

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
MONIQUE MOORE,**

COMPLAINANT,

v.

CASE No. 17-1563-EL-CSS

**THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY,**

RESPONDENT.

ENTRY ON REHEARING

Entered in the Journal on July 17, 2019

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Monique Moore.

II. PROCEDURAL HISTORY

{¶ 2} The Cleveland Electric Illuminating Company (CEI, Company, or Respondent) is an electric light company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On July 10, 2017, Monique Moore (Complainant or Ms. Moore), filed a complaint against CEI. The complaint alleges that, in 2012, CEI improperly disconnected service at a rental property Complainant owns; has wrongfully failed to restore such service since that time; and, in 2017, erroneously accused her of tampering, and charged her for theft of electric service, all of which, considered together, have caused Complainant to suffer damages, in the form of lost rental income, for which she seeks compensation from CEI.

{¶ 4} On July 31, 2017, CEI filed its answer, making some specific admissions, but otherwise denying all other allegations of the complaint and setting forth several affirmative defenses.

{¶ 5} On May 22, 2019, the Commission issued an Opinion and Order (Order) determining that this matter should be decided in favor of CEI, based on a finding that Complainant failed to carry the burden of proving that CEI has breached any legal obligation it holds as a public utility subject to the Commission's jurisdiction.

{¶ 6} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission. Any such application is required to set forth specifically the grounds on which the party considers the order to be unreasonable or unlawful. R.C. 4903.10, also provides, in part, that if the Commission grants such rehearing, it shall not take any evidence that, with reasonable diligence, could have been offered during the original hearing.

{¶ 7} On June 21, 2019, Complainant filed an application for rehearing of the Order. In her application for rehearing, Complainant sets forth four assignments of error. First, Complainant contends that, as a general matter, the Commission's review and interpretation of the testimony and evidence in this matter is unreasonable, unfair, and demonstrates a clear prejudice in favor of Respondent. Second, Complainant submits that the Commission was unreasonable in finding that Complainant failed to prove that CEI removed the meter. Third, Complainant asserts that, with regard 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. Fourth, and finally, Complainant argues that the Commission was unreasonable, unfair, and unlawful in finding that the time period of unmetered service usage, used in calculating the assessment to be charged for theft of service, may be permitted to go as far back as 2015

because, contends Complainant, there is no evidence that the alleged theft commenced in 2015.

{¶ 8} On June 25, 2019, CEI filed a memorandum contra Complainant's application for rehearing. In its pleading, CEI makes four arguments: first, that the Commission correctly performed its role as an impartial fact finder; second, that the Commission correctly determined that Complainant failed to prove that CEI removed the meter; third, that the Commission correctly based its decision on the record evidence; and, fourth, that the Commission correctly determined that Complainant failed to meet her burden of proof in challenging the reasonableness of the methodology used to determine how much unmetered usage should be included in calculation of CEI's assessment for theft of service. Overall, CEI posits that the Commission correctly and without prejudice weighed the record evidence and found that Ms. Moore did not meet her burden of proof regarding the allegations in her complaint. On that basis, CEI submits that Ms. Moore's application for rehearing is without merit and should be denied.

III. DISCUSSION

A. *Complainant's First Assignment of Error*

{¶ 9} As her first assignment of error, Complainant contends that the Commission, in its Order, displayed "clear prejudice," relied on an interpretation of evidence that is "clearly tainted," and "has gone out of its way to interpret all matters in favor of CEI." (Moore App. for Rehearing at 2). Explaining her position, Ms. Moore accuses the Commission of not appropriately weighing the testimony of record which reflects that Ms. Moore was told by CEI, based on Company records, that the meter was removed due to a fire.

{¶ 10} In its response, CEI points out that the Order is supported by more than 50 references to the record and demonstrates full consideration of the evidence and arguments presented by both parties (CEI Memorandum Contra at 3).

{¶ 11} Upon review, the Commission finds Complainant's first assignment of error is without merit, fails to provide proper grounds for granting rehearing of the Order, and, as such, should be denied. The Commission recognized and appropriately considered all such evidence of record that, according to Ms. Moore, shows that CEI told Ms. Moore both "that the electricity to the unit in question had been turned off due to a fire" and "that the meter was removed due to a fire." Order at ¶¶ 13, 22. However, the Commission also considered and gave appropriate weight and greater credence to other record evidence which demonstrated that the reason for the electric service disconnection precipitating this complaint occurred because of the unsafe condition discovered by CEI, namely, that the meter was missing due to its removal by someone besides CEI. Order at ¶ 30.

B. Complainant's Second Assignment of Error

{¶ 12} Next, we will consider the Complainant's second assignment of error, that the Commission erred in finding that Complainant failed to prove that CEI removed the meter. This issue was thoroughly addressed in the Order. Order at ¶¶ 26-31. In regard this issue, Complainant has not made any new arguments on rehearing that the Commission has not already considered and thoroughly addressed in its Order. Instead, once again on rehearing, Complainant primarily relies on CEI's statement that "the meter was removed due to a fire" as her only source of alleged proof that it was CEI who removed the meter.

{¶ 13} As already noted, the record shows that CEI, based on its own records, made that statement to Ms. Moore in 2012, when she first reported that the electric in the upper unit was not working. Likewise, the Order reflects that the Commission considered that statement, along with all the other record evidence, in reaching its conclusion that "the evidence in this case, considered altogether, does not support a finding that the meter was removed by CEI." Order at ¶28.

{¶ 14} On rehearing, Ms. Moore claims, without citing to any foundation in the record, that when she first reported the service interruption to CEI, the Company, “citing a fire,” “did indicate” that “they removed the meter” (Moore App for Rehearing, at 5). Nonetheless, even now, on rehearing, it remains the Commission’s view that there is simply no evidence of record to support this claim. Instead, as indicated in the Order: (a) the Company records do not indicate who removed the meter; (b) neither party claims to have witnessed the actual removal of the meter or to have first-hand knowledge about when it was removed, who removed it, or why it was removed; and, further, (c) Complainant conceded, on the record, that “it can only be inferred that CEI removed the meter.” Order at ¶ 28. On balance, we agree with CEI’s rehearing assessment that “Ms. Moore’s argument that CEI removed the meter lacks any basis in fact or in law and should be rejected.” CEI’s Memorandum Contra at 4.

{¶ 15} In the Order, the Commission specifically found both that Ms. Moore had the burden to prove, by a preponderance of the evidence, that CEI improperly removed the meter; and that, based on our review of the whole record, she failed to meet that burden. Order at ¶ 30. On rehearing, Ms. Moore has presented no reason to revisit either of these findings. As she has failed to raise any new issues apart from those already addressed in the Order, we find that Complainant’s second assignment of error is without merit, fails to provide proper grounds for granting rehearing of the Order, and, as such, should be denied.

C. Complainant’s Third Assignment of Error

{¶ 16} Next, we will consider the Complainant’s third assignment of error; namely, that in regard 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.

{¶ 17} Ms. Moore, contends that she never provided any deposition testimony which would have depicted her as reporting to CEI in 2015 that her electrician moved the

meter from the upper unit to the lower unit at her direction. In fact, when responding to the same line of questioning during the hearing, Ms. Moore instead argues that she explained her own version of what happened in 2015, claiming that a meeting at the property was held for the purpose of allowing her electrician to demonstrate to representatives from CEI and the City of Cleveland that there was never a fire and that the meter was in good operating order (Tr. at 45-46). (Moore App. for Rehearing at 6). Curiously, on rehearing, Ms. Moore now states that “at all times, Moore has claimed that it was the downstairs unit that was not in service.” (Moore App. on Rehearing at 6). We do not understand why Ms. Moore has, at this stage of the proceeding, made this assertion, but we do observe that it does not comport either with the facts of record in this case generally, or with portions of Ms. Moore’s own hearing testimony (Tr. at 42 - 44). Order at ¶¶ 12-13.

{¶ 18} CEI notes that it is under no obligation to seek out or present “independent evidence” to corroborate its business records in order to render them credible. Moreover, CEI emphasizes that neither party presented “independent evidence” to corroborate who moved the meter, or when the jumper cables were installed. (CEI Memorandum Contra at 4).

{¶ 19} We find no basis for Complainant’s contention that, in regard to the theft of service issue, the Commission unfairly judged any of the evidence presented in this case. As CEI has pointed out, neither party presented “independent evidence” to corroborate who moved the meter or when the jumper cables were installed. Despite Ms. Moore’s assertion that the Commission has unfairly placed the burden of proof on her to demonstrate the validity of her claims, she was made aware of this longstanding principle nearly 10 months before the evidentiary hearing in this case, giving her sufficient time to conduct discovery and prepare her case. Entry (Aug. 24, 2017) at ¶ 8.¹

¹ We also note that Ms. Moore never filed a request for additional time to prepare for hearing.

{¶ 20} Further, we observe that a large portion of Ms. Moore’s argument appears to refute a conclusion which the Commission never reached: that Ms. Moore committed theft of electricity. As CEI correctly points out, the Commission did not find that Ms. Moore was, in fact, the person who committed theft of electricity. (CEI Memorandum Contra at 5). Rather, the Commission found only that Ms. Moore is the person who should be held responsible for paying for the unmetered service usage which occurred due to tampering. Specifically, the Commission made a finding that, because she failed to present evidence sufficient to rebut the presumption established in Ohio Adm.Code 4901:1-18-07E)(1), Ms. Moore is “the party responsible for paying for the tampering and related service theft that occurred in this case.” Order at ¶ 37. Based on the evidence of record presented in this case, the Commission remains unable to make its own determination regarding who moved the meter or for what precise period of time that the theft of service actually occurred. Consequently, as Ms. Moore has failed to present any new arguments in her application for rehearing as to the reasonableness of CEI’s theft of service assessment, we continue to find that Ohio Adm.Code 4901:1-18-07(E)(1) was appropriately applied.

{¶ 21} For these reasons, we find that Complainant’s third assignment of error is without merit, fails to provide proper grounds for granting rehearing of the Order, and, as such, should be denied.

D. Complainant’s Fourth Assignment of Error

{¶ 22} As her fourth assignment of error, Complainant claims that the Commission was unreasonable, unfair, and unlawful in finding that the time period of unmetered service usage used in calculating the assessment CEI may charge for theft of service in this case, may be permitted to go back as far as 2015 because there is no evidence that the service theft commenced in 2015. Ms. Moore asserts that CEI’s determination that the period of assessment should date back to May 2015 is based, not on evidence, but rather, on “a totally unreasonable conjecture.” (Moore App. for Rehearing at 7). Further, in Complainant’s view, she should not be required to address

the reasonableness of CEI's theft of service assessment as "a burden of proof" issue. She contends that requiring her to find and present evidence that might tend to show that CEI's assessment is unreasonable is something she considers to be an impossible burden to meet, in that it might involve her in a need to present "evidence of something she knows nothing about." (Moore App. for Rehearing at 7).

{¶ 23} The reasonableness of CEI's calculation of unmetered usage charges, including whether sufficient reason exists to support CEI's decision to establish May 2015 as the starting date of the theft of service assessment period, was thoroughly addressed in the Order. Order at ¶¶ 38-39. Furthermore, Complainant has not made any new arguments on rehearing that the Commission has not already considered and addressed in its Order. The Commission based its decision on its review of the entire record and found that the Complainant failed to show, by a preponderance of the evidence, that CEI's theft of service assessment, or the methodology CEI applied in calculating it, were unreasonable. Moreover, assigning the burden of proof to the Complainant and our ultimate determination in this case is consistent with Commission precedent and the application of Ohio Adm.Code 4901:1-18-06 and -07. *In re the Complaint of Robert M. Stambaugh v. Ohio Edison Co.*, Case No. 88-266-EL-CSS, Opinion and Order (Nov. 8, 1988).

{¶ 24} Accordingly, we find Complainant's fourth assignment of error is without merit, fails to provide proper grounds for granting rehearing of the Order, and, as such, should be denied.

{¶ 25} Having found all four of Complainant's assignments of error to be without merit, the Commission finds that Complainant's application for rehearing should be denied. As a final matter, any assignments of error raised by Complainant that have not otherwise been addressed in this Entry on Rehearing are hereby denied.

IV. ORDER

{¶ 26} It is, therefore,

{¶ 27} ORDERED, That Complainant's application for rehearing be denied. It is, further,

{¶ 28} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

DEF/sc

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Summary: Entry on Rehearing that the Commission denies the application for rehearing filed by Monique Moore. electronically filed by Docketing Staff on behalf of Docketing