

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Ron Mosley,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 11-1494-EL-CSS
	)	
The Dayton Power and Light Company,	)	
	)	
Respondent.	)	

SUPPLEMENTAL OPINION AND ORDER

The Commission, considering the public hearings held on September 22, 2011, and February 12, 2013, and November 21, 2013, issues a Supplemental Opinion and Order.

APPEARANCES:

Mr. Ron Mosely, 900 Willow Brook Ct., Dayton, Ohio 45424, on his own behalf.

Kegler, Brown, Hill & Ritter, by Mr. Andrew J. Sonderman, Capitol Square, Suite 1800, 65 East State Street, Columbus, Ohio 43215-4294, on behalf of Dayton Power & Light Company.

OPINION:

I. Background

On March 29, 2011, Mr. Ron Mosley (Complainant) filed a complaint against the Dayton Power and Light Company (DP&L). The Complainant alleged that DP&L wrongfully disconnected his electric service and charged him the sum of \$2,187.14. For relief, he sought damages of \$20,000. DP&L filed an answer on April 13, 2011, in which it denied the material allegations of the complaint.

On September 22, 2011, the Commission held a hearing. The Complainant testified on his own behalf and presented billings to support his claim that DP&L improperly charged him for electrical service. The Complainant claimed that he had paid his bills. At the hearing, the Complainant began to produce monthly bills starting from January 2004 and to discuss line items in each bill. DP&L claimed that none of the amount in dispute accrued prior to June 13, 2008. The attorney examiner, therefore, allowed DP&L to put on

its witness to offer evidence that the entire amount in dispute stemmed from June 13, 2008. When the Complainant resumed the presentation of billings, DP&L moved for permission to continue discovery of the materials that the Complainant intended to present at hearing. The attorney examiner adjourned the hearing to allow additional discovery.

The hearing resumed on February 12, 2013. The Complainant did not appear. At the hearing, DP&L presented additional evidence to support its billing. DP&L's witness continued testimony from the previous hearing and offered evidence to show that the Complainant owed \$4,008.81 as of February 4, 2013. On July 10, 2013, the Commission issued an Opinion and Order in which it concluded that the Complainant failed to sustain the burden of proof.

On July 31, 2013, the Complainant filed a pleading seeking to appeal the Commission's decision. The pleading was construed as an application for rehearing. The Complainant attributed his absence from the hearing to a failure to receive notice of the hearing. Upon investigation, Docketing's records show that on December 17, 2012, the attorney examiner issued an Entry that scheduled the February 12, 2013 hearing. However, there was no service notice evidencing a mailing of the Entry to the Complainant. On August 21, 2013, the Commission, therefore, granted rehearing to allow the Complainant the opportunity to present evidence. The entry granting rehearing noted that the Complainant would be barred from introducing documentary evidence that should have been provided pursuant to DP&L's discovery requests, unless the Complainant provided such documentary evidence to DP&L at least 30 days prior to the hearing. DP&L sought discovery of any documents that the Complainant intended to rely upon at hearing. On September 26, 2013, the attorney examiner issued an entry scheduling this matter for a hearing on November 21, 2013.

## II. Law

DP&L is an electric light company as defined by R.C. 4905.03(A)(3) and a public utility by virtue of R.C. 4905.02. DP&L is, therefore, subject to the jurisdiction of the Commission pursuant to R.C. 4905.04 and 4905.05.

R.C. 4905.26 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.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

### III. Hearing

On November 21, 2013, the hearing proceeded as scheduled with both parties in attendance. At the beginning of the hearing, the attorney examiner reiterated the Commission's order that the Complainant would be barred from introducing documentary evidence that should have been provided pursuant to DP&L's discovery requests, unless such documentary evidence had been provided to DP&L at least 30 days prior to the hearing (Tr. at 6). In his opening statement, counsel for DP&L pointed out that the Complainant had not provided responses to discovery requests. He added that the Complainant had not provided any information since the September 22, 2011 hearing. During the hearing, the Complainant attempted to introduce and refer to documentary evidence. Because the Commission's August 21, 2013 Entry on Rehearing forbade the use of documentary evidence by the Complainant that should have been provided to DP&L prior the hearing, the attorney examiner sustained DP&L's objections to the use of such material. Aside from the failure to produce any admissible documents to support his complaint, the Complainant did not offer any testimony to support his claim that DP&L overcharged him for electric service.

DP&L made its witness, Kolleen Buman, available for cross examination. Ms. Buman is employed by DP&L and manages formal and informal customer complaints. (Tr. at 45.) At the February 12, 2013 hearing, the prefiled testimony of DP&L's witness Ms. Lisa Brown was admitted into the record. Ms. Brown's testimony provided an account of debits and credits relating to the Complainant's bill. Ms. Buman adopted the testimony of Ms. Brown (Tr. at 47-48). The Complainant did not cross examine the witness on any issues relating to his account balance or the complaint.

### IV. Discussion and Conclusion

At the February 12, 2013, hearing, DP&L presented evidence showing that, since the September 22, 2011 hearing, the Complainant's account balance had increased from \$2,187.14 to \$4,008.81, as of February 4, 2013 (Tr. II, Resp. Ex. B). The record shows that the Complainant rejected numerous opportunities to respond to discovery and provide evidence of any errors in DP&L's accounts. Moreover, the Complainant appeared at the hearing on November 21, 2013, and failed to provide testimony in support of his complaint. Finally, the Complainant failed to cross examine DP&L's witness concerning any inaccuracies in his account. The failure to provide testimony or cross examine DP&L's witness on the central issue of the complaint compels the Commission to find that the Complainant has failed to carry the burden of proof. Accordingly, the complaint should be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On September 22, 2011, the Commission held a hearing. At the hearing, the Complainant sought the admission of exhibits that should have been served in response to discovery requests. The attorney examiner granted DP&L's motion to continue the hearing to allow further discovery.
- (2) The Complainant failed to comply with DP&L's discovery requests and the attorney examiner's orders to compel. In response to DP&L's July 26, 2012 motion to dismiss, the Commission issued an order on October 31, 2012, directing the attorney examiner to complete the hearing and ordering that the Complainant be barred from introducing documentary evidence that should have been provided pursuant to DP&L's discovery requests, unless such documentary evidence was provided to DP&L at least 30 days prior to the hearing.
- (3) By entry issued December 17, 2012, the attorney examiner scheduled the continuation of the hearing for February 12, 2013.
- (4) The February 12, 2013 hearing proceeded as scheduled; however, the Complainant failed to appear.
- (5) On July 10, 2013, the Commission issued an Opinion and Order finding that the Complainant failed to sustain the burden of proof.
- (6) On July 31, 2013, the Complainant filed a letter that the Commission construed to be an Application for Rehearing. The Complainant appeared to allege that he did not receive notice of the hearing. DP&L filed a memorandum contra on August 8, 2013.
- (7) On August 21, 2013, the Commission granted rehearing because there was no record that Docketing served a copy of the entry scheduling the February 12, 2013 hearing.
- (8) By entry issued September 26, 2013, the attorney examiner scheduled a hearing for November 21, 2013.
- (9) On November 21, 2013, the hearing proceeded as scheduled. Both parties appeared at the hearing.


- (10) DP&L is a public utility and an electric company pursuant to R.C. 4905.02 and 4905.03. Thus, DP&L is subject to the jurisdiction of this Commission under the authority of R.C. 4905.04 through 4905.06.
- (11) This complaint is properly before the Commission pursuant to the provisions of R.C. 4905.22 and 4905.26.
- (12) In a complaint case, the burden of proof is on the complainant. *Grossman v. Public. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).
- (13) The Complainant has failed to carry the burden of proof that DP&L billed him incorrectly for service or that it wrongfully disconnected his electric service.

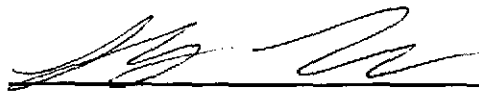
It is, therefore,


ORDERED, That, in accordance with the findings and conclusions in this Supplemental Opinion and Order and the Opinion and Order issued in this proceeding on July 10, 2013, the complaint be dismissed. It is, further,

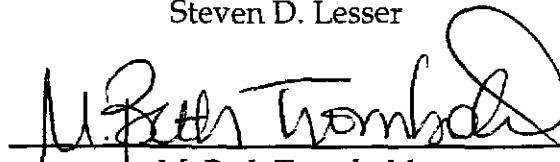
ORDERED, That a copy of this Opinion and Order be served upon the parties and all interested persons of record.

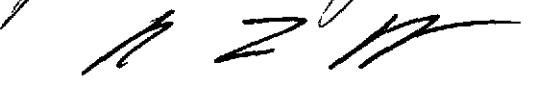
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Todd A. Snitchler, Chairman

  
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Steven D. Lesser

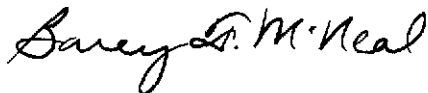
  
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Lynn Slaby

  
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M. Beth Trombold

  
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Entered in the Journal  
**APR 02 2014**

  
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Barcy F. McNeal  
Secretary