

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

FOREST HILLS SUPERMARKET, INC.)	
d/b/a KONNIS FAMILY FOODS)	
)	
Complainant,)	
)	
v.)	Case No. 18-785-EL-CSS
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
)	
Respondent.)	

POST-HEARING BRIEF OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

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I. INTRODUCTION

Complainant Forest Hills Supermarket, Inc. d/b/a Konnis Family Foods (“Forest Hills” or “Complainant”) alleges that The Cleveland Electric Illuminating Company (“CEI” or “Company”) violated Commission rules by failing to include consumption history and previous unpaid balances on monthly electric bills. Complainant’s allegations are unfounded and wrong.

The evidence in this proceeding demonstrates that Complainant was properly billed for previously unbilled electricity consumption during the period December 2016 through July 2017. The bills that Complainant alleges failed to include the required information all relate to the rebilling period during which the new meter serving Complainant’s business had not been properly associated with Complainant’s account. As soon as the meter association was corrected, Complainant was provided with detailed usage and information about the amount due for the new meter. Further, all of the billed amounts reflect actual meter data.

The evidence also shows that Complainant continued to receive monthly bills from the meters which for a time remained associated with Complainant’s service account. These bills showed consumption history, previous unpaid amounts, and, importantly, zero consumption. Complainant at all times received bill statements containing the information required by the Commission’s rules. Complainant was aware of billing issues with its account since December 2016 but did not contact CEI about its account until after being rebilled. The alleged violations thus arise from the Complainant’s own actions and inactions.

For all of the reasons set forth in more detail below, Complainant failed to meet its burden in this proceeding and the Complaint against CEI should be dismissed with prejudice.

II. HISTORY OF THE PROCEEDINGS

On May 1, 2018, Forest Hills filed a complaint against CEI, alleging that CEI bills issued to Forest Hills lacked consumption history, unpaid balances, and accurate metering (“Complaint”).¹ In its Complaint, Forest Hills states that it received a letter from CEI which billed Forest Hills \$44,961.07 for unpaid and previously unbilled charges for electric services rendered, followed by a bill statement on August 9, 2017. Complainant seeks judgment against CEI in the amount of \$44,961.07, plus treble damages.

On May 22, 2019, CEI filed its answer, denying the material allegations of the Complaint. CEI admits that it sent the August 1, 2017 letter and August 9, 2017 bill to Complainant but asserted that the rebill complied with Section 4901:1-10-23, Ohio Admin. Code (“O.A.C.”), and that at all times CEI complied with the relevant statutes, rules and its tariffs.

On September 18, 2018, the parties attended a settlement conference at the Commission’s offices in Columbus, Ohio, but the parties were unable to resolve the matter. On February 15, 2019, pursuant to the Attorney Examiner’s Entry of November 21, 2018, CEI prefiled the testimony of its expert witness, Princess A. Davis. An evidentiary hearing was held in this matter on February 26, 2019. CEI appeared with counsel. Complainant appeared by counsel. Despite having neither witnesses nor direct testimony, Complainant participated by introducing into evidence several documents,² lodging objections to CEI’s evidence,³ and extensively cross-examining Company Witness Davis. At the conclusion of the evidentiary hearing, the Attorney Examiner closed the record in this case. Pursuant to the Attorney Examiner’s directive, Ohio Edison now submits this Initial Brief in support of its position in this

¹ Complaint, p. 4.

² Transcript at p.20, line 15.

³ See, for example, Tr. p.26, lines 6-21.

proceeding.

III. BACKGROUND

Complainant is a grocery store located at 13598 Euclid Avenue, Cleveland, Ohio (the “Property”). Complainant is a tenant at the Property, which is in a strip mall, and occupies a landlord-owned building. Complainant currently receives non-residential electric service at the Property from the Company under Account No. 110124917649 (“Account -649”).⁴ Complainant began receiving service from CEI under Account -649 in December 2016, after a landlord-requested upgrade was made to the electric service at the Property, resulting in a new meter (Meter S314036132 or “New Meter”) being installed to deliver electric service to Complainant.⁵

Prior to December 2016, Complainant received electric service at the Property from CEI solely through two meters, #834742596 and #A11692577 (the “Old Meters”) under Account No. 110023165209 (“Account -209”). On September 6, 2016, CEI completed the project, energized the service to the New Meter, and the New Meter was billed to the landlord. The Complainant continued to be billed for the Old Meters under the Complainant’s Account -209, because service to Complainant at that time still ran through the Old Meters until the meter switchover was made in December 2016.⁶

CEI did not receive notice from either the landlord or Complainant when the Property’s electric lines behind the meters were switched from the Old Meters to the New Meter.⁷ As a result, CEI continued to bill Complainant monthly under Account -209, with meters registering zero usage. Meanwhile, the New Meter, which began registering Complainant’s electricity usage in December 2016, was reflected on the landlord’s monthly bills. In May 2017, the

⁴ Company Exhibit A, Direct Testimony of Princess A. Davis on Behalf of The Cleveland Electric Illuminating Company, February 15, 2019, p. 3. (“Davis Direct”)

⁵ *Id.* at p.4.

⁶ *Id.*

⁷ *Id.* at p. 7

landlord contacted CEI inquiring why the New Meter was being included on its account, and in June 2017 CEI confirmed that the New Meter was serving Complainant at the Property. In July, rebills were calculated using the actual meter read data, and on August 1, 2017 CEI sent a letter notification to Complainant regarding the previously unbilled usage, rebill calculations, and explaining that an installment plan had been established.⁸ On August 9, 2017, CEI sent a monthly bill to Complainant that included the rebilled amount, the consumption history and total amount due.⁹

Complainant thereafter sent two letters to CEI regarding this rebill. On August 20, 2017, Complainant's attorney sent a letter stating that Complainant was trying to reach a resolution with the landlord.¹⁰ Complainant's letter did not dispute the amount of the bills, or allege that the registered consumption was inaccurate.¹¹ On October 11, 2017, Complainant sent a second letter to CEI, this time stating that "[s]ince the end of 2016, [Complainant] has been attempting to work out an on-going billing issue to no avail."¹² There had been no communications between Complainant and CEI regarding billing issues prior to CEI's August 1, 2017 letter.¹³

IV. LAW AND ARGUMENT

Complainant has failed to satisfy its burden in this proceeding. Section 4905.26 of the Ohio Revised Code requires that the Commission set for hearing a complaint against a public utility when grounds appear that:

[A]ny rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory,

⁸ Id. at p. 4. See also Complainant's Exhibit 1; Tr. p.66, line 8 through p.67, line 3.

⁹ Davis Direct, p. 5, lines 21-22; Complainant's Exhibit 3.

¹⁰ Davis Direct, p. 6. See also, Company Exhibit C.

¹¹ *Id.*

¹² Id. at p. 5.

¹³ *Id.*

unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained.¹⁴

It is well-established that the burden of proof rests with the complainant in proceedings before the Commission.¹⁵ Thus, Complainant bears the burden of proving its allegation that CEI's electric bills failed to provide twelve months of consumption history and previous unpaid balances, or were in any way inaccurate.¹⁶ Complainant must make this showing by a preponderance of the evidence.¹⁷ This is a burden Complainant cannot meet in this case. The evidence in the record demonstrates that Complainant's electric bills during the relevant time period included all of the requisite information. Because Complainant cannot meet its burden, the Commission must dismiss the Complaint in its entirety and find in favor of CEI.

It is undisputed that Complainant received monthly billing statements from CEI for Account -209. At the hearing, Complainant stipulated that the monthly bills for April, May, June, and July 2017 had been received by Complainant.¹⁸ Company Witness Davis testified that each monthly bill statement included twelve months of consumption history, an unpaid balance, and showed zero electricity consumption on both meters.¹⁹ Similarly, Complainant's evidence also showed the required information on the Account -649 bill statements.²⁰ Every bill statement offered into evidence included consumption history, unpaid balances, and current amount due.

Complainant's emphasis at trial that CEI had not sent bills each month to Complainant

¹⁴ O.R.C. §4905.26.

¹⁵ *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214, 214 N.E.2d 666 (1966).

¹⁶ O.R.C. §§4905.22, 4905.26; *see also DiSiena v. The Cleveland Electric Illuminating Company*, Case No. 09-0947-EL-CSS, Opinion and Order, 2 (Dec. 8, 2010).

¹⁷ *Ohio Bell Telephone Co. v. Pub. Util. Comm.*, 49 Ohio St. 3d 123, 126 (1990); *Grossman*, 5 Ohio St. 2d at 190.

¹⁸ Tr. at p. 21.

¹⁹ Tr. at p 24, lines 17-22; See also Company Exhibits B-1, B-2, B-3, B-4.

²⁰ Complainant's Exhibits 2, 3, and 4.

with previous unpaid balances summing up to the rebilled amount is unavailing.²¹ Section 4901:1-10-23(A)²² specifically allows rebilling for prior unbilled service which, by its very nature, does not appear on prior monthly bills. In *Allied Erecting*, the Commission found that backbilling for 36 months was not improper where the estimated unbilled usage was not proved to be unreliable, even though the Commission found the utility had violated a Commission rule.²³ Thus, even if Complainant *had* proven the alleged violation, which it has not, the remedy would not include free electricity.

Furthermore, Complainant bears responsibility for not heeding the signs that something was wrong with its account.²⁴ In *Blanchard v. Toledo Edison*, the Commission dismissed a Complaint for wrongful termination of service for nonpayment where Complainant claimed to have not received billing statements but made no effort to contact Toledo Edison about the problem.²⁵ Here, Complainant received six monthly billing statements, each showing zero consumption in contrast to typical monthly usage of approximately 60,000 to 70,000 kWh.²⁶ There is no evidence that Complainant made any contact to CEI to inquire why its bills showed zero consumption instead of the usual amounts. Indeed, when confronted with the bill for the previously unbilled usage, Complainant's first reaction was to reach out to the *landlord*, not CEI.

²¹ See, e.g., Tr. at p. 67, lines 7-19

²² 4901:1-10-23(A) states, in pertinent part: "When an electric utility has undercharged any nonresidential customer as the result of a meter or metering inaccuracy, billing problem, or other continuing problem under the electric utility's control, unless the customer and the electric utility agree otherwise, the maximum portion of the undercharge that may be billed to the customer in any billing month, based upon the appropriate rates, shall be determined by dividing the amount of the undercharge by the number of months of undercharged service."

²³ *In re: Complaint of Allied Erecting and Dismantling Company, Inc. v. Ohio Edison Company*, Case No. 07-905-EL-CSS, Entry on Rehearing, November 6, 2013, ¶ 7 ("Allied does not point to any nexus as to how OE's violation of Rule 4901:1-10-05(1), O.A.C, should lead us to the conclusion that Allied sustained its burden of proof of showing that OE improperly calculated OE's backbill.")

²⁴ *In re Complaint of John Blanchard v. The Toledo Edison Company*, Case No. 18-82-EL-CSS, Opinion and Order, February 20, 2019, at p. 4 (citing *In re Complaint of Jane Ann Bidwell v. American Electric Power*, Case No. 15-1020-EL-CSS, Opinion and Order (October 20, 2017).

²⁵ *Id.* ("To get an explanation why he was not receiving bills or to sign up for auto-pay, the Complainant could have directed an inquiry to Toledo Edison.")

²⁶ Davis Direct, p. 7, lines 5-8; see also Company Ex. B-4 (showing consumption history in chart and table).

CEI could not correct the billing issues Complainant was experiencing with its landlord until notified—ironically by the landlord and not by Complainant. Complainant’s bills did not suddenly or inexplicably jump from \$7,000 to \$37,000 as Complainant implies—they went from \$7,000 to almost \$0 for six months and then to \$37,000.²⁷ Complainant’s failure to heed the warning signs resulted in CEI rebilling the previously unbilled service – something that CEI is permitted to do under Ohio law.

III. CONCLUSION

The evidence presented in this proceeding demonstrates that Complainant’s CEI electric bills included all required information based on actual meter read data during the relevant time period, and that CEI’s rebilling of Complainant complied with the Commission’s Rules. Complainant failed to present any evidence to the contrary, and therefore has not met its burden. Accordingly, CEI respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted,

/s/ Robert M. Endris

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²⁷ Id. lines 14-17 (in November a credit balance of \$5,209.17 was transferred from Account -209 to Account 649).

ATTORNEYS FOR THE
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ILLUMINATING COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief of Ohio Edison Company was sent to the following by U.S. mail on this 15th day of March, 2019.

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