

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
PATRICK ALLEN,

COMPLAINANT,

v.

CASE NO. 15-1237-EL-CSS

OHIO EDISON COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on January 29, 2019

I. SUMMARY

{¶ 1} The Commission finds that Complainant, Patrick Allen, has not carried his burden of proving that Ohio Edison Company has breached any legal obligation that it holds as an electric light company and public utility subject to the Commission's jurisdiction.

II. PROCEDURAL BACKGROUND

{¶ 2} On June 30, 2015, Patrick Allen (Complainant or Mr. Allen) filed a complaint with the Commission against Ohio Edison Company (Ohio Edison, Respondent, or Company), alleging that Respondent has overcharged Complainant over an extended period.

{¶ 3} On July 20, 2015, Ohio Edison filed its answer, denying the entire complaint and setting forth several affirmative defenses.

{¶ 4} A settlement conference was scheduled for and held on September 10, 2015. However, the parties were unable to resolve the dispute involved in this complaint case.

{¶ 5} On May 5, 2016, Complainant filed a letter requesting that a hearing be scheduled. By Entry issued May 6, 2016, the attorney examiner found that the discovery

process was not yet completed and that no hearing would proceed until after the discovery process was completed, which included Complainant attending a scheduled deposition with the Company. By January 31, 2018, Complainant reported to Ohio Edison that he would be representing himself, despite earlier indications that he had retained counsel. For the purpose of resolving discovery issues that were still outstanding at the time, a prehearing discovery teleconference was scheduled for February 5, 2018. However, Complainant failed to call-in or otherwise participate the February 5, 2018 discovery teleconference.

{¶ 6} On February 8, 2018, Ohio Edison filed a motion to dismiss this case due to Complainant's apparent failure to adequately prosecute this matter. Ohio Edison alleged that Complainant had, over time, changed the status of his representation by counsel in ways that hampered Ohio Edison's efforts to obtain complete discovery. While Ohio Edison's motion was pending, on February 26, 2018, Michael R. Shade filed a notice of appearance, identifying himself as Complainant's counsel. He also filed a motion, which the attorney examiner granted, seeking establishment of a new procedural schedule based on the fact that Complainant was, for the first time of record, being represented by counsel. Discovery was completed under the new procedural schedule.

{¶ 7} Following completion of discovery, an evidentiary hearing in this case was scheduled and held on June 25 and 27, 2019. Four witnesses appeared and testified at the hearing: Patrick Allen, Complainant; Diane L. Winters, Complainant's fiancé (Ms. Winters); William T. Beutler, P.E., Senior Consulting Engineer for First Energy Service Company (Mr. Beutler); and Kevin Smalley, P.E., Regional External Affairs Consultant for Ohio Edison (Mr. Smalley).

{¶ 8} At the hearing's conclusion, the attorney examiner fixed the schedule for the filing of post-hearing briefs, indicating that parties would need to file initial briefs and reply briefs by August 12, 2019, and August 30, 2019, respectively (Tr. at 157). Both parties timely filed initial briefs on August 12, 2019, and reply briefs on August 30, 2019.

{¶ 9} Although Complainant timely filed his reply brief on August 30, 2019, on that same date, Complainant also filed a motion seeking a 30-day extension of the deadline for the filing of his reply brief, or, in the alternative, an additional 30-day period within which to supplement his filed reply brief. In support of this motion, Complainant asserts that, beginning only after the hearing concluded, he “found it necessary to request” from Respondent additional billing records that Respondent had never provided to Complainant. Complainant suggests that the time extension would serve to allow him an opportunity to receive and consider such billing records to potentially reference them within any supplement to his filed reply brief. On September 10, 2019, Ohio Edison filed a memorandum in opposition to Complainant’s August 30, 2019 motion for time extension. Ohio Edison gives several reason why it believes the motion should be denied, including that: (1) contrary to the requirements of Ohio Adm.Code 4901-1-13 and the attorney examiner’s instructions at hearing, the motion for time extension was not filed in time to allow it to be considered and ruled on in advance of the deadline which the movant was seeking to extend; and (2) Complainant had sufficient opportunity, prior to hearing, to obtain the involved billing records, but failed to do so, including by failing to utilize the Commission’s discovery procedures in seeking to obtain them. The Commission finds merit in both of these arguments propounded by Ohio Edison. New evidence should not be introduced after the closure of the record, consistent with longstanding Commission precedent. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 37. As the only basis provided by Complainant for this extension of time would be to potentially include references to billing records that were not introduced or admitted into the record during the evidentiary hearing, we find that Complainant’s request to be improper. Accordingly, the Commission denies Complainant’s August 30, 2019 motion for a time extension.

III. APPLICABLE LAW

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

{¶ 11} 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.

{¶ 12} 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 his complaint by a preponderance of the evidence.

IV. DISCUSSION

A. *Summary of Complainant's Testimony*

{¶ 13} Mr. Allen, a licensed electrician in the state of Ohio, is the Ohio Edison customer of record at 5077 U.S. Highway 42 South, Delaware, Ohio 43015, (the Property), an address at which he both resides and which serves as the location of his electrician business, All-Win Electric, a holding company, SID Electric, as well as two horse-related businesses, All-Win Boarding Stables and All-Win Carriage Service, operated by his fiancé, Ms. Winters, who is the sole owner of the Property (Tr. at 6-7, 24-25, 46-47). The Property has a 15,000 square-foot horse barn, which contains numerous stalls, a riding arena, work areas, and an attached two-story residence (Tr. at 14-16). There is also at least one additional outbuilding on the Property (Tr. at 18).

{¶ 14} After he took occupancy, Mr. Allen came to believe that his bills were "high for the Property," and were always over \$1,000 to \$1,400 (Tr. at 7, 9). Mr. Allen stated

that he began to take steps to uncover the underlying cause of his high bills, become more energy efficient, and reduce his electric usage at the Property. For example, he notes that he made all of the following improvements: replaced all the lights with fixtures designed to use less energy; installed new breakers and replacement wiring; changed the well pump; removed both the window air conditioner as well as the furnace and transitioned to floor heat utilizing gas; eliminated big fans in the gables; and constantly tightened and rewired things. Complainant submits that he worked with Ohio Edison to evaluate his service level but to no avail. Despite everything he did, “the bills never really subsided” and he “got no reprieve.” (Tr. at 8-9, 17-18, 25, 27).

{¶ 15} According to Mr. Allen’s testimony, the apparent overcharging finally came to an end when, on either March 14th or 15th of either 2014 or 2015, a large contingent of Ohio Edison representatives met with him and his fiancé at his house to analyze his electric usage. At that time, according to Complainant, the Company’s crew cut the Ohio Edison tag which sealed his meter and conducted tests on the wiring and breakers. At that point, Complainant personally requested that they “at least try to tighten some things down, see if there is a loose lug or something loose.” (Tr. at 9-10, 42.) Mr. Allen testified that the Ohio Edison crew tightened the neutral lugs inside the meter base, and as soon as they did, “the little line on the meter slowed down immediately,” an observation made by Complainant that he immediately brought to the attention of one of the Ohio Edison representatives there (Tr. at 9-10.) Complainant’s testimony indicates that, after the neutrals were tightened, the cost of his monthly service reduced – perhaps by four to seven hundred dollars per month, depending on the month (Tr. at 16, 21; Complainant’s Initial Brief at 1). Mr. Allen testified that once the neutral lugs were tightened, his usage dropped considerably for home and barn (Tr. at 16, 21). As a corroborating witness, Ms. Winters testified that, after the Ohio Edison employees tightened the neutral lugs, their electric bills decreased. Explaining further, she added that it “dropped significantly” to “around \$600.” (Tr. at 50-53.)

{¶ 16} As already noted, Complainant failed to specify the precise date on which the neutral lugs were tightened, indicating that it might have been on either March 14th or

15th, of either 2014 or 2015 (Tr. at 10, 20, 22). Additionally, as part of his initial post hearing brief, Complainant identifies two separate dates, February 10, 2015 (a date which neither of Complainant's witnesses ever referenced in their hearing testimony), and March 15, 2015, as potential dates on which the lugs were tightened and allegedly eliminated overcharging (Tr. at 22; Complainant's Initial Brief at 1-2). It appears that Complainant's position in this case, stated more clearly in his initial brief rather than enunciated in any specific testimony, is that he was overcharged between \$600 to \$800 per month, during the 34-month period between June 8, 2012 and March 15, 2015. On this basis, he maintains that he should be compensated \$700 per month in overcharges for each month of the 34-month period, totaling an estimated amount of \$23,800 in overcharges over that period. (Tr. at 20-23; Complainant's Initial Brief at 1-2.)

{¶ 17} During direct examination, Mr. Allen claimed that he was told that he is not allowed to access the meter base and perform work, without proper authority. Thus, he believes it is Respondent's responsibility to maintain the equipment inside the meter base and that the Company should have kept the neutral lugs adequately tightened (Tr. at 12.) Nevertheless, on cross-examination, Mr. Allen acknowledged his awareness that, as a licensed electrician in Ohio, he is permitted to contact Ohio Edison for permission to remove the meter seal and enter the meter base on the Property (Tr. at 24). He stated that his practice, as an electrician, is to enter a meter base only in an emergency, declared by a fire chief, if such an emergency is of a type that would necessitate his entering (Tr. at 42). Ms. Winters testified that she and Mr. Allen were both present when the meter base was opened during Ohio Edison's lug-tightening site visit, which she indicated happened in 2015. She also testified that, at no time, did Mr. Allen ever enter the meter base serving the Property. (Tr. at 47-48, 55.)

B. Summary of Respondent's Testimony

{¶ 18} The testimony of Respondent's two witnesses, considered together, presents additional factual background concerning this case. Mr. Smalley testified that Mr. Allen contacted Ohio Edison with a high bill complaint for the first time on April 16, 2014 (Ohio

Edison Ex. 2 at 6). At that time, in response, an Ohio Edison representative reviewed the account summary with Mr. Allen, sent Mr. Allen a usage report showing the last two years of his electrical usage and charges, and provided Mr. Allen with rate calculations using the tariff rates applicable to the type of residential electric service that Complainant receives at the Property (Complainant's Ex. 2 at 7).

{¶ 19} The Ohio Edison representative also ordered a test of the electric meter then in place at the Property. The meter then in place (with a nine-digit meter number ending in 7895) was removed and sent for testing on April 21, 2014. At the same time, a meter (with a nine-digit meter number ending in 4125) was installed at the Property and has remained there ever since (Ohio Edison Ex. 2 at 6-8). According to Company witness, Mr. Beutler, the removed meter tested at 100.07% accuracy, which, he testified, complies with the requirements of Ohio Adm.Code 4901:1-10. (Ohio Edison Ex. 1 at 6.)

{¶ 20} Complainant contacted Ohio Edison again in October 2014, to complain that his usage was beginning to increase (Ohio Edison Ex. 2 at 8). In response, on November 6, 2014, Ohio Edison set a recorder on the meter socket at the Property for 29 days. Ohio Edison provided the results of the recorder testing to Complainant. If there had been a problem with the power coming from the Company's equipment, the recorder would have captured that information. Instead, the results of the recorder showed that there were no problems with the voltage coming from the company's equipment to the property (Ohio Edison Ex. 2 at 9, Attach. 3.) In addition, the results of the recorder were in line with the usage that was registered by the meter for the same time period, and the usage also matched the weather patterns at the time (Ohio Edison Ex. 1 at 6, Attach. 1; Ohio Edison Ex. 2 at 9, Attach. 3).

{¶ 21} In further response to Complainant's complaints about high bills, on February 10, 2015, Ohio Edison sent two employees from its meter department, two employees from its line department, and a line supervisor to the Property to conduct further inspection and testing (Tr. at 9, Ohio Edison Ex. 2 at 10). The team checked all of the Company's equipment and wires, including the service connections in the transformer and

the customer's underground service and conductors (Ohio Edison Ex. 1 at 6; Ohio Edison Ex. 2 at 10). Both Company witnesses testified that, on the February 10, 2015 site visit, no problems were identified – all of the Company's equipment was working properly and without issue (Ohio Edison Ex. 1 at 7; Ohio Edison Ex. 2 at 10).

{¶ 22} During the February 10, 2015 site visit, Ohio Edison personnel conducted a test using a device called a Super Beast (Ohio Edison Ex. 2 at 10-11). The Super Beast is a service conductor¹ tester. It is installed in the customer's meter base and works by adding electrical load to the service conductors, one conductor at a time. The Super Beast test indicates if there is a problem -- e.g., an open conductor – on either of the hot legs and/or the neutral. Both of the Company's hearing witnesses testified that the results of the Super Beast testing at the Property showed that there were no problems with any of the conductors. (Ohio Edison Ex. 1 at 7; Ohio Edison Ex. 2 at 10.)

{¶ 23} To install the Super Beast device, workers must check the lugs securing the conductor to the meter base. If the lugs are loose during the Super Beast test, there could be a flash, or there could be incorrect open conductor readings (Tr. at 147; Ohio Edison Ex. 2 at 10). Mr. Smalley testified that when Ohio Edison personnel checked the lugs at the Property, they were tight but needed to be further tightened in order to install and use the Super Beast device (Ohio Edison Ex. 2 at 10). Both of the Company's hearing witnesses testified that the tightening of the lugs in connection with the Super Beast test had no impact on Complainant's electric usage or the functioning of the electric meter at the Property (Ohio Edison Ex. 1 at 8; Ohio Edison Ex. 2 at 10.)

{¶ 24} Both Mr. Beutler and Mr. Smalley testified that a "loose neutral" or loose neutral lugs cannot cause usage to be recorded incorrectly or cause a customer's bill to be too high (Ohio Edison Ex. 1 at 8-9; Ohio Edison Ex. 2 at 10-11). Mr. Beutler explained the

¹ Conductors are essentially wires; they are the media over which electricity travels (Tr. at 145).

purpose of a “neutral.” The most common residential service in the United States is the single split-phase, 120/240 volt measured service, and this is the type of service in use at the Property. The service includes two hot legs and one neutral. The hot legs are wires or conductors connected with the electrical system that have electronic potential relative to electrical ground or neutral. The neutral conductor is the return conductor of the imbalance current (Ohio Edison Ex. 1 at 7-8.)

{¶ 25} Mr. Beutler further explained that a loose neutral would not affect the recording of a customer’s usage, because the meter measures current drawn by the load, and the reference voltage is the 240 volts measured from one hot leg to the other hot leg. The voltage the meter uses is not referenced to the neutral. When a neutral is loose, the voltage varies from the service voltage of 120 volts. The voltage on each service leg can vary from 0 to 240 volts. Voltage and load are related: typically, as voltage increases, the load increases; and as voltage decreases, the load decreases. During loose neutral conditions, the voltage increases on the service leg with bigger loads. Thus, while voltage goes up on the smaller loads, it actually goes down on the bigger loads, and the usage will either decrease or stay the same. The meter accurately measures what the customer is using because it measures current and hot-leg -to-hot-leg voltage (Ohio Edison Ex. 1 at 8; Tr. at 77.)

{¶ 26} Mr. Smalley explained that the meter base is the metal box that houses the electric meter. He then explained that, under Ohio Edison’s Commission-approved tariff, relevant portions of which were included as attachments to his pre-filed testimony, Ohio Edison owns and provides the electric meter itself, but all lines from the transformer to the meter base, the meter base itself, and all lugs in the meter base – including the neutral lugs – are on Complainant’s side of the point of attachment (which demarks the boundary between Company ownership of and responsibility for equipment and customer ownership and responsibility for equipment) and, as such, are the customer’s responsibility. (Ohio Edison Ex. 2 at 13.) Mr. Smalley next explained that, if Complainant was concerned that the neutral lugs were loose or that there was some issue with the neutral, Mr. Allen, as a licensed electrician, could have contacted Ohio Edison and requested permission to remove the

meter seal, open his meter base and, could have checked on his own behalf for any problems or issues. Moreover, while Complainant knew he could do this, Mr. Smalley testified that there is no record of him ever contacting Ohio Edison to request such permission, and he offered no evidence to suggest that he ever did so. (Tr. at 24, 40; Ohio Edison Ex. 2 at 14.)

V. CONCLUSION

{¶ 27} The first issue to be addressed is whether loose neutral lugs can have an impact on a customer's service usage and, if so, can result in overcharges. Complainant failed to offer any expert witness testimony or documentary evidence in support of his view that loose neutrals affected his electrical usage and bills. Upon review of the whole record, we find that Complainant has failed to explain any basis for his arguments on this issue.

{¶ 28} Moreover, Complainant has simply failed to refute Mr. Beutler's and Mr. Smalley's expert testimony,² summarized in Paragraphs 24 and 25 of this Order, which explains that loose neutral lugs cannot cause a customer's usage to be recorded incorrectly by the meter or cause a customer's bill to be too high. The record evidence presented by Ohio Edison further shows both that the tightening of the lugs did not actually make a difference in the usage levels recorded at the Property and that there was a plausible explanation for the bills being as high as they were. Specifically, with regard to this other explanation for the level of the bills, Ohio Edison produced unrefuted evidence which supports a finding that electric usage and related charges at the Property fluctuated with

² Complainant purports to challenge the expert testimony of Mr. Beutler and Mr. Smalley by arguing that they did not attach to their testimony any treatises or reports in support. There is no requirement that expert witnesses need to attach any such documents to their testimony. Both clearly qualify, and clearly testified, as expert witnesses. Both are electrical engineers and registered Professional Engineers; and, as further described in their testimony, together share a combined total of over 50 years of experience in their field. Similarly, Complainant also argues that these same two witnesses "did not swear or affirm that their answers were their answers" and "did not sign" their pre-filed Direct Testimony. (Complainant's Reply Brief at 3.) This argument, too, is without merit. Each Ohio Edison witness testified under oath as to the authenticity and accuracy of his pre-filed testimony. Under such circumstances, no signature on the pre-filed testimony is required.

weather conditions and increased during colder winter months (Ohio Edison Ex. 2 at 11; Ohio Edison Initial Brief at 13). Because Respondent has provided sufficient credible expert witness testimony that explains convincingly why Complainant's electric usage and charges could not be impacted by the tightening of any loose neutral, while Complainant has failed to provide any support for his postulation that loose neutrals affected his electric usage and bills, we conclude that this complaint should be denied and dismissed in favor of Respondent.

{¶ 29} Even if we were to find that it was possible for the loose neutral lugs to have caused the alleged overcharging, which we have not, we would arrive at the same outcome in this case given Ohio Edison's testimony regarding how responsibility for maintaining the neutral lugs falls on the customer and not on the Company. Complainant claims that Ohio Edison bears a legal duty to keep the neutral lugs in his meter base properly tightened and in proper working condition. In short, Complainant is asking the Commission to decide that the alleged overcharges ceased once the neutral lugs in Complainant's meter base were tightened, and moreover, that such a showing circumstantially proves that the overcharges resulted directly from Ohio Edison's failure to meet its alleged legal duty to adequately maintain the neutral lugs in Complainant's meter base (Tr. at 12). Thus, in order to prevail in this case, Complainant, as the party who bears the evidentiary burden of proof, is also required to show that Ohio Edison bears a legal duty to maintain the neutral lugs in Complainant's meter base. If the Company bears no such duty, then even if loose neutrals affected Complainant's electric usage and bills, the Company bears no responsibility for the manner in which loose neutrals impacted Complainant.

{¶ 30} Although at one point in his testimony, Complainant claimed that the neutral lugs exist "on the line side of the meter," by which he presumably means that they are the Company's responsibility, he offered nothing of substance to support this claim (Tr. at 12). Indeed, Complainant has offered no evidence or documentation, nor cited to any legal authority or precedent, which supports the conclusion that Ohio Edison bears any responsibility for maintaining the neutrals lugs in Complainant's meter base. On the other

hand, the Company presented sufficient and convincing evidence to the contrary, namely, Mr. Smalley's testimony and documentation indicating that, under Ohio Edison's Commission-approved tariff, Ohio Edison owns and provides the electric meter itself, but that all lines from the transformer to the meter base, the meter base itself, and all lugs in the meter base – including the neutral lugs – are on Complainant's side of the point of attachment and, as such, are the customer's responsibility. (Ohio Edison Ex. 2 at 13-14.) Upon review of the entire record, the Commission finds that Complainant has failed to meet the evidentiary burden of showing that Ohio Edison is required to maintain the neutral lugs in Complainant's meter base. This, too, is among the reasons why the Commission finds that the complaint in this case should be denied and dismissed in favor of Respondent.

{¶ 31} Further, we find, as Ohio Edison has argued, that Complainant's witnesses' testimony regarding their undocumented beliefs about whether any overcharges occurred on Complainant's electric bills – and if so, how much they totaled -- was not credible, and was refuted by actual billing records introduced by Ohio Edison (Ohio Edison Initial Brief at 10-15). For example, Mr. Allen testified that prior to the lug tightening, his electric bills were "always over \$1,000 to \$1,400" but went down "considerably" and were between \$400 and \$700 per month after the lugs were tightened (Tr. at 9, 16). Ms. Winters, at first, testified that, from the time she acquired the Property in 2012 until the lugs were tightened in 2015, the electric bills for the Property were between \$1,400 to \$1,500 per month. Later, she further testified that, during that same period, the electric bills stayed over \$1,100 to \$1,200 "always." (Tr. at 56.) She also testified that, after the lugs were tightened, the bills dropped considerably to "around \$600" per month (Tr. at 53).

{¶ 32} Contrary to Mr. Allen and Ms. Winters' testimony, the Billed Account Summary for the Property, attached as an exhibit to the complaint in this case and also introduced as one of Ohio Edison's hearing exhibits, shows that from June 2012 through March 2015, the costs for electric service only reached or exceeded \$1,100 four times (in February and March of both 2014 and 2015) (Ohio Edison Ex. 3). During that same interval, the monthly electric costs only reached or exceeded \$1,400 twice (in February and March of

2015 (Tr. at 109-110; Ohio Edison Ex. 3). Further, the Bill Summary Account, and thus the record in this case, also reflects that the electric bills for the Property were frequently less than \$600 from June 2012 through March 2015, the month after Ohio Edison claims it tightened the lugs (Tr. at 109-110; Ohio Edison Ex. 3). Complainant's and Ms. Winters' testimony that, after the lug tightening, the monthly bills were between \$400 and \$700 per month (Tr. at 9, 16), or remained at around \$600 per month (Tr. at 53), is not substantiated. Ohio Edison introduced three electric bills for service provided to the Property after the lugs were tightened, each of which exceeded \$1,000 (the February 2016 bill, for \$1,384.85; the March 9, 2016 bill, for \$1,505.07; and the January 2018 bill, for \$1,317.16). (Tr. at 110-112; Ohio Edison Ex 4; Ohio Edison Ex. 5, Ohio Edison Ex.6.) Simply put, Complainant submitted no competent evidence to show that the tightening of the lugs impacted his electric usage and bills. In fact, even though Mr. Allen and Ms. Winters purported to testify extensively about their electric bills, and noting the allegedly high bills are the gravamen of the complaint in this case, Complainant failed to introduce even one electric bill into evidence.

{¶ 33} Furthermore, we note that neither at hearing, nor in his post-hearing briefs, was Complainant ever able to identify with specificity the date on which he claims that Ohio Edison tightened the neutral lugs in his meter base. At hearing, he testified that it was either on March 14th or 15th of either 2014 or 2015. In his initial brief, he seems to indicate that it was either on February 15, 2015, or on March 15, 2015. Secondly, while he claims in his reply brief to have testified "that from the time service was commenced he was overcharged over an amount of \$23,800", the record reflects that he actually offered no such testimony (Complainant's Reply Brief at 3). Rather, when asked at hearing whether he had determined what he thought he had overpaid since taking occupancy on the Property, he testified "I've never put a total number together" (Tr. at 21).³ In any event, Complainant's specific request

³ We believe we understand how Complainant came up with the overcharging total figure he announced in his initial brief. There, Complainant explains that, because he submits that Ohio Edison overcharged him between \$600 to \$800 per month, during the 34-month period between June 8, 2012 and March 15, 2015, he

for an award of \$23,800 is outside of the Commission's jurisdiction. *Lahke v. Cincinnati Bell, Inc.* 1 Ohio App.3d 114, 115, N.E.2d 928, 929 (1st Dist. 1981).

{¶ 34} Contrarily, there is ample unrefuted testimony which addresses: (1) actions Ohio Edison took, in April 2014, to test and replace Complainant's meter (Tr. at 64); (2) actions Ohio Edison took, in November 2014, to place a recorder on the meter socket for 29 days (Tr. at 86); and (3) Ohio Edison's use of the Super Beast device in February 2015 to test conductors (Tr. at 118; Complainant's Reply Brief, at 1). Considered together, none of this testimony presents any reason for the Commission to find that Ohio Edison: (1) failed to properly maintain its equipment, (2) failed to provide adequate utility service, or (3) overcharged Complainant. Based on our review of the entire record, we conclude that Ohio Edison has produced competent evidence sufficient to support our finding that all of Respondent's equipment was thoroughly tested and was found to be in good working order and in compliance with all applicable standards (Ohio Edison Ex. 1, at 6, 7; Ohio Edison Ex. 2, at 8-11). Ohio Adm.Code 4901:1-10. No showing has been made of record that there were any problems with any of the Company's equipment. Based on the record, the Commission finds that Ohio Edison took the appropriate actions under its tariff and Ohio Adm.Code 4901:1-10-05, to confirm that the usage data was accurately recorded and that the meter was functioning properly.

{¶ 35} The evidence of record, considered as a whole, supports a finding that Ohio Edison's service to Complainant complied with all applicable laws, Commission rules, and Ohio Edison's Tariff. Complainant has not demonstrated that Ohio Edison's actions were unjust, unreasonable, inadequate, or in violation of any law, rule, or Commission order. For all of these reasons, we find that Complainant has failed to satisfy his evidentiary burden of

should be compensated \$700 per month for each month of that 34-month period, totaling an estimated amount of \$23,800 in overcharges over that period. (Complainant's Initial Brief at 1-2.)

proof in this case and, therefore, he is not entitled to any relief. Accordingly, we find that this case should be denied and dismissed, with prejudice, in Respondent's favor.

{¶ 36} Complainant has not demonstrated that Ohio Edison has breached any legal obligation that it holds as an electric light company and public utility subject to the Commission's jurisdiction. For this reason, as well as the other reasons addressed above, upon review of the whole record, we hold that Complainant has failed to meet his burden of proof in this case.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 38} On June 30, 2015, Patrick Allen filed a complaint with the Commission against Ohio Edison.

{¶ 39} On July 20, 2015, Ohio Edison filed its answer, denying the entire complaint and setting forth several affirmative defenses.

{¶ 40} A settlement conference was scheduled for and held on September 10, 2015. However, the parties were unable to resolve the dispute involved in this complaint case.

{¶ 41} Following the completion of discovery, a hearing in this case was held on June 25 and 27, 2019.

{¶ 42} Complainant has failed to prove the allegations of his complaint.

VII. ORDER

{¶ 43} It is, therefore,

{¶ 44} ORDERED, That Complainant's August 30, 2019 motion for time extension is denied. It is, further,

{¶ 45} ORDERED, That this matter be decided in favor of Ohio Edison as Complainant has failed to sustain his burden of proof. It is, further,

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

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

DEF/kck

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Summary: Opinion & Order that the Commission finds that Complainant, Patrick Allen, has not carried his burden of proving that Ohio Edison Company has breached any legal obligation that it holds as an electric light company and public utility subject to the Commission's jurisdiction. electronically filed by Docketing Staff on behalf of Docketing