

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Gwendolyn Tandy,)	
)	
Complainant,)	
)	
v.)	Case No. 12-2102-EL-CSS
)	
Cleveland Electric Illuminating Company,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the complaint filed by Gwendolyn Tandy and the evidence admitted into the record at the hearing held in this matter, and having determined that the matter should proceed to opinion and order, hereby issues its Opinion and Order.

APPEARANCES:

Gwendolyn Tandy, 1439 Sulzer Avenue, Euclid, Ohio 44113, on her own behalf.

Whitt Sturtevant LLP, by Andrew J. Campbell and Gregory L. Williams, 88 East Broad Street, Suite 1590, Columbus, Ohio 43215, and Carrie M. Dunn, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, on behalf of Cleveland Electric Illuminating Company.

OPINION:

I. History of Proceeding

On July 17, 2012, as supplemented on October 29, 2012 and November 8, 2012, Gwendolyn Tandy (complainant) filed a complaint with the Commission against the Cleveland Electric Illuminating Company (CEI or respondent). In the complaint, Ms. Tandy argues that she has been billed improperly. More specifically, Ms. Tandy states four billing issues: (a) her electric bill showed a credit of \$12.29 on February 1, 2012, but by March 2, 2012, reflected a balance due of \$443.98; (b) a letter dated June 28, 2012, from CEI to Ms. Tandy summarizing the activity on her account is misleading; (c) that CEI is not properly reflecting the payments made on her electric account; and (d) Ms. Tandy was re-enrolled in the Percentage of Income Payment Plan (PIPP) on February 5, 2012, which her monthly electric bills do not accurately reflect.

On August 6, 2012, CEI filed its answer to the complaint. In its answer, CEI contends that the company has at all times acted in compliance with its tariff on file with the Commission, the rules, regulations, and laws of the state of Ohio, and accepted standards and practices in the electric industry. CEI alleges that the complaint fails to set forth reasonable grounds to sustain a complaint. Further, the respondent also asserts that Ms. Tandy lacks standing to bring certain claims raised in the complaint.

By entry issued August 23, 2012, the complaint was scheduled for a settlement conference on September 12, 2012, at the office of the Commission, in Columbus, Ohio. On the morning of September 12, 2012, Ms. Tandy contacted the Attorney Examiner and stated that she could not attend the conference. Accordingly, by entry issued September 13, 2012, the settlement conference was rescheduled for September 27, 2012. The settlement conference was held as rescheduled; however, the parties were unable to resolve the dispute informally.

By entry issued November 1, 2012, this matter was scheduled for a hearing on December 4, 2012, but the hearing was subsequently postponed in light of a request by CEI to hold this hearing and the hearing in another complaint filed by Ms. Tandy, on the same day. Accordingly, the hearing in this case was rescheduled for and held on January 15, 2013. Pursuant to Rule 4901-1-29, Ohio Administrative Code (O.A.C.), CEI filed the written testimony of Deborah Reinhart on January 8, 2013.

At the hearing, Ms. Tandy testified on her own behalf. CEI presented the written direct testimony of Deborah Reinhart (CEI Ex. 1),¹ Customer Compliance Lead for FirstEnergy Service Company.²

As the parties were informed by the Attorney Examiner at the conclusion of the hearing and reiterated by entry issued January 24, 2013, briefs addressing the issues raised in the case were to be received by the Commission by no later than February 12, 2013. CEI filed its brief on February 12, 2013. Ms. Tandy made a filing on February 14, 2013.

On February 25, 2013, CEI filed a motion to strike the complainant's filing of February 14, 2013, in its entirety on the basis that it was filed after the due date for briefs or, independent of the lack of timeliness, on the basis that it constitutes the submission of

¹ The direct testimony of Ms. Reinhart included attachments: Att. A - 2008-2009 Energy Assistance Resource Guide; Att. B - 2010-2011 Energy Assistance Resource Guide; Att. C- Detailed Statement of Account for 1441 Sulzer Avenue for the period October 2, 2010 - February 17, 2012; Att. D - Copies of bills for 1439 Sulzer Avenue for each billing cycle December 2, 2010 through December 2012 except for the billing cycle March 2011; Att. E - Detailed Statement of Account for 1439 Sulzer Avenue for the period January 4, 2011 - December 12, 2012.

² CEI and FirstEnergy Service Company are wholly owned subsidiaries of FirstEnergy Corporation.

evidence after the close of the proceedings. CEI argues that complying with the procedural schedule does not require an understanding of complex legal or evidentiary issues and, therefore, Ms. Tandy as a pro se complainant should be required to comply with the established due dates. Further, CEI contends that the filing should be stricken, except for four pages, on the basis that most of the filing is new documents and information not offered for admission at the hearing. CEI submits that Ms. Tandy's opportunity to introduce new evidence ended at the close of the hearing. Further, the respondent reasons that allowing the submission of new evidence, after the close of the hearing, would deny CEI the opportunity to cross examine Ms. Tandy on the new evidence or allow CEI to introduce evidence to rebut the new evidence. As such, CEI argues failing to strike the February 14, 2013 filing of Ms. Tandy would deny CEI's due process rights. For these reasons, CEI requests that the filing be stricken.

The Commission notes that Ms. Tandy's filing of February 14, 2013, consist of two pages of narrative (pages 1 and 2 of the filing are duplicated at pages 18 and 19), copies of select pages of the bills issued for 1441 Sulzer Avenue for the period October 4, 2010 - August 3, 2011; copies of money order receipts purportedly for payments made on the 1441 Sulzer Avenue account dated April 21, 2011, May 25, 2011, June 13, 2011, and December 20, 2010; select pages of the bills issued January 5, 2011, February 1, 2012 and February 8, 2013, for 1439 Sulzer Avenue and a copy of a money order receipt purportedly for a payment made on the 1439 Sulzer Avenue account dated May 25, 2011. We note that the bills issued January 5, 2011 and February 1, 2012 for 1439 Sulzer Avenue were presented and admitted into evidence at the hearing (Tr. 47, 81; CEI Ex. 7 at 5-8, 53-56); however, the complainant did not present for admission into the record any of the bills for 1441 Sulzer Avenue or the copies of the money order receipts for payment on either account. After the close of the record, there is no basis to admit any of the bills for 1441 Sulzer Avenue or the money order receipts for either account. Ms. Tandy should have brought these items with her to the hearing and requested admission of the documents into the record, thus, providing CEI the opportunity to cross examine her on the documents and challenge the veracity or efficacy of the documents. Accordingly, the Commission grants CEI's motion to strike the complainant's February 14, 2013 filing, except for the first two pages of the filing.

II. Applicable Law

CEI is a public utility, as defined in Sections 4905.02 and 4905.03, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

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. The Commission also notes that the burden of proof in complaint proceedings is on the

complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

III. Summary of the Evidence

Ms. Tandy testified that she owns the duplex which includes her residence located at 1439 Sulzer Avenue and the adjoining unit located at 1441 Sulzer Avenue, Euclid, Ohio. The complainant moved into 1439 Sulzer Avenue on or about June 2006. Ms. Tandy recognizes that she must contact the electric company to establish or cancel service. Ms. Tandy states that she usually reviews her bills when she receives them unless she has automatic payment established. (CEI Ex. 4; Tr. at 18, 19, 39, 69-70, 71, 47.)

In her complaint, Ms. Tandy argues that her bill issued February 1, 2012, shows a credit of \$12.29 but by March 2, 2012, reflected a balance due of \$443.98 and disputes the transfer of charges from 1441 Sulzer Avenue which appears on her bill issued March 5, 2012 (Tr. at 7, 26; CEI Ex. 7 at 57-60).

Ms. Tandy testified that she had been enrolled in PIPP since approximately 2000. As evidenced by a letter from the Ohio Department of Development (ODOD)³ dated November 3, 2011, Ms. Tandy submits she was recertified for PIPP assistance for her electric service at 1439 Sulzer Avenue with a PIPP installment payment due of \$29.00 each billing cycle. Ms. Tandy also offered that the November 3, 2011, ODOD letter indicates her utility service account balances as determined by ODOD at that time. Subsequently, Ms. Tandy explained that the bill issued November 30, 2011 included a HEAP credit of \$57.90 which paid her account balance in full because her balance was actually \$56.82. Ms. Tandy also noted that on February 24, 2011, she was issued an emergency HEAP credit of \$146.48 bringing her account balance to zero. CEI stipulates that an emergency HEAP credit of \$146.48 was applied to Ms. Tandy's account (ending in 0079) on February 24, 2011. (Tr. at 17-18, 25-26, 30-32, 34; Complainant Ex. 4, CEI Ex. 7 at 45-48, CEI Ex. 1, Att. E.)

Further, Ms. Tandy testified that when the PIPP program was converted to PIPP Plus she never consented to be a part of the new PIPP Plus.⁴ Ms. Tandy argues that PIPP Plus doubled her balance. The complainant argues that for an 18-month period, commencing January 2011, CEI added her PIPP payments to her account balance rather than subtract the payments. For example, Ms. Tandy asserts her PIPP installment payments were added to her account balance for the bills issued January 4, 2011, February

³ Effective as of September 2, 2012, Section 166.01(Z), Revised Code, defines the former ODOD as the Ohio Development Services Agency (ODSA). ODOD, now known as ODSA, is the agency charged with the administration of the PIPP program for electric utility services.

⁴ The PIPP program was revised and renamed PIPP Plus effective November 1, 2010. Utility service customers participating in PIPP were automatically enrolled in PIPP Plus.

1, 2011, June 6, 2011, November 2, 2011, and November 30, 2011. She also argues that she did not receive credit for PIPP installments paid on time. According to Ms. Tandy, if she gets a disconnection notice and she submits her PIPP installment due on time, the PIPP program prohibits the disconnection of her electric service. (Tr. at 17, 23, 27, 28, 29-30, 44, 74).

Ms. Tandy argues that the Summary of Statements provided to her are not understandable and are misleading. The complainant argues that the Summary of Statements do not match the information on the bills received on or about the same time and do not include the date for the transactions shown nor an understandable explanation for the adjustments. (Tr. at 7, 34-37; Complainant Ex. 1 (dated July 29, 2012 for account ending in 7153); Complainant Ex. 5 (dated June 28, 2012 for account ending in 0079)).

The complainant submits that her request for relief in this case is based on the law which states that for each infraction she is entitled to \$200. Ms. Tandy implies that her previous balance has been incorrect for 18 months. She also testified that the law stated that when you make a written complaint to a company, that the company has 30 days to acknowledge your complaint and 60 days for a solution. Ms. Tandy contends that she has been complaining about her CEI bills for two years and the problem has not yet been resolved. However, Ms. Tandy could not provide a reference to the law she was referring to at hearing. (Tr. at 72-73, 75.)

Testifying as to the bill generated February 1, 2012, on cross examination Ms. Tandy acknowledges that according to the bill, the previous bill amount is \$173.81, that the bill reflects a payment of \$30.00, and her PIPP installment due of \$29.00. While the complainant recognizes that the \$30.00 payment is less than \$173.81 previous amount bill due, Ms. Tandy reasons that the total current charges of \$19.91 is less than the \$30.00 payment reflected on the bill and, therefore, she believes that her account should reflect a credit. The complainant makes the same argument as to the bill generated April 4, 2012 where the current charges of \$43.78 are less than the payment made of \$59.00. (Tr. at 57-59, 60-61).

On cross examination, Ms. Tandy acknowledged that the letters from ODOD required her to submit proof of her income for the years 2009, 2010, 2011, and 2012 to maintain enrollment in the PIPP program. The complainant also read from an ODOD document, dated December 12, 2011, which stated that Ms. Tandy had failed to provide the requested documentation. The December 12, 2011, letter from ODOD also warned Ms. Tandy that "this letter serves as notice that the Office of Community Assistance considers your past energy assistance for the 2010, 2011 and 2012 heating seasons to be noncompliant. We, therefore, demand payment of restitution for benefits improperly received" By letter dated February 5, 2012, from ODOD addressed to Ms. Tandy, the

complainant was informed that she had been dropped from the PIPP program. (Tr. at 40-43; CEI Ex. 4, CEI Ex. 5, CEI Ex. 6⁵.)

CEI offered the testimony of Deborah Reinhart, Customer Compliance Lead with FirstEnergy Service Company (CEI Ex. 1, including Att. A - Att. E). In her prefiled testimony, Ms. Reinhart explains that on February 17, 2012, CEI transferred \$269.08 in charges which had accrued for electric service at 1441 Sulzer Avenue (account ending in 7153), a residential account also in Ms. Tandy's name, to Ms. Tandy's account at 1439 Sulzer Avenue. According to Ms. Reinhart, the account for 1441 Sulzer Avenue was established in Ms. Tandy's name in September 2010. According to CEI records, Ms. Tandy remained the customer of record at 1441 Sulzer Avenue until June 23, 2011, when the complainant contacted CEI to terminate service. Ms. Reinhart testified that CEI sent a 10-day notice advising the tenant that service would be disconnected if the tenant failed to apply for service. Further, the witness stated that according to CEI records the tenant at 1441 Sulzer Avenue never applied for service and the account was closed with a final balance due of \$383.28. After supplier charges, the remaining balance due to CEI of \$269.08 was transferred to Ms. Tandy's account at 1439 Sulzer Avenue. CEI argues that the balance due of \$269.08 was not written off of Ms. Tandy's residential account, as Ms. Tandy asserts in her complaint, but was written-off of the account at 1441 Sulzer Avenue. (Tr. at 89; CEI Ex. 1 at 6-7 Att. C.)

CEI witness Reinhart explained that Ms. Tandy was enrolled in PIPP Plus at 1439 Sulzer until February 1, 2012. CEI received a drop notification from ODO dated February 5, 2012. Further, CEI witness Reinhart disputes Ms. Tandy's claim that she had a \$12.29 credit balance on the bill issued February 1, 2012. The witness explained that the \$12.29 credit, which appeared on the bill issued March 5, 2012, is a deferred arrearage credit as a result of being enrolled in PIPP Plus. According to Ms. Reinhart, the account balance at 1439 Sulzer Avenue on the bill issued March 5, 2012 was \$459.21 (please pay amount). (Tr. at 43; CEI Ex. 1 at 6-7, CEI Ex. 6, CEI Ex. 7 at 53-60).

Ms. Reinhart explained that as a result of her participation in PIPP Plus, Ms. Tandy's July 2012 bill was adjusted for the difference between her PIPP Plus installment amount paid and the current charges which had accrued. On that basis, Ms. Tandy's payment due was adjusted by \$9.09 and her outstanding balance due was reduced. (Tr. at 84-87, 90-91; CEI Ex. 1 at 73.)

Ms. Reinhart admits that the balance on the Summary of Statements may not be the same as the balance on the customer's monthly bill but offered that the customer is provided additional detail with the Summary of Statements. Ms. Reinhart contends that the June 28, 2012, Summary of Statement provided to Ms. Tandy for 1439 Sulzer Avenue is

⁵ Ms. Tandy also filed this letter in the docket as part of her complaint submitted on July 17, 2012.

not misleading, as Ms. Tandy claims. CEI also provided Ms. Tandy a Summary of Statements for 1441 Sulzer Avenue. CEI witness Reinhart asserts that the statements accurately summarize the beginning and ending balance, total billings, payments and adjustments for the stated periods. (Tr. at 90-93; CEI Ex. 1 at 7, 8-10.)

IV. Discussion

A. PIPP enrollment status

A review of the record evidence demonstrates that Ms. Tandy was enrolled in PIPP, and then the PIPP Plus program, until February 2012. It appears that the administrator of the electric PIPP Plus program questioned the validity of Ms. Tandy's enrollment and requested additional income information (CEI Ex. 4). Although, Ms. Tandy claims that she provided ODOD the requested information, she failed to provide any documentation supporting this claim or any documentation supporting her continued enrollment in PIPP Plus after February 2012. In fact, Ms. Tandy argues she never agreed to be enrolled in PIPP Plus and further acknowledges receipt of ODOD notification that her participation in PIPP Plus had been terminated (CEI Ex. 6). We note that Ms. Tandy filed the notice in the docket as a part of her complaint. Further, we note that Ms. Tandy also filed, as a part of her pleadings in the docket, the notice from the Integrity Unit of the Office of Community Assistance that restitution was due by January 14, 2012, which includes a copy of the certified mail receipt signed by Ms. Tandy on January 1, 2012. Accordingly, the Commission finds that Ms. Tandy's participation in the PIPP Plus program was terminated, pursuant to Rule 122:5-3-02(I), O.A.C., effective February 2012 and, thereafter, Ms. Tandy was no longer eligible for PIPP on-time incentive credits. The Commission finds that based on the record presented in this matter, CEI's bills generated effective February 2012 through December 2012 correctly reflect Ms. Tandy's status as a non-PIPP customer.

B. Outstanding Account Balance

Ms. Tandy admits that she owns the property located at 1439 Sulzer Avenue and 1441 Sulzer Avenue. The record evidence also reveals that Ms. Tandy was the customer of record for 1441 Sulzer Avenue, from September 2010 through June 23, 2011. Ms. Tandy did not challenge CEI's testimony that she established service in her name or requested termination of the service in her name at 1441 Sulzer Avenue. Further, the Commission notes that the bills for 1441 Sulzer Avenue were addressed to Ms. Tandy and sent to her at 1439 Sulzer Avenue. Accordingly, the Commission finds that the evidence demonstrates that Ms. Tandy was the customer of record and, therefore, is responsible for the bill incurred at 1441 Sulzer Avenue from September 2010 through July 5, 2011. Furthermore, the Commission finds that the evidence does not substantiate Ms. Tandy's dispute of the charges transferred from 1441 Sulzer Avenue to 1439 Sulzer Avenue. CEI properly

transferred the accrued residential service charges from the account for 1441 Sulzer Avenue to Ms. Tandy's active residential account for service at 1439 Sulzer Avenue.

The Commission finds that the complainant has not sustained her burden of proof with regard to the outstanding account balance that has accrued on the account for 1439 Sulzer Avenue, including the February 17, 2012 transfer of charges accrued at 1441 Sulzer Avenue. First, the Commission notes that, while Ms. Tandy was a PIPP customer, the only payment due each month was her monthly PIPP installment. However, the record in this case reveals that the PIPP installment was paid only sporadically December 2010 through November 30, 2011, thus accruing an outstanding balance on the account. It is the responsibility of the electric PIPP customer to make the monthly PIPP installment payment. Rule 122:5-3-02(H)(1)(a), O.A.C. The evidence conclusively demonstrates that ODOD terminated Ms. Tandy's participation in PIPP effective February 2012. The bill issued February 1, 2012 listed actual outstanding charges of \$151.43 and, with the transfer of charges accrued at 1441 Sulzer Avenue of \$269.08, Ms. Tandy's outstanding account balance was \$429.60 as of the bill issued March 5, 2012. Although, the record demonstrates that Ms. Tandy consistently made a payment of at least \$30.00 each month April 4, 2012 through December 7, 2012, her actual outstanding balance remained approximately \$400 through the bill issued December 7, 2012. Despite the complainant's allegations, nothing in the record supports the claims that CEI has failed to correctly reflect her PIPP installments or other payments made on her account at 1439 Sulzer Avenue. Ms. Tandy failed to present sufficient evidence to support her dispute of the charges transferred to her account for 1441 Sulzer Avenue or to support claims that she has been overcharged or inaccurately billed. Therefore, we conclude that the complainant did not sustain her burden of proof in regard to the charges incurred on the account at 1439 Sulzer Avenue for the period December 2010 through December 2012.

C. Summary of Statements

Ms. Tandy argues that the Summary of Statements provided to her are not understandable and are misleading. It appears that what Ms. Tandy really wanted was copies of the bills previously issued on her accounts. Nonetheless, the Commission finds this claim is insufficient to sustain a complaint under Section 4905.26, Revised Code. While the Summary of Statements may require the customer to contact the utility for more details and an explanation of certain transactions, Ms. Tandy has failed to sustain her burden to demonstrate, by the submission of any evidence, that the Summary of Statements is unreasonable or a violation of a rule, Commission order or Ohio law. Accordingly, the Commission finds that this aspect of Ms. Tandy's complaint should be dismissed.

D. Request for Relief

Given that the complainant has not sustained her burden of proof to substantiate any of the allegations raised in her complaint against CEI, the request for relief is moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) CEI is a public utility, as defined in Sections 4905.02 and 4905.03, Revised Code, and, as such, is subject to the jurisdiction of the Commission.
- (2) On July 17, 2012, as supplemented on October 29, 2012, and November 8, 2012, Ms. Tandy filed a complaint against CEI.
- (3) A settlement conference was held on September 27, 2012.
- (4) The hearing on the issues raised in the complaint was held on January 15, 2013.
- (5) In a complaint case, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission* 5 Ohio St.2d 189, 214 N.E.2d. 666 (1966).
- (6) Ms. Tandy failed to sustain her burden of proof to support her claims against CEI.
- (7) Ms. Tandy failed to sustain her burden of proof to establish that CEI violated its tariff, any Commission rule, or any provision of Title 49, Revised Code, and, therefore, the complaint should be dismissed.

ORDER:

It is, therefore,

ORDERED, That CEI's motion to strike is granted as discussed herein. It is, further,

ORDERED, That the complaint be dismissed. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

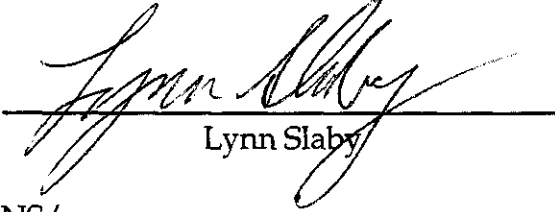
Todd A. Snitchler, Chairman



Steven D. Lesser



Andre T. Porter



Lynn Slaby

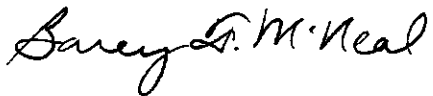


M. Beth Trombold

GNS/vrm

Entered in the Journal

MAR 06 2013



Barcy F. McNeal
Secretary