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Case No. 15-1662-EL-CSS
The Public Utilities Commission of Ohio
Jimmy Hayes,
Complainant,

vs.

Cleveland Electric Illuminating Company,
Respondent.

Brief submitted to Attorney Examiner, Daniel E. Fullin
The Public Utilities Commission of Ohio

Submitted by Jimmy Hayes
Complainant
2728 Green Road
Shaker Heights, OH 44122
216.269.4304

Faxed July 1, 2016
to
614.752.8351
12 pages

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INTRODUCTION

The Complainant, Jimmy Hayes, respectfully wishes Mr. Daniel E. Fullin, Attorney Examiner on behalf of The Public Utilities Commission of Ohio accept this document as a brief summarized position, of why the Commission should direct the Respondent, Cleveland Electric Illuminating Company (CEI), to refund Complainant's security deposit plus interest. This submission follows a hearing before the Attorney Examiner on June 7, 2016. Exhibit numbers refer to defense exhibit numbers as assigned by Attorney Examiner during the June 7th hearing.

STATEMENT OF THE CASE

In sum:

- Complainant complied with CEI request and paid security deposit of \$5900.00 in order to secure electric service at Complainant's place of business under account #175-0001217-013.
- CEI stated in writing upon receipt of Complainant's security deposit that those funds plus interest at an annual rate of 5%, would be returned to Complainant.

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- CEI did not comply with its own practices and failed to return the security deposit and interest to Complainant despite repeated requests.

**COMPLAINANT ABIDED BY CLEVELAND ELECTRIC ILLUMINATING
COMPANY'S PRACTICE AND COMPLIED FULLY WITH UTILITY'S
REQUEST TO PAY SECURITY DEPOSIT**

On October 10, 1996, Complainant paid CEI \$5900.00 as a security deposit for electric utility services for his business under account #175-0001217-013 in the form of check #3077 (Exhibit #6). In response, CEI gave Complainant a receipt (Exhibit #5) stating the receipt was to be retained until "your deposit is refunded to you." The receipt further stated that "Interest at the annual rate of 5% will be paid on this deposit as long as it remains with the Illuminating Company. Upon the closing of your account, The Illuminating Company will apply the deposit and any interest to the final bill and refund the difference within 30 days."

CLEVELAND ELECTRIC ILLUMINATING COMPANY FAILED, PER ITS OWN PRACTICE, TO REFUND COMPLAINANT'S SECURITY DEPOSIT

Between October 10, 1996 and to date (June 29, 2016), CEI has failed to refund the deposit and accrued interest to Complainant. Per CEI's practices, past and present, the funds should have been returned. Utility claims it no longer maintains records during the time in question to return the deposit however, Complainant's inquiries made during the time of records retention resulted in no satisfaction and return of refund. Complainant has made Respondent aware since the late 1990s that the matter needed to be resolved. Correspondence and phone calls referenced account number. Records should have been retained by utility as this was an open customer service matter. In Respondent/Company Exhibit #1, Ms. Deborah Reinhart , Senior Customer Services Compliance Specialist, stated "CEI generally maintains customer service records for six years." Complainant began inquiring about refund and asking for proof of payment or the monies be returned in late 1990s. Based on CEI's demonstration at hearing of its ability to source its own records, full records should have been fully accessible to address Complainant's inquiries to demonstrate security deposit was paid or not paid.

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**COMPLAINANT PRESENTED DOCUMENTS TO SUPPORT POSITION
THAT CEI DID NOT REFUND COMPLAINANT'S SECURITY DEPOSIT**

In follow ups to numerous phone calls to CEI's Customer Service call centers over a period of years beginning prior to 2003, Complainant asked CEI to please comply with its policy to return Complainant's deposit. (TR34). As directed by the utility's customer service and other representatives, Complainant, or his legal representative, cooperated and submitted and resubmitted the security deposit receipt and other supporting documents, addressed specifically as directed by the utility's own employees to identified corporate representatives. (Exhibits 4, 5, 6, 7, 9).

**CHRONOLOGY OF COMPLAINANT'S ACTIONS AND EFFORTS TO
RESOLVE MATTER WITH CLEVELAND ELECTRIC ILLUMINATING
COMPANY**

A chronology of key communication between Complainant and CEI substantiates continued good faith efforts to secure the return of the deposit by demonstrating the monies were apparently still being held by CEI. Complainant has shown security deposit was paid and provided financial transaction records between the parties that show security deposit was not returned.

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1. October 10, 1996: Complainant paid CEI \$5900.00 security deposit for electric services, account #175-0001217-013. (Exhibit #6) CEI issued Complainant receipt with printed agreement to refund monies plus 5% interest. (Exhibit #5)
2. Beginning within two years of deposit payment through 2016 Complainant called CEI Customer Service customer service and inquired about return of refund and requested monies. (TR34)
3. May, 2009: Complainant sells the business where Account #175-0001217-013 is provided.
4. June 9, 2009: CEI conducts last meter reading and Complainant pays final bill for service. (Exhibit #12)
5. November 2, 2011: Complainant follows CEI directions to fax his receipt and request for refund after there is no response to calls to CEI Customer Service to send his refund to him. (Exhibit #4)
6. August 6, 2012: Attorney Ken Lumpkin writes Donna Skulski at CEI in Concord office and requests refund (plus interest) on behalf of Complainant. (Exhibit #7)
7. October 1, 2012: Attorney Carrie Dunn, First Energy Headquarters, Akron,

e-mails Attorney Lumpkin that she is responding to communication to Ms. Skulski and states "Mr. Hayes was a good paying customer" who "should have received reimbursement by June 1998." (Exhibit #8)

8. August 4, 2015: Upon CEI request for documentation, Complainant sent another letter requesting refund and interest attaching May 12 and June 10, 2009 bills for service and copies of the checks (cancelled) cashed to pay for services. (Exhibits 9, 11, 12, 13).
9. August 20, 2015: In response to Complainant's repeated requests for satisfaction of his matter with CEI, Marilyn Cottrill responded to his inquiry by saying in part "Mr. Hayes paid his deposit 18 years ago in 1996. At that time, as the receipt indicates, Centerior would apply the deposit to the final bill. However, in 1998, the commission adopted a rule that required the Company (now CEI) to change its practice. (See Case No. 97-1578). The rule required the Company to annually review each account for which a deposit is being held and shall promptly refund the deposit if during the preceding 12 months, the customer had not been disconnected or late on payment more than two times. Therefore, beginning with that rule's effective date, if the Company was holding a deposit for a customer, and that customer was not delinquent, the Company would have had to refund the deposit to the customer."

As a result of the above communications which led to no return of the deposit, Complainant filed with the PUCO to help resolve the matter.

UTILITY FAILED TO TELL COMPLAINANT WHY SECURITY DEPOSIT WAS NOT RETURNED

During June 7th hearing, Complainant repeatedly asked CEI representative Deborah Reinhart, Senior Compliance Specialist, to document when and how his security deposit was returned. She did not do so. (TR72-82)

After Careful review of Respondent's responses to Complainants' inquires and Respondent's testimony at the hearing, the Complainant maintains:

- There is no reason for CEI to doubt the validity of the receipt for the \$5900.00 paid or that the funds were secured by the utility. (Exhibit #5)(TR71) In reference to: October 10, 1996: Complainant paid CEI \$5900.00 security deposit for electric services, account #175-0001217-013. (Exhibit #6) CEI issued Complainant receipt with printed agreement to refund monies plus 5% interest.

Additionally, in a response to Complainant's question re: accepting a check for \$11,571.74 as payment for deposit and current bill, Ms. Reinhart could not explain why CEI would cash a check for an amount over and

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above the utility service. Complainant maintains the sum included the security deposit. (TR79)

- When asked by the Attorney Examiner, Respondent could not demonstrate in hearing that the utility did not receive phone calls and inquiries from Complainant seeking to determine the return of the security deposit during a time period when the utility says it had the records to fully show client-utility transactions. ((In reference to #2 notation above: Beginning within two years of deposit payment through 2016 Complainant called CEI customer service and inquired about return of refund and requested the refund. (TR34)))
- Respondent objected to Complainant's presentation of Exhibit #7 claiming hearsay in regards to Complainant's attorney letter to resolve the matter. However, Exhibit #8 is a letter from First Energy Attorney Carrie Dunn sent as a response to Attorney Ken Lumpkin's letter. Complainant holds that First Energy's Senior Account Manager in Customer Support, to whom the letter was addressed, would not have escalated the matter for review to the Corporate Counsel if it were not warranted for further review and handling. ((In reference to # August 6 and October 1 notations above regarding correspondences August 6, 2012: Attorney Ken Lumpkin writes Donna Skulski at CEI in Concord office and requests refund (plus

interest) on behalf of Complainant. (Exhibit #7) and October 1, 2012: Attorney Carrie Dunn, First Energy Headquarters, Akron, e-mails Attorney Lumpkin that she is responding to communication to Ms. Skulski and states "Mr. Hayes was a good paying customer" who "should have received reimbursement by June 1998." (Exhibit #8)))

Ms. Dunn further states, "In 1996, it was CEI's policy that after a customer paid a security deposit for new service, the customer was given twelve months to establish themselves as an active, good paying customer. If the customer was an active and good paying accounting, starting on the 13th month, the security deposit was refunded plus 5%. Since Mr. Hayes was a good paying customer, this policy would have applied. Thus, based on CEI's policy, Mr. Hayes should have received reimbursement by June 1998. Our records do not go back that far, but there are no records or reasons that CEI would not have applied to refund this money to Mr. Hayes in 1998." Ms. Dunn provided no proof in the October 1, 2012 correspondence that Complainant's security deposit was refunded. Ms. Dunn, Christine Watchorn, First Energy Counsel and Deborah Reinhart, First Energy, in their appearances at the June 7, 2016, presented no proof they the utility refunded Complainant's security deposit. (TR81-83)

CONCLUSION

It is the position of the Complainant that Cleveland Electric Illuminating failed to refund Complainant's security deposit per the utility company's own practices.

First Energy Corporate Counsel Carrie Dunn wrote on October 1, 2012, in response to inquiries about the security deposit paid in 1996 that, "Our records do not go back that far, but there are no records or reasons that CEI would not have applied to refund this money to Mr. Hayes in 1998." (Exhibit #8) That said, Complainant began inquiring @1998 about the security deposit and continued to do so during a time period when the records would have been retained by CEI per PUCO regulations. (TR74) The customer itemized statement for the January 1, 1998-August 31, 2000 billing period clearly does not show that the utility refunded the security deposit. (Exhibit #2)

Complainant's supplying of any other customer itemized statement, bills, cancelled checks for other time periods simply serves to show transactions of a business relationship.

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Ms. Reinhart's testimony did not support the utility's practice of when and how it determined when refunds would be issued. Testimony cited some instances when clients were paid early, "it was in our tariff that we could do that." (TR80) Further she stated, "I am just coming to the conclusion it had to have been, you know, refunded or applied to your bill prior to that date," with no documentation to support her suppositions. (TR 81)

When further asked by the Attorney Examiner "The question is are you aware of a document that you refunded the money to him?" she stated "I cannot say that I have seen an exact document with that information on it, just what I can conclude." (TR82)

At the very least, if CEI failed to follow its own practice and refund the monies as due by June, 1998 under the new regulation, the deposit and interest should have been refunded at the close of the Complainant's account in May, 2009. It was not.

The Complainant respectfully asks Mr. Fullin to fully weigh the communication addressed to the CEI and PUCO, documents presented as hearing exhibits, the Complainant's hearing testimony and this brief, and recommend The Public Utilities Commission of Ohio direct CEI to acknowledge its error and promptly refund the Complainant's security deposit and all due interest.

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