

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

FAYE E. DANIELS,)	
)	
Complainant,)	
)	
v.)	Case No. 15-1288-GA-CSS
)	
THE EAST OHIO GAS COMPANY D/B/A)	
DOMINION EAST OHIO,)	
)	
Respondent.)	

**POST-HEARING BRIEF OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

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I. INTRODUCTION

Faye Daniels alleges that The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) has wrongly disconnected her gas service “in the dead of winter” on several occasions, and she accuses DEO of failing to properly credit payments and even of having a disregard “for human life.” All of these allegations are incorrect. DEO has properly accounted for all payments received on Ms. Daniels’ account. When DEO has disconnected service to Ms. Daniels’ residence, it has been justified under the rules and during warm weather. As for her allegation of malice, there is no evidence that DEO has acted with any intention other than to abide by the Commission’s rules.

Ms. Daniels was given an opportunity to present evidence in support of her claims. She failed to do so. What documentation she did submit not only failed to demonstrate unreasonable service, but pertained solely to events occurring *after* she filed her complaint. Ms. Daniels has not sustained her burden of proof, and the complaint should be dismissed.

II. FACTUAL AND PROCEDURAL BACKGROUND

Since 2001, Ms. Daniels has been a natural gas customer of DEO and a participant in the Percentage of Income Payment (PIPP) program.¹ (Callahan Dir. at 2–3.) She first established service at her current residence, 2505 Crown Place NW, on March 14, 2014, using the Commission’s Winter Reconnect Order (WRO). (*Id.* at 2; Tr. 64.) Since that time, she has been disconnected three times.

A. March–June 2014

Because Ms. Daniels had previously been a PIPP customer, DEO placed her account in the PIPP program when she reestablished service. Ms. Daniels owed a PIPP default amount that

¹ For the sake of brevity, DEO refers to the program as “PIPP” in this brief, although the actual program name is “PIPP Plus.”

carried over from her last account. After applying an energy-assistance payment, the default amount totaled \$206.50. (Callahan Dir. at 3.) To remain on PIPP, Ms. Daniels was required to pay off this default by the due date of her next monthly bill. *In re Winter Reconnection Order*, Case No. 13-1889-GE-UNC, at *7(b) (Sep. 11, 2013).

Ms. Daniels never paid this amount. She paid one PIPP installment of \$43.00, and DEO received a cash payment of \$23.00. (Callahan Dir. at 3.) DEO also received a Home Energy Assistance Program (HEAP) credit of \$233.00, but by rule these payments do not count toward the PIPP default amount. (*Id.*) Having failed to cure the default amount, Ms. Daniels was removed from the PIPP program. (*Id.*)

On May 13, 2014, Ms. Daniels filed an informal complaint at the Commission, disputing how her payments had been applied. In the course of investigating this complaint, DEO discovered an outstanding debt of \$4,503.18 from her prior account and transferred that amount to her active account. (*Id.* at 3–4.) This outstanding debt first showed on Ms. Daniels’ May 23 bill, which also included a shut-off notice. No payment was received, and on June 25, 2014, DEO disconnected service. (*Id.* at 4.)

On July 7, DEO issued a final bill for the account, with a total account balance of \$4,490.46. (*Id.*)

B. June–August 2014

The second disconnection was the result of unauthorized usage on Ms. Daniels’ account. On August 7, 2014, a Revenue Protection Investigator determined that the gas service had been turned back on at the curb box serving Ms. Daniels’ residence. The investigator disconnected service that day, and Ms. Daniels was billed for the gas consumed and an investigation fee. (*Id.*) The total account balance on her August 7 final bill came to \$4,667.95. (DEO Ex. 2 at 12.)

C. January–June 2015

On January 8, 2015, Ms. Daniels again utilized the WRO with a \$175.00 payment from Stark County Community Action to restore service to the Crown Place address. (Callahan Dir. at 4–5.) DEO again placed Ms. Daniels back on PIPP, subject to her PIPP default, which by this time had grown to \$783.13. (*Id.* at 5.) By the due date, DEO had only received two cash payments totaling \$69.00, along with a HEAP credit of \$342.00. (*Id.*) This was insufficient to cure the PIPP default, and Ms. Daniels was again removed from the program. (*Id.*)

DEO billed Ms. Daniels for her total account balance of \$4,125.67 and automatically placed her on a one-sixth payment plan. (*Id.*) Between February and June, Ms. Daniels made a single \$44.00 payment, received on March 6. (*Id.*) Her account well past due, DEO issued a disconnection notice on May 26 and disconnected service to the Crown Place address on June 23, 2015. (*Id.*)

D. Procedural History

Less than a month following this disconnection, on July 13, Ms. Daniels filed this complaint. (Complaint at 1.) The Commission set the matter for hearing for November 10, 2015, but when Ms. Daniels was unable to travel to Columbus, the hearing was rescheduled for December 14. That day, DEO’s witness and counsel appeared for the hearing as scheduled, but Ms. Daniels did not. DEO filed a motion to dismiss for failure to prosecute, but the Commission rescheduled the hearing a third time for February 1, 2016. This time, Ms. Daniels did appear and testified on her own behalf. DEO presented the testimony of witness Margaret Callahan. The attorney examiner permitted the filing of post-hearing briefs with a deadline of March 16, 2016.

III. STANDARD OF PROOF

R.C. 4905.26 provides that any person may file a written complaint that any rate, charge, or service of a public utility is in any respect unjust, unreasonable, unjustly discriminatory, in

violation of law, or inadequate. In every complaint proceeding brought pursuant to R.C. 4905.26, the complainant bears the burden of proving the allegations alleged in the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189 (1966); *see also* Entry at 2–3 (Oct. 14, 2015). Therefore, if Ms. Daniels fails to prove that DEO provided unreasonable or inadequate service, then the Commission should rule in favor of DEO and dismiss the complaint.

IV. ARGUMENT

Ms. Daniels has not carried her burden of proof in this case. She consistently failed to make adequate payments to sustain service on her various accounts, and DEO merely followed the Commission’s rules in administering her accounts. Neither the allegations in Ms. Daniels’ complaint nor the evidence offered at the evidentiary hearing demonstrate that DEO acted unreasonably or unlawfully in any way. The complaint, accordingly, should be dismissed.

A. DEO did not provide unreasonable service.

The complaint alleges that DEO has disconnected Ms. Daniels’ service multiple times in the dead of winter, and that DEO has failed to properly account for payments received from HEAP. (*See* Complaint at 1.) Ms. Daniels does not specify to which years she is referring, but the documents that accompany the complaint (pertaining to gas service from DEO) strictly refer to 2014 and 2015. (*Id.* at 2–4, 7–8.) DEO accordingly presented evidence regarding the disconnections that occurred during that time.

1. All three disconnections covered by the complaint were in compliance with Commission rules.

DEO has disconnected service to the Crown Place address on three occasions since Ms. Daniels first requested service there. All three disconnections were reasonable and permitted under the Commission’s rules.

a. The first disconnection for nonpayment was in accordance with the rules.

Ms. Daniels' repeated failure to comply with payment rules caused her first disconnection. The problem began with Ms. Daniels' failure to comply with the terms of the PIPP program.

Rule 4901:1-18-12(D)(3) applies to customers who, like Ms. Daniels, had been dropped from the program for nonpayment. It provides that such customers "may re-enroll in the program after all missed PIPP plus payments . . . have been cured." *Id.* Similarly, the WRO requires customers to "pay the balance of any PIPP Plus default over \$175 . . . on or before the due date of the customer's next bill to maintain or be reenrolled in PIPP Plus." *In re Winter Reconnection Order*, Case No. 13-1889-GE-UNC, at *7(b) (Sep. 11, 2013). If a customer fails to cure this default, she is dropped from PIPP. Ohio Admin. Code 4901:1-18-17(A).

Here, Ms. Daniels availed herself of the WRO in March 2014, was reenrolled in PIPP, but then failed to satisfy her PIPP default within the required timeframe. (Callahan Dir. at 3.) This resulted in her being removed from the program and her arrearages coming due. (DEO Ex. 2 at 10, 19.)

Ms. Daniels then failed to pay the amount of her arrearages. The Commission's rules permit utilities to disconnect service to residential customers "for nonpayment of regulated services." Ohio Adm. Code 4901:1-18-03(H). More specifically, if a customer "has not made full payment or arrangements for payment . . . for any given bill containing a previous balance," that customer is considered delinquent and subject to the utility's disconnection procedures. *Id.* 4901:1-18-04(A)(1).

By May 2014, Ms. Daniels was no longer on PIPP, and was therefore responsible for her nearly \$4,500 unpaid account balance. DEO properly gave notice on her May 23 bill that unless

Ms. Daniels paid her past-due amount, she would be disconnected. (DEO Ex. 2 at 10–11.) Ms. Daniels made no such payment, and DEO properly disconnected service on June 25, 2014. (Callahan Dir. at 4.)

b. The second disconnection for unauthorized usage was also permissible.

The second disconnection pertained to unauthorized usage. Less than two months after Ms. Daniels’ service was disconnected, on August 7, 2014, a Revenue Protection investigator discovered that someone had physically turned service back on at the curb box serving Ms. Daniels’ residence. (*Id.*) Ms. Daniels had never paid the amount due, but was again benefiting from service. The investigator disconnected service at the curb box, and Ms. Daniels was billed for the metered usage, plus an investigation fee. (*Id.*)

The Commission’s rules make clear that a “natural gas company may disconnect service without prior notice” when someone “not authorized by the gas or natural gas company has reconnected service.” Ohio Adm. Code 4901:1-13-09(A) and (B). DEO is also permitted to charge “tariffed reconnection and investigation charges,” which must be paid before the company will restore service to the premises. *Id.* 4901:1-13-09(B)(2)(c). The August disconnection was also permitted under the Commission’s rules.

c. The third disconnection, also for non-payment, was also proper.

Like the first disconnection, Ms. Daniels’ most recent disconnection in June 2015 was again for non-payment. This one was also proper under the Commission’s rules.

Ms. Daniels again availed herself of the WRO to reconnect service in January 2015 and was reenrolled in PIPP. (Callahan Dir. at 5.) Under the requirements of the WRO, she needed to cure her PIPP default to maintain her status on PIPP. *In re Winter Reconnect Order*, Case No. 14-1371-GE-UNC, at *7(b). Ms. Daniels did not do so, and was removed from PIPP. (Callahan

Dir. at 5.) Ms. Daniels then faced an outstanding balance of over \$4,000, and again failed to make payments sufficient to satisfy this balance. (*Id.*) DEO attempted to ease the burden by placing Ms. Daniels on its one-sixth payment plan, but Ms. Daniels made no payments either toward the plan or toward her current usage. (Callahan Dir. at 5; DEO Ex. at 21–24.) After giving Ms. Daniels timely notice of her pending disconnection on May 26, DEO disconnected service on June 23, 2015. (Callahan Dir. at 5.) As discussed above, DEO’s actions were permissible under the Commission’s rules.

In short, the evidence demonstrates that all of the complained-of disconnections were proper under the Commission’s rules.

B. Ms. Daniels has not offered any evidence contradicting DEO’s defense or supporting her own claims.

In complaint proceedings, the complainant bears the burden of proof and must support her claims with evidence. Failure to do so is fatal. *See, e.g., In re Complaint of James Locker v. Ohio Edison Co.*, Opin. & Order, Case No. 05-1469-EL-CSS, 2007 Ohio PUC LEXIS 179, at *30 (Feb. 28, 2007) (“claims” that have “not been adequately substantiated on the record” are “therefore[] denied”).

DEO’s evidence shows that it did not provide unreasonable service to Ms. Daniels—her problems resulted from her own failure to comply with the Commission’s rules. But even if DEO had not shown this, the Commission would still be required to dismiss the case, because Ms. Daniels has failed to offer any evidence in support of her claims.

1. Ms. Daniels’ service has not been disconnected during the dead of winter.

First, Ms. Daniels claimed that DEO has repeatedly “turned off [her] gas in the dead of winter” after having received energy-assistance payments. (Complaint at 1.) She alleges that

DEO waits for her first PIPP payment to come due and then shuts her off, claiming that the payments received are not enough. (*Id.*)

Even were they true, these allegations would not state a claim. Although certain additional protections may apply during winter months, there is nothing *per se* illegal or unreasonable about a disconnection during that time. But regardless, the evidence disproved Ms. Daniels' allegations.

At hearing, Ms. Daniels provided no documentation in support of these allegations. DEO, on the other hand, provided the testimony of a customer-service manager and statements of account and billing statements dating back to January 2013. (DEO Ex. 2.) This evidence shows that Ms. Daniels was disconnected on June 25, 2014, August 7, 2014, and June 23, 2015—all dates falling in the summer. (Callahan Dir. at 4–5; DEO Ex. 2 at 12, 14, & 25.) Not only that, but Ms. Daniels' last disconnection at her prior address also occurred in the summer. (DEO Ex. 2 at 4–5.) None of these disconnections occurred during winter, but all during warm-weather months.

Ms. Daniels claimed at hearing that her service was disconnected in “February or March” of 2015, but she presented no evidence to support this claim, and it is contradicted by DEO's billing and account records. (Tr. 11–15.)

2. HEAP credits may only apply to a customer's total account arrearages.

Ms. Daniels also alleged that DEO has disconnected her after being paid by HEAP (Complaint at 1), and questioned whether it was “legal” for DEO to receive a large payment on her behalf and then still cut off her service. (Tr. 5.)

Contrary to Ms. Daniels' allegation, the Commission's rules explicitly prohibit companies from applying HEAP payments to PIPP default amounts. “Money provided from HEAP . . . shall not be counted as part of the monies paid by the customer to meet the monthly PIPP plus income-based payment requirement.” Ohio Adm. Code 4901:1-18-13(C)(1). Rather,

these payments instead “shall first be applied to the customer’s arrearages and then held to be applied to future arrearages.” *Id.* This is how DEO applied these payments to Ms. Daniels’ account. (Callahan Dir. at 3.)

DEO complied with these rules, and Ms. Daniels has not provided any evidence suggesting otherwise.

3. Ms. Daniels has shown no evidence of ill intent by DEO.

Finally, Ms. Daniels alleged that the way DEO has handled her account shows that it does not “care for human life.” (Complaint at 1.) Once again, however, there is no evidence to support this allegation, which is itself incredible.

The evidence shows that DEO applied the rules as it understood them to Ms. Daniels’ account. And the only alleged facts she appeared to offer in support of this claim—that DEO disconnected service in “the dead of winter”—were untrue. In short, there is no substantiation for the claim that DEO does not “care for human life.” (Complaint at 1.)

C. Ms. Daniels’ claims raised for the first time during hearing are improper and lack merit.

As discussed, Ms. Daniels did not use her opportunity at hearing to present any evidence in support of her burden of proof. In fact, the only evidence she presented at hearing pertains to events or issues not raised in her complaint. (*See* Complainant Ex. 1–3.)

1. Issues not raised in the complaint are forfeited and cannot be fairly considered.

To begin with, this is clearly improper. The complaint sets the scope of relevance for all proceedings that follow. The Commission cannot fairly consider such issues. *See, e.g., In re the Complaint of OHIOTELNET.COM, INC.*, Case No. 09-515-TP-CSS, 2010 Ohio PUC LEXIS 1314, Entry at *8 (Dec. 1, 2010) (striking testimony relating to issues that were not raised in the complaint and explaining that “[t]he complaint does not raise these issues . . . these claims fall

outside the scope of the complaint . . . [t]o be heard, this claim should have been pleaded”); *In re Complaint of Cleveland Elec. Illum. Co.*, Case No. 95-458-EL-UNC, 2004 Ohio PUC LEXIS 627, Order on Remand at *9 (Dec. 21, 2004) (“It would be inappropriate to consider additional allegations not raised in this original complaint”). In addition to wasting the time and resources of the Commission, raising new issues for the first time at hearing deprives the company of an opportunity to investigate and either respond to the issue or prepare a defense.

DEO objected to this problem at the hearing. (Tr. 34.) Were the Commission to reach a decision adverse to the company on such an issue, it would deny the company due process. The Commission should disregard any issues raised at the hearing that were not raised in the complaint.

2. Even if considered, the new claims also lack merit.

The Commission should not reach the new claims, but even it does, they clearly lack merit.

a. Ms. Daniels has not produced evidence of any attempt to apply a medical certificate to her account.

One of Ms. Daniels’ new claims was that she attempted to obtain a medical certificate to prevent disconnection of her gas account, stating at hearing that she “got one for [DEO]” and that “it might have been in April, March or April [of 2015].” (*Id.* at 11–12, 20–23.) Given that Ms. Daniels was already receiving service during this time period and was not disconnected until two or three months later, it is not clear what error she is alleging. In any event, she offered no documentation to support this claim, and DEO has no record of Ms. Daniels requesting or submitting a medical certificate. Even if considered, this claim must be rejected as undeveloped and unsupported.

b. The three exhibits introduced by Ms. Daniels post-date the complaint and do not show unreasonable service.

Ms. Daniels also introduced three exhibits at hearing. All of them post-date the July 13, 2015 complaint, and none support any of her claims.

The first exhibit was a verification letter, dated November 19, 2015, stating that Ms. Daniels' application for PIPP had been approved (Complainant Ex. 1). What relevance this has is unclear. This certainly does not indicate that DEO was or is bound to keep her on PIPP, only that she had been initially approved based on the program standards. It does not call into question any of DEO's evidence or any of DEO's bases for the earlier disconnections.

Ms. Daniels' second exhibit was a letter dated January 11, 2016, stating that she would receive a HEAP credit of \$334.00 toward her DEO bill. (Complainant Ex. 2.) Ms. Daniels complained at hearing that this payment should have been applied to her account. (Tr. 32–33.) The letter presented by Ms. Daniels, however, instructs the customer to “allow 60 days for this credit to appear on” her utility bill. Given the January 11 date of the letter and the February 1, 2016 date of hearing, less than 60 days later, it is not unreasonable that Ms. Daniels' account did not yet reflect this credit. Additionally, as mentioned above, HEAP payments are not permitted to be credited toward a customer's PIPP default, so the application of such a payment to Ms. Daniels' account would have no bearing on whether she was able to remain on PIPP. Again, this is irrelevant to any of the issues in the complaint.

Ms. Daniels' last exhibit was a receipt for a \$44.00 “utility bill” payment made at Walmart on December 4, 2015, for the recipient “Dominion East Ohio.” (Complainant Ex. 3.) This payment is recognized on Ms. Daniels' December 23, 2015 bill (DEO Ex. 2 at 31), but was insufficient to satisfy her PIPP default and maintain her status in the PIPP program. Again, this

evidence suggests no wrongdoing on DEO's part and is irrelevant to the issues raised in the complaint.

V. CONCLUSION

The evidence shows that DEO provided reasonable service to Ms. Daniels. Ms. Daniels has not offered any evidence to the contrary. The Commission should dismiss the complaint.

Dated: March 16, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Post-Hearing Brief was served by U.S. mail this 16th day of March, 2016, to the following:

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