

**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 REPLY BRIEF  
OF THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

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## **I. INTRODUCTION**

Complainant Jenny Kenderes (“Complainant”) filed her post-hearing brief (“Complainant’s Brief”) on November 12, 2019. Complainant’s Brief consists of one page of conclusory “facts” and a “summary,” neither of which proves the allegations in her Complaint that her electric bills from The Cleveland Electric Illuminating Company (“CEI”) were incorrect from approximately October 2017 through April 2018. In the “summary” portion of Complainant’s Brief, Complainant notes that “[t]he evidence presented at the hearing such as copies of bills, (both gas and electric), testimony from myself and First Energy [sic] etc will hopefully shed light on this case.”<sup>1</sup> In this respect, Complainant is correct, because the evidence admitted at the hearing proves that Complainant was correctly billed by CEI for her electric usage during all relevant time periods. The bare assertions in Complainant’s Brief do nothing to move the evidentiary needle in her favor. For the reasons set forth below, as well as in CEI’s Post-Hearing Brief, which is incorporated herein in its entirety, Complainant failed to meet her burden in this proceeding and the Complaint against CEI should be dismissed with prejudice.

## **II. LAW AND ARGUMENT**

### **A. Complainant’s Brief offers no factual explanation to support Complainant’s belief that the CEI meter servicing her home registered her electric usage incorrectly.**

Complainant’s Brief begins with a short recitation of the facts Complainant thinks support her belief that CEI’s meter registered her electric usage incorrectly:

- her usage from October 2017-April 2018 was higher than usual;
- she purchased her home in 2015 and fewer individuals live in the house now than at the time of purchase;

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<sup>1</sup> Complainant’s Brief at 1.

- all of her [appliances] are new and efficient, including a gas furnace and stove;
- average daily temperatures were warmer in the years and months of higher meter readings;
- her electric consumption was more than 270 percent higher than her neighbors'; and
- her usage returned to normal after a new meter was installed in April of 2018.<sup>2</sup>

CEI does not dispute these facts. But these facts do not support Complainant's claim that the CEI meter servicing her home incorrectly registered her usage from October 2017-April 2018. Nor does her claim that "[a] home with a square footage such as [hers] is incapable of handling this type of surge in electricity."<sup>3</sup> First, this claim is not supported by any evidence, and Complainant is not qualified to offer this type of an opinion as an expert. At the Hearing, Complainant admitted that she owns and operates a senior living placement agency, has a high school education, and has no electrician or engineering training.<sup>4</sup> In other words, she lacks the requisite expertise to offer this type of opinion testimony.<sup>5</sup> And while Complainant claims that various electricians inspected her home, these electricians did not offer testimony in this proceeding and Complainant

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<sup>2</sup> See Complainant's Brief at 1.

<sup>3</sup> *Id.* This is the second time that Complainant has belatedly attempted to tie her higher than normal usage with a "surge" in electricity. The first time was at the Hearing in this matter, and upon CEI's attorney's objection that "[t]here has been no evidence presented in this case that there was a power surge," the Attorney Examiner directed Complainant to rephrase her question. See Hearing Tr. at 90. There is no mention of a "power surge" in the Complaint, and Complainant has offered no evidence to support a power surge claim in this case.

<sup>4</sup> Hearing Tr. at 24-25.

<sup>5</sup> See Ohio Rule of Evidence 702 (A witness may testify as an expert if all of the following apply:

(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:

(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

(2) The design of the procedure, test, or experiment reliably implements the theory;

(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.).

offered no evidence of their findings.

Second, and more importantly, CEI's Meter Lab tested Complainant's meter and found it to be 99.76% accurate.<sup>6</sup> And CEI's expert witness, Robert Perkins, offered the following testimony in this proceeding:

Q. MS. KENDERES ALLEGES SHE COULD NOT POSSIBLY HAVE USED THE AMOUNT OF ELECTRICITY REGISTERED ON THE METER FROM OCTOBER 2017 TO APRIL 2018. HOW DO YOU RESPOND?

A. I believe it is not only possible that she used the registered amount, but that it is certain.

Complainant has not offered any evidence or testimony that rebuts this expert opinion or the findings of CEI's Meter Lab. She has not met her burden in this proceeding.

**B. The CEI meter servicing Complainant's home tested accurately, and the record demonstrates a plausible explanation for Complainant's electric usage.**

Unlike Complainant, CEI presented extensive testimony and evidence showing that the CEI meter servicing Complainant's home registered her usage accurately and offered plausible explanations for why her usage was higher than normal between October 2017-April 2018. The plausible explanations include, but are not limited to:

- the meter servicing Complainant's home tested 99.76% accurate in CEI's Commission-regulated Meter Lab<sup>7</sup>;
- the period of high usage corresponded with the winter heating season, and in CEI's expert witness Mr. Perkins' "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"<sup>8</sup>;

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<sup>6</sup> Perkins Testimony at 5.

<sup>7</sup> Perkins Testimony at 7, 11.

<sup>8</sup> Perkins Testimony at 7-8; *see also* CEI Exhibit 4 at 3 (overlying Complainant's electric usage from October 2017

- Complainant’s electric usage returned to normal in April 2018, which is “the end of that really, really cold” winter heating season, which is likely attributable to warming outside temperatures<sup>9</sup>; and
- Complainant did not have electricians inspect the usage at her house until March of 2018 – which coincides with the downward trend in Complainant’s electric usage that winter – and even if they did not find anything wrong, they may have cured some defect during the inspection without having first been aware of the problem.<sup>10</sup>

Any one of the explanations offered by CEI is a plausible explanation for Ms. Kenderes’ high usage. The Commission is clear that a utility “need not ‘prove’ its ‘plausible explanation’” for a customer’s high usage, and that “[t]he burden of proof remains on the customer.”<sup>11</sup> 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. Complainant has not met her burden of proof.

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

As discussed in CEI’s Post-Hearing Brief, Complainant raised two new issues for the first time at the Hearing: (1) CEI disconnected her electricity “illegally” on May 10, 2018,<sup>12</sup> and (2) there was a “surge” of electricity at her residence at some point in time.<sup>13</sup> The Attorney Examiner presiding over the Hearing sustained CEI’s objections to these claims.<sup>14</sup> Complainant produced no evidence or testimony to support either claim at the Hearing or in Complainant’s Brief . 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.

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to April 2018 with the average daily temperature during that time period).

<sup>9</sup> Hearing Tr. at 64; *see also 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).

<sup>10</sup> Tr. at 25; Perkins Testimony at 11.

<sup>11</sup> *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).

<sup>12</sup> Tr. at 11-12.

<sup>13</sup> Tr. at 90.

<sup>14</sup> Tr. at 11-12; 90.

### III. CONCLUSION

Complainant did not meet her burden of proof under the Commission's two-factor test for high bill complaints. On the other hand, CEI presented ample evidence of the accuracy of Complainant's meter and plausible explanations for Complainant's higher than normal usage. Accordingly, The Cleveland Electric Illuminating Company respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Post-Hearing Reply Brief of The Cleveland Electric Illuminating Company was sent to the following by U.S. mail on this 13th day of December, 2019.

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Summary: Reply Post-Hearing Reply Brief of The Cleveland Electric Illuminating Company electronically filed by Ms. Emily V Danford on behalf of The Cleveland Electric Illuminating Company