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Respondent-Appellee.

Case No.

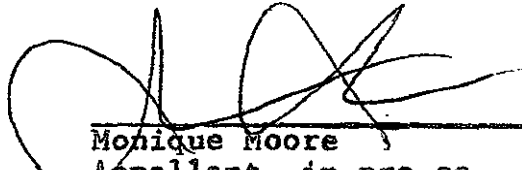
PUCO Case No. 17-1563-EL-CSS

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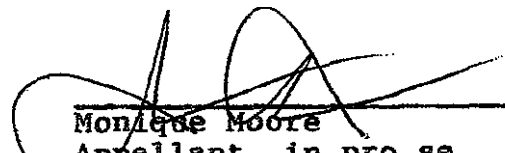
**CERTIFICATE OF FILING**

I hereby certify that a true copy of the foregoing Notice of Appeal was filed with the docketing division of the Public Utilities Commission of Ohio, 180 E. Broad St., Columbus, Ohio 43215-3793, via regular First-Class U.S. Mail, on this 3<sup>RD</sup> day of September 2019.

  
\_\_\_\_\_  
Monique Moore  
Appellant, in pro se

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was sent to the office of Robert M. Endris, FirstEnergy Service Company, 76 S Main St., Akron, Ohio 44308, counsel for the appellee herein, on this 3<sup>rd</sup> day of September, 2019.

  
\_\_\_\_\_  
Monique Moore  
Appellant, in pro se

IN THE SUPREME COURT OF OHIO

IN RE: COMPLAINT OF  
MONIQUE MOORE,

Complainant-Appellant,

-vs-

THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY,

Respondent-Appellee.

Case No. \_\_\_\_\_

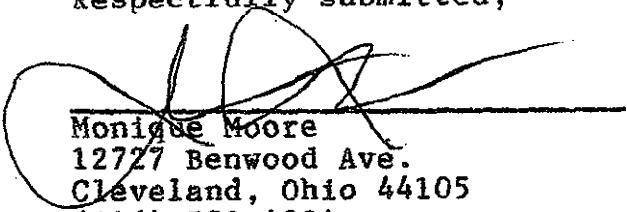
PUCO Case No. 17-1563-EL-CSS

**APPELLANT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**  
**AND TO PROVIDE REDUCED NUMBER OF COPIES FOR FILING**

Now comes Appellant, Monique Moore, proceeding in pro se, and respectfully moves this Court to permit her to proceed with the instant direct appeal as of right in forma pauperis, without the payment of filing fees or costs deposits associated herewith, and to provide a single copy of each document required for filing.

This Motion is presented pursuant to and in accordance with all applicable Rules of this Court and for the good cause that she is indigent under the law and unable to obtain the necessary funds with which to pay the fees and costs in this appeal or to afford multiple copies of the documents necessary to perfect it, as fully set forth in the attached Affidavit of Indigency.

Respectfully submitted,

  
Monique Moore  
12727 Benwood Ave.  
Cleveland, Ohio 44105  
(216) 780-4824  
Appellant, in pro se

STATE OF OHIO

AFFIDAVIT OF INDIGENCY

COUNTY OF CUYAHOGA

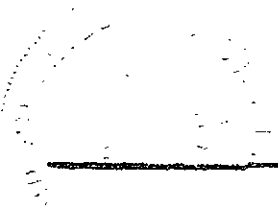

I, the undersigned, being first duly sworn according to law, competent to testify to and having personal knowledge of the facts enumerated herein, do hereby swear and affirm that the following statements are true and correct:

1. I am the Complainant-Appellant in this case;
2. I am indigent under the law, wherein my current expenses and liabilities exceed my assets and income;
3. I am unable to obtain the necessary funds with which to pay the filing fees and costs deposit in this case without undue financial hardship, or to purchase multiple copies of the documents required to perfect this appeal;
4. I have a good faith belief that I am entitled to relief in this appeal, and simply am unable financially to obtain the funds for filing fees, costs deposits and multiple copies of pleadings without undue financial hardships upon me.

Further Affiaht sayeth naught.

  
Monique Moore

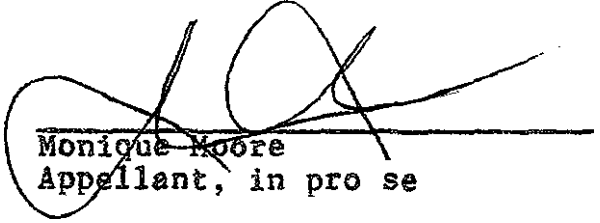
Sworn to and subscribed before me on this 3<sup>rd</sup> day of Sept, 2019.

  
  
Diana Murrain  
Notary Public, State of Ohio  
Commission Expires 1/2023

(seal)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was sent to the office of Rogbert M. Endris, FirstEnergy Service Company, 76 S. Main St., Akron, Ohio 44308, counsel for the appellee, via reguylar first-class U.S. Mail, on this 3<sup>rd</sup> day of Sept, 2019.

  
Monique Moore  
Appellant, in pro se

**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,**

**OPINION AND ORDER**

Entered in the Journal on May 22, 2019

**I. SUMMARY**

{¶ 1} The Commission finds that Complainant, Monique Moore, has not carried her burden of proving that The Cleveland Electric Illuminating Company has breached any legal obligation that it holds as a public utility subject to the Commission's jurisdiction.

**II. FACTS AND PROCEDURAL BACKGROUND**

{¶ 2} On July 10, 2017, Monique Moore (Complainant or Ms. Moore) filed a complaint with the Commission against The Cleveland Electric Illuminating Company (CEI, Company, or Respondent). The complaint alleges that, in 2012, CEI improperly disconnected service at a rental property she 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 her to suffer damages, in the form of lost rental income, for which she seeks compensation from CEI.

{¶ 3} On July 31, 2017, CEI filed its answer, making some specific admissions as described in this paragraph, but otherwise denying all other allegations of the complaint

and setting forth several affirmative defenses. In its answer, CEI admits: (a) that service was terminated at the involved property in February 2012 due to an unsafe condition observed by a CEI meter reader; (b) that as a condition precedent to having her service restored, Complainant was required to have performed a meter inspection; (c) that, when attempting, in April 2017, to initiate service for the lower unit, a CEI employee discovered both that service was "on" for the upper unit and that the meter socket for the upper unit had been tampered with, allowing service to be re-initiated; (d) that, once the tampering was discovered, CEI notified Complainant both of the tampering itself and of amounts she owes for tampering fees and for unmetered usage dating back to May 2015; and, finally, (e) that CEI is holding Complainant responsible for the tampering found at her property and, on that basis, CEI has denied electric service to Complainant at the property.

{¶ 4} On August 11, 2017, Complainant filed a pleading by which she sought to amend her complaint in such a way as to clarify further that she seeks to be awarded monetary damages for lost rental income that she claims were caused by CEI. On April 16, 2018, the attorney examiner issued an Entry which found that those portions of the complaint pertaining to the award of either compensatory or punitive monetary damages are both beyond the scope of this Commission's jurisdiction and irrelevant to its adjudication of the utility service-related issues raised. The Entry indicated that, on that basis, the award of damages would not be further addressed in the context of this complaint proceeding. Entry (Apr. 16, 2019) at ¶ 8.

{¶ 5} A settlement conference was held on September 21, 2017; however, the parties were unable to resolve this matter.

{¶ 6} A hearing was held on May 16, 2018. At the hearing, Ms. Moore testified on her own behalf and also sponsored one other witness, her father, Mr. George Edwards. CEI presented the testimony of two witnesses, Ms. Deborah Reinhart and

Mr. Robert Perkins, each of whom adopted their respective written testimony, pre-filed on May 9, 2018.

{¶ 7} Each party has filed both an initial post hearing brief, as well as a reply brief.

### III. APPLICABLE LAW

{¶ 8} CEI is a public utility and an electric light company, as defined in R.C. 4905.02 and 4905.03, and, as such, is subject to the jurisdiction of this Commission.

{¶ 9} 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.

{¶ 10} In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, in order to prevail in this matter, Complainant must prove the allegations in her complaint by a preponderance of the evidence.

{¶ 11} There are several administrative rules at issue in this proceeding. Generally, Ohio Adm.Code Chapter 4901:1-10 contains rules that are intended to promote safe and reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices of electric companies. Among other things, the chapter contains rule provisions that address who may install, inspect, or remove electric service meters; defines tampering; and determines how electric companies may proceed in addressing it. Ohio Adm.Code 4901:1-10-01(DD); Ohio Adm.Code 4901:1-10-02(A)(2); Ohio Adm.Code 4901:1-10-05(E); Ohio Adm.Code 4901:1-10-20(B)(1); Ohio Adm.Code 4901:1-10-20(B)(2). Additionally, Ohio Adm.Code 4901:1-18-07(E)(1) creates a rebuttable presumption that the person in possession or control of the meter at the time that an alleged tampering occurs is the party obligated to pay for the services rendered.



#### IV. DISCUSSION

##### A. *Summary of Complainant's Arguments, Testimony, and Evidence*

{¶ 12} Ms. Moore testified that she purchased the involved property, a two-unit rental property in Cleveland, Ohio, and ordered from CEI electric service to both units (Tr. at 17). Both units are served from a single service line to a meter base with two sockets located approximately one or two feet apart (CEI Ex. 1 at 4). Ms. Moore claims that service to the downstairs unit has been continuously provided and paid for under an account in her son's name since service was initiated in 2010. However, service to the upper unit continued from 2010 to February 2012, when it was terminated under circumstances that are at issue in this case. (Tr. at 12, 13). The parties do not agree on the facts which resulted in this termination of service to the upper unit. Ms. Moore's position is that CEI wrongfully disconnected service to the upper unit by removing the meter (Tr. at 18).

{¶ 13} Complainant asserts that, in February 2012, she visited the property and discovered that the electric service for the upper unit was not working. Ms. Moore claims that when she called the Company to find out why this was so, a CEI service representative told her "that the electricity to the unit in question had been turned off by CEI because of a fire" and also that "the meter was removed due to fire." In performing her own investigation of the location of the meter in 2012, Complainant stated she saw no evidence of a fire, but noticed her meter was missing. She told the CEI service representative that there had not been a fire and, on that basis, asked to have service restored. (Tr. at 18, 32) At hearing, both Ms. Moore and her witness, Mr. Edwards, claimed repeatedly that the meter base (and, thus, presumably the meter) was not damaged by fire and that no fire occurred (Tr. at 13, 18, 46, 58-59 64, 67, 72, 77).

{¶ 14} Ms. Moore claims that "CEI records show that CEI removed the meter because it was thought that there was a fire." Without citing to any evidence, she contends that CEI's position is that there was a fire, the meter was burnt, and that, for

that reason, the meter was removed by CEI. (Complainant Initial Br. at 3, 6.) For support, Ms. Moore points to the statement in the pre-filed testimony of CEI witness Reinhart, which indicates "Company records include a note that the meter and/or meter base was burnt due to a fire at the property" (CEI Ex. 1 at 5). Complainant, in her initial brief, first asserts that "it is clear from the evidence that the meter was removed by CEI in February 2012." However, several sentences later in the same brief, Complainant concedes that "it can only be inferred that CEI removed the meter." (Complainant Initial Br. at 6.)

{¶ 15} Ms. Moore argues that CEI removed the meter because of an unspecified "unsafe condition" mentioned in CEI's answer to the complaint. Based on an assumption that fire damage to the meter and/or meter base is the reason for CEI's removal of the meter, Complainant has argued that Respondent's removal of the meter, which she alone alleges to have happened, was unjustified because there was no fire, and no damage done by fire to the meter and/or meter base. (Tr. at 58 -59, 67, 114)

{¶ 16} According to Ms. Moore, CEI gave her a choice between two alternatives in order to restore her service: (1) she had to have an electrician look at the electrical connections and provide CEI with a letter saying that it was okay for the electricity to be connected at the premises; or (2) she "would have to have the City of Cleveland inspect the premises and have the City give CEI the okay to restore services" (Tr. at 37). Ms. Moore describes certain futile efforts she made, over a period of years, to work with various electricians and city inspectors. Ultimately, Ms. Moore admits, however, that she never responded to CEI's requirements regarding restoration of service. Nor does she claim that she ever passed the inspection that was required in order for service to be restored to the upper unit (Tr. at 18, 39).

{¶ 17} Ms. Moore claims that, in 2017, "she had a potential tenant for the upstairs unit and she informed him of the problem with the electricity." She indicates that "she told him to call to see if he could get the electricity turned on, thinking maybe CEI would now turn it on for a third party due to a passage of time." She admits that "CEI came out

to the premises on April 9, 2017 to turn on the service and allegedly found jumper cables at the unit" which, she concedes, "indicated to CEI that service was being stolen." Ms. Moore acknowledges an understanding that, "under the circumstance when there is no obvious party to hold responsible" CEI would, and told her that they would "hold the homeowner responsible." (Tr. at 12, 30; CEI Ex. 1 at 9; CEI Ex. 2 at 4, 5.)

{¶ 18} At that point, says Ms. Moore, CEI charged her "a tampering fee of \$128.00 and charged her with theft of service from March 2015 that added up to \$2,400."<sup>1</sup> She claims that "CEI stated that they charged her for electric service from March of 2015 because Moore requested service in 2015." Moore admits that she did request service in 2015. However, Ms. Moore asserts that "there is no proof that there was any tampering or theft of service before the alleged finding of the jumper cables in 2017." Ms. Moore points out that no jumper cables were presented as evidence (Tr. at 12, 26, 30, 93, 128). Ms. Moore denies that she had anything to do with tampering or the placement of jumper cables.

{¶ 19} Complainant asserts that CEI has not presented a valid reason for assessing tampering charges back to 2015 (Tr. at 12). CEI witness Reinhart explained that, while an even longer period of tampering was possible, CEI considered the May 27, 2015 request for service for the upper unit as the appropriate indication for when the upper unit likely began receiving electric service illegally (CEI Ex. 1 at 8). Complainant believes CEI picked this date on the basis that it was the last date that CEI was at the property, except for the monthly meter reader, who, in Complainant's opinion, should have seen and reported the alleged theft (Tr. at 31, 32; Complainant Initial Br. at 5; Complainant Reply Br. at 6). Complainant also avers that CEI picked this date as a matter of mere "convenient

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<sup>1</sup> At hearing Ms. Moore testified that the amount of the tampering charge was \$122.00 (Tr. at 30). Similarly, at one point Ms. Moore claims that CEI has required her "to pay over \$2,500.00 to address the erroneous theft charge," but otherwise consistently claims the amount of the assessment for theft of service was \$2,400.00 (Tr. at 25, 30, 32). By way of comparison, Ms. Reinhart testified that CEI's standard tampering charge is \$125.00, and that, in this case, the theft of service charge assessed to Ms. Moore amounted to \$2,425.50 (CEI Ex. 1 at 8).

speculation” and that there is insufficient evidence of record to support the conclusion that this is the date on which theft of service began. Complainant argues that CEI has tried, unsuccessfully in Complainant’s view, to attack Ms. Moore’s truthfulness in general as a justification for assessing theft of service charges going back to 2015. Complainant contends that such attacks on her integrity are unconvincing and, in any event, provide no justification for establishing 2015 as the starting point of the period for assessing theft of service charges. (Complainant Reply Br. at 6).

**B. *Summary of Respondent’s Arguments, Testimony and Evidence***

{¶ 20} In CEI’s view, the Complainant has alleged: (a) that Respondent wrongfully removed the electric meter from one of the two involved dwelling units; (b) that CEI wrongfully required an inspection before reconnecting service to that unit; (c) that CEI has improperly charged her with unmetered usage of electricity in connection with tampering theft discovered in April 2017; (d) that CEI has not proven there was a fire at her property; and (e) that she has shown that the dwelling unit is safe for reconnection without providing proof of inspection (CEI Ex. 1 at 4 – 8). Respondent submits that all of these allegations by Complainant are incorrect and unfounded for at least three reasons (CEI Initial Br. at 2).

{¶ 21} First, argues CEI, Complainant does not accurately recount the circumstances of the meter’s removal. While Complainant alleges the meter was removed by CEI due to a mistaken belief that there was a fire, Respondent contends that the company’s records clearly indicate that, during a routine meter reading visit, a missing meter was encountered. The next business day a meter technician arrived to secure the open socket by placing a plastic cover over it. CEI asserts that, while there may have been some misunderstanding during subsequent communications between the parties concerning company notes which mention a fire, the simple fact remains: CEI did not remove the meter. CEI emphasizes, too, that there are no company records which indicate that CEI removed the meter. (CEI Ex. 2 at 4.)

{¶ 22} As regards any confusion over whether a fire played any role in the service termination that occurred in February 2012, 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.” CEI acknowledges that, several days later, Complainant called to inquire about the removal of the meter, and was told by a contact center representative that the company’s notes indicated it was due to a fire, and that an inspection was required before a new meter could be installed. (CEI Ex. 2 at 4, 5.) CEI’s witness Mr. Perkins testified that the most likely reason that the meter technician indicated a fire would be because he was provided that information by someone at the premises (CEI Ex. 2 at 6). Mr. Perkins also testified that, based on his own investigation, it is not possible that CEI removed the meter (Tr. at 115). CEI contends that, regardless of the reason for the meter’s removal by someone other than the company personnel, its absence constituted an unsafe condition warranting termination of service pending inspection (CEI Reply Br. at 3).

{¶ 23} CEI secondly argues that despite being clearly and repeatedly informed that she would need to have the property inspected before a new meter could be set for reconnection of service, Complainant failed to provide proof of such inspection. CEI brings attention to the fact that such an inspection is necessary to protect the safety of CEI customers and the public, and is required by the Commission’s rules and the company’s tariffs. (CEI Ex. 1 at 2, 5, 6, 7.) Specifically, the Company’s applicable tariff states “[a]s required by Chapter 4901:1-10 of the Ohio Administrative Code, before the Company connects service for any new installations, such installation must be inspected and approved by the local inspection authority or, when there is no local inspection authority, by a licensed electrician. An inspection is also necessary for any changes in wiring of the customer’s premises” (PUCO No. 13, Sheet 4).

{¶ 24} Third, CEI posits that the evidence of tampering is incontrovertible. CEI’s records indicate that in April 2017, the company discovered “jumpers” had been placed in the empty socket (for the upper unit) that caused electricity to flow into that unit

without being registered. CEI avers that this tampering was discovered when a meter services technician visited the property to complete a work order when the account holder for the downstairs unit requested to terminate service, and another individual requested new service in his name. CEI takes the position that, as the property owner of the unoccupied upper unit where the tampering was discovered, Complainant bears the responsibility for such unauthorized use of electricity. (CEI Ex. 1 at 7-10; CEI Ex. 2 at 8.)

{¶ 25} CEI submits that the facts of record support its legal right to deny reconnection of service to the upper unit without proper inspection and payment for theft of service. CEI believes that the testimony of its two witness establish not only that a missing meter and tampering with the electric meter were found at the property, but also that unmetered electricity usage occurred. The company's position is that, until assurances are given that future tampering will not occur, and until the past due amounts are settled, CEI must continue to deny reconnection of service. CEI believes that this complaint should be dismissed with prejudice, based on a Commission finding that the Company complied with the provisions of its tariffs, the Ohio Administrative Code as well as the Ohio Revised Code. (CEI Initial Br. at 9-10.)

## V. CONCLUSION

### A. *Service Termination and Applicable Service Reconnection Requirements*

{¶ 26} The parties do not agree on the underlying reason why electric service to the upper unit was disconnected in February of 2012. Complainant claims it happened because Respondent removed the meter. 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.

{¶ 27} Respondent, on the other hand, insists that it did not remove the meter, but instead, disconnected the service because of an unsafe condition it found when, on a routine meter reading visit, its meter reader discovered that the meter serving the upper unit was missing. In fact, CEI witness Perkins explains in great length why, based on his nearly 30 years of experience regarding meter services and as an electrical contractor, customer tampering is a much more likely reason as to why the meter was removed in the first place, including the fact that Ms. Moore and her son, Jwone Moore, retained sole possession of the property until May of 2015 and that Ms. Moore even admitted to directing her electrician to switch the meter from the upper unit to the lower unit after the lower unit meter had been removed (CEI Ex. 2 at 4-5).

{¶ 28} 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 (CEI Ex. 2 at 4-5). Complainant premises her complaint on her allegation that CEI removed the meter; however, even she ultimately concedes that it can only be inferred that CEI removed the meter (Tr. at 86; Complainant Initial Br. at 6). Moreover, Complainant has never suggested any plausible reason why CEI might have removed the meter. The company's records do not indicate who removed the meter (CEI Ex. 2 at 4). The evidence in this case, considered altogether, does not support a finding that the meter was removed by CEI.

{¶ 29} Meanwhile, CEI's own explanation for why it disconnected service to the upper unit is much more plausible. CEI disconnected service when, in the regular course of its provision of electric service, one of its meter readers happened upon, and reported, a missing meter that had been removed by someone other than CEI. This scenario and resulting disconnection is consistent with Commission rules and applicable tariff provisions promoting safe and reliable electric service to consumers and the public.

{¶ 30} Because Ms. Moore has the burden of proof in this case, she must prove the allegation that CEI improperly removed the meter to the upper unit by a preponderance of the evidence. We find that she has failed to do so. Instead, upon consideration of the record as a whole, we find Complainant's version of the events that led to the disconnection of service to the upper unit to be less credible than the version advanced by CEI. Furthermore, upon discovering that the meter for the upper unit was displaced, CEI was authorized, pursuant to Ohio Adm.Code 4901:1-10-20(B)(1), to disconnect service for safety reasons. As discussed below, because we have determined that CEI did not remove the meter, an inspection would be required pursuant to CEI's applicable tariff, regardless if the meter was, in fact, removed by Ms. Moore.

{¶ 31} As noted above, the record supports a finding that, when it discovered the missing meter at Complainant's property, CEI took appropriate action under both the Commission's rules and its tariff to disconnect service. We further conclude that CEI was in compliance with Commission rules and its tariff when it required, as a condition precedent to service reconnection, a successful inspection of the property by the local inspection authority. Ohio Adm.Code 4901:1-10-05(E); (PUCO No. 13, Sheet 4). It is undisputed that CEI informed Ms. Moore that she needed to obtain such an inspection before a new meter could be installed in order to reconnect service to the upper unit (Tr. 37). Further, Company records show that CEI never received proof of any such inspection (CEI Ex. 1 at 6; CEI Ex. 2 at 6-8). Indeed, Ms. Moore admitted that she failed to ever successfully pass any such inspection, which requires the inspecting party to submit documentation directly to the Company (Tr. at 39). We find that, under such circumstances, CEI remains under no obligation to, and for ongoing safety reasons should not, restore service to the upper unit of Complainant's property until such an inspection has been completed.



**B. *Tampering***

{¶ 32} Tampering is specifically defined, within Ohio Adm.Code 4901:1-10-01(DD), to include impeding the registering of electric usage. CEI is required by Ohio Adm.Code 4901:1-10-20(A) to establish and maintain an anti-theft and anti-tampering plan which it must submit to a specific member of Staff. Ohio Adm.Code 4901:1-10-20(B)(2) authorizes utilities, such as CEI, to refuse to reconnect service to a customer found to have tampered until payment is received for the estimated charges for unmetered service.

{¶ 33} CEI company records show that on May 4, 2015, Complainant called to request service to the upper unit to be restored, claiming that the Company had removed the meter. Complainant repeated this claim to another Company representative, and further claimed that her electrician had switched the meter from the upper unit to the lower unit. (CEI Ex. 2 at 5.) On May 27, 2015, Complainant again called to request a meter for the upper unit, which led to the Company visiting the property and discovering that a meter was present in the lower unit meter socket, while the upper unit meter socket was empty (CEI Ex. 1 at 6-7). Complainant has not presented any evidence to refute this description of events, but claims not to recall making calls of this nature in May of 2015 (Tr. at 46).

{¶ 34} The record shows that nothing further happened with respect to the upper unit until two years later, partly due to the fact that no requisite inspection was ever completed, as discussed above (CEI Ex. 2 at 6-8). On April 13, 2017, Mr. Henry Duncan requested service to be established in his name for the lower unit. When the Company's service technician arrived to process the request, he discovered jumpers had been placed in the empty meter socket for the upper unit. As noted by Company witnesses Reinhart and Perkins, the jumpers caused unmetered electricity to flow into the house wiring associated with the upper unit, allowing theft of electricity (CEI Ex. 1 at 6-7; CEI Ex. 2 at 8.) Again, Complainant has not presented any evidence to refute this description of

events. 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. (Tr. at 12, 26, 30, 93, 112, 128.) Further, according to CEI, Ms. Moore contends, without basis, that jumpers are too large for meter readers to not notice them even in the course of their regular workload (CEI Ex. 2 at 8). Complainant primarily relies on such arguments as these to challenge the trustworthiness of CEI's tampering claims.

{¶ 35} Both of CEI's witnesses testified that, in May of 2015, Ms. Moore called the Company to report that she had had her electrician switch the meter from the upper unit to the lower unit because the lower unit meter had been removed (CEI Ex. 1 at 6, 7; CEI Ex. 2 at 5). A photograph of the two meter bases, taken by CEI witness Perkins on his May 4, 2018 visit to the property, depicts both that the meter had been moved from the upper unit to the lower unit, and also, that when the picture was taken, the seals used secure the meter base and provide ready indication of whether tampering had been found, were missing (CEI Ex. 2 Attach. RP-1). At hearing, CEI witness Perkins explained that a grey seal means the account is existing in normal status; a black seals indicates tampering has been discovered. Once tampering is discovered, a gold colored tamper lock, which can only be entered by CEI personnel through use of key, is also employed elsewhere on the meter box. The gold tamper lock is designed to deter any further tampering (Tr. at 102, 121.)

{¶ 36} Upon review of the whole record, we find that sufficient evidence has been produced to support a finding that tampering, through the use of jumpers, did occur and was discovered by the Company in April 2017 during its visit to the premises to process the service request for the lower unit.

{¶ 37} Ms. Moore testified that she has owned and maintained sole possession of the property since 2010 (Tr. at 12, 36). Under Ohio Adm.Code 4901:1-18-07(E)(1), there is a rebuttable presumption that the person in control of the meter is the party obligated to

pay for the services rendered. Throughout, Ms. Moore offered no evidence to rebut the presumption that she is responsible for the tampering and related theft of service, but instead, offered only rhetorical questions asking why she would have any reason to do such things. In fact, Ms. Moore even conceded to the fact that Mr. Buchanan, the resident renting the lower unit, admitted to her that he had placed the jumpers that were found in the meter socket for the upper unit (Tr. at 26, 42; CEI Initial Br. at 8). Upon our review of the whole record, we find that Ms. Moore is the person who, throughout the entire course of the events that have given rise to this complaint, was in control of the meter. We find that she has not presented evidence sufficient to overcome the rebuttable presumption provided for within Ohio Adm.Code 4901:1-18-07(E)(1). Consequently, we find Ms. Moore to be the party responsible for paying for the tampering and related service theft that occurred in this case.

{¶ 38} As a more distinct issue, Ms. Moore has questioned whether it was appropriate for CEI to assess her service theft charges dating back to May 27, 2015; denying that CEI's basis for doing so is valid (Tr. at 12, 25, 30). 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. Ms. Reinhart further testified that she followed the usual method used by the Company to calculate unmetered usage and that, in this case, her estimate was conservative with respect to the time period over which theft may have occurred. (CEI Ex. 1 at 8, 9.)

{¶ 39} Similar to our previous findings, we find that the Company produced sufficient evidence to support the actions it took in responding to the discovered tampering, including charging Ms. Moore its standard tampering fee of \$125.00 and assessing against her, in accordance with company practice and Ohio Adm.Code 4901:1-10-20(B)(2), unmetered usage charges for tampering. The Commission further finds that

the method in which these unmetered usage charges were calculated is reasonable, which Company witness Reinhart explained was done by using the Company's system-wide average daily residential customer usage rate of 25 kilowatts, resulting in a total charge of \$2,425.00 for usage beginning on May 27, 2015 (CEI Ex. 1 at 8). Upon review of the whole record, we find that Complainant has not shown, by a preponderance of the evidence, that the service theft charge CEI assessed was unreasonable.

{¶ 40} Based upon our review of the record as a whole we find that there is insufficient evidence presented to support a finding that CEI has breached any legal obligation it holds as a public utility subject the Commission's jurisdiction.

## **VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶ 41} CEI is a public utility and an electric light company, as defined in R.C. 4905.02 and 4905.03, and, as such, is subject to the jurisdiction of this Commission.

{¶ 42} On July 10, 2017, Ms. Moore filed a complaint alleging that CEI improperly disconnected service, wrongfully failed to restore service, improperly charged her with tampering and theft of service, and caused her to incur damages.

{¶ 43} On July 31, 2017, CEI filed an answer in which it admitted some but denied others of the complaint's allegations, and set forth affirmative defenses.

{¶ 44} A settlement conference was held on September 21, 2017, and a hearing was held on May 16, 2018.

{¶ 45} There is insufficient evidence to support a finding that CEI has breached any legal obligation it holds as a public utility subject to the Commission's jurisdiction.

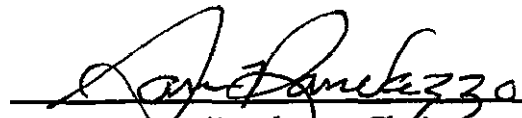
## VII. ORDER

{¶ 46} It is, therefore,

{¶ 47} ORDERED, That this matter be decided in favor of CEI as the Complainant has failed to sustain her burden of proof. It is, further,

{¶ 48} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

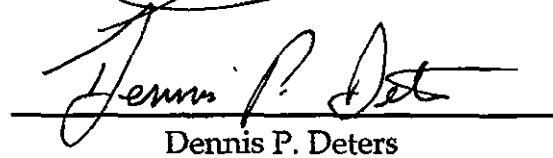
## THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Sam Randazzo, Chairman

  
M. Beth Trombold

  
Lawrence K. Friedeman

  
Daniel R. Conway

  
Dennis P. Deters

DEF/sc

Entered in the Journal

MAY 22 2019



Tanowa M. Troupe  
Secretary

**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.<sup>1</sup>

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<sup>1</sup> 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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**Case No(s). 17-1563-EL-CSS**

**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**