

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
DONNA M. BELL,**

**COMPLAINANT,**

**v.**

**CASE No. 18-1425-EL-CSS**

**THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY,**

**RESPONDENT.**

**ENTRY**

Entered in the Journal on May 20, 2019

{¶ 1} 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.

{¶ 2} Respondent, The Cleveland Electric Illuminating Company (CEI), is a public utility as defined in R.C. 4905.02. Accordingly, CEI is subject to the Commission's jurisdiction.

{¶ 3} On September 13, 2018, Donna M. Bell (Complainant) filed a complaint against CEI, alleging that she has had at least eight power outages in a three-month period. She also alleges that her bills are sporadic, not indicative of her electricity usage, and that CEI's meter on her property is faulty. Complainant also states that a power outage was responsible for damage to her water heater. Lastly, Complainant alleges that CEI has not adequately investigated or resolved these issues.

{¶ 4} On October 2, 2018, CEI filed an answer. In the answer, CEI denies the allegations made by Complainant. Additionally, CEI sets forth affirmative defenses including that Complainant fails to state a claim upon which relief can be granted.

{¶ 5} By Entry dated October 18, 2018, the attorney examiner scheduled a settlement conference in this matter for November 27, 2018.

{¶ 6} On November 15, 2018, Complainant requested that the settlement conference be conducted via telephone, as she recently had surgery and had difficulty driving long distances. By Entry dated November 19, 2018, the attorney examiner granted Complainant's request to conduct the settlement conference via telephone.

{¶ 7} The settlement conference was held on November 27, 2018. However, the parties were unable to resolve the matter at that time.

{¶ 8} On January 31, 2019, CEI filed a motion to dismiss for failure to state a claim upon which relief can be granted.

{¶ 9} In support of its motion, CEI argues that the Commission lacks jurisdiction over the property damage claim put forth by Complainant, and that the Commission is unable to award monetary damages. As of the date of this filing, Complainant has not filed a response to CEI's motion to dismiss.

{¶ 10} Upon review, the attorney examiner finds that CEI's motion to dismiss should be denied. CEI's motion to dismiss summarily concludes that the Commission does not have jurisdiction to resolve this matter because Complainant is requesting monetary damages. However, Complainant's allegations squarely focus on service-related issues, including eight power outages during a three-month period, billing issues, and a faulty meter. Though Complainant alleges that a power outage was responsible for damage to her water heater, importantly Complainant does not specifically request *monetary damages* related to her allegations of inadequate service. While CEI is correct in that the Commission has previously dismissed claims related to monetary damages, the attorney examiner notes that if the complainant also made allegations regarding inadequate service in a complaint, a hearing was nonetheless held with regard to those claims. *See, e.g., In re Delmar W. Smith v. Dayton Power & Light Company*, Case No. 03-2544-EL-CSS, Entry (Jan. 29, 2004) (finding

that complainant's request for monetary damages should be presented to a court of competent jurisdiction, if the service provided to complainant was found to be inadequate by the Commission); *see also, In re ASM, LLC v. The Cleveland Electric Illuminating Company*, Case No. 12-2372, Entry (Nov. 21, 2012) (finding that even if complainant's claims were couched in terms of tort law, the Commission had jurisdiction over claims related to inadequate service). Because the Commission has exclusive jurisdiction over complaints filed against a public utility by any person or corporation regarding service-related matters, the attorney examiner finds that Complainant has raised reasonable grounds for complaint pursuant to R.C. 4905.26.

{¶ 11} Furthermore, the attorney examiner finds that this matter should be set for a hearing. An evidentiary hearing is scheduled for July 23, 2019, beginning at 11:00 a.m. at the offices of the Commission, Hearing Room 11-A, 180 East Broad St., Columbus, Ohio 43215. Expert testimony should be filed no later than July 9, 2019, pursuant to Ohio Adm.Code 4901-1-29, in order to allow sufficient time for review and depositions prior to the hearing.

{¶ 12} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the motion to dismiss filed by CEI be denied. It is, further,

{¶ 15} ORDERED, That a hearing be scheduled in accordance to Paragraph 11. It is, further,

{¶ 16} ORDERED, That a copy of this Entry be served upon the parties and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Anna Sanyal

By: Anna Sanyal  
Attorney Examiner

JRJ/mef

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Attorney Examiner Entry denying motion to dismiss, and setting an evidentiary hearing for 7/23/19 at 11:00am electronically filed by Ms. Mary E Fischer on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission