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To: Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793
Fax: 614-466-0313

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APPLICATION FOR REHEARING #17-1563-EL-CSS

MONIQUE MOORE
12727 BENWOOD AVE.
CLEVELAND, OHIO 44105
(216) 780-4824

Response to Opinion and Order and Application for Rehearing

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

MONIQUE MOORE

Complainant

THE CLEVELAND ELECTRIC

Respondent

CASE NO. 17-1563-EL-CSS

COMPLAINANT MONIQUE MOORE'S APPLICATION FOR REHEARING

INTRODUCTION

NOW COMES, Complainant Monique Moore and submits an Application For Rehearing on the above matter based on the Public Utilities Commission's Opinion and Order (decision) made by the PUCO in the above-referenced case on or about May 22, 2019. Complainant states that the decision made by the hearing officer in this matter was unreasonable, unlawful, unfair and contrary to a reasonable interpretation of the facts. Specifically, Complainant states the following:

1. As a general matter, the Commission's review and interpretation of the testimony and evidence in this matter is unreasonable and unfair and demonstrates a clear prejudice in favor of the respondent utility. By doing this the entire matter should be reheard and the prejudicial views must be eliminated.
2. That the Commission was unreasonable in finding that the Complainant failed to meet the Burden of Proof that CEI removed the Meter.
3. In regards to the theft of service issue, the Commission was unfair in finding all CEI evidence was accurate despite the fact that it was not supported by independent evidence.
4. The Commission was unreasonable, unfair and unlawful in finding that the amount of alleged theft of service should go back to 2015 when there is no evidence of that the alleged theft commenced in 2015.

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING

STATEMENT OF FACTS

Complainant relies on the facts previously presented by the Complainant in its original Brief in this matter.

Basis for Application For Rehearing

1. AS A GENERAL MATTER THE COMMISSION'S REVIEW AND INTERPRETATION OF THE TESTIMONY AND EVIDENCE IN THIS MATTER IS UNREASONABLE AND UNFAIR AND DEMONSTRATES A CLEAR PREJUDICE IN FAVOR OF THE RESPONDENT UTILITY. BY DOING THIS THE ENTIRE MATTER SHOULD BE REHEARD AND THE PREJUDICIAL VIEWS MUST BE ELIMINATED.

A reading of the Commission Opinion and Order reveals a disturbing trend of the Commission consistently questioning the veracity, accuracy and substance of the Complainant Moore's testimony and evidence, while it takes any assertion by CEI as reliable despite inconsistencies and incongruent testimony and assertions. The Commission goes out of its way to interpret all matters in favor of CEI. This is apparent early in the Commission's Conclusion where in Paragraph 26 the Commission states:

"Complainant places reliance on an alleged incident in which a CEI contact center representative, responding during a call in which Complainant initially asked why the upper dwelling unit was without electric service, relayed information found within an uncorroborated Company note that purports to explain, not that CEI removed the meter, but rather only that "the electricity to the unit had been turned off," and that the meter was removed due to fire (CEI Ex. 1 at 5). Ever since, Complainant has relied on the second part of the statement as proof that it was CEI who removed the meter."

This "interpretation of the testimony/evidence" is clearly tainted in favor of CEI. The Commission refers to the information Moore received from a CEI representative as "an uncorroborated note".

There is no basis to find this "note was uncorroborated. The record shows that 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. Why in this case would the Commission seem to consider Moore's reliance on this fact unreasonable. At the same time, the Commission put substantial reliance on an assertion by a CEI Employee in

Paragraph 27 of its conclusion. There the Commission relies on Perkins claim that in his "experience . . . customer tampering is a much more likely reason as to why the meter was removed in the first place . . ." It is interesting that the Commission identifies Perkins in its conclusion simply as a CEI witness and not the fact that he was a CEI Employee who had a vested interest in the outcome of this matter. By treating Perkins testimony as though he was an independent expert again demonstrates the inability of the Commission to be even-handed and unbiased in its review. Perkins provides no evidence of his assertion; he provides no statistics regarding this assertion he simply makes a statement in the interest of his Employer. The Commission himself admits in his findings [pg8 paragraph 22], "as regards any confusion over whether a fire played any role in the service termination, CEI admits that when the meter reader first discovered the meter gone, he recorded the reason the meter was missing as "removed due to a fire." The Commission ignored his own findings by clearly showing bias by only relying on statements that are in self-interest.

Further, the Commission somehow believes the conjured up defense by Perkins that, [dt page 6 lines 1-4], "it's possible that the meter technician assumed there was a fire as a likely explanation in the absence of any other information; however, IN MY OPINION, it is more likely that someone at the property indicated to him during his visit that there had been a fire." Since the Commission believes Perkins assumption:

- (a) Why wasn't the "Missing Meter" explanation presented in CEI's notes back in 2012?
- (b) Why did not the meter technician simply say the meter was missing in 2012?
- (c) Why would a meter technician include in CEI's notes a fire, CEI tell Moore there was a fire, if there was no evidence of a fire?

Further, since Perkins testified that "*someone's*" told the meter reader there was a fire at Moore's property, then:

- (a) Why did not the meter reader document who this "someone" is/was?
 - (b) And, if this "someone" is known, why could not Perkins find this "someone" to explain why he or she thought there was a fire at Moore's property, especially since he came up with this story?
- The irony is that the Commission believes the conjured up **Invisible** person theory/excuse/defense. The Commission also finds all of CEI's explanations a "MISSING" meter, an "UNSAFE METER,

“JUMPERS” on cables, and **“MOORE AND SON STOLE THE METER,”** as “more plausible” explanations without any kind of supportive evidence whatsoever.

In discussing this more fully the Commission seems to ignore the fact that CEI was inconsistent in its assertions regarding the meter. While it is clear that CEI in 2012 told Moore that the meter was removed due to a fire, the Commission ignores the fact that CEI’s answer to the subject complaint states the meter was removed due to unsafe conditions. Further, in Perkins and Reinhart’s direct testimony, they clearly state that CEI **TOLD** Moore, the meter was removed because of a fire. However, it is the Commission’s belief that Moore [pg10 paragraph 28) **“has never suggested any plausible reason why CEI might have removed the meter.”** In 2012, CEI told Moore that the meter was removed because of a fire. This is the **ONLY** information given to Moore by CEI in 2012, 2013, 2014, 2015, 2016, and 2017.

It should be obvious that CEI modified its position many times based on the filing of the complaint. The Commission seems to ignore this and somehow believes CEI’s apparent claim that Moore removed the Meter [see Paragraph 30], even though that claim is based on a self-serving conjecture by a party in interest. Again, if the meter was missing since 2012, CEI **NEVER** included the “missing meter” theory in 2012, 2013, 2014, 2015, 2016, and/or 2017. The “missing meter” theory did not become an issue until 2018 by Attorney Robert M. Endris with the support of Perkins and Reinhart. For some reason(s), CEI never provided any evidence to the Commission, but the Commission found their “testimony” to be more plausible even though the information was based on assertions, absolutely no evidence, and no documentation.

Later in its Opinion regarding tampering the Commission continues with this pattern of questioning the veracity or relevance of Moore’s testimony while ignoring the same in CEI’s testimony. For example, the Commission interpretation of the evidence reviewed in Paragraphs 34 and 35 of its Opinion demonstrate how far the Commission went in interpreting facts in favor of CEI. In these Paragraphs the Commission looks at the events of April 2017 when CEI went to the premises to restore service to the Upper Unit of the premises. Allegedly the CEI service person arrived at the premises and found “Jumper Cables” connected that allowed unmetered service to the Upper Unit. Moore simply denies that she placed the Jumper Cables at the premises. However, the Commission states that Moore presented no evidence to refute these events stating at Para 34 page 13:

"Instead, she attacks the Company's reliance on written Company records in making its tampering claims, instead of producing at hearing either the jumpers themselves or photographs of them."

It is fact that Moore was not present during the alleged discovery of the Jumper Cables. How could she have possession of the cables or have pictures of them? The question is why did CEI not have pictures of the jumper cable? CEI NEVER provided the Commission pictures or documentation and yet he believed them. The Commission goes forward questioning Moore's contention that Jumper Cables were too big for them not to have been noticed previously by CEI Meter Readers prior to April 2017. The Commission claims that Moore provided no basis for this assumption. That is true but the size of Jumper Cables is well known and they obviously can be noticed from even 20 feet away, Challenging this contention calls into question the reasonableness of the Commissions review.

With such clear prejudice in its review of the testimony, evidence and facts in this matter the entire Order and Opinion should be thrown out and a rehearing be held.

2. THAT THE COMMISSION WAS UNREASONABLE IN FINDING THAT THE COMPLAINANT FAILED TO MEET THE BURDEN OF PROOF THAT CEI REMOVED THE METER.

The Commission determined that Moore failed in proving by the preponderance of evidence³ that CEI removed the Meter. This is important to the case because Moore claims that CEI illegal or unreasonable removal of the Meter is what caused Moore to be without service for the years in question. However, the Commission again seems to ignore CEI's notes that state that the "the meter was removed due to fire" (see CEI witness Deborah Reinhart testimony on page 5, lines 6-12 of her Direct [written Submitted] testimony). The Commission consistently ignores this fact and instead relies on assertions by a self-interested CEI employee as referenced in Argument 1 above. The fact that the Commissions finding seems to rely on the CEI Employee's claim demands that this matter be reheard. Clearly, Moore has no facts clear evidence of what happened to the Meter. She did not see anyone remove, she simply reported that service was not working in the Upper Unit. Although CEI claims to have no record that they removed the meter, they did indicate such in its first contact with Moore in 2012, citing a fire. The Commission ignores these facts and ignores the fact that CEI

did not change its position on the meter until the filing of the subject Complaint. It and there is no record of its removal. However, the mere statement regarding its removal in the CEI notes is some proof that CEI had something to do with its removal. For the Commission to even consider that Moore removed the Meter is inconsistent with the facts. It has been established that Moore contacted CEI seven (7) days later regarding the lack of service in the upper unit in 2012. This information provided by Reinhart [dt pg 5 lines 9-12], "Moore made her first call asking why the meter was removed, and she was told the meter was removed due to a fire..." It makes absolutely no sense for Moore to have made that call if she removed the Meter. And CEI provides no credible motive for her doing such. Because of this, the Commission approached this issue a rehearing is required.

3. IN REGARDS, TO THE THEFT OF SERVICE ISSUE THE COMMISSION WAS UNFAIR IN FINDING ALL CEI EVIDENCE WAS ACCURATE DESPITE THE FACT THAT IT WAS NOT SUPPORTED BY INDEPENDENT EVIDENCE.

In Paragraph 34 going forward, CEI relies on the allegation made by CEI that Moore called them and told them that she had an electrician switch the service from the upstairs unit to a missing socket for the downstairs unit. 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 the both City of Cleveland Inspector and a CEI employee present, demonstrated that the electric service could be connected to the Upper unit if a meter was installed. Whether a CEI employee was present, as Moore states, or Moore called CEI is disputed. However, either way, it would be rare for someone committing or attempting to steal service to provide data to CEI regarding such. Clearly, nothing nefarious was planned based on these actions. The dispute about whether the Downstairs or upstairs service was on at that time is equally curious. At all times Moore has claimed that it was the downstairs unit that was not in service. During the course of this matter, CEI made no claim disputing that until the hearing. In addition, the Commission relies on the testimony of another CEI employee, Perkins [Para 35]. From the statement made by the Commission, it would seem the Perkins testified to the fact that there was a removal of a meter from the upstairs to the downstairs unit at some unspecified time. However, in reviewing his testimony

{TR. Page 102 & TR. Page 120] Perkins does not make such allegation. Again, there is a situation that the Commission interprets all testimony and evidence in favor of CEI.

In this matter, Moore will admit that she had no idea as to who may have been responsible for the alleged theft of service. She had no knowledge of the Jumper Cables and relied on the CEI statements regarding said cables. Moore understands that based on law, that if there is theft of service and no other party can be shown to be responsible for such theft, the property owner is held responsible. Moore accepts this but believes that there should be a rehearing to clarify that her being held responsible is based on the workings of Ohio Adm. Code 4901:1-18-07(E)(1), and not from the evidence that she actually stole the service.

4. THE COMMISSION WAS UNREASONABLE, UNFAIR AND UNLAWFUL IN FINDING THAT THE AMOUNT OF ALLEGED THEFT OF SERVICE SHOULD GO BACK TO 2015 WHEN THERE IS NO EVIDENCE OF THAT THE ALLEGED THEFT COMMENCED IN 2015.

After finding that Moore could be held responsible for the alleged theft of service CEI calculated fees that Moore would be required to pay based on said finding. That amount included. A \$125.00 tampering fee and an amount calculated by CEI for unmetered services. Moore took issue with the amount of unmetered charges for tampering calculated by CEI. CEI calculated that amount to be \$2450.00. CEI stated that it calculated the charges back to May 2015, using a systemwide average of the daily charge for residential customers. Moore at all times maintained that this amount was not only unreasonable but unjustified as there was no evidence that there was theft of service going back to 2015. If in fact CEI claimed that a meter technician found jumper cables in April of 2017, he/she did not observe jumper cables years prior leading up to April 2017, but somehow CEI applied the "more than likely when theft occurred fee of \$2450," in an attempt to extort Moore based on an unwarranted assumption which is again somehow unjustly supported by the Commission. The Commission, however, labels the \$2450 as "ordinary usage" charge. In other words, charges that would have occurred if a tenant would have lived in the 2 bedroom dwelling. This too is interesting considering the unit has been empty since 2012.

As represented in the Commission's Opinion and Order, CEI indicated that it used the date of May 2015 because that was the last date that Moore had contacted CEI regarding restoration of service. Therefore, CEI assumed that that is when the theft of service commenced. That is a totally

unreasonable conjecture on the part of CEI. And although the burden of proof is on Moore it would be impossible for her to present evidence of something, she knew nothing about. Moore did state that if service was stolen as CEI alleges, through the use of Jumper Cables, that it would have been impossible for such theft to take place for two years without someone (Meter Reader) noticing the Jumper Cables on the meter. The Commission dismisses this assertion stating that Moore had no basis for making such a statement. But as referenced earlier Jumper Cables are of a known size. If they were on the meter, then it more than a reasonable claim that a Meter reader would have seen them.


This is not a burden of proof issue as the Commission may claim. It would be different had CEI presented some hard evidence, any evidence, that theft was taking place back to 2015, but that is not the case. CEI employee Reinhart states Ms. Reinhart testified that CEI considered the May 27, 2015 request for service at the upper unit as the appropriate indication of when the upper unit likely was receiving electric service illegally, noting that after the May 2015 request, there were no further requests to restore service to the upper unit until the illegal jumper cables were discovered on April 19, 2017. That is mere conjecture and Moore's simple denial means that the burden of proof should switch to CEI. If as established herein that Moore did not comply with CEI's demand to have the property pass an electrical inspection or a City of Cleveland inspection before service could be restored, there would be no need for Moore to request service.

The Commission was unreasonable in finding that CEI's demand for payment for unmetered use should be calculated back to 2015. Therefore, Moore demands a rehearing on this matter.

CONCLUSION

Based on the facts and arguments presented above Complainant Monique Moore respectfully request a rehearing in this matter.

Submitted by:



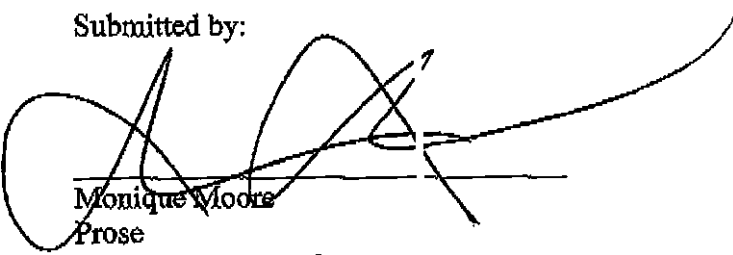
Monique Moore
Prose
Monique.moore93@yahoo.com
216-780-4824

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A copy of this Application for Rehearing was sent to the following on the 21st of June 2019 via email to:

Robert Endris Attorney For CEI

Submitted by:



Monique Moore
Prose
Monique.moore93@yahoo.com
216-780-4824

SERVICE

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

Robert Endris Attorney For CEI