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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

MONIQUE MOORE

Complainant

THE CLEVELAND ELECTRIC

Respondent

CASE NO. 17-1563-EL-CSS

RESPONSE BRIEF OF MONIQUE MOORE, COMPLAINANT

INTRODUCTION

This brief is written almost always in the third person for the purposes of clarity.

The Case before the Commission and the respective briefs of the parties present two main issues to the Commission. These issues are as follows:

ISSUES:

1. The first main issue relates to the illegal removal of the electric meter from the premises and the damages resulting from such removal. These issues include:
 - a. The main issue presented to the Commission in the Complaint is whether CEI wrongfully, erroneously, negligently and/or recklessly disconnected the electric service to Monique Moore at 12727 Benwood Avenue, Cleveland, Ohio 44105 in 2012, by removing the electric meter from the unit.
 - b. Whether because of such wrongful removal by CEI that CEI erroneously required that Moore obtain [and pass] an inspection to have service restored at the property. Note there is some minor dispute whether was told she had to pass an inspection by the City of Cleveland or in alternative obtain a letter from a licensed electrician certifying that the electric service can be restored. Note this last minor dispute will prove to be irrelevant to this matter.
 - c. Whether Moore was and in what amount Moore was damaged because of said wrongful actions.

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- d. Initially there was the implied issue of whether CEDI's removal of said electric meter was justified because there was a fire. However, CEI through its initial brief and the testimony it presented at the hearing, concedes that the meter was not removed because of fire.
2. The second major issue relates to the alleged Tampering by Complainant. These issues include the following:
 - a. Whether jumper cables were used to connect electricity to the upper unit of the premises.
 - b. Whether Moore was responsible for connecting said jumper cables thereby tampering with electric service.
 - c. Whether, even if Moore did not connect the jumper cables thereby creating the tampering, whether said alleged tampering can be attributed to Moore and Moore be held responsible for said tampering because she was apparently the person in possession of the property at the time.
 - d. Whether the tampering fee accessed by CEI going back to 2015 is proper.

ARGUMENT

1. Removal of the Meter. In the initial brief Moore presents evidence that CEI removed the meter from the premises. CEI seems to deny this simply by stating that CEI did not remove the meter. Although Moore did not observe CEI removing the meter CEI's communication with Moore and other subsequent statements by CEI demonstrate that CEI removed the meter.

FACTS:

The following is a response to CEI interpretation of the facts.

1. REMOVAL OF THE METER.

a. CEI WRONGFULLY REMOVED THE ELECTRIC METER FROM MOORE'S PREMISES AT 12727 BENWOOD AVENUE

The issue regarding the removal of the meter is paramount in this case. At all relevant times prior to February 2012 electric service at 12727 Benwood Avenue, Cleveland, Ohio was working and maintained at both the upper and lower units at the property. In February of 2012 Moore visited the premises, that was being rehabbed, and discovered that the electric service for the second-floor unit was not working. [Please note that CEI has some confusion regarding which unit, upper or lower, was turned off. While Moore has no access to CEI's records Moore maintained and always maintained that the service was off

in the Upper Unit and that service was always on in the lower unit. This was confirmed in Moore's Cross Examination on page 44, line 24.] After discovering the meter for one of the units was missing Moore called CEI to inquire why was the meter removed. This is confirmed by CEI witness Deborah Reinhart on page 5, lines 6-12 of her Direct [written Submitted] testimony. At that same point Reinhart also confirms that Moore was told by CEI that **"the meter was removed due to fire and she must have her meter base inspected by the City of Cleveland before a new meter could be placed in the socket to restore service."** This statement is direct, clear and unambiguous. It indicates the CEI had determined why the meter was removed. This is important because CEI seems to recklessly claim in its brief and throughout the hearing that Moore or someone associated with Moore removed the meter. In addition, it is important to note that in its Answer to Moore's [CEI Answer paragraph 2] CEI denies there was a fire and states "that electric service was terminated on February 7, 2012, due to an unsafe condition . . . "Those two statements made by CEI not only show that CEI removed the meter, it demonstrates the lack of consistency in CEI's claim regarding the removal of the meter. CEI changing stories regarding the removal of the meter is further shown in its Hearing Testimony where CEI's representative conveniently speculates that it is most likely that Moore removed the meter. Other facts that demonstrate that CEI removed the meter and that the reason for the removal was because CEI assumed there was a fire are detailed in the original brief and include the following fact:

1. In his Direct Testimony, on Page 5, Lines 17 through 23, CEI Director of Meter Services Robert Perkins states that "The Company Records indicate that upon Moore's inquiry subsequent to the discovery of the missing meter, **she was told that the meter was removed due to fire.**" This shows CEI removed the meter.
2. 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]. The CEI employee making such claim could not have indicated that the meter was "burnt" unless that person observed the meter at the time. CEI removed the meter.

CEI ARGUMENT: CEI arguments seems to rely primarily on its claim that it did not remove the meter. Despite the facts referenced above CEI at the hearing claims that Moore removed the meter. This is based only on the convenient conjecture of CEI employee Perkins who states that Moore removed the meter, because in "his experience" one of the reasons for a missing meter is that the

customer removes the meter in order to steal services [See: Direct Testimony of Robert Perkins (note a separate document from the hearing Transcript) Page 4, Lines 8 through 17]. This assertion is not logical and irresponsible since Moore clearly contacts CEI seven days later to inquire why the meter was missing. If there was an intent by Moore to steal service as Perkins inaccurately surmises, then there would have been no reason to contact CEI and inquire about the missing meter. CEI presents no testimony that would be contrary to this conclusion.

In addition, CEI knew the meter was not present in the premises since 2012, but took no action, made no inquiry regarding the missing meter. Perkins in his testimony dismisses any other reason why there would be a missing meter. Clearly CEI's records are either incorrect or are misrepresented and CEI removed the meter. There is no reason for Moore to do such if in fact she removed the meter.

The issue now becomes whether CEI's removal of the meter was justified. CEI in the hearing seems to confirm that there was no fire. Its answer references an "unsafe condition" [CEI answer paragraph 2] but does not specify the nature of this condition. The statement alone is an admission that since 2012 CEI has determined there was no evidence that there was a fire. Moore's initial brief lists other reasons to demonstrate that there was no fire including:

- Moore's witnesses, Mr. Edwards confirms that when he looked at the meter location, that he saw no evidence of a fire [Hearing Transcript Page 59, Line 7 and Hearing Transcript Page 67, Lines 7-15.
- CEI at no time provided any evidence of a fire
- CEI employee, Perkins, states in his testimony that in 2017 he saw no damage to the meter base [Hearing Transcript Page 114, Lines 22 – 25].
- It can only be concluded that CEI removed the meter and that said removal was not justified.

b. BECAUSE CEI WRONGFULLY REMOVED THE METER CEI WRONGFULLY REQUIRED MOORE TO OBTAIN AN INSPECTION FROM THE CITY OF CLEVELAND BEFORE SERVICE COULD BE RESTORED.

As CEI references in its initial brief: When a meter is removed by anyone other than the Company's personnel or authorized agent, . . . , the Company may properly require inspection before reconnecting service.

In this case it is clear that CEI removed the meter so CEI did not have the option to require an inspection to reconnect services. Therefore, CEI had no authority to require the passing of the inspection to reconnect the services.

Although it may not be relevant to determining this case Moore takes this time to clarify one of the misleading assertions by CEI. In its initial brief CEI claims that Moore claimed that she got an inspection, but that CEI never received any record of such inspection. Moore actually testified that she had licensed electricians and two City of Cleveland inspectors review the situation. However, Moore does not claim that she passed the inspection. Without passing the inspection Moore had no reason to provide CEI with any information regarding such. Moore believes this is one of the many attempts by CEI to cast doubt on her veracity and has nothing to do with the substance of the case.

Even if for safety reason an inspection must be passed then the cost of such inspection should be the responsibility of CEI since they illegally removed the meter.

2. TAMPERING

Moore generally relies on her initial brief in addressing the tampering issue. Moore did not see the jumper cables and denies being responsible for the placement of the jumper cables. If it is determined by the Commission that there was in fact tampering and that because of the rule that states in general that if no one else is responsible for the tampering, that the tampering can be attributed to the person in possession of the property.

Therefore, the real issue in this matter is the amount of the tampering fee. At no point does CEI present a valid reasonable argument that the tampering charges should be assessed back to 2015. In fact, in its own brief CEI refers to going back to 2015 as “to the time period over which such theft may have occurred.” This is reflective of Ms. Reinhart’s attempted justification of using 2015 as the original theft date as she responds to the question as to when theft may have occurred (Reinhart Hearing Testimony Page 8, lines 4 through 8]. Here Reinhard says that CEI “considered the May 27, 2015 request for service for the Upper unit as the appropriate indication of when the upper unit likely was receiving electric service illegally.” This speculation should not be a basis of setting a date to charge for theft of service. What CEI apparently did was select a date that was the last date that in CEI’s opinion was the last date

upon which theft could have taken place. This is apparently based on May 2015 was the last date that CEI was at the property [except for the monthly meter reader, who should would observed the alleged theft using jumper cables on the meter]. Moore in the original brief argues that the monthly meter reader would have seen the alleged theft. But even viewing CEI's argument without considering that the meter reader would have seen the jumper cables, is nothing more than convenient speculation. It cannot be assumed that when it was possible that theft took place then that is the date it took place, without other evidence supporting that conclusion. In addition, it is interesting that CEI's Reinhart in her testimony actual says that there is reason to believe theft took place prior to 2012 even though CEI was out at the premises at least once during that year to provide new service. This demonstrates CEI will make wild speculations regarding this issue. The relevant section(s) of Ohio Administrative Code [O.A.C. 4901:1-18-07(E)(2)(b) provides a list of criteria to restore service in the case of an undisputed tampering charge [note here that Moore does dispute the tampering]. The relevant provision subsection E(2)(b) states that the party must have:

"Paid to the utility company an amount estimated by the company to be reasonable compensation for unauthorized usage obtained and not paid for at the time of disconnection."

Assessing tampering charges back to 2015 is not reasonable nor is it supported by the facts.

CEI then attempts [but fails] to call into question Moore's truthfulness in general as justification to going back to that date. Even if that argument was convincing [which it is not] it would not justify going back to 2015. These claims of untruthfulness are addressed below:

1. On page 90, lines 5 through 8 of the hearing transcript CEI's attorney asks CEI employee Reinhart whether in the in the course of her examination, did she find any other evidence that would cause you [referring to Reinhart] to connect or associate Ms. Moore with tampering. Reinhart responded that CEI had an application from Moore for an address in Brecksville where CEI found tampering. But she continues by saying that the prior occupant of the premises admitted to the tampering. This testimony could only serve to create confusion.
2. In Reinhart's pre-submitted testimony [Page 8 through 9] Reinhart is asked by CEI's attorney asks Reinhart for other indications that theft may have occurred over a longer period of time. Reinhart provides the following list.
 - a. The first two reason relates to inquiries or requests by Moore for PIPL and questions regarding whether Moore's son resided at the property. CEI promotes the use of PIPL and it is hard to see where a party request data on PIPL would indicate anything nefarious. Reinhart's questioning as to when and whether

Moore's son lived at the property is not justified by the record and even if there were actual questions about this matter would not be relevant to determining when the alleged theft began.

- b. Reinhart states that Moore caused the meter to be moved from the Upper unit to the Lower Unit. This claim is apparently based on Reinhart's claim that Moore called CEI sometime in 2015 and told CEI that she [Moore] has an electrician switch the meter at the property from serving the upper unit to serve the lower unit. However, Moore denies this claim on cross examination [See Hearing transcript page 45 through 46] and explains that in 2015 that an electrician, with both City of Cleveland Inspector and a CEI employee present demonstrate that the electric service could be connected to the Upper unit if a meter was installed. What is interesting about this is that Moore says that CEI was present for said demonstration. CEI never denies that they were present for that demonstration.
- c. Reinhart says that Moore at one time said that her tenant agreed to pay the tampering fee, but then rescinded the offer. This is all based on Moore's alleged assertions. It is difficult to see how this shows that Moore was not truthful. There is no context provided for this matter on the record so any assumption or characterization of this is pure speculation.
- d. She also claims Moore had no leases or rent roles. While this is not reflected on the record it should be noted that oral leases are both legal and common in Ohio. Her claim that Moore does not know he lives in the property is not supported by the facts. Moore knows who lives there and who pays her rent.
- e. These claims by Reinhart that she attempts to show untruthfulness on the part of Moore only demonstrate CEI's contempt for the process by making unfounded claims that are not evidence of what it purports to claim.

CEI has no basis for going back to 2015 to assess the tampering charge. Note that while it may be a presumption [rebuttable] that the owner of the property may be responsible, CEI has not established that Moore should be the responsible party.

Damages Requested. Moore restates its demand for damages listed in the initial brief as outlined below. Note Moore has modified its claim for all damages adding any amount related to inspection of the premises.

- a. Compensatory Damages of lost rent in the amount of \$62,400.00.
- b. Special or Nominal Damages in the amount of \$5000.00 and an additional amount equal to the cost incurred by Moore in obtaining and passing an electrical inspection require to insure the safety at the property.

- c. Punitive Damages in the amount of \$20,000.00 for CEI's grossly negligent treatment of customer Moore

CONCLUSION:

The PUCO should find for Monique Moore and award damages as suggested above.

Submitted by:

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SERVICE

A copy of this Response Brief was sent to the following on the 20th of August 2018 via email:

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