

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

JENNY KENDERES,

Complainant,

v.

**THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,**

Respondent.

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Case No. 18-0922-EL-CSS

POST-HEARING BRIEF OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

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I. INTRODUCTION

Complainant Jenny Kenderes alleges that her electric bills from The Cleveland Electric Illuminating Company (“CEI”) were too high from approximately October 2017 through April 2018. She believes (incorrectly) that the alleged high bills were the result of CEI’s meter temporarily registering high usage during that time. She is wrong for at least two reasons.

First, the evidence in this proceeding supports the conclusion that Complainant’s electric bills were, at all relevant times, just, reasonable, and accurate. As an initial matter, Complainant’s bills make sense given that her period of high usage corresponded with the winter heating season. And while Complainant claims that she had electricians inspect her home, she admitted at the hearing that the electricians did not visit her home until March of 2018 (the end of the winter season and the point at which her usage began to return to normal), and she presented no evidence to prove that their inspections ruled out all potential causes of her high usage during the winter of 2017-2018.

Second, and more notably, is the fact Complainant’s electric bills were the result of usage that was proven accurate by a meter test conducted in April 2018. The meter test, which CEI conducted free of charge at Complainant’s request, proved that Complainant’s meter was operating accurately at 99.76%, well within the accuracy parameters established by the Commission. In other words, the meter servicing Complainants’ home was operating properly during the relevant time period, and Complainant presented no evidence at the hearing showing otherwise. Her electric bills, therefore, are just and reasonable.

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

II. BACKGROUND

Complainant first moved into her residence at 4116 Parkside Drive, Brooklyn, Ohio 44144 in 2015.¹ From October 2017 through early April 2018, her CEI bills were higher than usual, and asserts in her Complaint that the cause of this high usage is a “faulty meter.”² She further claims that in October 2017, her meter was “running loud” and that her “neighbor told [her] that his son felt a jolt of energy from [the Property].”³

Contrary to Complainant’s claims, CEI’s only record of the Complainant reporting to CEI that her meter was “making loud noises” and that her “neighbor got shocked” when turning off the water at Complainant’s house was a May 18, 2017 telephone call, five months before the period of high billing Complainant has complained of began.⁴ Upon receiving this call, a CEI troubleman reported to the Property that same day to investigate Complainant’s claims, and “did not detect any unusual sounds coming from the meter,” and “tested the CEI line-side wires at the Property to check for loose connections and found none.”⁵

CEI’s records show that Complainant called CEI on March 23, 2018 to complain about her perceived high electric consumption since October of 2017.⁶ She called CEI again on April 4, 2018 requesting that her meter be replaced.⁷ CEI personnel removed the meter from Complainant’s residence on April 5, 2018 and installed a new meter that same day.⁸ The old meter was sent to the Meter Lab in Akron, Ohio for testing.⁹ Complainant did not request to be present for the test.¹⁰ The Meter Lab conducted standard tests on the meter, all of which

¹ Complaint at 8.

² *Id.*

³ *Id.*

⁴ Perkins Testimony at 4. At the Hearing, Complainant admitted that she “could be wrong” about the day that she called CEI about these matters. *See* Tr. at 96.

⁵ CEI Ex. 5 (“Perkins Testimony”) at 12.

⁶ Answer at 3; Perkins Testimony at 5.

⁷ Answer at 3; Perkins Testimony at 5.

⁸ Answer at 3; Perkins Testimony at 5.

⁹ Answer at 3; Perkins Testimony at 5.

¹⁰ Hearing Tr. at 26.

measured well within the accuracy thresholds established by the Commission with an average accuracy of 99.76%.¹¹ CEI mailed a letter to Complainant on April 11, 2018 informing her of the results of the test, and that CEI representative also spoke with Complainant on the telephone on April 16, 2017 about the test results.¹²

Complainant filed this proceeding against CEI on May 24, 2018. The Attorney Examiner conducted a one-day evidentiary hearing on October 17, 2019. CEI presented the expert testimony of Robert Perkins and six additional exhibits. Complainant presented her case through her own testimony and an exhibit comprised of three years of her CEI bills. The Attorney Examiner closed the record in this case at the close of all testimony. Pursuant to the Attorney Examiner's directive, CEI now submits this initial brief in support of its position in this proceeding.

III. LAW AND ARGUMENT

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

[A]ny rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained¹³

It is well-established that the burden of proof rests with the complainant in proceedings before

¹¹ Perkins Testimony at 5.

¹² Perkins Testimony at 5.

¹³ O.R.C. §4905.26.

the Commission.¹⁴ Thus, Complainant bears the burden of proving her allegation that CEI's electric bills from October 2017 through March 2018 were somehow unjustly or unreasonably excessive.¹⁵ Complainant must make this showing by a preponderance of the evidence.¹⁶ This is a burden Complainant cannot meet in this case.

The Commission analyzes "high bill" complaints by looking at two specific factors: (1) whether the meter servicing the property has been tested and determined to be within the accuracy parameters established by the Commission; and (2) whether the record demonstrates a plausible explanation for the Complainant's electric usage.¹⁷ Here, both factors undoubtedly favor CEI. As set forth below, the evidence in the record demonstrates that Complainant's electric bills during the relevant time period were just, reasonable, and accurate. Because Complainant cannot meet her burden, the Commission must dismiss the Complaint in its entirety and find in favor of CEI.

A. The meter servicing the Property was tested and determined to be within the accuracy parameters established by the Commission.

On April 5, 2018, CEI tested Complainant's meter and found it to be 99.76% accurate.¹⁸ To find in Complainant's favor would require the Commission to disbelieve the results of CEI's meter test and the testimony of its expert witness, Robert Perkins. Mr. Perkins is the Manager of Engineering Services at CEI and has worked at CEI, Ohio Edison Company and FirstEnergy

¹⁴ *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214, 214 N.E.2d 666 (1966).

¹⁵ O.R.C. §§4905.22, 4905.26; *see also DiSiena v. The Cleveland Electric Illuminating Company*, Case No. 09-0947-EL-CSS, Opinion and Order, 2 (Dec. 8, 2010).

¹⁶ *Ohio Bell Telephone Co. v. Pub. Util. Comm.*, 49 Ohio St. 3d 123, 126 (1990); *Grossman*, 5 Ohio St. 2d at 190.

¹⁷ *See, e.g., In re the Complaint of Kingsville Apartments a/k/a Center Court Apartments, LLC v. Columbia Gas of Ohio, Inc.*, Case No. 05-1229-GA-CSS, Opinion and Order, 19-20 (Apr. 4, 2007) ("Further, the Commission has held that, in addition to the utility company's proof as to the accuracy of the meter, the company must provide at least a 'plausible explanation' to support the consumption for which the customer was billed.") (citing *In re the Complaint of Merle Davis v. The Cleveland Electric Illuminating Company*, Case No. 81-1495-EL-CSS, Opinion and Order (Nov. 2, 1983)).

¹⁸ Perkins Testimony at 5.

Service Company in various capacities involving meters for over 28 years.¹⁹ He has held his current position since 2006.²⁰ Currently, Mr. Perkins’ “job responsibilities include management and oversight of all activities that fall within the responsibility of Meter Services at [CEI].”²¹

Mr. Perkins testified that Complainant called CEI on March 23, 2018 to complain about her perceived high electric consumption since October of 2017, and again on April 4, 2018 requesting that her meter be replaced.²² CEI personnel removed the meter from Complainant’s residence on April 5, 2018 and installed a new meter that same day.²³ The old meter was sent to the Meter Lab in Akron, Ohio for testing.²⁴ Complainant did not request to be present for the test.²⁵ The Meter Lab tested the meter on April 10, 2018, and the meter measured well within the accuracy thresholds established by the Commission with an average accuracy of 99.76%.²⁶ CEI sent Complainant a letter with the test results on April 11, 2018.²⁷

In pre-filed testimony, Mr. Perkins stated that the Meter Lab’s tests “use exactly the same delivery-side electrical connections and measurement relationships as in the field,” and “there is no difference in result between testing in the field and testing in [the Meter Lab],” which is why the “Meter Lab is able to verify meter accuracy as required by law.”²⁸ Mr. Perkins also testified that “[m]eters do not temporarily ‘go haywire’ for a few months and then revert to normal. When they break—which is relatively rare—they stay broken. If Ms. Kenderes’ meter was

¹⁹ Perkins Testimony at 1.

²⁰ *Id.*

²¹ *Id.* at 2.

²² Perkins Testimony at 5.

²³ Perkins Testimony at 5.

²⁴ Perkins Testimony at 5.

²⁵ Hearing Tr. at 26.

²⁶ Perkins Testimony at 5.

²⁷ Perkins Testimony at 5; see also CEI Ex. 6.

²⁸ *Id.* at 6. Mr. Perkins also provided extensive testimony at the Hearing regarding how the Meter Lab runs its tests, the testing parameters that are utilized, and the results of each test parameter for Complainant’s meter. *See* Tr. at 43 (describing the test boards used at the Meter Lab); Tr. at 46 (describing the type of tests run by the Meter Lab); Ttr. At 72-84 (describing in detail the test results of the tests performed by the Meter Lab on Complainant’s meter).

malfunctioning as she claims it was, it would not have tested 99.76% accurate at the Meter Lab.”²⁹ Mr. Perkins also noted that “Commission Staff inspects [CEI’s] Meter Lab annually for compliance”³⁰ with the Commission’s meter test standards, further corroborating the accuracy of CEI’s meter testing process. Finally, Mr. Perkins testified that when a mechanical meter tests accurately—as was the case here—the standard practice is for the Meter Lab to “hold onto” the meter “for ten days after the tests” and then to discard the meter, which is what CEI did after testing Complainant’s meter.³¹

Complainant introduced no testimony or evidence that contradicts the findings of CEI’s Meter Lab. Rather, at the Hearing, Complainant complained that she was not present for the meter test at the Meter Lab, and claimed that she “would have loved to pay” for “an additional test to sort of corroborate the results” of CEI’s meter test.³² But Complainant admitted that she did not request to attend the meter test,³³ and that she did not ask CEI about retesting the meter until some time after she had received the test results.³⁴ In fact, she stated that she “set [the matter of the meter test] aside to deal with later,” and that she “honestly do[es] not recall when [she] would have initiated” her request.”³⁵ Complainant’s failure to ask to attend the meter test, and failure to promptly request a re-test of the meter, are clearly issues of Complainant’s own making. The record shows that the meter tested at 99.76% accuracy and that CEI followed the Commission’s Rules in conducting the meter test and notifying the Complainant of the results of the meter test. Complainant presented no evidence to the contrary. Complainant has not met her burden of proving this factor of the Commission’s high bill complaint test.

²⁹ Perkins Testimony at 6-7.

³⁰ *Id.*

³¹ Tr. at 54-55; 86-87.

³² Tr. at 25-26.

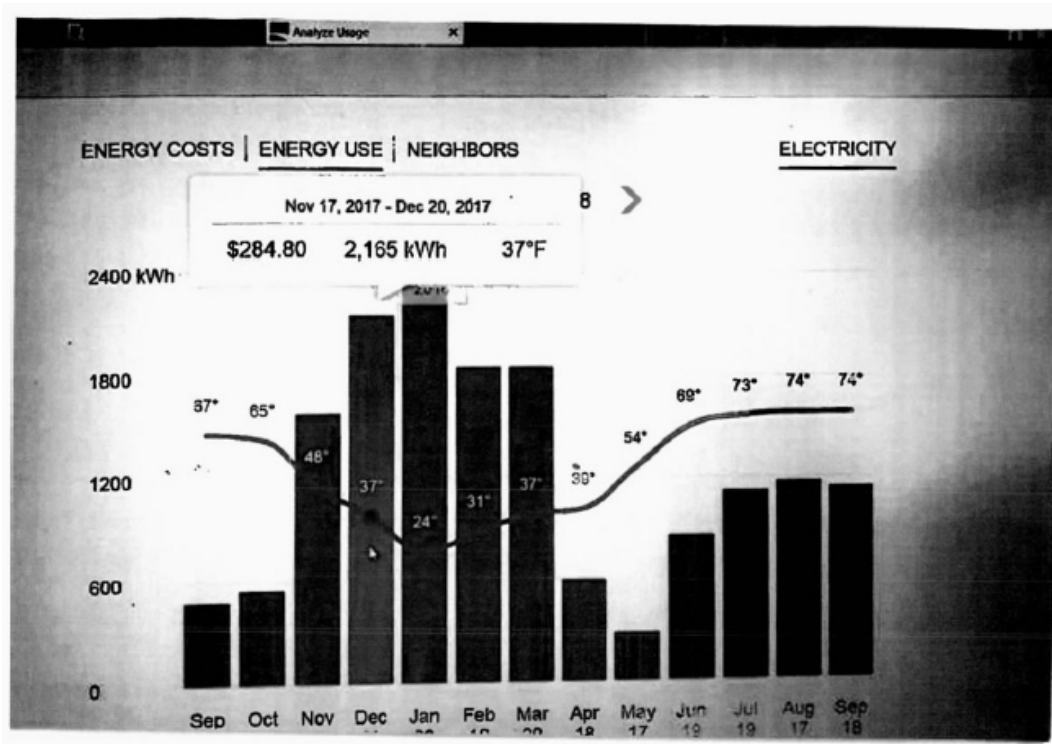
³³ Tr. at 25-26.

³⁴ Tr. at 98-99.

³⁵ Tr. at 98-99.

B. The record demonstrates a plausible explanation for Complainant's electric usage.

It is undisputed that Complainant's period of high usage corresponded with the winter heating period.³⁶ Mr. Perkins testified that "[b]ased on my 28 years of professional experience, when I see temperature decrease coupled with a residential consumption increase, the increased consumption is related to heating the house during the winter season."³⁷ The chart in CEI Exhibit 4³⁸, which Complainant downloaded from her online CEI account, illustrates this fact by overlaying the monthly average temperature with Complainant's monthly average electricity usage:



While Complainant alleges that after CEI replaced her meter on April 5, 2018, “within the very first day . . . consumption has returned to normal,”³⁹ CEI’s witness testified that April marks “the

³⁶ Tr. at 6; Perkins Testimony at 7.

³⁷ Perkins Testimony at 7-8.

³⁸ CEI Exhibit 4 at 3.

³⁹ Complaint at 8.

end of that really, really cold” winter heating season.⁴⁰ This alone satisfies CEI’s burden under the second factor of the Commission’s high bill complaint test, as the Commission has found a utility’s “hypothes[is] that the drop in usage after March 23, 1984 was attributable to warming outside temperatures” to be plausible.⁴¹

Mr. Perkins offered other plausible explanations as well. For instance, Complainant testified that she “had two electricians . . . come over [and they reached] the same conclusion [that] there’s [no source of high usage] on the inside of the house that [they] could find.”⁴² Notably, Ms. Kenderes did not offer these electricians as witnesses or produce any written record of their alleged inspections. But Complainant also admitted at the hearing that these electricians came to her home in “early March of 2018,”⁴³ which coincides with the downward trend in Complainant’s electric usage that winter. And, as Mr. Perkins testified, “assuming that the electricians did indeed find nothing wrong,” there “could have been a ground condition in the wiring at the Property,” or “someone living at the Property could have identified an appliance causing the high consumption and unplugged it – possibly without Ms. Kenderes’ knowledge.”⁴⁴ The Commission has also found a hypothesis like this to satisfy the “plausible explanation” factor of its test.⁴⁵ Perhaps even more compelling, Mr. Perkins testified that it “is also possible that in the process of checking the wiring or electrical equipment at the Property that Ms. Kenderes’ electrician cured some defect condition without having first been aware of the problem.”⁴⁶

⁴⁰ Hearing Tr. at 64.

⁴¹ *In the Matter of the Complaint of John Taylor et al. v. Columbus and Southern Electric Company*, 1985 Ohio PUC LEXIS 228, PUCO Case No. 84-762-EL-CSS (Jul. 2, 1985)

⁴² Tr. at 8; see also Complaint at 8.

⁴³ Tr. at 25.

⁴⁴ Perkins Testimony at 11.

⁴⁵ *In the Matter of the Complaint of Robert W. Andrews, et al. v. Columbia Gas of Ohio, Inc.*, 1985 Ohio PUC LEXIS 1397, PUCO Case No. 84-1443-GA-CSS (May 28, 1985) (“Gas usage at the residence dropped substantially after the complainants received the April 3, 1984 bill, and it is likely that the complainants were able to correct the problem causing high usage once they were aware of the high usage.”)

⁴⁶ Perkins Testimony at 11.

Finally, Mr. Perkins testified that CEI “cannot ‘push’ electricity through a meter—it can only be drawn through or ‘pulled’ by electric-consuming devices on the customer’s side of the meter. . . . Electricity, somewhat like pushing on a rope, doesn’t go anywhere until it is pulled.”⁴⁷

CEI does not know the exact cause of Complainant’s high usage, and may never know, but the evidence strongly suggests that the cause is related to the winter heating season.⁴⁸ Mr. Perkins testified that he “based his conclusion” in this case “on the test results of the test of the accuracy of [Complainant’s] meter. . . . What caused [Complainant’s high usage], without ever going into [her] house, I really can’t tell [her] for sure. . . . what we did see in [her] consumption, though, is the temperature change and an increasing consumption and it’s very, very common.”⁴⁹ The Commission is clear that a utility “need not ‘prove’ its ‘plausible explanation,’” and that “[t]he burden of proof remains on the customer.”⁵⁰ While Complainant asserted time and again that it is “not possible” that she used the amount of electricity that registered on her meter, she presented no evidence to prove her claim. On the contrary, CEI presented ample plausible explanations for Complainant’s usage. Complainant has not met her burden of proving this factor of the Commission’s high bill complaint test.

C. Complainant has not demonstrated any other unjust or unreasonable service.

Complainant raised two new issues for the first time at the Hearing: (1) CEI disconnected her electricity “illegally” on May 10, 2018,⁵¹ and (2) there was a “surge” of electricity at her

⁴⁷ Perkins Testimony at 7.

⁴⁸ CEI attempted to obtain Complainant’s Dominion natural gas bills in discovery to see if her gas usage was abnormal during the relevant time period. CEI requested these bills in written discovery served to Complainant on November 5, 2018. *See* Tr. at 26-28; *see also* CEI Ex. 1. However, Complainant produced nothing until August 2, 2019, after CEI filed and the Commission granted a Motion to Compel. On August 2, Complainant produced a summary of her natural gas charges from the relevant time period, but not the bills themselves. Tr. at 28; *see also* CEI Ex. 2.

⁴⁹ Hearing Tr. at 51-52.

⁵⁰ *In the Matter of the Complaint of Arthur M. Shuster v. Columbia Gas of Ohio, Inc.*, 1988 Ohio PUC LEXIS 587, PUCO Case No. 87-2080-GA-CAA (Jun. 14, 1988).

⁵¹ Tr. at 11-12

residence at some point in time.⁵² Counsel for CEI objected to these new claims, and the Attorney Examiner directed Complainant to “focus on what you wrote in your formal complaint” and “rephrase your question,” respectively.⁵³ Complainant produced no evidence or testimony to support either claim. To the extent these remarks are construed as additional claims for unjust or unreasonable service, Complainant has likewise failed to meet her burden of proving either claim.

III. CONCLUSION

Complainant did not meet her burden of proof under the Commission’s two-factor test for high bill complaints. On the contrary, CEI presented ample evidence of the accuracy of Complainant’s meter and plausible explanations for Complainant’s higher than normal usage. Complainant’s high bill complaint should be dismissed.

The evidence presented in this proceeding demonstrates that Complainant’s CEI electric bills during the relevant time period were just, reasonable, and accurate. Indeed, the record demonstrates that the meter serving Complainant’s property was functioning properly and reading accurately within the parameters established by the Commission. Moreover, Complainant’s electric usage is explained by a combination of many factors, most notably the fact that the period of high usage coincided with the winter heating season. As a result, Complainant has been charged properly and accurately for her electricity usage at 4116 Parkside Drive, Brooklyn, Ohio 44144. Having presented insufficient evidence to the contrary, Complainant failed to meet her burden.

Accordingly, The Cleveland Electric Illuminating Company respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

⁵² Tr. at 90.

⁵³ *Id.*

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief of The Cleveland Electric Illuminating Company was sent to the following by U.S. mail on this 22nd day of November, 2019.

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