

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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I. INTRODUCTION

The evidence in this proceeding clearly establishes the relevant facts that when the Company discovered an open meter socket at Complainant's Property it properly required proof of inspection before reconnecting service, and when tampering was discovered Complainant was held responsible for the theft of electricity found at her Property. The Commission's rules and the Company's tariffs support the actions taken by the Company, including the assessment of unmetered usage charges for tampering.

Complainant's Initial Brief cannot be relied upon for the Commission's determination in this proceeding because it is nothing more than innuendo unsupported by the record, conjecture based on bias, and outright misrepresentation of the record. Her Statement of Facts is rife with argument and nearly devoid of reference to the record. The few citations to the record misstate and mischaracterize the evidence.¹ Complainant's Argument lacks any foundation in law and simply repeats the accusations and misrepresentations in her Statement of Facts. Further, Complainant's Initial Brief improperly injects new facts not in the record, and spins a tall tale of deception in her effort to score a \$75,000 jackpot that the Commission cannot even award. These abuses of the record in Complainant's Brief are far too numerous for the Company to address each occurrence; therefore, only some will be addressed by way of example in this Reply.

¹ In one such example, at p.2, Complainant alleges that Company Witness Perkins admitted a fact at hearing, but as throughout her Brief, her citation to the Hearing Transcript is made only to her "question," not the witness' response. In this example, the presiding Attorney Examiner admonished Complainant for making a statement instead of asking a question, after which she immediately concluded her cross examination without any response by the witness. ("In addition, Perkins admitted in response to a question from Moore at the hearing that Reinhart's notes indicated that "the meter and meter case was burnt due to fire" [See Hearing Transcript Page 129 Lines - 11 & Lines 17 - 21].....")

II. RESPONSE TO COMPLAINANT'S FIRST ARGUMENT: THE EMPTY METER SOCKET CAUSED THE SERVICE INTERRUPTION—NOT CEI.

A. CEI's meter reader discovered an empty meter socket.

On a winter day in 2012, a CEI meter reader encountered an empty meter socket at the Property owned by Complainant, where he was scheduled to read two meters but in that month found there was only one meter.² The next business day a meter technician arrived to secure the open socket by placing a plastic cover over it.³ Company Witness Perkins testified that CEI's records are clear on these two facts. Regardless of the reason for the meter's removal by someone other than Company personnel, its absence constituted an unsafe condition warranting termination of service pending inspection.

Complainant, on the other hand, alleges the Company improperly removed the meter. In several pages of arguments she conflates the Company's notes about a fire⁴ with who removed the meter. She repeatedly falsely claims that the Company's witnesses admitted that CEI removed the meter, for example stating: "Despite admitting the meter was removed by CEI..."⁵ However, at no time throughout this proceeding, neither in pleadings nor in testimony, has the Company admitted to removing the meter. In fact, quite the opposite: the Company has steadfastly maintained that CEI did not remove the meter. In the clearest of terms, Mr. Perkins testified under cross examination:

Q: So is it possible that CEI removed the meter?

A: Based on my investigation, no.

² Pre-filed Direct Testimony of Robert L. Perkins, III, at p. 4.

³ *Id.*

⁴ Company Witness Perkins explains the likely basis for the Company's notes at p.5, 6 ("Indeed, without a positive indication from the responsible party, such as a notice from the Fire Department, the reason would remain unknown and there would be no information to be so recorded. 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.")

⁵ Brief of Monique Moore, Complainant, p. 3; see also, p.6 ("because their own notes indicate that CEI removed the meter.")

(Hearing Transcript at p. 115, lines 6-8). Company Witness Perkins also testified that the Company records do not indicate the CEI removed the meter.⁶

Elsewhere, Complainant argues that “it can only be inferred that CEI removed the meter.”⁷ While Complainant likely means to argue, erroneously, that the only possible inference to be drawn from her spin of the record is that the Company removed the meter, it certainly would be correct to state that there is no evidence that CEI removed it, only inference biased by objective.

B. Inspection is the proper requirement before reconnection of service.

Inspection is an important safety precaution that is required by law.⁸ When an unsafe condition such as a missing meter is discovered, the Commission’s rules and the Company’s tariff properly require proof of a successful inspection before restoring service to the Property. The Company clearly communicated this requirement to Complainant.⁹ As Company Witness Perkins explained, it did not matter whether there was a fire, or simply a missing meter—either condition required an inspection by the local authorities to ensure the safety of the customers, the public, and employees.¹⁰

⁶ Prefiled Testimony of Robert L. Perkins, III, p.4 (“The Company’s records do not indicate that CEI removed the meter, and do not say who did.”)

⁷ Brief of Monique Moore. at p.6.

⁸ 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.”)

⁹ Pre-filed Testimony of Deborah Reinhart, p.5.

¹⁰ Company Witness Perkins, p. 6.

However, Complainant never obtained a successful inspection.¹¹ While she describes efforts to do so in her Brief, including evidence never admitted into the record, she never completed necessary electrical work identified as necessary to restore service. From this description emerges a startling and stark demonstration of Complainant's callous disregard for her tenant's safety—attempting to rent her Property (Upper Unit) that could not pass inspection, instructing her prospective tenant to request service in the hopes that the mere “passage of time” and a different person asking would somehow result in reconnection.¹² Instead of acknowledging at any point in this proceeding the danger to which her tenant would be exposed, Ms. Moore blames the Company for requiring the inspection her Property could not pass, and wants to be paid \$50,000 in lost rent.

III. RESPONSE TO COMPLAINANT'S SECOND ARGUMENT: THE COMPANY DID NOT UNREASONABLY PREVENT COMPLAINANT'S ELECTRIC SERVICE FROM BEING RESTORED.

As stated above, the Company did not remove Complainant's meter, and Complainant's assertions that the Company's notes indicate that it removed the meter are erroneous. Whoever removed the meter before the meter reader arrived that day in February 2012 set in motion the subsequent chain of events.¹³ Afterward, it was Complainant's own failure to ensure that her Property received a successful inspection by the proper authorities that prevented reconnection.¹⁴

IV. RESPONSE TO COMPLAINANT'S THIRD ARGUMENT: THE COMPANY FOUND EVIDENCE OF TAMPERING.

¹¹ See for example, Brief of Monique Moore, p.9 (“I admit the fact that I did not present CEI with any paperwork from the City or electricians because they did not approve the work done.”)

¹² *Id.* at p. 5 (“Even though at that time she had the funds to complete the required electrical work she wanted to be able to get the tenant immediately. However, she told him to call to see if he could get the electricity turned on, thinking maybe CEI would now turn it on for a third party due to of passage of time.”)

¹³ Company Witness Perkins, p.4.

¹⁴ Brief of Monique Moore, p.4 (“Moore never responded to CEI's requirements regarding restoration of service.”)

Company Witness Reinhart testified that in April 2017, Henry Duncan requested that service be established in his name for the Lower Unit after the previous tenant had terminated service.¹⁵ While the meter technician was on-site to process that request, he discovered jumper cables had been placed in the empty meter socket associated with the Upper Unit.¹⁶ Company Witness Perkins testified that he also examined Company records and confirmed the evidence of tampering.¹⁷ He also testified at the hearing that the locking pin devices that should have been on both the existing meter and empty meter socket were present in Complainant's Exhibit 1, the picture of the meter that Complainant took in February 2018, but were absent when he visited the Property in May 2018, indicating that someone other than Company personnel had accessed the meter.¹⁸ Charges were properly assessed to the owner of the Property pursuant to Ohio law.¹⁹

Complainant argues in her Brief that the Company having not introduced the jumper cables physically into evidence, and not offering pictures of the jumpers connected to her meter base, means that it is possible that the jumper cables were found on "another house altogether."²⁰ This argument ignores the clear testimony in the record by both Company Witness Reinhart and Company Witness Perkins that the Company records kept in the normal course of business show that the jumper cables were found in the empty meter socket for the Upper Unit at her Property.

¹⁵ Company Witness Reinhart, p.7. As explained by Ms. Reinhart, Complainant earlier alleged that Mr. Duncan was "long gone." Complainant now claims the prospective tenant might have successfully established service for the Upper Unit in his name "for all she knows."

¹⁶ *Id.*

¹⁷ Company Witness Perkins, p. 3, 8.

¹⁸ Hearing Transcript p. 102, line 19—p.103, line 8; p. 106, lines 7-10 ("Someone gained access to the socket, the inside of the socket."). See also, *In the Matter of the Complaint of James R. Locker dba L.J. Properties v. Ohio Edison Company*, Case No. 99-977-EL-CSS, Opinion and Order, p.8 (April 27, 2000) (The Commission finds that the subsequent cutting of the hasp is an incident of tampering and reinforces our belief that the initial incident of tampering occurred.").

¹⁹ 4901:1-18-07(E)(1) O.A.C., ("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.").

²⁰ Brief of Monique Moore, p.7.

Both witnesses described their experience in relying on such records to investigate matters relating to customer service. Notably, Complainant admitted in cross examination that her tenant first claimed responsibility for placing the jumper cables that had been found at the Property, but later recanted.²¹

Complainant makes much of the lack of meter reader discovery of the jumpers prior to April 2017. Again, without any evidence in the record, she argues that “it is known by all the size of Jumper Cables and they a [sic] large enough they would have been observed.” She later gives explicit details about the physical properties of the jumper cables and that “they have 4 connectors that are at least the size of a man’s hand.” Setting aside for the moment that such unintroduced evidence is improperly presented in her Brief, for someone who professes to have nothing to do with stealing electric services, Complainant seems to know a lot about the jumper cables that are used to do it.

IV. RESPONSE TO COMPLAINANT’S FOURTH ARGUMENT: COMPLAINANT’S REQUEST FOR DAMAGES IS UNSUPPORTED BY EVIDENCE AND OUTSIDE THE COMMISSION’S JURISDICTION TO AWARD.

While Complainant alleges it was her intent to rent the Upper Unit for \$400 per month to support a claim for lost rent, she failed to provide evidence that the Property was habitable and capable of being rented for that amount. Indeed, she admits she was unable to pass an electrical inspection by the City of Cleveland. She asserts the work was unnecessary—caused only by the Company’s inspection requirement—instead of recognizing that her Property did not meet applicable safety codes as found by the Inspector. Complainant also attempts to charge the Company for damage she admits she cannot document, again asserting the Company is to blame for requiring an inspection. However, all claims for damages are misplaced because the

²¹ Hearing Transcript, p.42, lines19-24.

Company did not cause these damages—it simply fulfilled its obligations pursuant to the Commission’s rules and the Company tariff.

Even more important, the money damages sought by Complainant are not within the Commission’s jurisdiction to award to Complainant. As the Commission affirmed recently, claims sounding in tort are within the exclusive jurisdiction of the Court of Common Pleas.²²

VI. CONCLUSION

The Company acted properly in requiring an inspection of the electric service for the Property before reconnecting service to the Upper Unit, and in charging Complainant for the unmetered usage of electricity corresponding with tampering found in the empty meter socket. Complainant failed to obtain the needed inspection, and as the owner of the Property with no customer of record for the Upper Unit, Complainant is responsible under Ohio law to pay for the service rendered through such tampering.

Respectfully submitted,

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²² *In the Matter of the Complaint of Citizens Against Clear Cutting, et al., v. Duke Energy Ohio, Inc.*, Case No. 17-2344-EL-CSS, Entry, Par. 51 (March 8, 2018)(“As noted earlier, the Supreme Court of Ohio has long held that the Commission has no power to judicially ascertain and determine legal rights and liabilities or to adjudicate controversies between parties as to property rights and claims based on tort liability.” (citing *New Bremen, et al. vs. Pub. Util. Comm.*, 103 Ohio St. 23, 30-31, 132 N.E. 162, 164 (1921))”).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of The Cleveland Electric Illuminating Company's was delivered by electronic mail and U.S. Mail to the following on this 20th day of August, 2018.

Monique Moore
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