

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

MONIQUE MOORE)	
)	
Complainant,)	
)	
v.)	Case No. 17-1563-EL-CSS
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
)	
Respondent.)	
)	

**INITIAL BRIEF OF
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

Robert M. Endris (0089886)
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Telephone: 330-384-5728
Facsimile: 330-384-3875
rendris@firstenergycorp.com

ATTORNEY FOR THE CLEVELAND
ELECTRIC ILLUMINATING COMPANY

I. INTRODUCTION

Complainant Monique Moore (“Complainant”) alleges that The Cleveland Electric Illuminating Company (“CEI” or the “Company”) wrongfully removed the electric meter to one of the two dwelling units at her rental property located at 12727 Benwood Avenue, Cleveland, OH (“Property”), and that CEI wrongfully required an inspection before reconnecting service to the open unit. Complainant further alleges the Company improperly charged her with unmetered usage of electricity in connection with tampering theft discovered in April 2017. In support of this allegation, Complainant alleges that CEI has not proven there was a fire at her property, and that she has shown the Property is safe for reconnection without providing proof of inspection. Complainant also disputes the logic of computing theft charges from the date her service request was denied for lack of the required inspection, and requests money damages for lost rent. Complainant’s allegations are incorrect and unfounded for at least three reasons.

First, Complainant does not accurately recount the circumstances of the meter’s removal. While Complainant alleges the meter was removed by CEI due to a mistaken belief there was a fire, the Company’s records clearly indicate that during a routine meter reading visit a missing meter was encountered. There may have been some misunderstanding during subsequent communications between CEI and Ms. Moore and/or her son Jwone, but the simple fact remains: CEI did not remove the meter. Thus, there was no improper meter removal due to an assumption about a fire.

Second, despite being clearly and repeatedly informed that she needed to have the Property inspected before a new meter could be set for reconnection of service, Complainant failed to provide proof of such inspection. In fact, Complainant inexplicably resisted having the City of Cleveland inspector visit her Property. However, such inspection is necessary to protect the safety

of CEI customers and the public, and is required by the Commission's rules and the Company's tariffs.

Third, the evidence of tampering is incontrovertible. The Company's records indicate that in April 2017 the Company discovered "jumpers" had been placed in the empty socket for the ("Upper Unit") that caused electricity to flow into the Upper Unit of the Property without being registered. This tampering was discovered when a meter services technician visited the Property to complete a work order when the account holder for the downstairs unit ("Lower Unit") requested to terminate service, and another individual requested new service in his name. As the property owner of the unoccupied Upper Unit where the tampering was discovered, Complainant bears the responsibility for such unauthorized use of electricity.

For these reasons, fully set forth below, Complainant has failed to meet her burden to demonstrate that the Company provided inadequate service or acted unreasonably. Thus, the Commission should dismiss the Complaint.

II. FACTUAL BACKGROUND

A. Initial Disconnection of Service

This case began in February 2012 when a Company meter reader visiting the multi-dwelling Property on a normal meter reading cycle, observed that one of the two meter sockets at the Property was open, i.e., the meter associated with the downstairs unit ("Lower Unit") had been removed from the socket.¹ The meter reader noted this fact and it was duly followed up by a meter specialist, who confirmed the meter was missing, placed a cover over the empty socket, and updated the Company records.² He recorded the reason the meter was missing as "removed due

¹ Pre-filed Direct Testimony of Robert L. Perkins, III, at p. 4.

² *Id.*

to a fire.”³ Several days later, Complainant called to inquire about the removal of the meter, and was told by a contact center representative that the notes indicated it was due to a fire, and that an inspection was required before a new meter could be installed.⁴ Company witness Robert L. Perkins, III, CEI’s Manager of Meter Services, testified that the most likely reason the meter technician indicated a fire would be because he was provided that information by someone at the premises.⁵

Complainant speculates that the reason CEI assumed there was a fire was due to her son splattering paint on the meters.⁶ She also argues that there couldn’t have been a fire or else CEI would have had to disconnect service to both meters and “red tag” the Property.⁷ However, not only does the photo in Complainant’s Exhibit B clearly show a lack of paint on the remaining meter and on the meter base, all of this conjecture ignores the fact that *CEI did not remove the meter*.

B. The Inspection Requirement

Company records show that Complainant was informed that she needed to have an inspection completed by the City of Cleveland in order to have a new meter installed for the Lower Unit.⁸ Company witness Deborah Reinhart testified that Complainant was informed of this requirement on several occasions.⁹ However, despite testifying that she obtained an inspection from both the City of Cleveland and from a licensed electrician, the only evidence of an inspection

³ *Id.* at p. 3-4.

⁴ *Id.* at p. 4.

⁵ Perkins at p.6. (“In a situation such as this—where the Company did not remove the meter—the meter technician is not required to document the reason why the meter was removed... Because the meter technician took the step of including fire as a reason, I surmise that he was very likely to have been told this information by someone at the Property.”).

⁶ Hearing Transcript at p. 33.

⁷ *Id.* at p. 29.

⁸ Reinhart at p. 5.

⁹ *Id.*

that Complainant provided was a permit for an inspection dated June 2015.¹⁰ Further, Company records show that proof of inspection has never been received by the Company.¹¹

C. Discovery of tampering

Company records show that on May 4, 2015, Complainant called to request service for the Upper Unit to be restored, claiming that her son had spray painted the meters and that the Company had removed the meter.¹² Complainant repeated this claim to another Company representative, and further claimed that her electrician had switched the meter from the Upper Unit to the Lower Unit. On May 27, 2015, Complainant again called to request a meter for the Upper Unit, which led to the Company visiting the Property and ascertaining that a meter was present in the Lower Unit meter socket while the Upper Unit meter socket was empty.¹³ Meanwhile, Lower Unit tenant Jeffrey Buchanan established service in his name on July 6, 2015.

Nothing further was requested for the Upper Unit until two years later. On April 13, 2017, apparently unbeknownst to Complainant, Mr. Henry Duncan requested service be established in his name for the Lower Unit.¹⁴ When the Company's service technician arrived to process the request, he discovered "jumpers" had been placed in the empty meter socket for the Upper Unit.¹⁵ These "jumpers" caused unmetered electricity to flow into the house wiring associated with the Upper Unit, allowing theft of electricity from the Company.¹⁶ Per the Company's tariff, a tampering fee was assessed along with charges for unmetered electricity using the standard average

¹⁰ Hearing Transcript at p. 39.

¹¹ Perkins at p. 7; Reinhart at p. 6.

¹² Reinhart at p. 6.

¹³ *Id.* at p. 7.

¹⁴ *Id.* (footnote 1) ("Ms. Moore claimed in her deposition that "Henry" was a prospective tenant who requested service for the Upper unit, and that when he was denied because of the inspection requirement that he was "long gone." Ms. Moore also claimed that Mr. Buchanan: moved back into the Lower unit in August 2017; is currently residing there; and that service had never been terminated in his name. Later, Ms. Moore confirmed that "Henry" is Henry Duncan.").

¹⁵ *Id.*

¹⁶ *Id.*

usage of 25 kWh per day from the discovery of the theft extending to Ms. Moore's most recent request for service to the Upper Unit on May 27, 2015.¹⁷

III. LAW AND ARGUMENT

The Company took the appropriate action under its tariff and Commission rules when it discovered the missing meter at Complainant's property: requiring an inspection. Instead of complying with the Company's instruction to obtain an inspection report from the City of Cleveland to allow the Company to set a new meter in order to restore service, Complainant waited more than five years until the discovery of tampering and charges for theft of electricity were assessed and then filed this Complaint. Both the Company's demand for an inspection letter and its charges for tampering and theft of electricity are supported by its approved tariffs and Commission Rules.

A. The Company's demand for inspection letter was proper.

When a meter is removed by anyone other than the Company's personnel or authorized agent, as happened in this case, or if it has been more than twelve months since service has been provided to a premise, the Company properly may require inspection before reconnecting service. Proper inspection is a key ingredient to providing safe and reliable electric service.¹⁸ The Company's tariff requires such inspections before electric service is initiated.¹⁹ The Commission's rules support the requirement for successful inspection as a condition of connecting electric

¹⁷ *Id.* at p. 8.

¹⁸ 4901:1-10-02(A)(2), Ohio Administrative Code ("The rules in this chapter... Are intended to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices.")

¹⁹ The Cleveland Electric Illuminating Company, P.U.C.O. No. 13, Electric Service Regulations, X.A. ("As required by Chapter 4901:1-10 of the Ohio Administrative Code, before the Company connects service for any new installations, such installation must be inspected and approved by the local inspection authority or, when there is no local inspection authority, by a licensed electrician. An inspection is also necessary for any changes in wiring on the customer's premises.")

service.²⁰ Tampering, including displacement of a meter, is proper grounds for disconnection of service and which justifies the requirement of an inspection before reconnection of service.²¹

The record is clear that Ms. Moore was informed that she must obtain an inspection before a new meter could be placed to reconnect service to the Upper Unit.²² The record is also clear that Ms. Moore failed, at any point, to obtain such inspection and to provide or cause to be provided proof of the same to the Company.²³ At the hearing, Ms. Moore admitted that she failed to offer any documentation that she successfully had obtained, or passed, an inspection.²⁴

B. The Company properly assessed tampering and theft charges.

Tampering is specifically defined in the Commission's rules to include impeding the registering of electricity usage.²⁵ The Company is required to establish an anti-theft and anti-tampering plan and submit the same to the Commission.²⁶ Utilities may refuse to reconnect service

²⁰ 4901:1-10-05(E), O.A.C., ("The electric utility's meters shall be installed and removed by the electric utility's personnel or authorized agent. Before initial service to a service location is energized, the electric utility shall verify that the installation of the meter base and associated equipment has either been inspected and approved by the local inspection authority or, in any area where there is no local inspection authority, has been inspected by a licensed electrician.")

²¹ 4901:1-10-20(B)(1), O.A.C. ("An electric utility may disconnect service for safety reasons without prior notice to a customer in either of the following circumstances: (a) The electric service meter, metering equipment, or associated property was damaged, interfered or tampered with, displaced, or bypassed. (b) A person not authorized by the electric utility has reconnected service.")

²² Reinhart at p. 5.

²³ Id. at p. 6 ("The Company's records indicate that no inspection has ever been received as required, and so the Company did not restore service to the Lower Unit."). See also, Perkins at p.7 ("Moreover, the proper process following a successful inspection is for the City Inspector to send a letter directly to CEI, of which CEI receives hundreds each year. But CEI has never received such a letter for the Property despite Ms. Moore's testimony that a replacement City Inspector was assigned to her case and also visited the property.")

²⁴ Hearing Transcript, p.39 (Q: And isn't it true that you never presented any evidence of an inspection, either from an electrician or from the City of a past [sic] inspection? A: Never, not a past [sic], no, never.")

²⁵ 4901:1-10-01(EE), O.A.C. ("Tampering" means to interfere with, damage, or by-pass a utility meter, conduit, or attachment with the intent to impede the correct registration of a meter or the proper functions of a conduit or attachment so far as to reduce the amount of utility service that is registered on or reported by the meter. Tampering includes the unauthorized reconnection of a utility meter, conduit, or attachment that has been disconnected by the utility.")

²⁶ 4901:1-10-20(A), O.A.C. ("Each electric utility shall establish and maintain an anti-theft and anti-tampering plan and shall submit its plan and subsequent amendments to the director of the service monitoring and enforcement department.")

to a customer found to have tampered until payment is received for the estimated charges for unmetered services.²⁷ There is a rebuttable presumption that the person in control of the meter is the party obligated to pay for the services rendered.²⁸

The record is clear in this case that “jumpers” were found in the empty meter socket for the Upper Unit of the property owned by Ms. Moore.²⁹ Ms. Moore testified that her tenant in the Lower Unit, Mr. Buchanan, first admitted that he had placed the jumpers in the socket, and then later recanted.³⁰ Ms. Moore testified that she has owned the Property since 2010,³¹ and also stated that she has had sole possession of the Property since 2010.³² Ms. Moore called in May 2015 to request a new meter placement for the Upper Unit.³³ Ms. Moore offered no evidence to rebut the presumption that she is responsible for the tampering and related theft, only rhetorical questions why she would have any reason to do so.³⁴ However, in her Amended Complaint Ms. Moore identified 50,000 reasons for stealing services to provide electricity to the Upper Unit where she wouldn’t—or couldn’t—pass inspection: rental income.³⁵

²⁷ 4901:1-10-20(B)(2)(d), O.A.C. (“A statement that, if the customer does not contest the disconnection, the electric utility is not required to restore service until the customer has provided satisfactory assurances that such tampering or unauthorized reconnection has ceased and has paid or made satisfactory arrangements to pay the electric utility an amount that the electric utility calculates for unmetered service, any defaulted amount, any damage to the electric utility’s equipment or meter, any security deposit (consistent with rule 4901:1-10-14 of the Administrative Code), and any tariffed reconnection and investigation charges.”)(emphasis added).

²⁸ 4901:1-18-07(E)(1)(“ When a utility company has disconnected a meter in connection with alleged tampering, or unauthorized reconnection of a gas, or electric meter, conduit, or attachment of a utility, there shall be a rebuttable presumption that the person in possession or control of the meter, conduit, or attachment at the time the tampering or reconnection occurred is the party obligated to pay for the service rendered through the meter, conduit, or attachment.”).

²⁹ Perkins at p. 8; Reinhart at p. 7.

³⁰ Hearing transcript, p.42, 43.

³¹ *Id.* at p. 36.

³² *Id.* at p. 12.

³³ Reinhart at p. 6, 7.

³⁴ Hearing transcript, p. 26 (“So, again, if I’m going to steal services...I am not going to do it to a rental property that eventually I am going to rent to a tenant. It doesn’t make sense. I’m paying for one unit and not the other? It just doesn’t make sense.”)

³⁵ Amended Complaint, p. 3 (“it is therefore being requested that I be awarded a total of \$50,000 for loss of income for five and a half years at fair market value for a two bedroom unit...”)

Company Witness Reinhart explained the methodology she followed to calculate the amount of charges for the unmetered service, by using the system-wide average for residential customers of 25 kWh per day.³⁶ Ms. Reinhart testified that she followed the usual method used by the Company to calculate unmetered usage, and that her estimate was conservative with respect to the time period over which such theft may have occurred.³⁷

C. Complainant has not met her burden of proof.

The burden of proof in customer complaint cases such as this is solely and squarely placed upon the Complainant. Complainant must demonstrate by a preponderance of evidence that the service provided by the utility was inadequate.³⁸ A utility defending the complaint need only introduce sufficient evidence refuting the testimony of the Complainant.³⁹ Where complainant fails to rebut evidence submitted by utility in support of its defense, the Ohio Supreme Court will uphold dismissal of the claim.⁴⁰ Complainant has not demonstrated by a preponderance of evidence (or any evidence for that matter) that CEI's action was inappropriate, nor has Complainant rebutted the irrefutable evidence submitted by CEI in support of its defense. This complaint should be dismissed.

IV. CONCLUSION

The facts support the Company's legal right to deny reconnection of service to the Upper Unit at the Property at 12727 Benwood Avenue without proper inspection and payment for theft of services. As indicated by the synopsis of events testified to by Company Witnesses Deborah

³⁶ Reinhart at p. 8.

³⁷ *Id.* at p. 8, 9.

³⁸ *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, (1990), 49 Ohio St. 3d 123.

³⁹ *Id.*

⁴⁰ *Thomas v. Pub. Util. Comm.* (1986), 24 Ohio St. 3d 167.

Reinhart and Robert L. Perkins, III, both a missing meter and tampering with the electric meter socket were found at the Property, and unmetered electricity usage occurred. Until assurances are given that future tampering will not occur, and until the past due amounts are settled, the Company must continue to deny reconnection of service. CEI respectfully requests that this Complaint be dismissed with prejudice and that the Commission find that CEI complied with the provisions of its tariffs, the Administrative Code as well as the Ohio Revised Code.

Respectfully submitted,

/s/ Robert M. Endris
Robert M. Endris (0089886)
Counsel of Record
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Telephone: 330-384-5728
Facsimile: 330-384-3875
rendris@firstenergycorp.com

*Attorney for The Cleveland Electric
Illuminating Company*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Brief of The Cleveland Electric Illuminating Company's was delivered by electronic mail and U.S. Mail to the following on this 23rd day of July, 2018.

/s/ Robert M. Endris
An Attorney for The Cleveland
Electric Illuminating Company

Monique Moore
12727 Benwood Ave.
Cleveland, Ohio 44105

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/21/2018 2:04:31 PM

in

Case No(s). 17-1563-EL-CSS

Summary: Brief Initial Brief of The Cleveland Electric Illuminating Company electronically filed by Mr Robert M Endris on behalf of Endris, Robert Mr.