

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	)	
Jo Anne Foley,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 85-211-GA-CSS
	)	
Columbia Gas of Ohio, Inc.	)	
and	)	
The Toledo Edison Company,	)	
	)	
Respondents,	)	
	)	
Relative to alleged failure to	)	
credit customer account.	)	

OPINION AND ORDER

The Commission, coming now to consider the above-entitled matter, and being fully advised in the premises, hereby issues its Opinion and Order.

APPEARANCES:

Ms. Jo Anne Foley, 6638 Whiteford Center, Lambertville, Michigan, on her own behalf.

Messrs. Stephen B. Seiple and Thomas E. Morgan, 200 Civic Center Drive, P.O. Box 117, Columbus, Ohio 43216-0117, on behalf of Columbia Gas of Ohio, Inc., Respondent.

Ms. Denise Hasbrook, 300 Madison Avenue, Toledo, Ohio 43652, on behalf of The Toledo Edison Company, Respondent.

HISTORY OF THE PROCEEDINGS:

On February 19, 1985, Jo Anne Foley filed this complaint with the Commission against Columbia Gas of Ohio, Inc. (Columbia, company). Ms. Foley alleged that on February 22, 1984, she sent a Home Energy Assistance Program (HEAP) voucher along with a personal check to Columbia to pay the gas bill for her rental property at 212 Floyd Street, Toledo, Ohio. Her gas account was credited for the amount of the personal check, but the \$194 voucher was not credited to her account. The complainant alleged that she called Columbia on numerous occasions to inquire about the \$194 voucher amount that remained a debit on her account but received no satisfactory answer from the company. The complainant then called HEAP and learned that the \$194 voucher had been paid to The Toledo Edison Company (Toledo Edison). The complainant stated that she is not a customer of Toledo Edison

and did not know how Toledo Edison came to receive payment for the voucher. The voucher was made out to Raymond Grier who was Ms. Foley's tenant at 212 Floyd Street. The address for Raymond Grier given on the face of the voucher was 231 18th Street, Toledo, Ohio, which was apparently his former address. The complainant stated that the \$194 voucher should have been credited to her Columbia Gas account at 212 Floyd Street because she alleged that Raymond Grier gave her the voucher for the purpose of reducing his rent in the amount of the voucher. She alleged that she sent the voucher to Columbia in order to receive the credit and that Columbia failed to credit her account properly. She alleged that she cannot find Raymond Grier to demand payment from him and that Toledo Edison was not at fault for receiving payment on the voucher when the voucher was sent to Toledo Edison.

On March 11, 1985, Columbia filed a motion to dismiss the complaint. First, Columbia could not verify that it had ever received the voucher in question. Second, Columbia stated that it had no control over the handling of HEAP vouchers by Toledo Edison or by the Ohio Department of Development (ODOD), which administers the HEAP program. Columbia also stated that ODOD, Toledo Edison, and Mr. Grier were indispensable parties whose joinder would be required.

A preliminary conference was held on the record on August 30, 1985. As a result of the conference, Toledo Edison was joined as a party to this proceeding. By entry dated October 1, 1985, the Commission denied Columbia's motion to dismiss the complaint and set the matter for hearing on October 30, 1985. On October 4, 1985, Columbia asked for a continuance in order to prepare its case, and Toledo Edison requested a continuance on October 9, 1985, to prepare its case. The hearing was rescheduled for December 3, 1985. On November 4, 1985, Toledo Edison answered the complaint. Toledo Edison stated that it had received Raymond Grier's HEAP voucher along with the bill of Maxine Person Anderson of Woodland Avenue, Toledo, Ohio. Toledo Edison cashed the voucher on March 28, 1984 and applied it to the account of Ms. Anderson. Toledo Edison also filed a motion to compel the joinder of Maxine Person Anderson as a party necessary to the adjudication of the complaint. Toledo Edison stated that Ms. Anderson forwarded the voucher to it and that if the Commission found that the complainant Jo Anne Foley should receive the \$194 credit for the voucher instead of Maxine Person Anderson, Toledo Edison would debit Ms. Anderson's account by the \$194 previously credited. Since the ruling would affect Ms. Anderson's interests, Toledo Edison requested that she be joined as a party. The hearing on this matter took place on December 3, 1985. At the hearing, Toledo Edison renewed its motion for the joinder of Maxine Anderson. Jo Anne Foley testified on her own behalf at the hearing. Ms. Sheila Gardner, program coordinator of HEAP at ODOD, was called as a witness by Columbia as was Mr.

Michael Schwieterman, a cash and collection supervisor at Columbia, and Ms. Eileen Rae, a residential credit supervisor at Toledo Edison, testified on behalf of Toledo Edison. Columbia filed a post-hearing brief on January 7, 1986.

The attorney examiner issued his report on May 5, 1986. The attorney examiner denied Toledo Edison's motion to join Maxine P. Anderson and also stated that the Commission did not have the authority to grant Columbia's previous motion to join ODOD, Mr. Grier, or Ms. Anderson. The examiner found that the complainant had failed to establish that Columbia acted unreasonably in not crediting her account \$194 pursuant to the Grier HEAP voucher. The examiner recommended that the complaint be dismissed. On May 27, 1986, the complainant asked for an extension of time to file exceptions to the examiner's report. The Commission granted the extension to July 25, 1986. On July 29, 1986, the complainant responded to the examiner's report. Her response was that Columbia was "neglectful" when the company received her personal check with a note on the check indicating the \$194 voucher amount, and "it was their job to clarify the amounts." She stated further that as soon as she realized that she had not received the \$194 credit, she began to inquire about the problem. She stated that at the hearing she had produced a note from Raymond Grier stating that he had given her the voucher for his rent. The complainant contended that Columbia "made the mistake" and should be the one to attempt to gain payment from Maxine Anderson. On August 6, 1986, Columbia filed its reply to the complainant's exceptions. Columbia stated that there was no record that the Grier voucher had ever been sent to the company and that it was only speculation that Columbia had mishandled the voucher. Columbia further stated that it had not been established that Maxine Anderson wrongfully acquired or used the voucher.

#### DISCUSSION:

The issue to be resolved in this proceeding is whether Columbia's failure to credit Jo Anne Foley's gas account for the \$194 HEAP voucher issued in the name of Raymond Grier was unjust, unreasonable, or unlawful. The complainant owns the rental property at 212-214 Floyd Street, Toledo, Ohio which is a duplex with a single gas meter. While the property is leased to tenants, the complainant-landlord properly maintains gas service in her family name and remains responsible to pay for gas service at the property (Tr., 17-23). The Commission strongly encourages utilities to place service only in the name of the landlord-property owner in the case of master-metered premises and strongly discourages the practice of tenants at master-metered premises having utility service in the tenants' names. The Commission remains convinced that its policy regarding master-metered premises is sound. However, HEAP vouchers may be issued to tenants on the basis of income eligibility. The HEAP voucher

must be signed over to a utility company, which sends the voucher to HEAP at ODOD for payment. The tenant at a master-metered premises may sign his or her HEAP voucher over to the landlord, who, in consideration for the voucher, reduces the tenant's rent. Then the landlord submits the HEAP voucher endorsed by the tenant to the utility company which sends the voucher to ODOD. Columbia does not actually credit the customer's account until ODOD pays Columbia, which takes approximately two months. This method of handling HEAP vouchers is apparently quite proper.

The complainant stated that she regularly accepts HEAP vouchers from her tenants in lieu of rent (Con. Tr., 23). As in this proceeding the vouchers may be addressed to the tenant at a previous address. Raymond Grier's 1984 voucher had his address as 231 18th Street, Toledo, Ohio, but the voucher apparently found its way to Mr. Grier at the Floyd Street address where Mr. Grier had moved in August 1983. The complainant has two units at the Floyd Street address. For her January 1984 gas payment, the complainant sent the \$194 HEAP voucher of her downstairs tenant to Columbia along with a personal check for the difference and received a credit from Columbia for the voucher on her March gas bill. This was the usual procedure, and nothing had gone wrong. The complainant testified that she did exactly the same thing for the February 1984 gas bill for her Floyd Street property except that she used the \$194 HEAP voucher of her other tenant, Raymond Grier, along with her personal check. The personal check was cashed by Columbia and credited to Ms. Foley's account, but Columbia had no knowledge of the Grier voucher (Tr., 18-19). For at least two months the continuing presence of a \$194 debit was expected as the complainant waited for ODOD to pay Columbia. Afterwards, the complainant phoned Columbia several times, but Columbia did not know where the voucher was. The complainant testified that she finally called HEAP in August 1984 and learned that the Grier voucher had been paid to Toledo Edison (Tr., 17). Raymond Grier moved out of the Floyd Street address on June 21, 1984. The complainant testified that she does not know where Mr. Grier is and has not attempted to recover the money from him (Tr., 24). However, at the hearing she introduced a handwritten note, dated August 19, 1985, from Raymond Grier stating: "Raymond Grier did use my voucher from (HEAP) for my rent to Mrs. Foley. Raymond Grier." (Complainant's Ex. E).

Columbia's witness Schwieterman testified that when Columbia receives a HEAP voucher, a clerk writes down the name of the person on the voucher and the amount to be credited to that person's account (Tr., 29). Columbia might send to HEAP as many as one hundred vouchers at a time. When the company receives payment from HEAP, the company goes through its records to credit the accounts. Mr. Schwieterman testified that Columbia searched its records and did not have any record of the Grier voucher at all (Tr., 30). There is no record that the Grier voucher was received by Columbia and no record that HEAP paid Columbia

anything on the Grier voucher. Of course, Grier had no account with Columbia and was not a customer of Columbia. He was a tenant in a master-metered premises whose account was in the name of the landlord, Ms. Foley. Mr. Schwieterman testified that the clerk who takes care of vouchers only takes care of vouchers. Obviously, Columbia has to separate the vouchers from accompanying personal checks or bill stubs in order to mail the vouchers to HEAP for payment. The voucher clerk will write down the account number of the person whose name is on the voucher or look up the address of the person on the voucher in order to determine who will receive the credit once HEAP makes payment. Mr. Schwieterman testified that if the name on the voucher has no account and the address has no service, Columbia will mail the voucher back to the person whose name is on the voucher (Tr., 35).

The factual evidence of record and Columbia's clerical procedures lead to the conclusion that Ms. Foley mailed the Grier HEAP voucher to Columbia along with her bill and personal check, which Columbia cashed and credited to her account. The \$194 voucher amount remained a debit on Ms. Foley's account after her personal check was credited. Ms. Foley had every right to use the Grier voucher as she did, and Columbia could have credited the voucher to her account, as Columbia credited the voucher of Ms. Foley's other tenant the previous month. However, after Ms. Foley mailed the Grier voucher in to Columbia, the Commission concludes that the company misplaced the voucher in such a way that the voucher could no longer be connected to the Foley account. Columbia apparently returned the already endorsed voucher to the former Grier address, and afterwards there followed a series of events that ended with an endorsed instrument being placed into another person's hands. The question, in this case, is whether Columbia's actions were unjust and unreasonable so that Columbia should compensate Ms. Foley for the value of the voucher lost to her. Columbia's procedures for handling HEAP vouchers ought to take into consideration the problem that the vouchers may often be applied to the account of someone whose name is not on the voucher. This will be a fairly frequent occurrence in the case of master-metered premises. In this case, Columbia lost the \$194 payment that Columbia could have had years ago. Toledo Edison had no problem in obtaining payment for the Grier voucher, even though the voucher was paid on another account and another address than the name and address that appeared on the voucher's face. However, in spite of the fact that Columbia's procedures were inadequate to assure proper treatment of the Grier voucher, we must conclude that the complainant Ms. Foley's own lack of care actually initiated the problem. Ms. Foley could easily have avoided the voucher difficulties if she had written her name, address, or account number on the Grier voucher. Mr. Grier merely signed his name on the voucher and did not indicate on the voucher's face that he had in fact signed it over to Ms. Foley. There was nothing on

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the voucher but Grier's name and former address (Columbia Ex. 1). Ms. Foley should have realized that if the voucher were misplaced at Columbia, Columbia would have no way of tracing the voucher to her account. She should have also realized that, given the volume of bills and vouchers that Columbia deals with each day in winter, the possibility that the voucher would be separated from the rest of her bill was not small. Ms. Foley is a landlord who presumably has experience in dealing with checks, and she must realize the calamities that may arise when endorsed instruments are not handled properly. At the prehearing conference, Ms. Foley stated that the two vouchers she had accepted for the Floyd street address in the winter of 1984 both had different addresses than that rental property. If Ms. Foley had written her name, address, or account number on the Grier voucher when she sent in the voucher, she probably would have received her credit with no problem. Had Columbia mishandled a voucher which had clearly on its face been signed over to Ms. Foley with her account number or at least her name and address on it, Ms. Foley might have a better argument that Columbia's action were unreasonable. However, we must find that Ms. Foley's own handling of the endorsed voucher was the source of her problem in this proceeding. Therefore the complainant has not established that Columbia acted unreasonably in not crediting her account for the Grier voucher. The complainant did not meet her burden of proving, as required by Grossman v. Pub. Util. Comm., 5 Ohio St. 2d 189 (1966), that Columbia acted unreasonably, unfairly, or unlawfully in this case. The complaint should be dismissed.

Two procedural matters also arose in the context of this proceeding. One was the attempts of Columbia and Toledo Edison to join various parties which these companies considered indispensable. Columbia had requested that ODOT, Toledo Edison, and Raymond Grier be joined. Only Toledo Edison was so joined. Toledo Edison requested then that Maxine P. Anderson be joined, but the examiner denied the request. The examiner found that the Commission could not compel ODOT, Grier or Anderson to join this action but could compel Toledo Edison to join because Toledo Edison is a utility subject to Commission jurisdiction. The examiner found that no specific administrative rule or statute governs joinder of parties in Commission proceedings. The examiner also stated that Columbia or Toledo Edison could have requested that the Commission issue subpoenas upon Grier or Anderson, but such subpoenas were not requested. A subpoena was issued at the request of Columbia that Sheila Gardner of ODOT appear, and Ms. Garner appeared pursuant to this subpoena. It is clear that the Commission could not have compelled the joinder of Raymond Grier or Maxine P. Anderson as parties to this action. In any event, their participation was not relevant to this proceeding which was a complaint brought by Ms. Foley against Columbia for not crediting the HEAP voucher to her account. This is also true for the second procedural question, which is the status of Toledo Edison in this proceeding. The examiner found

that Toledo Edison's role was simply to provide information. The complainant made it clear that her complaint was against Columbia and not against Toledo Edison (Tr., 43-44). Toledo Edison provided the information that it has received payment for the Grier voucher. It was not unreasonable or unlawful for Toledo Edison to send the voucher to HEAP for payment when Toledo Edison received the endorsed voucher from one of its customers.

FINDINGS OF FACT:

- 1) On February 19, 1985, Jo Anne Foley filed a complaint against Columbia alleging that Columbia did not properly credit her account for \$194.00, which should have been credited pursuant to a HEAP voucher which was issued in the name of Raymond Grier, a tenant residing in property owned by complainant.
- 2) A public hearing on the complaint was held on December 3, 1985, at the offices of the Commission.
- 3) Notice of the hearing was published in the Toledo Blade, a newspaper of general circulation in Lucas County, Ohio in accordance with Section 4905.26, Revised Code.
- 4) The complainant owns the property at 212-214 Floyd Street, Toledo, Ohio, which is a duplex with a single gas meter. The property is leased to tenants, but the complainant has properly maintained the gas service in her family name rather than that of the tenants.
- 5) Raymond Grier, one of the complainant's tenants at the Floyd Street address, received a HEAP voucher for \$194 addressed to him at 231 18th Street, Down, Toledo, Ohio and tendered the voucher to the complainant who reduced his rent by \$194.
- 6) The complainant mailed to Columbia, along with her bill and personal check, the HEAP voucher for \$194 endorsed by Raymond Grier for her payment made to Columbia in February, 1984.
- 7) Columbia has no record of receiving the Grier HEAP voucher. The voucher was probably separated from the other papers of the complainant so that Columbia had no way of crediting the voucher to the Foley account.

Columbia probably was forced to return the Grier voucher to Grier at his former address, which was the address on the voucher.

- 8) The complainant did not write her name, address, or account number on the voucher which had no indication on its face that it had been signed over to the complainant.
- 9) The disputed HEAP voucher for \$194.00 was paid to Toledo Edison and credited to the account of Maxine P. Anderson of Woodland, Avenue, Toledo, Ohio.

CONCLUSIONS OF LAW:

- 1) Columbia and Toledo Edison are public utilities as defined by Section 4905.03, Revised Code, and are subject to the jurisdiction of the Commission under Section 4905.04, Revised Code.
- 2) This matter was brought as a complaint under Section 4905.26, Revised Code. Publication of notice of the hearing was made in accordance with the requirements of that section.
- 3) Complainant is the landlord of rental property located at 212-214 Floyd Street, Toledo, Ohio. The rental property is a master-metered premises with gas service billable to complainant-landlord.
- 4) Toledo Edison did not act unreasonably or unlawfully when Toledo Edison sent the HEAP voucher it received from its customer to HEAP for payment.
- 5) The complainant acted without proper care when she sent in the Grier voucher to Columbia without indicating on the face of the voucher that it had been signed over to her and that it was payable to her account. Her actions did not evidence the appropriate care a landlord in her situation would be expected to show. Columbia's procedures were insufficient to handle the HEAP voucher appropriately. Once the voucher was separated from the other Foley papers, Columbia was forced to return the voucher to Grier. However, it was the complainant's



initial lack of care that caused Columbia to be unable to credit the voucher properly.

- 6) Columbia's action in not crediting the complainant's account \$194.00 for the Grier HEAP voucher was not unjust, unreasonable, or unlawful.

ORDER:

It is, therefore,

ORDERED, That the instant complaint is hereby dismissed, and the case closed as a matter of record. 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

\_\_\_\_\_  
Thomas V. Chema, Chairman

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William H. Brooks

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Gloria L. Gaylord

\_\_\_\_\_  
Ashley C. Brown

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Alan R. Schriber

CLM/ksb

Entered in the Journal

AUG 19 1988

A True Copy

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Nancy L. Wolpe  
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Secretary