

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
JIMMY HAYES,**

**COMPLAINANT,**

**V.**

**CASE NO. 15-1662-EL-CSS**

**THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY,**

**RESPONDENT.**

**OPINION AND ORDER**

Entered in the Journal on November 29, 2017

**I. SUMMARY**

{¶ 1} The Commission finds that the Complainant has failed to carry the burden of proving that The Cleveland Electric Illuminating Company did not return the alleged October 1996 security deposit for a commercial electric service account that was closed in 2009.

**II. FACTS AND PROCEDURAL BACKGROUND**

{¶ 2} On September 23, 2015, Jimmy Hayes (Complainant or Mr. Hayes), who held a commercial account for electric service at a McDonald's restaurant, filed a complaint against The Cleveland Electric Illuminating Company (Company or CEI). Complainant alleges that CEI failed to meet its obligation to return his security deposit, in an amount of \$5,900, plus interest. Attached to the complaint is a copy of what purports to be a receipt for Mr. Hayes' payment of the security deposit, dated October 10, 1996.

{¶ 3} On October 12, 2015, CEI filed its answer, in which it responds to each allegation contained within the three unnumbered pages of the complaint. In its answer,

CEI admits none of the specific allegations made in the complaint, indicates that some of the information set forth in the complaint requires no response, asserts that it lacks knowledge sufficient to admit or deny a number of the allegations of the complaint, and sets forth several affirmative defenses. Moreover, in its answer, CEI asserts both: (a) that it has reviewed all of its records of the Hayes account, from 2003 until the account was closed, but has found no record of a security deposit being held during that period; and (b) that it believes that any security deposit paid would have been refunded or applied to Complainant's account prior to 2003, in accordance with Commission rules.

{¶ 4} A settlement conference was held on February 4, 2016; however, the parties were unable to resolve this matter. A hearing was scheduled for and held on June 7, 2016. At the hearing, Mr. Hayes testified on his own behalf and CEI presented the testimony of its witness, Deborah Reinhart, Senior Customer Services Compliance Specialist, including adoption of her written testimony, pre-filed on May 31, 2016.

{¶ 5} A briefing schedule was established by the attorney examiner's oral ruling made during the June 7, 2016 hearing. It was later modified by an attorney examiner's Entry issued July 6, 2016. CEI timely filed its Initial Brief on July 1, 2016 and its Reply Brief on July 22, 2016. Complainant timely filed his Initial Brief on July 5, 2016, and his Reply Brief on July 20, 2016.

### III. APPLICABLE LAW

{¶ 6} CEI is a public utility and an electric light company, as defined in R.C. 4905.02 and 4905.03, and, as such, is subject to the jurisdiction of this Commission.

{¶ 7} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 8} In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, in order to prevail in this matter, Complainant must prove the allegations in his complaint by a preponderance of the evidence.

{¶ 9} The Commission's rule on security deposits, as applicable here, indicates, essentially, that companies must after the first two years of holding such a deposit, or, upon customer request annually thereafter, review each nonresidential electric service account on which a deposit is being held and, if such review shows both that service was not disconnected and that a threshold number of past due bills was not issued during the review period, then the company must promptly refund the deposit or credit the account in the amount of the deposit, plus interest (Ohio Adm.Code 4901:1-10-14(I)). CEI's tariff provision, applicable at the time Complainant's account was opened, authorized the Company to retain any deposit and apply the same upon bills for service or any indebtedness to the Company. It also stated that CEI would pay interest at five percent to the date of the final bill. (Co. Ex. 1, Attachment DLR-1, at 3).

{¶ 10} Ohio Adm.Code 4901:1-10-03(A)(2) provides in pertinent part that "[u]nless otherwise specified in this chapter, each electric utility shall maintain, for three years, records that are sufficient to demonstrate compliance with the rules of this chapter." Further, Ohio Adm.Code 4901:1-10-14(N) provides that "[e]ach electric utility shall retain records of customer deposits for at least one year after the deposit, including interest, is returned and/or applied to the customer's bill."

#### IV. DISCUSSION

{¶ 11} Complainant had a commercial account with CEI for electric service at a McDonald's restaurant from June 26, 1996 through May 31, 2009 (Hayes Exs. 6 and 13; Co. Ex. 1, at 6). The final bill was issued on June 10, 2009 (Co. Ex. 1, at 6).

{¶ 12} Complainant states that he paid to CEI a security deposit of \$5,900 on or about October 10, 1996 and that, at that time, he received a document entitled "Deposit Receipt" (Hayes Ex. 5; Hayes Reply Brief, at 2). Complainant introduced a copy of a check dated October 10, 1996 (alleged deposit check) -- the same date that is reflected on the Deposit Receipt -- in the amount of \$11,571.74, not \$5,900 (Hayes Ex. 6; Co. Ex. 1, at 8; Tr. at 79). During cross-examination of CEI's witness, Complainant asserted that the check covered both the security deposit and his monthly bill (Tr. at 79; Hayes Reply Brief, at 7). However, at no point did Complainant produce a copy of the monthly bill or any other evidence to substantiate this claim.

{¶ 13} Complainant alleges that the Deposit Receipt entitles him to a security deposit refund that became due, with interest, when the account was closed on May 31, 2009, and should have been included as an offset on his final bill, issued on June 10, 2009. The Deposit Receipt itself indicates that "[u]pon 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." (Hayes Ex. 5; Hayes Initial Brief, at 3.) Mr. Hayes submits that CEI neither refunded the deposit at that time, nor indeed at any time. Mr. Hayes alleges that CEI's failure to refund the security deposit is a violation of its own policies and practices (Hayes Initial Brief, at 3, 4).

{¶ 14} Besides the Deposit Receipt and the alleged deposit check, the Complainant produced documents that addressed limited portions of his account's total lifespan, which opened on October 11, 1996 and closed on June 10, 2009. Specifically, these documents include only: (1) a CEI-originated "Customer Itemized Statement," depicting all transactions on the account beginning December 23, 1997 through August 31, 2000 (hereinafter "Customer Itemized Statement - December 1997- August 2000") (Hayes Ex. 1); (2) a CEI-originated "Detailed Statement of Account," depicting all transactions on the account beginning August 9, 2007 through June 9, 2009 (hereinafter "Detailed Statement of Account - August 2007- June 2009") (Hayes Ex. 2); (3) Complainant's monthly bill dated

May 12, 2009 (Hayes Ex. 11); and (4) Complainant's final bill dated June 10, 2009 (Hayes Ex. 12).

{¶ 15} Additionally, Complainant submits that he "began inquiring about [the] refund and asking for proof of payment or the monies be returned in the late 1990s," well before the account closed in 2009 (Hayes Initial Brief, at 4). Noting CEI's admission that it "generally maintains customer service records for six years," Complainant contends that inquiries he "made during the time of records retention resulted in no satisfaction and return of [the] refund" (Hayes Initial Brief, at 4). The Complainant also asserts that his alleged inquiries in late 1990s about the refund constituted a customer inquiry and "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" (Hayes Reply Brief, at 3). However, Complainant presented no documentation or other substantive evidence, nor is any evidence in the record, to support Complainant's claim that he began inquiring about a security deposit refund at any time prior to 2009.

{¶ 16} CEI's witness Reinhart testified that CEI is unable to confirm whether Complainant paid a \$5,900 security deposit in October 1996, (Co. Ex. 1, at 7). According to Ms. Reinhart's testimony, CEI is unable to verify or authenticate the Deposit Receipt (Co. Ex. 1, at 7-8). CEI asserts the receipt itself is not signed and gives no indication of who, if anyone, at CEI might have prepared it. Ms. Reinhart testified that she was not involved, and did not know who was involved, in preparing the Deposit Receipt (Co. Ex. 1, at 7). She indicated that she had never seen the Deposit Receipt prior to her investigation in this case and that it is not something that exists in CEI's records (Co. Ex. 1, at 7). According to CEI, no record evidence exists showing it was ever in their records (Co. Initial Brief, at 5).<sup>1</sup>

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<sup>1</sup> Complainant counters that CEI presented no evidence to support a claim that the document is not in the format of a receipt the company would have used in 1996. Complainant also raises that the bottom left of the document has a form identifier "Form X244 (4/93)" and that this supports that conclusion that CEI prepared this receipt. (Hayes Reply Brief, at 3.)

{¶ 17} As CEI points out in its initial brief, there are no documents in evidence regarding any activities on Complainant's account during the period from October 11, 1996 to December 31, 1997 (Co. Initial Brief, at 6). CEI submits that it does not have, and under rules regarding records retention, Ohio Adm.Code 4901:1-10-03(A)(2) and Ohio Adm.Code 4901:1-10-14(N), is not required to retain, documents regarding Complainant's account from October 10, 1996 to December 23, 1997 (Co. Initial Brief, at 3; Co. Ex. 1, at 5).

{¶ 18} CEI contends that none of the documents in evidence demonstrate that CEI was holding a security deposit in any amount in connection with Complainant's account, or that interest was accruing on a security deposit connected with Complainant's account. CEI's witness admitted that she is not aware of the existence of any document that shows whether, and if so, when CEI actually refunded Complainant's security deposit (Tr. 82, 83). However, she testified that the documents produced of record reflect that no security deposit was being held on or after January 1, 1998. Additionally, she testified that this creates an inference that any security deposit paid by Complainant in October 1996, had, by January 1, 1998, already been applied toward any indebtedness or outstanding balance that had existed on the account (Tr. 80-84).

{¶ 19} CEI witness Reinhart testified that, if CEI had been holding a security deposit for Complainant, the security deposit amount would have been reflected on the Customer Itemized Statement - December 1997- August 2000, in the column entitled "Transition Amount," and would have been denoted with the letter "S" for security deposit (Tr. 83-84, see also: Hayes Ex.1, Co. Ex 1, at Attachment DLR-3). CEI indicates that the Customer Itemized Statement - December 1997- August 2000 does not bear any indication of a security deposit on hold with CEI. On this basis, CEI submits that it was not holding a security deposit on the Complainant's account between January 1, 1998 and August 31, 2000 (Co. Initial Brief, at 7, 8). Similarly, CEI contends that the Detailed Statement of Account - August 2007- June 2009 does not reflect a security deposit was

being held by CEI during that time period. Therefore, CEI believes that Ms. Reinhart presented uncontested testimony that neither document bears any indication of a security deposit on hold with CEI (Tr. 62, Co. Initial Brief, at 8, 9). Ms. Reinhart further testified that when CEI holds a security deposit on a customer's account, the customer's bill reflects "[s]ecurity deposit interest" in a section on the bill entitled "Charges from the Illuminating Company" (Co. Ex. 3). Ms. Reinhart testified that she reviewed all bills that Complainant has provided of record and found no indication on any of the bills that any security deposit was being held (Tr. 63-64, 75-76).

{¶ 20} According to the Company, from the time that Complainant opened his account with CEI in 1996 through at least September 2000, the portion of CEI's Tariff PUCO No. 12 pertaining to security deposits provided that "[t]he Company may retain any deposit and apply the same upon bills for service or any indebtedness to the company" (Co. Ex. 1, at 10). CEI submits that any security deposit paid by Complainant was most likely applied to his account prior to 1998, pursuant to CEI's tariff. CEI witness Reinhart testified that Complainant's account was frequently in arrears and was most likely in arrears prior to December 23, 1997 (Co. Ex.1, at 8, 10). The Customer Itemized Statement reflects both that Complainant owed a balance of \$6,747.47 on December 23, 1997, the first process date listed; and that he was assessed late charges 28 times between January 1, 1998 and August 31, 2000 (Co. Ex.1, at 10). Based on this evidence, CEI submits that it is likely that any deposit Complainant provided to CEI would have been applied to Complainant's account pursuant to CEI's tariff prior to January 1, 1998 (Co. Initial Brief, at 8).

{¶ 21} According to CEI, Complainant contacted CEI's contact center in 2009, 2011, and 2012 to inquire about the security deposit. In each instance, CEI contact service representatives reviewed and investigated his account at those times and determined that there was no security deposit on hold with CEI (Co. Initial Brief, at 10). CEI witness Reinhart testified that when Mr. Hayes contacted CEI in 2009, CEI's contact center

representatives were able to review records from 2003 until the account was closed in 2009 (Co. Ex. 1, at 8). CEI indicates during the customer inquiries, no record of a security deposit being held, nor any record of the accrual or payment of security deposit interest during that span of time were found, and in 2009 Mr. Hayes was advised that there was nothing on his account to indicate a security deposit was being held (Co. Ex. 1, at 8, 9; Co. Initial Brief at 10; Tr. 73-74).

{¶ 22} Further, CEI submits that two of Complainant's exhibits (Hayes Exs. 12 and 13) demonstrate both that Complainant's final bill was issued by CEI on June 10, 2009, and was paid in full by Complainant, by checks dated May 31, 2009 and June 30, 2009. It is CEI's position that when the final bill was issued and paid in full, no deposit was applied because none was being held by CEI at that time.

## V. CONCLUSION

{¶ 23} The Commission finds that Complainant has failed to meet his burden of proof. Complainant has failed to provide any substantive evidence to show CEI did not return the alleged deposit to him (either in the form of a refund or as an amount credited to a balance due on his account) at any time after October 10, 1996. As the complainant has the burden of proof in this case, it is incumbent upon him to substantiate his claim, and the Commission is not persuaded that Complainant met his burden.

{¶ 24} The evidence in this case contains no documents regarding any activities on Complainant's CEI account during the period from October 10, 1996 to December 23, 1997. Moreover, the Commission finds that pursuant to the applicable record retention rules, CEI is not required to retain such records. In the absence of this evidence, CEI has presented cogent arguments that during this time period, it likely either refunded the security deposit funds to Complainant or applied them to the balance due on his account, in accordance with its tariff.

{¶ 25} The Commission is persuaded by the facts in evidence and totality of the circumstances that it is likely a refund to Complainant or a credit against charges owed to CEI occurred prior to 1998. First, during that period, the portion of company's tariff pertaining to security deposits provided that CEI could retain any deposit and apply the same upon bills for service or any indebtedness to the company. Second, Complainant's account was frequently in arrears. He was assessed late charges 28 times during the time period covered by Customer Itemized Statement - December 1997- August 2000. (Hayes Ex. 1). Third, he owed a balance of \$6,747.57 as of December 23, 1997, the first process date listed on the Customer Itemized Statement - December 1997- August 2000. (Hayes Ex. 1). Fourth, as noted by CEI, the available records of account statements and bills from 1998 forward did not demonstrate that CEI was holding a security deposit on the account, as no notations were on the documents, which further leads us to believe the deposit was either refunded or used for indebtedness prior to 1998.

{¶ 26} Complainant's inability to establish a record of the transactions that occurred on his account prior to December 23, 1997, combined with his inability to counter the existing documentary evidence which supports the conclusion that, after that date, CEI never held a security deposit, is grounds for finding that Complainant has failed to sustain his evidentiary burden in this case.

{¶ 27} Additionally, Complainant's claim that he has been requesting a return of his security deposit since the late 1990s is illogical. The deposit receipt upon which Complainant relies as evidence that he is entitled to a return of his security deposit, states in pertinent part that "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" (Hayes Ex. 5). Complainant closed his account in 2009. Thus, it is not logical that Complainant would have begun requesting a refund of his security deposit just two or three years after opening a commercial account that he maintained for the next 10 to 11 years. The uncontested evidence is that, as of December 23, 1997, Complainant owed

a balance on the account of \$6,747.57 and was assessed late charges 28 times during the ensuing 32-month period. The more logical inference is that any deposit Complainant made was applied to his account before December 23, 1997. On balance, Complainant's claim, unsupported by physical evidence, that he has been requesting a return of his security deposit since the late 1990s, provides no reasonable basis for the Commission to find that Respondent should have, but did not, refund or apply the security deposit to Complainant's account balance during the period prior to December 23, 1997.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 28} On September 23, 2015, Mr. Hayes filed a complaint against CEI alleging that it has failed to meet its obligation to return his 5,900.00 security deposit, allegedly paid in October 1996, on his commercial account that was closed in 2009.

{¶ 29} On October 12, 2015, CEI filed an answer in which it admitted none of the specific allegations and claims: (a) that it has reviewed all of its records of the Hayes account, from 2003 until the account was closed, but has found no record of a security deposit being held during that period; and (b) that it believes that any security deposit paid would have been refunded or applied to Complainant's account prior to 2003, in accordance with Commission rules.

{¶ 30} A settlement conference was held on February 4, 2016, and a hearing was held on June 7, 2016.

{¶ 31} The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1996).

{¶ 32} There is insufficient evidence to support a finding that CEI failed to meet its obligation to return Complainant's security deposit, allegedly paid in October 1996, on Complainant's commercial account that was closed in 2009.

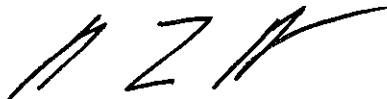
## VII. ORDER

{¶ 33} It is, therefore,

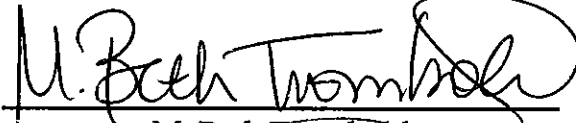
{¶ 34} ORDERED, That this matter be decided in favor of CEI for failure of the Complainant to sustain his burden of proof. It is, further,

{¶ 35} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

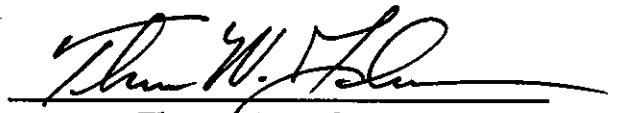
## THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



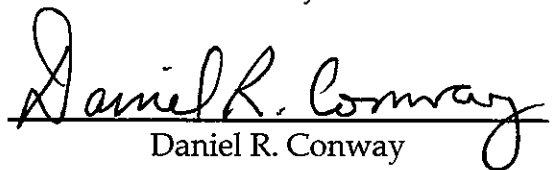
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

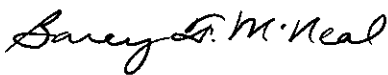


Daniel R. Conway

DEF/sc/vrm

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Barcy F. McNeal  
Secretary