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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.

PUCO

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Complainant Reply Brief to The Cleveland Electric Illuminating Company's
Initial Post-Hearing Brief submitted to the PUCO

Submitted to Attorney Examiner, Daniel E. Fullin
The Public Utilities Commission of Ohio
and
Attorney Christine Watchorn
Counsel for The Cleveland Electric Illuminating Company

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Due July 22, 2016

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I. INTRODUCTION

The Complainant, Jimmy Hayes, has reviewed The Cleveland Electric Illuminating Company's (Respondent's) Initial Post-Hearing Brief submitted to the PUCO on July 1, 2016.

The Complainant respectfully requests that Mr. Daniel E. Fullin, Attorney Examiner on behalf of The Public Utilities Commission of Ohio accept this document as Complainant's Reply Brief and along with the Complainant's Initial Brief filed July 1; Complainant's Hearing testimony on June 7; and, Complainant's various documents and communication filed over the course of this inquiry and complaint, direct CEI to refund Complainant's security deposit plus interest. (In this document, exhibit numbers refer to Complainant exhibit numbers except where noted.)

Complainant does not "contend," he states declaratively that he paid a security deposit to CEI: \$5900.00 on October 10, 1996 for his business under account #175-0001217-013 and presented as proof, a copy of the receipt from CEI (Exhibit #5) as well as a copy of the cancelled check, #3077 (Exhibit #6). used to pay the deposit and the current bill amount due.

CEI's review of the documents it refers to as being presented "haphazardly" should show the Respondent that the security deposit was not returned in the sum of \$5900.00 with or without interest.

In CEI's expressed doubt of the validity of the Complainant's receipt and cancelled check, the utility has not presented any evidence to show the Complainant's receipt was not in the format of a receipt or proof of payment that the company would have issued in 1996. As noted and visible in the document's lower left hand corner, the receipt was prepared by CEI on its **Form X244 (4/93.)** (Exhibit 5)

Contrary to Respondent's statement that the Commission is being asked "to order a refund of security deposit based on his word," (Respondent Initial Brief, 4) repeated submissions have been made of business transactions and documents of phone, letter and other communication to secure the deposit refund. Complainant maintains that his first inquiries by 1998, regarding the status of his deposit refund fully constituted a customer service inquiry and that records should have been maintained for the purpose of an open customer service issue until the case was resolved to the satisfaction of both parties. (Complainant Initial Brief-15 and TR34) Additionally, the Complainant's inquiry began during a period when the records should have been retained by CEI per PUCO regulations. (TR74) Carrie Dunn, First Energy Corporate Counsel in her communication October 1, 2012 stated that in reply to Complainant's inquiries about the security deposit paid in 1996: "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) **Complainant's Customer Itemized**

Statement from dates January 1, 1998-August 31, 2000, provided to Complainant by CEI, does not show the utility refunded the security deposit.

II. STATEMENT OF FACTS

CEI states "Complainant had a commercial account with CEI from June 1996 through May 2009. (Respondent's Initial Brief-4) CEI does not question the account commenced during a time period when it claimed client records do not currently exist. It stands to reason that CEI would state "the Complainant's account was opened prior to 2003," for example, or other period of time when it said it could access records. CEI remains inconsistent in when and how it chooses to refer and cite its own records keeping practices including retention of records and application of security deposit policies. For example, during her June 7 Hearing testimony (TR 80-83), Ms. Deborah Reinhart, Senior Customer Services Compliance Specialist, expressed uncertainty regarding what documents she actually viewed in this case. She said "I cannot say that I have seen an exact document with that information on it, just what I can conclude." With all of the resources available to Ms. Reinhart, CEI's in-house and outside counsel, she testified she is still unclear as to what documents she has reviewed, seen in the case of Jimmy Hayes vs. The Cleveland Electric Illuminating Company. Her comments in Company Exhibit #1 and at the Hearing demonstrate a corporation inconsistently

applying policy and practices. Further in answers to questions by the Complainant and the Attorney Examiner she said (TR80-83):

EXAMINER FULLIN: Let's go back on the record. Go ahead with the question.

Q. (By Mr. Hayes) Why would you have paid us earlier?

A. As mentioned, I mean, in my testimony, I had given about the company tariff and in there along with, you know, applying to such a final bill, okay, also for the use of deposits, you know, the company either could retain or we could apply the deposit on any indebtedness owed to the company or outstanding balance at the time. So, I mean, it was in our tariff that we could do that.

Q. When did you do that? Do you have any clue?

A. Like I said, based on the review here, I mean, I am just basing it -- I can tell you as of January 1 of '98, you know, it's not showing on your account as a deposit that's held at that point. And so our -- you know, I am just coming to the conclusion it had to have been, you know, refunded or applied to your bill prior to that date.

Q. Could have. I just paid it '96 and you are supposed to give it to me later and it's showing -- the transcript shows that you didn't.

A. Well, like I said, it had to have been prior to this January of '98 date, January 1 of '98, because it is not showing as a deposit held. And based on, you know, the itemized statement and even our customer -- or detailed statement of account, now we -- if we have a deposit, it would show on there as a deposit held.

EXAMINER FULLIN: Are there any other questions?

All right. Let me ask a couple more. --

FURTHER EXAMINATION

By Examiner Fullin:

Q. Are you aware of any document that shows that you refunded the Complainant's deposit?

A. Again, based on -- I can only go on based on my review of the document Mr. Hayes provided.

Q. And based on that, you are not aware of any document that shows it was refunded?

A. Well, right. Based on this I can -- I can conclude that we weren't holding a deposit as of January 1 of '98.

Q. The question is are you aware of a document that you refunded the money to him?

A. I cannot say that I have seen an exact document with that information on it, just what I can conclude.

Q. You can infer from what you presented?

A. Right.

Q. But I am not asking for an inference. Are you aware of a document that shows that?

A. No, because our records don't go back that far. We are only really required to --

Q. So you're not aware of any document that shows that it was refunded.

A. Like I said, other than what's here, that's what I have, the information to base it off of.

Q. That information creates an inference that it was already paid but you are not aware of a document that shows that it was refunded.

A. I don't have a copy of the actual bill that would show that it was refunded on it.

Q. Okay. So just "yes" or "no."

A. No. No.

In its July 1 document, CEI says it is not able to confirm the purpose of Exhibit #6, the check dated October 10, 1996 in the amount of

\$11,571.74 and questioned whether it was payment of a deposit. Exhibit #5, the deposit receipt, is also dated October 10, 1996 and reflects payment of the \$5900.00 for security deposit and service charges due of \$5671.74.

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 above the utility service. Complainant maintains the sum included the security deposit (TR79) and that the Complainant's Customer Itemized Statement (Exhibit #2) supports claim showing monthly usage and corresponding charges.

CEI states that "any security deposit paid by Complainant was most likely applied to his account prior to 1998 pursuant to CEI's Tariff. The utility should be able to speak with certainty whether a customer was refunded or not refunded a security deposit. In response to late fees, any fees charged were paid with monthly bills and are not relevant in an account review. Additionally, CEI Attorney Carrie Dunn wrote Complainant was a "good paying customer." (Exhibit #8)

As is the case with other documents presented at the Hearing, both the Attorney Examiner and attorneys for CEI were presented copies of the originals, including the receipt, which the Complainant had in his possession at the Hearing and retains to date.

Complainant appreciates the Attorney Examiner's acceptance of all Complainants' Hearing Exhibits and respectfully asks that they be fully considered as valid and authentic documents. In the case of exhibit communications between Complainant and/or his legal representative with CEI, whether customer service or in-house or outside counsel, Complainant asks that full weight be given to those documents as CEI representatives fully presented themselves as authorized to act and speak on behalf of the utility.

In its repeated challenge of the authenticity of the deposit receipt and cancelled check (Exhibits #5 and #6), Respondent states in its Initial Brief-14, that its own witness Deborah Reinhart "had not seen either of these documents prior to her involvement in this case and neither document is in CEI's records." This is clearly puzzling. The receipt and check have repeatedly been sent to CEI's various representatives in various mailings, faxes and emails as part of initial and follow up inquiries with each person identified to address this matter. Exhibits #3, 4, 5, 6, 9 are just some of the examples of when the receipt was shared with CEI. Complainant is not clear why Respondent's own counsel (in-house and outside, which also received the receipt and cancelled check as representatives and agents of CEI) had not shared these documents earlier with its own witness. In Company Exhibit #1-3 Ms. Reinhart stated that she has "worked at either FirstEnergy Service Company or the Pennsylvania Power Company ("Penn Power") in a customer

service capacity for the last 40 years. I have held my current title since March 2015. I previously served as a Customer Compliance Lead for four years, and in that position I supervised the Customer Compliance department, which investigates complaints by customers to the Public Utilities Commission of Ohio.” With these responsibilities, it would seem Jimmy Hayes vs. The Cleveland Electric Illuminating Company would have been a case escalated to Ms. Reinhart’s attention years ago.

CONCLUSION

Complainant continues to maintain his position that he adhered in 1996 to the Cleveland Electric Illuminating Company’s request to provide a security deposit in order to have electric service for his business with the full written understanding on the receipt from the utility that the deposit would be returned with interest. To date, CEI has not lived up to its end of the agreement, has not paid the Complainant and failed to show why the Complainant has not been paid. (TR72-82)

Complainant respectfully requests the Attorney Examiner review all submitted documents and testimonies and recommend to the PUCO that CEI be directed to refund the deposit with interest.