr. Smith for tampering and that tampering charges would have to be settled before the electric service could be turned back on. Ms. Johnson stated that a Dear Occupant letter was sent out on January 7, 2009, to the 1930 Mahoning Avenue address. (Tr. at 27-28.)

Mr. Smith stated that the 1930 Mahoning Avenue address was unoccupied, and he again recited his billing address as 7051 Kinsman-Nickerson Road in Kinsman, Ohio (Tr. at 29).

Ms. Johnson stated that the company had no mailing address for his other property and that, as far as the company was concerned, the service had not been on since 2005 (Tr. at 29).

Mr. Smith explained that the power was on when he bought the house, that vagrants had lived in the house, and that they had probably damaged the meter base (Tr. at 30).

Ms. Johnson stated that an inspection of the electric system in the house had been received and approved, but that an order for service had never been placed (Tr. at 31).

Mr. Smith informed Ms. Johnson that he had called Ohio Edison again and told the company to send the bill for electric service at his property to his home address. According to Mr. Smith, the Ohio Edison representative at that time told him that the company would not be sending a bill until he had finished renovating his property; after that, the company would send a construction bill. (Tr. at 31-32.)

Ms. Johnson informed Mr. Smith that she would transfer his call to the company's Revenue Protection Department. The call then was transferred to Ohio Edison representative, Alicia Allen. (Tr. at 33-36.)

Mr. Smith stated his name and repeated the other information about his problem to Ms. Allen. Mr. Smith asked Ms. Allen what he had to do to get the power turned back on as soon as possible. Mr. Smith stated that, in his experience as a contractor, it is the responsibility of the electric company to provide the meter base. (Tr. at 36-38.)

Ms. Allen stated that the inspection was received. She apologized because, when Mr. Smith called, someone should have matched the inspection up to an order and so the company could go ahead and make the account active. She also stated that, if the meter base is damaged or needs to be replaced, then the homeowner needs to take care of it. (Tr. at 38-39.)

Mr. Smith asked who he had to call to get a meter base, and he stated that he needed to get the service back on as quick as possible (Tr. at 40-41).

Ms. Allen stated that, when the meter base was replaced, Mr. Smith could call the company and someone would bring the meter out to the house. However, she stated that it has to be scheduled and company personnel would not be out that day or on the weekend. After placing Mr. Smith on hold, Ms. Allen was unable to locate a meter base at the company. She advised Mr. Smith that a meter base could be obtained wherever electricians get their supplies. Further, in response to Mr. Smith's question about whether the power lines into the meter base were still energized, Ms. Allen stated that a work order to cut off the power had not been carried out yet. (Tr. at 42-45.)

Mr. Smith stated that he needed to know that the power is shut off and who to call to get the wires from the street back on the meter base (Tr. at 48).

Ms. Allen stated that Mr. Smith needed to call back into Customer Service. She also stated that, when Mr. Smith called in September and the call was transferred to New Service, Mr. Smith never talked to anyone in New Service. Ms. Allen stated that the company did not have an address, name, or any information for Mr. Smith, and thus could not bill him. She noted that all the company had was notes from Mr. Smith. (Tr. at 48-50.)

Mr. Smith stated that he had given his address as 7051 Kinsman-Nickerson Road when he called two different times previously. He stated that the reason no bill was paid for electric usage at the property was that the company never sent him a bill. (Tr. at 48-51.)

- (4) On January 30, 2009, Mr. Smith contacted Ohio Edison representative Nelson Rodriguez. Mr. Smith stated his name and gave the other information about his problem to Mr. Rodriguez. Mr. Smith stated that he was ready to replace the meter base. He then asked what he needed to do get the power disconnected from the meter base. (Tr. at 53-57.)

Mr. Rodriguez stated that the power was scheduled to be cut that day, so the work had probably been completed. Mr. Rodriguez stated that Mr. Smith could verify that the power had been cut by visually checking the power pole. (Tr. at 57-58.)

Mr. Smith next asked Mr. Rodriguez to put him in contact with someone at the company so he could give them his billing address. He stated that if there was money owed, he wanted the company to send him a bill and that he would pay it. (Tr. at 58.)

Mr. Rodriguez stated that Mr. Smith was listed as a customer in the company's computer record for the account at 7051 Kinsman-Nickerson Road, but that the service was not listed in his name at the 1930 Mahoning Avenue address. Mr. Rodriguez asked if Mr. Smith had cleared the tampering charge with the company's Revenue Protection Department. He stated that the company had previously not received an

application from Mr. Smith to get the power turned back on and that he could transfer Mr. Smith's call to the Revenue Protection Department so they could let him know what needed to be paid for Mr. Smith to get service. Mr. Rodriguez then transferred Mr. Smith's call to another Ohio Edison representative, Deb Jones. (Tr. at 59-66.)

Mr. Smith stated his name and repeated the other information about his problem to Ms. Jones. Mr. Smith requested that Ms. Jones take his name and address and send him a bill so that his account would be current. (Tr. at 76-71.)

Ms. Jones stated that a payment for electricity, \$306.44, would have to be made before the power could be turned back on. She stated that the payment included usage on the meter from the time the service was on, a \$115.00 security deposit, a \$20.00 reconnection fee, and a \$125.00 fee for tampering. Ms. Jones stated that she was not able to do anything else with this type of account, but that she could send an e-mail requesting that a supervisor contact Mr. Smith. She stated that there was no bill because the company did not have anything to bill and that there had to be an active account for Mr. Smith to receive a bill. Ms. Jones informed Mr. Smith that payment could be made by using a debit or credit card via a telephone call or by going to an agency in his area, Convenient Food Mart, with his account number. She took Mr. Smith's telephone number and stated that she would have a supervisor from the Tampering Department call him. Thereafter, the call concluded. (Tr. at 71-78.)

- (5) On February 11, 2009, Mr. Smith contacted Ohio Edison representative Robert Marchesani and stated his name (Tr. at 79).

Mr. Marchesani stated that he was not qualified to speak to Mr. Smith and that the call would have to be transferred to another department. Mr. Marchesani then transferred the call to Ohio Edison representative Laura Miller. (Tr. at 80.)

Mr. Smith stated his name and gave the history of his dispute with Ohio Edison to Ms. Miller. Mr. Smith then stated that he was tired of talking on the telephone and wanted to set up a face-to-face meeting with someone from Ohio Edison so that his problem could be straightened out. (Tr. at 81-85.)

Ms. Miller stated that Ohio Edison's walk-in offices had been closed for about three years and that there was no way to set up an appointment. She noted that everything is done over the phone or by fax. Further, in response to Mr. Smith's statement that Ohio Edison did not keep track of the calls he made, she stated that all of his conversations were noted on his account. (Tr. at 85-86.)

Mr. Smith and Ms. Miller agreed that he was responsible for electric usage only from the date that he took possession of the premises. Subsequently, in response to Ms. Miller's question about whether he had faxed proof of when he purchased the property to Ohio Edison, Mr. Smith stated that he had not faxed anything. (Tr. at 86-88.)

Ms. Miller gave Mr. Smith an Ohio Edison fax number and advised him to list on the fax the fact that he was disputing the tampering charge and a telephone number where he could be contacted by the Tampering Department. Thereafter, the call concluded. (Tr. at 92-99.)

- (6) On March 2, 2009, Mr. Smith contacted Ohio Edison representative Anna Rodriguez. Mr. Smith stated his name and gave his telephone number to Ms. Rodriguez, and asked if Ohio Edison had received the fax he had sent on February 12, 2009. (Tr. at 100-103.)

Ms. Rodriguez stated that she needed to transfer Mr. Smith's call to another department, and she asked Mr. Smith to hold on the line. Thereafter, the call concluded. (Tr. at 103.)

III. SUMMARY OF THE TESTIMONY

A summary of the testimony of the parties is attached to this opinion and order as Appendix A.

IV. ARGUMENTS OF THE PARTIES

C. Richard Smith

Mr. Smith made repeated contact with Ohio Edison stating that he wanted to place the electrical service in his name, and he advised Ohio Edison that he owned the property at 1930 Mahoning Avenue, that his mailing address was 7051 Kinsman-Nickerson Road, that his telephone number was (330) 876-7984, and that the electrical service was on at the 1930 Mahoning Avenue property (Smith Post-Hearing Brief at 8).

Mr. Smith was advised in his first call to Ohio Edison that a safety inspection was required. Mr. Smith arranged for the inspection and the inspection report was forwarded to Ohio Edison by the city of Warren building inspector. Mr. Smith believed that he had completed the application for new service. However, he contacted Ohio Edison again when he did not receive a bill. At that time, he again stated his purpose and Ohio Edison's representatives appeared to take note of the information provided by Mr. Smith for his account. But, regardless of the contact information he had related to Ohio Edison and without notice to Mr. Smith, service to 1930 Mahoning Avenue was disconnected in winter weather. (*Id.* at 8-9.)

Mr. Smith believed, after speaking to Ohio Edison representative Partello during his second telephone call to Ohio Edison, that the telephone call had concluded and that a bill for the 1930 Mahoning Avenue property would be sent to his home address on 7051 Kinsman-Nickerson Road. However, the conversation during the telephone call indicates that, instead of completing a new service application, Ms. Partello was about to transfer Mr. Smith's call to Ohio Edison's New Service Department. (*Id.* at 9.)

Any confusion on Mr. Smith's part about the requirements for establishing new service should have been dispelled by a summary of his rights and obligations, which was required to be given to new customers by Ohio Edison under Rule 4901:1-10-12, Ohio Administrative Code (O.A.C.) Specifically, Rule 4901:1-10-12(B)(5), O.A.C., required Ohio Edison to provide Mr. Smith with "an explanation of what each applicant must do to receive service from that electric utility." As a result of Ohio Edison's failure to provide the summary, there was a disconnect between Mr. Smith's request for service at 1930 Mahoning Avenue and what Ohio Edison required of him before establishing service at that address. (*Id.* at 9.)

Based upon the repeated contacts with Ohio Edison, the Commission should find that Mr. Smith established residential service and that Ohio Edison was required to comply with the notice requirements of Rule 4901:1-18-06, O.A.C. The disconnection at 1930 Mahoning Avenue occurred between the months of November and April. Ohio Edison, therefore, was required to make personal contact with Mr. Smith at least ten days prior to electrical service being disconnected. No such personal contact was provided to

Mr. Smith, and the electrical service was disconnected to 1930 Mahoning Avenue in violation of the standards set forth by the state of Ohio. (*Id.* at 10.)

Mr. Smith contacted Ohio Edison on January 30, 2009, and spoke with Jaleia Johnson and Alicia Allen. During this telephone call, Mr. Smith related the history of the electrical service at 1930 Mahoning Avenue and made a complaint. Later, on January 30, 2009, Mr. Smith again contacted Ohio Edison and spoke to Nelson Rodriguez and Deb Jones, and repeated his complaint. Also, during the telephone call with Deb Jones, Mr. Smith requested to speak with a supervisor. He was informed that a supervisor was unavailable, but that one would call him back the following day. Mr. Smith, however, testified that he did not receive a call from any supervisor. (*Id.* at 10-11.)

Subsequently, on February 12, 2009, Mr. Smith transmitted documents by fax to Ohio Edison that both proved his ownership of the 1930 Mahoning Avenue property and set forth his complaint. At hearing, Ohio Edison witness Vidal acknowledged Ohio Edison's receipt of the fax in his direct testimony. But Mr. Smith testified that he did not receive a call from any supervisor. Rule 4901:1-10-21(A), O.A.C., defines a complaint as a customer/consumer contact when such contact necessitates follow-up by or with the electric utility to resolve a point of contention. While Rule 4901:1-10-21(B), O.A.C., mandates that each electric utility shall make good faith efforts to settle unresolved disputes, which efforts may include meeting with the customer/consumer at a reasonable time and place. Moreover, Rule 4901:1-10-21, O.A.C., sets forth specific time periods for an electric utility to provide status reports and investigate the complaints. Yet despite Ohio Edison's obligations under Rule 4901:1-10-21, O.A.C., the company made no effort to resolve the dispute with Mr. Smith. Instead, Mr. Smith was accused of tampering and required to pay tampering fees and penalties before the company would restore electrical service to 1930 Mahoning Avenue. Ohio Edison continued to insist that Mr. Smith pay the tampering charges until after the complaint was filed with the Commission. Only at that time was Ohio Edison willing to drop its demand for the payment of tampering charges and related investigation fees. (*Id.* at 11-12.)

Mr. Smith did not tamper with the electrical service at 1930 Mahoning Avenue; nor did Mr. Smith attempt to benefit from any such tampering. Mr. Smith did notify Ohio Edison immediately that the electrical service was on in a house that had been vacant, and he attempted to have service placed in his name. Ohio Edison had at its disposal tape recorded conversations and computer printouts that should clearly have established that Mr. Smith was not attempting to steal electrical service. Rather than making a good faith effort to resolve the dispute with Mr. Smith, Ohio Edison stonewalled Mr. Smith and refused to acknowledge the company's mistake until he retained counsel and filed a complaint with the Commission. Based on all of the above, the Commission should find that Ohio Edison violated the rules and regulations governing the conduct of electric utility companies in Ohio and Mr. Smith should be granted authority to pursue damages in court. (*Id.* at 12-13.)

Ohio Edison

Complainant has never been the customer of record for electric service at the 1930 Mahoning Avenue property. 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. And despite Ohio Edison's attempts to keep him on the line, complainant never provided 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. The last time Ohio Edison provided residential service to the property was in April 2005, long before complainant purchased it. (Ohio Edison Post-Hearing Brief at 16-17.)

Complainant's use of power was unauthorized service, available to him only as a result of meter tampering. Complainant admitted that Ohio Edison did not turn the power on after he purchased the property and that the power was already on. He admitted the reason why the power was on: the meter at his property had been tampered with. And consequently, his usage was not authorized or approved by Ohio Edison. Complainant's use of power at his 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. (*Id.* at 17.)

Complainant also did not unilaterally established residential service through his phone calls and correspondence with Ohio Edison. This is because, 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, and complainant did not take the steps necessary to complete one. At critical points during his phone calls with Ohio Edison, complainant did not follow through. Instead, he either stated that he would call back later or he simply hung up, even after prompting by company representatives. (*Id.* at 17-18.)

Under the Commission's rules, there is a simple two-step process by which service is established. Specifically, a prospective customer requests service by submitting an application and the utility approves the service by accepting that application. 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. Thus, residential service is established only if a customer applies for service and the company accepts. Ohio Edison never accepted a service an application by complainant; nor was there an application to accept. Mr. Smith testified that he did not submit an application and never signed a contract for service. (*Id.* at 18-19, 21.)

Commission precedent agrees with the company's position in this matter. In a similar case, *Nationwide Mut. Fire Ins. Co. v. The East Ohio Gas Co.*, Case No. 86-453-GA-CSS (Entry dated April 29, 1986), 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." 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," 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." Similarly, in *Sanders v. The Dayton Power & Light Co.*, No. 97-843-GE-CSS (Opinion and Order dated July 15, 1999), 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 record at the home (a family friend) had requested cancellation of the service. In this matter, there should be a similar result. If there is no designated customer of record, there is no residential service, and there is no duty to notify of a pending disconnection. (*Id.* at 20.)

In order to apply for service, complainant was required to (i) provide information regarding the expected load and related characteristics of the service he needed at his 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. (*Id.* at 21.)

Complainant objects that he was never asked to take the required steps necessary to establish service, but 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. (Tr. at 17-18.) 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 21.)

During the 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 the process. Yet, despite Ms. Partello's repeated statements that complainant would need to speak to an additional Ohio Edison representative, complainant apparently misunderstood and hung up the phone. Ohio Edison repeatedly offered to guide

complainant through the application process, before the meter was removed. But complainant did not make an application. (*Id.* at 22-23.)

Before service can be initiated in complainant's name, he also must obtain an inspection of the new meter base that he installed at his property. Rule 4901:1-10-05(E), O.A.C., 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." Accordingly, Ohio Edison has required that complainant obtain an updated inspection to account for the new meter base that he installed at his property. Complainant, however, has never indicated that such an inspection has occurred. (*Id.* at 23-24.)

Complainant also has not established residential service because he has not paid for 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 reconnected. See *Locker d/b/a L.J. Properties v. Ohio Edison Co.*, Case No. 99-977-EL-CSS (Opinion and Order dated April 27, 2000); Rule 4901:1-10-20(B)(2)(d). In this case, Ohio Edison is not requiring that complainant pay tampering charges. Complainant, however, was repeatedly informed that he would be required to pay for the unauthorized usage that occurred at his property since he purchased it. Although complainant indicated that a company representative previously had agreed to a "contractor's courtesy", i.e., allowed him to use power at the property, but not pay for it until he sold the property, Ohio Edison never extended any such thing to complainant. Further, the company is not required to wait until after complainant sells his property in order to obtain payment for his unauthorized usage. (*Id.* at 24-25.)

The Commission's rules authorize electric utilities to disconnect residential service for tampering without prior notice. Rule 4901:1-10-20(B)(1)(a), O.A.C., allows disconnection for safety reasons where "[t]he electric service meter, metering equipment, or associated property was damaged, interfered with or tampered with, displaced or bypassed." Also, Rule 4901:1-10-20(B)(1)(a), O.A.C., authorizes termination of residential service where "customer, consumer, or his/her agent" "tampers with the utility company's meter." In this case, there is no dispute that the meter serving complainant's property was tampered with; nor is there any dispute that the resulting damage left the meter base in a dangerous condition. Thus, Ohio Edison was within its rights to terminate service at complainant's property without prior notice. (*Id.* at 25-26.)

Complainant should have been aware that, given the tampering, his power was subject to disconnection until he dealt with the tampering issue and properly initiated service in his own name. From complainant's first call to Ohio Edison, the company

representative indicated that power should be disconnected at complainant's property. Complainant knew that his power should not have been on. (*Id.* at 26.)

However, 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 his 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. Complainant repeatedly was advised that his usage was unauthorized and that, unless complainant established service in his name, the power to his property was subject to disconnection. Ohio Edison's disconnection of that service thus was proper under the Commission's rules and the company's tariff. (*Id.* at 26-27.)

Finally, Ohio Edison contends that complainant argued two new claims on brief: (i) that Ohio Edison allegedly failed to provide complainant with its "rights and obligations" summary in violation of Rule 4901:1-10-12, O.A.C., and (ii) that Ohio Edison allegedly violated Rule 4901:1-10-21, O.A.C., which requires utilities to make "good faith efforts" to resolve customer disputes. Because these new claims were not pled in the amended complaint (which was prepared by counsel), they should be dismissed out of hand. Complainant raises these claims for the first time in post-hearing briefing, and consequently, Ohio Edison did not have an opportunity to take discovery, prepare witnesses, or conduct cross-examination regarding them. (Ohio Edison Reply Brief at 12-13, citing *Ohiotelnet.com, Inc. v. Windstream Ohio, Inc.*, No. 09-515-TP-CSS (Entry dated Dec. 1, 2010) (striking portions of pre-filed testimony relating to claims that "were not pleaded" and "were not in the complaint"); *Carney v. Cleveland Heights-University Heights City School Dist.*, 143 Ohio App. 3d 415, 430 n.9 (8th App. Dist. 2001) (rejecting argument regarding new claim raised at summary judgment stage because it "was not pled . . . and [was] not properly before this court"); *Winterrowd v. Kunkle*, No. 1340, 1994 Ohio App. LEXIS 4649, *9 (2d App. Dist.) (rejecting claims because they "were not pleaded in [party's] complaint."))

Complainant alleges that Ohio Edison failed to send him a copy of its customer "rights and obligations" summary, in violation of Rule 4901:1-10-12, O.A.C. Rule 4901:1-10-12, O.A.C., requires that utilities provide new customers the "rights and obligations" summary, which includes various service-related information, "upon application for service." But complainant never applied for service. Rule 4901:1-10-12, O.A.C., does not require a utility to send its "rights and obligation" summary to any person who calls. It requires utilities to send that material, which summarizes service-related information, only to those who apply for service. (*Id.* at 13.)

Complainant resorts to disputing Ohio Edison's refusal to settle or resolve his claims. Complainant's failure to plead or otherwise give notice of this new claim has

prejudiced Ohio Edison. Although complainant alleges that Ohio Edison failed to make a "good faith effort" to settle his dispute, the evidence shows that, short of agreeing to complainant's significant settlement demands, there was little else Ohio Edison could have done. When complainant called to complain about the disconnection of power, Ohio Edison representatives repeatedly explained why power had been disconnected (*Id.* at 14-15, citing Tr. at 59, 61, 62, 72; OE Ex. F, p. OE_38). Complainant's response, whether over the phone, by fax, or by letter was the same: he refused to pay the amount necessary to restore service. Given that position, it is hard to know what other productive steps Ohio Edison could have taken to resolve this matter. Rule 4901:1-10-21, O.A.C., does not require a utility to accede to a customer's unreasonable demands or to pay settlements demanded in litigation. It requires only that a utility make a good faith effort to resolve disputes. Ohio Edison has acted in good faith in this matter. (*Id.* at 15.)

V. DISCUSSION AND CONCLUSION

The Commission notes that during his September 10, 2008, telephone call to Ohio Edison, Mr. Smith stated that he needed electric service established in his name for the house at 1930 Mahoning Avenue. He gave his name, billing address, and telephone number to Ohio Edison representatives. He also stated that the power was on and that vagrants had been living in the house. Acting on information that he received from an Ohio Edison representative, Mr. Smith had the electric service in the house inspected and the inspection report forwarded to Ohio Edison. After almost two months, when no bill was forthcoming, Mr. Smith called Ohio Edison on November 5, 2008. He stated his contact information and again asked for service at 1930 Mahoning Avenue. However, he apparently hung up before his call could be transferred to Ohio Edison's New Service Department.

The evidence of record reveals that Mr. Smith did not succeed in making an application for new service in his telephone calls on either September 10, 2008, or November 5, 2008. Although he repeatedly stated his name and billing address and requested that a bill be sent to him so he could pay for electric service at 1930 Mahoning Avenue, he simply did not continue his telephone conversations with Ohio Edison's representatives long enough to provide the specific information¹ the company needed to establish new service. Mr. Smith, therefore, was not the customer listed in Ohio Edison's records for 1930 Mahoning Avenue.

¹ In order to furnish service at appropriate voltages, Ohio Edison requires prospective customers to provide, as part of an application for service, information regarding the characteristics of the requested new service, including the voltage, amps, and phase of the service, the type and size of the hot water source, the type of heating and cooling sources, and descriptions of the major electrical appliances.

Beginning in October 2008, Ohio Edison detected unauthorized use of the electric service at 1930 Mahoning Avenue (Ohio Edison Exhibit M).² On January 7, 2009, Ohio Edison sent a "Dear Occupant" letter to 1930 Mahoning Avenue warning of possible disconnection if the unauthorized user did not contact the company. The letter was sent to 1930 Mahoning Avenue. (Ohio Edison Exhibit A at 13.) Because Mr. Smith had not succeeded in establishing service in his name, the letter was not sent to him at his stated billing address at 7051 Kinsman-Nickerson Road. Thereafter, on January 27, 2009, Ohio Edison witness Padovan investigated the electric usage at 1930 Mahoning Avenue, discovered evidence of tampering, removed the meter, and called a crew to shut off the power at that address (Ohio Edison Exhibit 1 at 4-7; Tr. at 180-181).³

Both parties agreed that there was tampering in connection with the meter at 1930 Mahoning Avenue and that the meter base was damaged, creating an unsafe condition (Tr. at 128, 136, 182; Ohio Edison Exhibit 1 at 5). Under Rule 4901:1-10-20(B)(1)(a), O.A.C., an electric company may disconnect a tampered meter, without prior notice, for safety reasons. Ohio Edison witness Padovan testified that the tampered meter represented a danger to the public. Mr. Padovan testified that he removed the meter from what appeared to be an unoccupied residence at 1930 Mahoning Avenue for safety reasons. (Tr. at 182, 189.) The Commission thus believes that, under the circumstances, Ohio Edison took the correct action in disconnecting the tampered meter.

On January 30, 2009, and again on February 11, 2009, Mr. Smith called Ohio Edison trying to get the power turned back on at 1930 Mahoning Avenue and establish service in his name. He replaced the damaged meter base. But he was not successful in establishing service. Ohio Edison insisted that Mr. Smith pay tampering charges before power would be restored (Tr. at 29, 66, 72-77).⁴ Mr. Smith, however, maintained that he did not tamper with the electric meter at 1930 Mahoning Avenue (Tr. at 30, 34, 42, 46).

When Mr. Smith called the company on January 30, 2009, Ohio Edison representative Deb Jones stated that she would have a supervisor call him about his problem (Tr. at 73, 77). There is no indication in the record that an Ohio Edison supervisor

² Authorized residential service was last supplied at 1930 Mahoning Avenue in April 2005. Ohio Edison witness Padovan testified that meter reading records for the months after April 2005 indicate that there was no usage through the meter at 1930 Mahoning Avenue until October 2008 (Ohio Edison Exhibit 1 at 7).

³ With regard to tampering in connection with the meter at 1930 Mahoning Avenue, Mr. Padovan testified that, because the meter seal was cut, he believed that someone tampered with the meter. Mr. Padovan noted that a common tampering technique involves removing the meter and placing small metal objects, such as nails, paper clips, or copper pipe between the legs on the meter base. This creates an alternate path for the electricity between the pole and the house. Consequently, even when the meter is placed back on the meter base, it will not record usage because the power is no longer flowing through the meter in order to reach the house. (Ohio Edison Exhibit 1 at 8.)

⁴ In pre-filed testimony, company witness Vidal testified that Ohio Edison is not currently requiring that Mr. Smith pay tampering charges (Ohio Edison Ex. A at 14).

contacted Mr. Smith. Thereafter, during the February 11, 2009, telephone call to the company, Mr. Smith was given a fax number by Ohio Edison representative Laura Miller so that he could send documents proving the date on which he had purchased the 1930 Mahoning Avenue property. Ms. Miller indicated that someone from Ohio Edison's Tampering Department would contact Mr. Smith in response to the fax (Tr. at 94). Utilizing the fax number given to him by Ms. Miller, Mr. Smith sent a fax to Ohio Edison on February 12, 2009, that contained documents showing when he had purchased his property (Tr. at 101, 118-121; Smith Exhibit 1). In pre-filed testimony, company witness Vidal testified that Ohio Edison received the fax (OE Exhibit A at 14). Mr. Smith, however, testified that he was not contacted by Ohio Edison in response to the fax that he had sent (Tr. at 121). Later, on June 1, 2009, Mr. Smith's attorney sent a letter to Ohio Edison, along with an enclosure summarizing events concerning the electrical service at 1930 Mahoning Avenue (Smith Exhibit 2). In addition to the summary of events, the letter stated that a copy of the fax that was sent to the company on February 12, 2009, was enclosed. Further, the letter stated that Mr. Smith had not received a response to his inquiry and requested that Ohio Edison send a reply. Mr. Smith testified that neither he nor his attorney was contacted by Ohio Edison in response to the letter that his attorney had sent (Tr. at 122).

Rule 4901:1-10-21, O.A.C., Customer complaints and complaint-handling procedures, provides, in part, that:

- (A) As used in this rule, customer/consumer complaint means a customer/consumer contact when such contact necessitates follow-up by or with the electric utility to resolve a point of contention.
- (B) Each electric utility shall make good faith efforts to settle unresolved disputes, which efforts may include meeting with the customer/consumer at a reasonable time and place.
- (C) Except as ordered by the commission or directed by the staff in disconnection or emergency cases, each electric utility shall investigate customer/consumer complaints and provide a status report within three business days of the date of receipt of the complaint to:
 - (1) The customer/consumer, when investigating a complaint made directly to the electric utility.

Mr. Smith was a customer of Ohio Edison at his 7051 Kinsman-Nickerson Road home address. He had a complaint. He could not get electric service established in his name at his recently-purchased 1930 Mahoning Avenue property.

In the aforementioned telephone calls between Mr. Smith and Ohio Edison on January 30, 2009, and February 11, 2009, company representatives indicated to Mr. Smith that someone from the company would contact him in response to his complaint and his dispute of the tampering charges that the company required him to pay. Subsequently, when Ohio Edison received the fax that Mr. Smith sent on February 12, 2009, the company had proof that Mr. Smith had purchased the 1930 Mahoning Avenue property recently at a sheriff's sale. In the Commission's opinion, the documents that Mr. Smith faxed to Ohio Edison should have indicated, at the least, that Mr. Smith's claims about not being involved in meter tampering merited closer attention by the company. But there was no evidence produced at hearing that a supervisor or other Ohio Edison personnel contacted Mr. Smith in response to the problem that he repeatedly had related to the company's representatives. We believe that, pursuant to the guidelines set forth in Rule 4901:1-10-21, O.A.C., someone from Ohio Edison should have contacted Mr. Smith to resolve his problem. Had that been done, the real obstacle to Mr. Smith's establishing electric service in his name at 1930 Mahoning Avenue, Ohio Edison's insistence on charging Mr. Smith for tampering, might have been eliminated.

The record shows that Mr. Smith gave the pertinent facts about the purchase of his property each time he contacted Ohio Edison. He informed company representatives that the power was on at his property when he purchased it, that vagrants apparently had been living on the premises, that he was using electricity to run power tools in his efforts to renovate the property, and that he wanted to be billed and establish electric service in his name. We note that, during Mr. Smith's November 5, 2008, telephone call to the company, Ohio Edison representative Dawn Partello stated that Mr. Smith had recent electric usage of 100 to 200 kilowatt hours, for which he would be responsible, and that she would transfer his call to the company's New Service Department to get the service put into Mr. Smith's name. Mr. Smith replied, "Okay." (Tr. at 23-25.) Perhaps that exchange between Mr. Smith and Ms. Partello is where Mr. Smith got the idea that he was to be granted a "contractor's courtesy," i.e., that he would be allowed to use the electricity, which had remained on, in his efforts to renovate 1930 Mahoning Avenue and pay for that usage later. Be that as it may, the record shows that Mr. Smith offered to pay for his electric usage from the time he purchased the property (Tr. at 58, 71, 75, 76, 84), if only the company would send him a bill. But, as previously noted, the company would not begin the billing process for Mr. Smith until he paid tampering charges.

The Commission believes that, although Mr. Smith undoubtedly was mistaken in his belief that Ohio Edison had accorded him a "contractor's courtesy," the issue of payment for the power that he did use in his renovation efforts at 1930 Mahoning Avenue is something else that could have been worked out between Mr. Smith and Ohio Edison if someone at the company had contacted Mr. Smith to resolve his problem.

Finally, we come to the issue of the inspection of the electric service at 1930 Mahoning Avenue. Mr. Smith was informed by Ohio Edison representatives, during his

first telephone call to the company on September 10, 2008, that an inspection by the city of Warren's building inspector would be needed before he could establish service in his name at 1930 Mahoning Avenue (Tr. at 13, 16-18). Mr. Smith had such an inspection performed and an inspection report was received at Ohio Edison (Tr. at 23). However, in his pre-filed testimony, company witness Vidal stated that a second inspection, an inspection of the meter base that Mr. Smith had replaced, is needed before power can be restored to Mr. Smith's 1930 Mahoning Avenue property and that Mr. Smith was informed of the need for this second inspection (Ohio Edison Exhibit A at 9, 13, 14-15). Further, on brief, Ohio Edison stated that the company has required Mr. Smith to obtain an updated inspection for the new meter base (Ohio Edison Post-Hearing Brief at 23, citing customer notes [Ohio Edison Exhibit F, p. OE_38], typed by an Ohio Edison representative, that stated: "Customer must have service inspected before issuing reconnection."). But there is no other place in the case record, not in the telephone calls played at hearing, the testimony of the parties at hearing, or the other exhibits submitted at hearing, that indicates Ohio Edison communicated the need for a second inspection to Mr. Smith or that Mr. Smith was even aware that he had to have the meter base inspected before he could obtain service. As with the tampering and unauthorized use issues in this matter, we believe that Ohio Edison was required under Commission rules to communicate better with Mr. Smith. If more communication had been undertaken by the company, then a resolution of this complaint might have been reached between the parties.

Under the guidelines set forth in Rule 4901:1-10-21, O.A.C., electric utilities are obligated to act diligently in response to consumer complaints. The record in this case shows that the company failed to investigate whether Mr. Smith should be required to pay tampering charges and that the company failed to respond to Mr. Smith in a timely manner. The Commission, therefore, concludes that Ohio Edison's refusal to begin the process of establishing electric service for Mr. Smith at 1930 Mahoning Avenue until he paid tampering charges was not justified under the circumstances presented in this case. Moreover, the Commission finds that adequate service was not provided by Ohio Edison when it failed to investigate the consumer complaint in this case as required by Rule 4901:1-10-21, O.A.C., and to act diligently to resolve the dispute.

Mr. Smith still needs electric service at 1930 Mahoning Avenue. In order to get that service, Mr. Smith should arrange for a meter base inspection at 1930 Mahoning Avenue. Ohio Edison, within ten days of the date of this opinion and order, should bill Mr. Smith at his 7051 Kinsman-Nickerson Road home address for the electricity he has used at 1930 Mahoning Avenue since October 2008. Mr. Smith shall pay the bill by the due date on the bill. Once a favorable meter base inspection has been faxed to Ohio Edison with contact information for Mr. Smith, the company should initiate service at 1930 Mahoning Avenue in Mr. Smith's name within 48 hours.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On March 17, 2010, as amended on August 9, 2010, C. Charles Smith filed a complaint with the Commission alleging that Ohio Edison removed the electric meter from his property, shut off the power supply, and caused damage to his property.
- (2) On April 6, 2010, and August 24, 2010, Ohio Edison filed answers denying the allegations in the complaint.
- (3) On July 29, 2010, a settlement conference was held; however, the parties failed to resolve this matter informally.
- (4) A hearing was held on February 23, 2011.
- (5) The Commission has jurisdiction over the complaint filed in this case.
- (6) Mr. Smith is a customer of Ohio Edison at his 7051 Kinsman-Nickerson Road home address.
- (7) Mr. Smith purchased the property at 1930 Mahoning Avenue at a sheriff's sale in August 2008. Proof of this purchase was available to Ohio Edison.
- (8) In his September 10, 2008, and November 5, 2008, telephone calls to Ohio Edison, Mr. Smith was not successful in establishing electric service in his name at 1930 Mahoning Avenue.
- (9) There was tampering in connection with the meter at 1930 Mahoning Avenue and the meter base was damaged, creating an unsafe condition.
- (10) Ohio Edison took the correct action in disconnecting the tampered meter for safety reasons.
- (11) When Mr. Smith communicated with Ohio Edison, the company required him to pay tampering charges before power would be restored to 1930 Mahoning Avenue.
- (12) Ohio Edison is not currently requiring that Mr. Smith pay tampering charges.
- (13) Mr. Smith offered to pay for his electric usage at 1930 Mahoning Avenue from the time he purchased the property.

- (14) On January 30, 2009, an Ohio Edison representative stated that she would have a supervisor call Mr. Smith about his problem.
- (15) On February 11, 2009, an Ohio Edison representative indicated that someone from Ohio Edison's Tampering Department would contact Mr. Smith in response to the fax that he would be sending to the company.
- (16) Mr. Smith's attorney sent a letter dated June 1, 2009, to Ohio Edison, along with an enclosure summarizing events concerning the electrical service at 1930 Mahoning Avenue. In addition to the summary of events, the letter stated that a copy of the fax that was sent to the company on February 12, 2009, was enclosed. Further, the letter stated that Mr. Smith had not received a response to his inquiry, and requested that Ohio Edison send a reply.
- (17) No one from Ohio Edison contacted Mr. Smith or his attorney in response to his January 30, 2009, and February 11, 2009, telephone calls, his February 12, 2009, fax, or his attorney's June 1, 2009, letter.
- (18) Mr. Smith's January 30, 2009, and February 11, 2009, telephone calls, his February 12, 2009, fax, and his attorney's June 1, 2009, letter constituted statements of a complaint to Ohio Edison, a complaint that necessitated a follow-up contact by the company.
- (19) After Mr. Smith's telephone calls or fax to the company, or his attorney's letter to the company, Ohio Edison failed to respond in a timely manner to resolve the dispute in this matter.
- (20) Ohio Edison's refusal to begin the process of establishing electric service for Mr. Smith at 1930 Mahoning Avenue until he paid tampering charges was not justified under the circumstances presented in this case.
- (21) Since January 30, 2009, adequate service was not provided by Ohio Edison when it failed to investigate the consumer complaint in this case as required by Rule 4901:1-10-21, O.A.C.
- (22) Mr. Smith still needs electric service at 1930 Mahoning Avenue.

ORDER:

It is, therefore,

ORDERED, That Mr. Smith's complaint against Ohio Edison for inadequate service is granted as set forth in this opinion and order. It is, further,

ORDERED, That Mr. Smith and Ohio Edison arrange for electric service at 1930 Mahoning Avenue under the terms set forth in this opinion and order. It is, further,

ORDERED, That copies of this entry be served upon Mr. Smith and his counsel, Ohio Edison and its counsel, and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Smith, Chairman


Paul A. Centolella


Steven D. Lesser

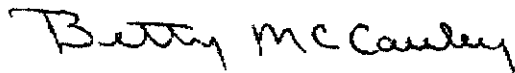

Andre T. Porter


Cheryl L. Roberto

KKS/vrm

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JUL 06 2011


Betty McCauley
Secretary

Appendix A

Smith Testimony

Charles Richard Smith purchased the property at 1930 Mahoning Avenue, at a sheriff's auction on August 8, 2008, for \$13,000. He paid the remaining balance and became the owner of the property on September 8, 2008. Because the keys to the house had been lost, it was necessary for Mr. Smith to force his way through the back door. Upon gaining entry, Mr. Smith discovered that the electricity was still on at the breaker box. He shut the power back off, inspected the rest of the property, and left. (Tr. at 105-108.)

On a return visit to the property, Mr. Smith inspected the electric meter on the side of the house. He discovered that the meter base was covered with paint chalk and that the seal had been cut and concealed in a groove of the meter. Mr. Smith cleaned off the paint chalk. Because he previously had turned on a basement light in the house for the purpose of inspecting the meter, he found that the meter was turning. (Tr. at 109.)

In order to renovate the property, Mr. Smith needed utilities - water, gas, and electricity. The electricity was already on. So, his first telephone call to Ohio Edison was for the purpose of getting the electricity put in his name. Acting on instructions from the company, he had the electrical service inspected. When the inspection was completed and approved, the inspector informed Mr. Smith that he would notify Ohio Edison that the inspection passed. (Tr. at 110-111.)

During the telephone call to Ohio Edison on September 10, 2008, no one told Mr. Smith that it was necessary for him to make an application for new service. Also, he was not told that he would have to provide information regarding the size of his furnace, air conditioning unit, or the type of voltage that he would require. Mr. Smith had given Ohio Edison all of his information, and he did not know what else he was supposed to do to get the service put in his name. He was expecting a bill for service. (Tr. at 111-115.)

In November, Mr. Smith contacted Ohio Edison again because he was concerned that he had not gotten a bill for electric service. He had received a bill for gas and water service. At that time, he was not told by the company that he needed to make an application for service, nor was he told that he had to do anything else to have service placed in his name. Each time that he contacted Ohio Edison, Mr. Smith gave the company his billing (home) address, name, the address of the property that was using the electricity, and the fact that the electricity was on at the property. (Tr. at 115-116.)

After the telephone call in November and prior to the removal of the meter from the house, Mr. Smith did not have any contact with Ohio Edison. Because he employed persons working on the renovation of the property, he was present on the premises two or three times per week. Mr. Smith noticed old advertisements but no current mail in the mailbox, and he did not receive a "Dear Occupant" letter from Ohio Edison. (Tr. at 117-118.)

Acting on advice from Ohio Edison, Mr. Smith transmitted a fax (Smith Exhibit 1) to the company. The fax contained a document entitled "Deed on Decree of Order of Sale" and receipts showing that he had purchased the property. In the fax, he advised the company that he was disputing the tampering charge. He received no notification of the fax's successful transmission, and he was not contacted by Ohio Edison. (Tr. at 120-121.)

Mr. Smith's attorney sent a letter (Smith Exhibit 2) to Ohio Edison dated June 1, 2009. The letter contained an enclosure Mr. Smith had written detailing his dispute with the company. Mr. Smith's attorney never received any communication from the company. On instructions from Mr. Smith, the lawyer filed a law suit against Ohio Edison in Common Pleas Court. Thereafter, counsel for Ohio Edison sent a letter asking Mr. Smith to withdraw his lawsuit on jurisdictional grounds and call the company if he wanted power restored. Subsequently, the Common Pleas Court action was dismissed. Mr. Smith, however, never had any further contact with Ohio Edison concerning his dispute with the company. (Tr. at 121-126.)

On cross-examination, Mr. Smith testified that, prior to the meter being removed from his property, he only communicated with Ohio Edison through two telephone calls in September and November 2008. During those calls, he did not tell the company that the meter seal had been cut. And during the November call, Ohio Edison personnel did not tell him that the power in the house would remain on. Mr. Smith last communicated with Ohio Edison in March 2009 when he called and asked the company why the fax that he had sent had not been acknowledged. Mr. Smith's attorney did send a letter to Ohio Edison in June 2009, but after June 2009, Mr. Smith did not communicate with the company regarding service at 1930 Mahoning Avenue. Further, concerning electrical service at the property, Mr. Smith did not submit an application for service, sign a contract for service, or pay for service. He also did not receive a letter from Ohio Edison welcoming him to the property. (Tr. at 126-133.)

On cross-examination, Mr. Smith testified that he did not pull the meter off the meter base at 1930 Mahoning Avenue or open the meter base. Mr. Smith acknowledged that it is not safe to provide service through a broken meter base and that after he replaced the meter base he could have applied for service from Ohio Edison, but did not do so because he was required to pay tampering charges. Mr. Smith also did not tell Ohio Edison the following: the closest electrical pole to his property, the number on the pole,

the voltage of the service that he wanted, the amps associated with the service, the phase of the service, the hot water source in the house, the size of the heater on the hot water tank, or the types of furnace, air conditioning, or appliances in the house. And, during Mr. Smith's telephone calls to Ohio Edison, the company did not provide him with a notification number or an account number. (Tr. at 136-138.)

Mr. Smith requested a face-to-face meeting with Ohio Edison, but was told the company has no facilities for such a meeting. Mr. Smith explained that did not make an application for service because he had no avenue to do so. With regard to Mr. Smith's telephone calls to Ohio Edison, he waited for an explanation about how he was to get power after he called the first time, but he did not get that explanation. The second time he called, on November 5, 2008, the person he spoke to told him that there had been a mix-up and that she would take care of it. Mr. Smith believed that, after his telephone calls to Ohio Edison, and the city of Warren building inspector contacting the company, there was nothing more he needed to do to get electrical service at 1930 Mahoning Avenue. (Tr. at 141-146.)

Timothy Smith, Mr. Smith's son testified that he sent a fax for his father to Ohio Edison at 330-315-9277. This fax, Smith Exhibit 1, was previously identified by Mr. Smith as the document he had provided to his son in order to have it faxed to Ohio Edison. (Tr. at 148-151.)

Ohio Edison Testimony

Mr. Carlos Vidal, an advanced business analyst for First Energy Corp., presented testimony on behalf of Ohio Edison. According to Mr. Vidal, under Section II of Ohio Edison's tariff, in order for Ohio Edison to establish service with a customer, the customer must first make an application for service, which must then be accepted by Ohio Edison. In order to apply for new service at a location where there has been no service for longer than one year, a customer must do two things. First, the customer must obtain an electrical inspection of the property. Second, the customer must provide certain information to the contact center regarding the expected load and type of service at that location. Specifically, the customer must provide (i) the voltage of the service required for that 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 heating source at the property and the associated load (e.g., the 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. Once the customer provides this information, the contact center personnel can issue an upgrade order, which initiates service at the property. (Ohio Edison Exhibit A at 1-8.)

Mr. Vidal testified that, in order to safely re-establish and provide power to a location where there has been no service for an extended period of time, Ohio Edison requires this information as part of a customer's application for new service, because the company must know what kind of service the customer requires and what the load is expected to be. This allows Ohio Edison to ensure the adequacy and safe operation of the transformers and other equipment that will service the new location. Mr. Vidal testified that, although complainant called Ohio Edison to inquire regarding service on several occasions beginning in September 2008, he never provided the company's contact center with the information required to make an application for new service. Moreover, although complainant was told by Ohio Edison in January 2009 that an electrical inspection was required following the discovery of a broken meter base at the 1930 Mahoning Avenue property, complainant has never obtained this inspection. Mr. Vidal testified that, because complainant still needed to obtain an electrical inspection of the property, and because complainant had not provided the specific information required to initiate new service, Ohio Edison did not issue an upgrade notification order, and service was not initiated. (Ohio Edison Exhibit A at 8-11.)

Mr. Vidal testified that complainant later did obtain an electrical inspection of 1930 Mahoning Avenue and that Ohio Edison received a copy of an inspection release form from the city of Warren for 1930 Mahoning Avenue on September 26, 2008. In order to establish service, however, complainant still needed to provide the specific load and service-type information for that property. Mr. Vidal testified that, because Complainant had not completed an application for service, and because Ohio Edison thus had not issued an upgrade order for the service, there was no new customer of record at 1930 Mahoning Avenue. Consequently, Ohio Edison did not send a service crew to initiate service at the property. Instead, Ohio Edison personnel noted in the contact log that the inspection had been received so that if complainant applied for service, the contact center representative would know that the inspection had taken place. (Ohio Edison Exhibit A at 11.)

Complainant next contacted Ohio Edison on November 5, 2008. Because the call related to new service, the representative attempted to transfer the call to a new service representative, but instead the call was transferred to an advanced move-in representative. When the second representative attempted to transfer complainant to a new service representative, it appears that complainant hung up without completing the transfer. (Ohio Edison Exhibit A at 11-12.)

On January 7, 2009, Ohio Edison sent complainant a "Dear Occupant" letter indicating that electric service was being used at the property, but that no one had applied for service there. The letter indicated that complainant had until January 21, 2009, to contact Ohio Edison or else Ohio Edison would initiate termination of service. (Ohio Edison Exhibit A at 13.)

Complainant made multiple calls to Ohio Edison on January 30, 2009. On each occasion, complainant indicated that power had been disconnected to 1930 Mahoning Avenue. Each time, the contact center representative explained that the reason for the disconnection was unauthorized usage at the property. Additionally, the representatives explained that complainant would need to pay charges assessed as a result of the tampering and that, because the meter base was broken, complainant would have to replace the meter base and obtain an additional inspection before service could be initiated. (Ohio Edison Exhibit A at 13.)

Mr. Vidal testified that complainant called Ohio Edison's contact center again on February 11, February 24 and March 2, 2009, to complain about the service disconnection. The representatives explained that service was disconnected because of unauthorized usage and that complainant would have to pay for the unbilled usage as well as tampering charges before service could be initiated. Then, on February 12, 2009, Ohio Edison received a fax detailing his dispute. Although the individual responsible for processing this fax properly filed it, he did not note Ohio Edison's receipt of it on the customer contact log. Subsequently, on March 5, 2009, Ohio Edison did receive a mailed version of that document. In it, complainant continued to refuse to make the payment required to initiate service at the property. Mr. Vidal testified that Ohio Edison currently is not insisting on payment of tampering charges in order for complainant to initiate service at 1930 Mahoning Avenue. (Ohio Edison Exhibit A at 13-14.)

Mr. Vidal testified that Ohio Edison is not currently providing service to 1930 Mahoning Avenue. This is because, where service at a location has been off for over a year, there are two items that a customer seeking new residential service must do: (i) the customer must obtain an electrical inspection of the property; and (ii) the customer must provide load and service information to Ohio Edison. Mr. Vidal testified that, although complainant obtained an electrical inspection in September 2008, he did not provide the necessary load and service information to Ohio Edison and, therefore, did not make an application for residential service. Moreover, complainant has not obtained an electrical inspection reflecting the replacement of the meter base, as complainant was advised by the company. Mr. Vidal testified that, until complainant obtains this inspection, Ohio Edison cannot initiate new service for complainant at 1930 Mahoning Avenue. (Ohio Edison Exhibit A at 14-15.)

On cross examination, Mr. Vidal testified that an Ohio Edison representative in the company's New Service Department asks a consumer questions relating to the establishment of new service. But until the representative starts the questioning, the customer would not be aware of the application process. With respect to Mr. Smith's November 2008 telephone call to Ohio Edison, Mr. Vidal testified that the original call came through as a regular general call, and when the agent recognized that it needed to be

handled by a new service agent, it was transferred. However, it was not transferred to Ohio Edison's New Service Department. It was transferred to an incorrect queue. Further, with respect to Mr. Smith's September 10, 2008, telephone call to Ohio Edison, no one told Mr. Smith that he had to complete the application process. Instead, the Ohio Edison representative offered to create an order. (Tr. at 156, 158, 165, 168-169.)

Mr. Vidal testified that when a meter advances and nobody is being billed for that service, it creates an implausible reading. And a group in Ohio Edison's Customer Accounting Department reviews those implausible readings and tries to determine what is happening. Mr. Vidal testified that one method that Ohio Edison has of doing that is to send a "Dear Occupant" letter to the premises, asking whoever is using the electricity to call the company and apply for service. He stated that these representatives do not review notes in a case, but they do have access to those notes. (Tr. at 170-171.)

Mr. Vidal testified that the information that Mr. Smith gave on two different occasions would not be considered detailed contact information, because detailed contact information is irrelevant if a person has not applied for service. He explained that when someone calls Ohio Edison, the company is required to ask that person's identity, phone number, and the address the person is calling about. It does not necessarily mean that Ohio Edison is going to update the address that the person is calling about with that information, because the company has not yet accepted an application for service. So, even though each time Mr. Smith called, and said "I want to place service at 1930 Mahoning Avenue in my name," the address was not updated because Ohio Edison never accepted an application for service. (Tr. at 171.)

Mr. Vidal testified that Ohio Edison's representatives, even though they had access to the notes in Mr. Smith's case, sent a "Dear Occupant" letter to an address that had been vacant and disconnected since 2005 because that was the only address they had for the letter. He noted that the letter advised the occupant to contact Ohio Edison within ten days or service would be terminated. (Tr. at 171-172.)

On January 27, 2009, Rick Padovan, a meterman for Ohio Edison, received a "Vacant Use on Meter" report from Ohio Edison's billing department indicating recorded usage on the meter at 1930 Mahoning Avenue, even though active service at that account had been discontinued. Mr. Padovan testified that, on that same day, he traveled to 1930 Mahoning Avenue to begin an investigation, during which he discovered that a seal on the meter had been cut, indicating that someone had tampered with the meter, and that the meter was turning. Mr. Padovan testified that, because tampering was indicated, he removed the meter from the meter base and noticed that one of the meter base legs, through which power is transferred from the meter, was broken. He then put a plastic cover over the socket, and called an Ohio Edison line crew to disconnect service at the pole. (Ohio Edison Exhibit 1 at 3-7, Tr. at 180-182.)

Mr. Padovan testified that none of the screens on his computer tablet indicated that complainant had contacted Ohio Edison. He stated that the only computer data available to him showed the name of the previous tenant, that the account was final and inactive and that no new tenant was signed up. In addition, Mr. Padovan testified that when he visits a house that is obviously empty and tampering is indicated, he pulls the meter for the safety of the public. (Ohio Edison Exhibit 1 at 3-7, Tr. at 188-189.)

Mr. Padovan testified that Ohio Edison's meter reading records indicate that in April 2005, the service account for the former occupant at 1930 Mahoning Avenue was finalized and closed, and a final meter reading of 64169 was taken. Mr. Padovan testified that meter reading records for the months after April 2005, show no usage through the meter at 1930 Mahoning Avenue until October 2008. He testified that the meter reflected 20 kilowatt hours (kWh) of usage in the month prior to October 6, 2008, and the meter read was the same for the period ending November 3, 2008. The meter registered 192 kWh for the month ending on December 5, 2008, 145 kWh for the month ending January 6, 2009, and 129 kWh between January 6 and January 27, 2009, which is when the meter was removed. (Ohio Edison Exhibit 1 at 7.)

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|---|---|------------------------|
| In the Matter of the Complaint of C. Richard Smith, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 10-340-EL-CSS |
| |) | |
| Ohio Edison Company, |) | |
| |) | |
| Respondent. |) | |

ENTRY ON REHEARING

The Commission finds:

- (1) On March 17, 2010, as amended on August 9, 2010, C. Richard Smith (Mr. Smith or complainant) filed a complaint with the Commission against Ohio Edison Company (Ohio Edison or company). In the complaint, Mr. Smith stated that Ohio Edison removed the electric meter from his property, shut off the power supply, and caused damage to his property. Mr. Smith requested that power be restored to his property and that he be awarded damages in this matter.
- (2) On April 6, 2010, and August 24, 2010, Ohio Edison filed answers to the complaint, variously admitting and denying the material allegations of the complaint.
- (3) On July 6, 2011, the Commission issued its opinion and order in this matter. In the order, the Commission concluded that Ohio Edison's refusal to begin the process of establishing electric service for Mr. Smith at 1930 Mahoning Avenue until he paid tampering charges was not justified under the circumstances presented in this case. Moreover, the Commission found that adequate service was not provided by Ohio Edison when it failed to investigate the consumer complaint in this case as required by Rule 4901:1-10-21, Ohio Administrative Code (O.A.C.), and to act diligently to resolve the dispute.

- (4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (5) Section 4903.10, Revised Code, also provides that if the Commission grants such rehearing, it shall specify the purpose for which rehearing is granted and shall also specify the scope of the additional evidence, if any, that will be taken; but it shall not take any evidence that, with reasonable diligence, could have been offered upon the original hearing.
- (6) On August 4, 2011, Mr. Smith filed an application for rehearing of the July 6, 2011, opinion and order. In the memorandum in support of the application for rehearing, Mr. Smith asserted the following assignments of error:
 - (a) The Commission erred in finding that Mr. Smith did not succeed in making an application for new service in his telephone calls on either September 10, 2008, or November 5, 2008.
 - (b) The Commission erred in finding that (i) the "Dear Occupant" letter was mailed to and delivered to the vacant premises located at 1930 Mahoning Avenue and (ii) that was all that was required prior to the disconnection of electrical services to 1930 Mahoning Avenue.
 - (c) The Commission erred in finding that both parties agreed that there was tampering in connection with the meter located at 1930 Mahoning Avenue, as defined in Rule 4901:1-10-01(Z), O.A.C., as there was no intent by Mr. Smith to impede the correct registration of the meter.
 - (d) The Commission erred in finding that Ohio Edison properly disconnected service without prior notice pursuant to Rule 4901:1-10-20(B)(1)(a), O.A.C.
 - (e) The Commission should allow a rehearing based upon Mr. Smith's good faith belief that the audio recordings of the telephone conversations

between Mr. Smith and Ohio Edison, played at the hearing as Exhibit G, were altered.

- (7) On August 5, 2011, Ohio Edison filed an application for rehearing of the July 6, 2011, opinion and order. In the memorandum in support of the application for rehearing, Ohio Edison asserted the following assignments of error:
- (a) The order unlawfully and unreasonably grants relief based upon a claim that complainant did not plead.
 - (b) Contrary to the findings in the order, Ohio Edison did not refuse to begin the process of establishing service for complainant solely because Mr. Smith refused to pay tampering charges.
 - (c) The order incorrectly finds that Ohio Edison provided inadequate service.
 - (d) The order fails to make clear that complainant is not entitled to pursue damages in state court under Section 4905.61, Revised Code (Section 4905.61).
- (8) On August 15, 2011, Ohio Edison filed a memorandum contra Mr. Smith's application for rehearing.¹ In the memorandum contra, Ohio Edison stated that Mr. Smith's first four assignments of error have already been considered and rejected by the Commission, and, thus, those issues cannot serve as grounds for rehearing. Ohio Edison also stated that Mr. Smith's fifth assignment of error, his argument that the audio recordings in this matter were altered, was not addressed at hearing or on brief when he had an opportunity to do so. As a result, Mr. Smith's application for rehearing should also be denied with respect to the audio recordings.
- (9) With regard to Mr. Smith's first four assignments of error, the Commission finds that Mr. Smith has raised no new arguments

¹ On August 23, 2011, Mr. Smith filed a pleading in response to the memorandum contra filed by Ohio Edison on August 15, 2011. Rule 4901-1-35, O.A.C., does not provide for the filing of a response to a memorandum contra an application for rehearing. Therefore, Mr. Smith's pleading will not be further considered in this matter.

in his application for rehearing. We believe that those issues have been fully considered and properly decided in our opinion and order in this matter.

- (10) Mr. Smith's fifth assignment of error is based on his belief that the audio recordings of his telephone conversations with Ohio Edison were altered. In support of this assignment of error, Mr. Smith stated that, although the parties stipulated that the recordings were authentic, the stipulation only eliminated the need to have an Ohio Edison witness testify that the recordings were what they purported to be. No one testified that the audio recordings were true and complete recordings of the telephone conversations between Mr. Smith and Ohio Edison's representatives. Mr. Smith noted that his counsel received the audio recordings six days before the hearing and that he heard the recordings for the first time at hearing. Because Mr. Smith testified that Ohio Edison representatives had granted him a "contractor's courtesy" during his renovation of the property at 1930 Mahoning Avenue, and that information was not included in the audio recordings, he began to investigate after the hearing whether the audio recordings had been altered.

Mr. Smith stated that the audio recordings have been submitted to an expert and the expert has identified 13 areas of concern, based upon the expert's review of only one of the 11 telephone conversations between Mr. Smith and Ohio Edison. Mr. Smith argued that the Commission should grant rehearing in order to compare the original disc recordings with Exhibit G and to allow him to develop the issue further.

With regard to Mr. Smith's fifth assignment of error, we observe that, even given the six-day time frame before the hearing in which Mr. Smith's counsel received the audio recordings from Ohio Edison, Mr. Smith, acting with reasonable diligence, could have at least raised that issue at hearing. He chose not to do so, however. Now, maintaining that the parties' stipulation to the authenticity of the audio recordings at hearing does not mean that the recordings were "true and complete," he seeks to raise the allegation that the recordings were altered through his application for rehearing and subsequently to offer evidence in support of that allegation. Mr. Smith has provided no explanation why the issue of the alleged alteration of the audio recordings could not

have been brought up at the hearing in this case. Therefore, pursuant to Section 4903.10, Revised Code, the Commission shall not take any additional evidence on that issue through a rehearing. Accordingly, we find that Mr. Smith's application for rehearing should be denied.

- (11) With regard to the Ohio Edison's second and third assignments of error, the Commission finds that the company also has raised no new arguments in its application for rehearing. We believe that those issues have been fully considered and properly decided in our opinion and order in this matter.
- (12) In support of its first assignment of error, Ohio Edison cited case law (e.g., *Ohiotelnet.com, Inc. v. Windstream Ohio, Inc.*, Case No. 09-515-TP-CSS (Entry dated Dec. 1, 2010) and *Carney v. Cleveland Heights-University Heights City School Dist.*, 143 Ohio App. 3d 415, 430 n.9 (8th App. Dist. 2001)), and argued that claims that are not pled in a complaint filed with the Commission cannot serve as the basis for later relief. Ohio Edison stated that complainant asserted for the first time in his post-hearing brief that the company violated Rule 4901:1-10-21, O.A.C., which requires utilities to make "good faith efforts" to resolve customer disputes. Ohio Edison argued that this new claim is highly prejudicial to the company, which did not have an opportunity to respond via its answer, take discovery, prepare witnesses, or conduct cross-examination to specifically address it.
- (13) Upon consideration of Ohio Edison's first assignment of error, the Commission finds that it is without merit. The Commission is of the opinion that Mr. Smith's entire presentation at hearing was that he tried repeatedly to get electric service from Ohio Edison; then, having complained to Ohio Edison, the company did not make a good faith effort to respond to him and try to resolve the dispute. Mr. Smith's citation to Rule 4901:1-10-21, O.A.C., and use of the words "good faith efforts" for the first time in his brief to refer to the company's lack of response to his problem, does not change the nature of his complaint before us. His claims on brief were not new to the case. And, judging by Ohio Edison's pleadings, its arguments at hearing, and its brief in this matter, the company was aware the nature of Mr. Smith's complaint and it responded accordingly. We do not believe that Ohio Edison was prejudiced in any way by the

O.A.C. citation or the words that were used in Mr. Smith's brief.

In addition, we would note that we are not constrained by the labels placed on arguments made by the parties on brief. Our finding that adequate service was not provided by Ohio Edison when it failed to investigate the consumer complaint in this case as required by Rule 4901:1-10-21, O.A.C, and to act diligently to resolve the dispute, was solely our own determination based on a thorough review of the record.

- (14) In support of its fourth assignment of error, Ohio Edison stated that the order fails to clarify that complainant is not entitled to pursue damages in state court under Section 4905.61, Revised Code. Citing to *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 865 N.E. 2d 1275, 1276, 1279 (Ohio 2007) (finding that Section 4905.61, Revised Code, is a penalty statute that has "punitive objectives"), Ohio Edison argued that treble damages under Section 4905.61, Revised Code, are not proper in this case. The company maintained that because the Commission found that Ohio Edison took the correct action in disconnecting the tampered meter for safety reasons, complainant is not entitled to any property damages that may stem from the removal of the meter.
- (15) We find no error on this issue. Our statement on the issue of damages in the July 6, 2011, opinion and order was part of our ruling on the company's request to dismiss the complaint. We stated that: "[w]hile Ohio Edison is correct that the Commission may not award monetary damages in this particular case, that fact does not justify dismissal of the case." Aside from addressing the company's request to dismiss the complaint, this statement confirmed our lack of jurisdiction to award damages in complaint cases such as this one. Further, Section 4905.61, Revised Code, applies to an action in a court of law. Our jurisdiction does not extend to what a party may or may not do in court. Thus, we make no pronouncement on what Mr. Smith is entitled to do under Section 4905.61, Revised Code.
- (16) Accordingly, we find that Ohio Edison's application for rehearing should be denied.

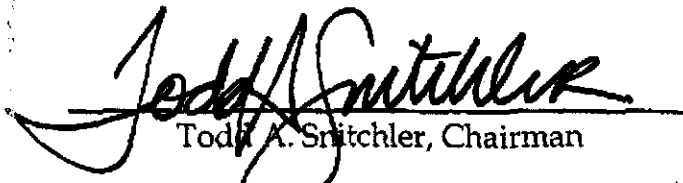
It is, therefore,

ORDERED, That Mr. Smith's application for rehearing be denied. It is, further,

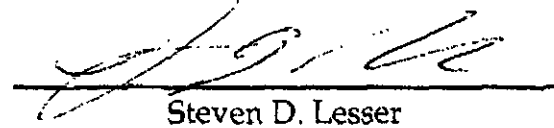
ORDERED, That Ohio Edison's application for rehearing be denied. It is, further,

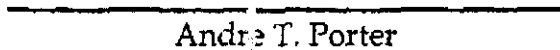
ORDERED, That a copy of this entry on rehearing be served upon each party of record.

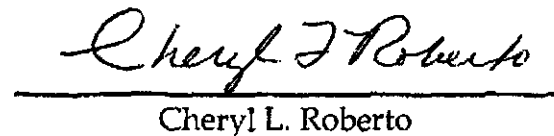
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Smith, Chairman


Paul A. Centolella


Steven D. Lesser

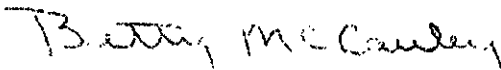

Andre T. Porter


Cheryl L. Roberto

KKS/vrm

Entered in the Journal

AUG 31 2011


Betty McCauley
Secretary