

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )	
Gwendolyn Tandy, )	
Complainant, )	
v. )	Case No. 14-686-EL-CSS
The Cleveland Electric Illuminating )	
Company, )	
Respondent. )	

ENTRY

The Commission finds:

- (1) On April 16, 2014, Gwendolyn Tandy (Complainant) filed a complaint with the Commission against the Cleveland Electric Illuminating Company (CEI or Respondent). In the 132 page complaint, Ms. Tandy argues that CEI:
  - (a) Provided inaccurate bills;
  - (b) Improperly transferred charges to her residential account;
  - (c) Without the complainant's consent, enrolled her in the Percentage of Income Payment Plan (PIPP) Plus program;
  - (d) Illegally disconnected her electric service on September 24, 2013; and
  - (e) Denied her energy assistance from the Fuel Fund grant program.

In support of her complaint, Ms. Tandy submitted copies of her CEI bills for January through December 2013 for 1439 Sulzer Avenue; copies of CEI bills mailed to Ms. Tandy at 1439 Sulzer Avenue for service at 1441 Sulzer Avenue for January through July 2011; obscured copies of the first page of her CEI bill for January through December 2009 at 1439 Sulzer Avenue. The

complaint also includes a letter from a CEI customer support representative regarding transfers to Complainant's account from the attached duplex (1441 Sulzer Avenue), a copy of a lease agreement purportedly between Complainant and a tenant for 1441 Sulzer Avenue, copies of court documents from the Euclid Municipal Court, Case No. 11CV102429 involving Complainant and a tenant, and a notice of change of electric supplier dated July 25, 2013 from CEI. Complainant argues CEI committed fraud and theft and requests that CEI credit her account for \$450 and pay her \$4,000.

- (2) On May 7, 2014, CEI filed its answer to the complaint and a motion to dismiss. In its answer, CEI admits that Gwendolyn Tandy is a customer at 1439 Sulzer Avenue, Euclid, Ohio with an account for electric service ending in 0079. CEI acknowledges that Complainant's electric service was disconnected for nonpayment on September 24, 2013. Respondent avers that Complainant's service was reconnected on October 22, 2013, pursuant to the Commission's Order in *In re Commission's Consideration of Emergencies for 2013-2014 Winter Heating Season*, Case No. 13-1889-GE-UNC (*Winter Reconnect Order*). CEI alleges that Ms. Tandy has continually failed to pay her electric bills. CEI states that the company has, at all times, acted in compliance with R.C. Title 49, its tariff on file with the Commission, and the rules, regulations, and orders of the Commission. Further, CEI states that the complaint does not set forth reasonable grounds to sustain a complaint, as required by R.C. 4905.26, or state a claim upon which relief can be granted.

In its answer and motion to dismiss, CEI notes that the complainant previously filed a complaint against CEI, in *In re Complaint of Gwendolyn Tandy v. The Cleveland Electric Illuminating Co.*, Case No. 12-2102-EL-CSS (*Tandy CEI 1*). CEI submits that the complaint in *Tandy CEI 1* primarily pertained to balance transfers to the complainant's account from 1441 Sulzer Avenue, the accounting of payments on the complainant's account, the complainant's eligibility for the PIPP Plus, and CEI's statement of account.

CEI contends that the Commission heard Ms. Tandy's complaint at a hearing held on January 15, 2013, and dismissed the allegations raised. See *Tandy CEI 1*, Order (Mar. 27, 2013) at

9. Further, CEI notes complainant's request for rehearing was denied. *Tandy CEI 1*, Entry on Rehearing (May 1, 2013) at 3. CEI avers that the Commission's decision in *Tandy CEI 1* was not appealed and, thus, is a final order.

- (3) More specifically, in its motion to dismiss, CEI argues that the pending complaint raises claims identical to the claims addressed in *Tandy CEI 1*, raises claims that could have been raised in *Tandy CEI 1*, and makes claims based on the consequences of the Commission's decision in *Tandy CEI 1*. CEI avers that the doctrine of res judicata "bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 643 N.E.2d 226 (1995). CEI notes that *Grava* further provides "an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 653 N.E.2d 226 (1995). Accordingly, CEI reasons that this complaint is barred by res judicata, laches, waiver and estoppel and, therefore, CEI requests that the complaint be dismissed.
- (4) On June 3, 2014, Complainant filed a statement specifically requesting that her electric service not be disconnected until after the Commission makes its ruling on her complaint. Further, Ms. Tandy restates that she is disputing all of her total past CEI charges.
- (5) On June 4, 2014, CEI filed a memorandum contra Ms. Tandy's request to maintain her electric service until her complaint is decided by the Commission. CEI submits that Complainant's electric service was disconnected on May 30, 2014 for nonpayment and, therefore, her request is moot. CEI reasons that Ohio Adm.Code 4901-9-01(E) contemplates a request for stay of disconnection as opposed to the reconnection of service. Further, Respondent submits that Ohio Adm.Code 4901-9-01(E) requires Complainant to pay all amounts not in dispute during the pendency of the complaint. In this case, CEI emphasizes, Complainant disputes her total account balance. CEI notes that Complainant's past due balance largely consist of amounts the Commission has already reviewed in a prior proceeding and determined properly collectible by CEI. See *In re Complaint of*

*Gwendolyn Tandy v. Cleveland Elec. Illum. Co.*, Case No. 12-2102-EL-CSS (*Tandy CEI 1*), Order (Mar. 6, 2013), Entry on Rehearing (May 1, 2013). Accordingly, CEI argues that because Complainant expressly seeks to avoid paying amounts that cannot reasonably be disputed, her request is improper. Finally, CEI offers that Complainant has filed an identical request in a parallel complaint against The East Ohio Gas Company d.b.a. Dominion East Ohio (Dominion).<sup>1</sup> CEI avers that the same request in this case and the complaint against Dominion tends to confirm that the claims made in both cases do not reflect bona fide disputes over the lawfulness of Complainant's utility services.

- (6) The Commission recognizes that Ms. Tandy previously filed a complaint against CEI which asserted identical and similar issues as the issues raised in the pending complaint. In *Tandy CEI 1*, Complainant asserted that CEI's bills were inaccurate and improperly reflected charges transferred to her account from 1441 Sulzer Avenue, the bills did not accurately reflect her PIPP eligibility, and that the statements of account were misleading. In accordance with R.C. 4905.26, a hearing was held and Complainant provided an opportunity to substantiate the allegations raised in the complaint. The Commission, considering the evidence of record, determined that Complainant had not sustained her burden of proof to substantiate any of the allegations raised in her complaint against CEI. *Tandy CEI 1*, Order (Mar. 27, 2013) at 9. The Commission also denied Complainant's request for rehearing. *Tandy CEI 1*, Entry on Rehearing (May 1, 2013) at 3. No appeal of the Commission's decision in *Tandy CEI 1* was filed by either party. Accordingly, the Commission's Order in *Tandy CEI 1* is now a final order.
- (7) The Commission finds that Complainant is precluded from raising the same issues in the current complaint that were previously decided by the Commission in *Tandy CEI 1* under the doctrine of res judicata. The Commission specifically addressed Complainant's PIPP Plus eligibility, participation and the termination of her participation in PIPP Plus in *Tandy*

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<sup>1</sup> See, *In re Complaint of Gwendolyn Tandy v. The East Ohio Gas Co. d.b.a. Dominion East Ohio*, Case No. 14-795-GA-CSS and *In re Complaint of Gwendolyn Tandy v. The East Ohio Gas Co. d.b.a. Dominion East Ohio*, Case No. 12-2103-EL-CSS.

CEI 1. *Tandy CEI 1*, Order (Mar. 27, 2013) at 4-7. Similarly, the Commission concluded that insufficient evidence was presented to substantiate Complainant's dispute of charges transferred to her account for services received at 1441 Sulzer Avenue. *Tandy CEI 1*, Order (Mar. 27, 2013) at 8. Further, the Commission specifically reviewed the charges which accrued to Ms. Tandy's residential account and determined that it had not been demonstrated that the outstanding account balance was inaccurate or overstated through December 2012. *Tandy CEI 1*, Order (Mar. 27, 2013) at 8. On that basis, the Commission finds that the first three claims in the pending complaint, as enumerated in Finding (1)(a), (b), and (c), must be dismissed as the same issues were raised and addressed in *Tandy CEI 1*.

- (8) The Ohio Supreme Court has held that "a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995) (syllabus). In the pending case, Complainant alleges that CEI illegally disconnected her electric service on September 24, 2013. CEI admits that the complainant's service was disconnected on September 24, 2013 for nonpayment and was reconnected on October 22, 2013 in accordance with the provisions of the *Winter Reconnect Order*. Based on the bills submitted with the complaint, it appears that Complainant's electric service was maintained, despite an outstanding past due balance, while *Tandy CEI 1* was being processed. The first bill after the issuance of the Entry on Rehearing in *Tandy CEI 1*, dated May 8, 2013, and each CEI bill issued thereafter through September 8, 2013, includes a disconnection notice for a previous balance due. The bill issued May 8, 2013, list a previous balance due of \$415.92 and the bill issued September 9, 2013, list a previous balance due of \$400.65. According to the CEI bills issued May 8, 2013 through September 9, 2013, Ms. Tandy made payments totaling \$200.01<sup>2</sup> and accrued current charges, including late payment fees, of \$147.82.<sup>3</sup> The disconnection notice on her bill dated September 8, 2013 warns that unless a payment of \$335.00 is made by September 20,

<sup>2</sup> Total payments made April - August 2013, respectively, equals \$200.01 (\$27.18 + 27.18 + 40 + 40 + 65.65).

<sup>3</sup> Total charges May - September 2013, respectively, equals \$147.82 (\$40.80 + 30.27 + 20.07 + 27.95 + 28.73).

2013, service may be disconnected. The disconnection notice meets the requirements of Ohio Adm.Code 4901:1-18-06(A)(5). Had Complainant prevailed on her claims in *Tandy CEI 1*, there is the possibility that her account would not have been in arrears \$400. However, the Commission notes that this is approximately the same amount that her electric residential account was in arrears as of the December 2012 bill in *Tandy CEI 1*. *Tandy CEI 1*, Order (Mar. 27, 2013) at 8. Thus, the Commission finds that the disconnection of Complainant's electric service on September 24, 2013 was a consequence of the Commission's decision in *Tandy CEI 1* and, therefore, this claim is also barred.

- (9) Finally, as to Ms. Tandy's last claim that she was denied energy assistance through CEI's Fuel Fund, the Commission finds this claim to also be barred. CEI's Fuel Fund assists residential customers with the payment of their electric bill to maintain electric service. CEI's Fuel Fund is funded by the shareholders of FirstEnergy Corporation, CEI's parent company and administered by the local community action agency. It appears that the complainant applied for assistance from the Fuel Fund in late August or early September 2013. In *Tandy CEI 1*, the Commission determined that the Ohio Department of Development (ODOD)<sup>4</sup> had terminated Complainant's participation in PIPP Plus in accordance with Ohio Adm.Code 122:5-3-02(I). *Tandy CEI 1*, Order (Mar. 27, 2013) at 7. Ohio Adm.Code 122:5-3-02(I) provides that:

Removal from PIPP for fraudulent enrollment. In the event that there is an allegation of fraudulent enrollment regarding a PIPP customer, the director, through the office of community services, will investigate such allegation. In the event the director finds that a PIPP customer is enrolled in the PIPP program or continues to participate in the PIPP program as a result of fraud or deception by the customer or any consumer who is a member of the customer's household, the director shall terminate such customer's enrollment in the PIPP program with immediate effect, demand that

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<sup>4</sup> Effective September 2, 2012, R.C. 166.01(Z) defines the former Ohio Department of Development (ODOD) as the Ohio Development Services Agency (ODSA).

the customer make restitution of all payments made from the fund for the benefit of such customer during the period the customer was fraudulently enrolled in the PIPP program, and reverse any arrearage credits received by such customer during the period the customer was fraudulently enrolled in the PIPP program. In addition, *any such customer found to have fraudulently enrolled in the PIPP program shall be ineligible to participate in the PIPP program for twenty-four months after the finding of fraudulent enrollment and until any demand for restitution is satisfied.* (Emphasis added.)

In light of ODSA's determination of fraud in association with Complainant's account, CEI denied the request for energy assistance from the Fuel Fund. ODSA, not the Commission, administers the electric PIPP Plus program and investigates allegations of fraud in association with the program.

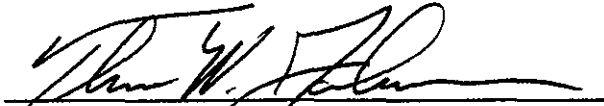
- (10) Accordingly, the Commission concludes that all of the allegations made in the current complaint were either addressed in *Tandy CEI 1*, the result from the Commission's decision in *Tandy CEI 1* or, in the case of the Fuel Fund, outside of the Commission's jurisdiction. Thus, the Commission concludes that the claims brought by Complainant in the pending proceeding are barred by the doctrine of res judicata and shall not be relitigated or beyond the Commission's jurisdiction. Accordingly, CEI's motion to dismiss should be granted and this matter closed of record.

It is, therefore,

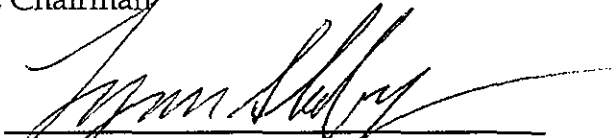
ORDERED, That CEI's motion to dismiss is granted and the matter closed of record.  
It is, further,

ORDERED, That a copy of this Entry be served upon Ms. Tandy, CEI and its counsel, and all other interested persons of record.

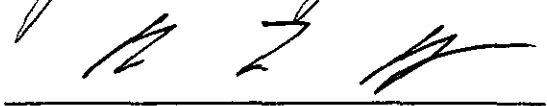
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

  
Steven D. Lesser

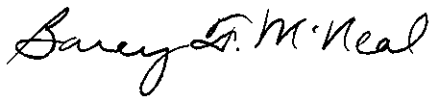
  
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Entered in the Journal **JUL 30 2014**



Barcy F. McNeal  
Secretary