

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
RUSSELL ENYART,

COMPLAINANT,

v.

CASE NO. 18-1734-EL-CSS

OHIO EDISON COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on April 17, 2024

I. SUMMARY

{¶ 1} The Commission finds that the complaint should be dismissed for failure of the complainant to demonstrate that Ohio Edison Company engaged in any unlawful, inadequate, or unreasonable practices or otherwise violated any Commission rule.

II. PROCEDURAL BACKGROUND

{¶ 2} On November 28, 2018, Russell Enyart (Complainant or Mr. Enyart) filed a complaint against Ohio Edison Company (Respondent or Ohio Edison). Mr. Enyart alleges that Ohio Edison failed to adequately provide service to Complainant's commercial property, the result of which was significant property damage. Specifically, Complainant explains that he bought a commercial property located at 50 Newton Street, Norwalk, Ohio (the Property) on January 26, 2018, and that Ohio Edison owed him a duty of reasonable service from January 26, 2018 onward. Complainant requests that the Commission make a finding that Ohio Edison provided inadequate, unjust, and unreasonable service that Complainant may take to a court of common pleas to seek compensatory damages pursuant to R.C. 4905.61.

{¶ 3} On December 18, 2018, Ohio Edison filed its answer. In its answer, Respondent generally denies the allegations contained in the complaint and asserts several affirmative defenses. As such, Ohio Edison admits that Mr. Enyart contacted Respondent on January 26, 2018, and requested service to the Property. Moreover, Ohio Edison acknowledges that it terminated service to the Property under the prior owner's account. However, Ohio Edison denies that it failed to transfer service to Mr. Enyart. Further, Respondent states it is without sufficient knowledge or information concerning some of Complainant's allegations.

{¶ 4} By Entry dated March 1, 2019, the attorney examiner scheduled a telephonic settlement conference to explore the parties' willingness and ability to negotiate a resolution of the complaint.

{¶ 5} The parties were unable to reach a resolution during the settlement conference. Thus, by Entry dated April 5, 2019, the attorney examiner issued a procedural schedule that established an August 6, 2019, deadline for filing testimony and an August 20, 2019 hearing date.

{¶ 6} On June 19, 2019, Respondent filed a partial motion to dismiss requesting that the Commission dismiss any portion of the complaint seeking monetary damages. On June 28, 2019, Complainant filed a memorandum contra Respondent's motion, to which Respondent replied on July 5, 2019.

{¶ 7} On July 16, 2019, Complainant filed an unopposed motion for a continuance of the August 6, 2019 hearing date, as well as the deadline for filing expert testimony, with a request for expedited treatment.

{¶ 8} On July 17, 2019, the attorney examiner issued an Entry granting the motion for a continuance. Accepting dates proposed by Complainant in the motion, the attorney examiner directed the parties to file testimony by October 29, 2019, and established a new hearing date of November 19, 2019.

{¶ 9} On October 29, 2019, three filings were submitted. Complainant filed both Mr. Enyart's direct testimony and a notice of voluntary dismissal of his request for damages. And Respondent filed the direct testimony of Princess Davis.

{¶ 10} On November 12, 2019, the parties filed a joint motion for a continuance and request for expedited treatment. Citing the desire to engage in further discovery, the parties requested that the hearing date be continued indefinitely with the condition that they file a status update by January 31, 2020. The attorney examiner granted the motion by Entry issued November 14, 2019.

{¶ 11} On February 21, 2020, after requesting and receiving a three-week extension of time, the parties filed a joint status update and a request for a prehearing conference.

{¶ 12} By Entry dated March 10, 2020, and pursuant to communications with counsel, the attorney examiner established a new procedural schedule. With the March 10, 2020 Entry, the attorney examiner set a new hearing date of June 30, 2020, and instructed that any additional pre-filed testimony be filed no later than June 15, 2020.

{¶ 13} On May 20, 2020, Ohio Edison filed an unopposed motion for leave to file an amended answer along with the proposed pleading. On May 21, 2020, the attorney examiner granted the motion and accepted the amended answer as of its filing date.

{¶ 14} In its amended answer filed on May 20, 2020, Ohio Edison clarified that Ohio Edison began providing electric service to the Property under Complainant's accounts on January 29, 2018, and service to the Property has continued since that time.

{¶ 15} On June 24, 2020, the attorney examiner issued an Entry denying as moot Respondent's June 19, 2019 partial motion to dismiss. Furthermore, given the constraints of the COVID-19 pandemic, the Entry continued the evidentiary hearing until October 27, 2020.

{¶ 16} By Entry issued on October 8, 2020, and again due to the pandemic, the attorney examiner directed that the October 27, 2020 hearing should be rescheduled and likely held remotely. The Entry indicated that a new hearing date would be determined by future entry, which entry would also provide information regarding the manner in which the hearing would be conducted.

{¶ 17} On December 30, 2020, the attorney examiner issued an Entry announcing that the evidentiary hearing would be conducted remotely on April 27, 2021, via Webex. The Entry also set forth dates for the filing of any additional pre-filed testimony, any stipulations of fact, a prehearing conference to allow counsel and the parties to test the new hearing technology, and a deadline for the exchange of exhibits.

{¶ 18} On April 27, 2021, the evidentiary hearing was conducted via Webex. At the hearing, both Mr. Enyart and Princess Davis adopted their prefiled testimony and answered questions on cross-examination. Both parties also presented numerous other exhibits. A transcript of the hearing, as well as any admitted exhibits that were not previously filed to the Commission's case docket, were filed on May 11, 2021.

{¶ 19} The parties filed timely initial post-hearing briefs on June 2, 2021, and reply briefs on June 21, 2021.

III. DISCUSSION

A. *Applicable Law*

{¶ 20} Ohio Edison is a public utility as defined in R.C. 4905.02 and, as such, is subject to the Commission's jurisdiction.

{¶ 21} R.C. 4905.22 provides that every public utility shall furnish service and facilities that are adequate, just, and reasonable, and that all charges made or demanded for any service be just, reasonable, and not more than the charges allowed by law or order of the Commission.

{¶ 22} Pursuant to R.C. 4905.26, the Commission has authority to consider a written complaint 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.

{¶ 23} In complaint proceedings, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, in this proceeding, it is Mr. Enyart's responsibility to present evidence in support of the allegations asserted in the complaint.

B. Summary of Testimony

{¶ 24} During the hearing, the attorney examiner admitted the pre-filed testimony of Mr. Enyart (Complainant Ex. 1) and audio recordings of his calls with Ohio Edison representatives (Complainant Ex. 2a; Complainant Ex. 2b; Complainant Ex. 2c). The attorney examiner also admitted into evidence Ohio Edison's responses and objections to Complainant's second and third requests for production of documents (Complainant Ex. 3 and Complainant Ex. 4, respectively), Ohio Edison's Schedule of Rates for Electric Service (Complainant Ex. 5), and a redacted version of a letter attached as an exhibit to the Complaint (Complainant Ex. 6b). As to Respondent, the attorney examiner accepted into evidence the pre-filed testimony of Princess Davis (Ohio Edison Ex. 1), as well as the following documents: a Customer Contact History for Meter UB (Ohio Edison Ex. 2); a Customer Contact History for Meter U1 (Ohio Edison Ex. 3); Meter Reading Results for Meter UB (Ohio Edison Ex. 4); Meter Reading Results for Meter U1 (Ohio Edison Ex. 5); Work Order Trackings for Block and Unblock Orders for Meter UB (Ohio Edison Ex. 6); 3/6/18 Billing Statement for Meter UB (Ohio Edison Ex. 7); and Ohio Edison's amended and supplemental responses to Complainant's first set of discovery (Ohio Edison Ex. 10).

{¶ 25} Mr. Enyart testified that he bought the Property on January 26, 2018 (Complainant Ex. 1-2 at 1; Tr. at 57). On January 31, 2018, Mr. Enyart was informed that a pipe burst in the pump house on the Property, causing flooding and damage (Complainant

Ex. 1 at 5; Tr. at 57). Upon cross examination, Complainant stated that he had not been to the Property before January 31, 2018, and that he never personally inspected the pump room at any time before the flooding occurred. (Tr. at 57.)

{¶ 26} Mr. Enyart confirmed that he called Ohio Edison to transfer electric service to the Property to his name on January 26, 2018 and that the service was provided under two accounts (Complainant Ex. 1 at 2-3). Mr. Enyart explained that each account is associated with a separate meter, with one meter registering usage for the main parts of the building and the other for the “pump house” (Tr. at 59). Complainant said that, during the call, he learned that service for his newly acquired Property could not begin under his name until the next business day, which was January 29, 2018. He consented that the service would begin on January 29, 2018. (Tr. at 20, 29, 59; Complainant Ex. 1 at 2-4.) Mr. Enyart also confirmed that he did not personally observe whether either meter at the Property was originally blocked by Respondent. Furthermore, Complainant agreed that he did not observe Ohio Edison doing any work at the Property on any day. (Tr. at 60, 62-63.) Mr. Enyart recalled that a contractor who worked at the Property, Steve, determined that there was no electricity running to the pump house. However, Complainant clarified that he was unaware of how Steve made such a determination. (Tr. at 67.) Upon cross-examination, Mr. Enyart affirmed that Steve came to the Property on an as-needed basis (Tr. at 70).

{¶ 27} Regarding the flooding, Mr. Enyart testified that on January 31, 2018, the pump house’s only source of heat was a plug-in heater. He acknowledged that he did not know if the heater needed to be manually turned back on after it was shut down. (Tr. at 70.) Further, Mr. Enyart confirmed that he did not have anybody inspect the interior of the pump house after he purchased the Property before the flooding event on January 31, 2018 (Tr. at 71).

{¶ 28} Ohio Edison presented witness Princess Davis, a FirstEnergy Compliance Specialist. Miss Davis testified that she was unaware of Ohio Edison providing same day service on newly enrolled services. She confirmed that there are two active meters and,

therefore, two accounts related to the Property. One is referred to as Meter U1 and the other as Meter UB; it is Meter UB that Mr. Enyart claims was turned off. (Ohio Edison Ex. 4 at 4-5.) Ms. Davis further confirmed that service was being rendered to the Property at the time Mr. Enyart called to have the bill transferred to his name. Further, witness Davis explained that it is company business practice to establish new service on the next business day. She also testified that it is not necessary to physically disconnect existing service from an old customer to transfer service to a new customer. (Tr. at 119-121; 126-127.) Witness Davis testified that, although the numbers were identical, she was unable to determine whether there was usage registered on Meter U1 between January 26, 2018, and January 29, 2018, because the line item on January 26 was an estimated reading and the line of January 29 was an actual reading. Further, Ms. Davis clarified, consistent with her prefiled testimony, that electric service was being provided to the Property as of January 26, 2018, because the account was still active for the prior customer's name as of that date. Witness Davis agreed that there was no reason for Ohio Edison to disconnect service at the Property in order to accept Mr. Enyart as a new customer of record. (Tr. at 123-124; Ohio Edison Ex. 1 at 4.)

{¶ 29} Ms. Davis testified that when Ohio Edison completed the prior owner's move-out request on January 29, 2018, a company serviceman completed a notification order in his handheld unit, which involved entering a reading and closing out the move-out request order. Ms. Davis clarified that a move-out request is simply the prior customer requesting to no longer be the customer of record for the premises, and Ohio Edison processes these requests by obtaining a reading to close out the billing. (Tr. at 124-125; Ohio Edison Ex. 1 at 4.) Witness Davis confirmed that between January 26, 2018, and January 29, 2018, there was no customer of record of the premises. She further testified, however, that electric service was never disconnected (Tr. at 141-142). Ms. Davis explained that, on January 25, 2018, the prior owner's move out request was ordered (Ohio Edison Ex. 1 at 4;

Tr. at 129; Ohio Edison Ex. 6 at 12).¹ She recognized that Mr. Enyart called to change over service to his name on January 26, 2018, but reiterated that Ohio Edison does not complete orders for a move-out and move-in on the same date; it is always the next business day (Tr. at 126-127). Witness Davis confirmed that Ohio Edison's records, specifically the document identified as Work Order Trackings for Block and Unblock Orders for Meter UB admitted into the record as Ohio Edison Exhibit 6, indicate that the prior owner's move-out request was completed at the premises on January 29, 2018 (Tr. at 129-130; Ohio Edison Ex. 6 at 12). Furthermore, Ms. Davis agreed that the "field notes" section in that document reflects that a work order was created on January 26, 2018, concerning Mr. Enyart's request to have service placed in his name. Ms. Davis then confirmed that Respondent's work orders demonstrate that Mr. Enyart's request was completed in the field on January 29, 2018. (Tr. at 130; Ohio Edison Ex. 6 at 13.) Witness Davis explained that technicians complete the requested transfer work orders in the field by entering in a meter reading and completing the order in their handheld unit. She observed that this reading was performed to process Complainant's request (Tr. at 131).

{¶ 30} Witness Davis clarified that once a prior owner calls to cancel service, if there is no new order for someone else to take over the service, then Ohio Edison generates an order to disconnect the service. Further, she confirmed that the terms "blocking service" and "disconnection" are synonymous and refer to a premises being de-energized at the meter. (Tr. at 128.) Ms. Davis testified that the work orders in this case indicate an "Error in Processing" message in between the logged results of the previous owner's request to be removed and Mr. Enyart's request to be added as the account owner. She explained that this message meant that processes did not occur in the correct order by the technician. (Tr. at 131.) Witness Davis clarified that in the work logs, the entries dated February 1, 2018,

¹ Ohio Edison Exhibit 6 is a two-page document identified as Work Order Trackings for the Block and Unblock Orders for Meter UB (Tr. at 115). Although the document is only two pages, the bottom of one page bears Ohio Edison's Bate stamp ending in 12, and the bottom of the other page bears Ohio Edison's Bate stamp ending in 13. For clarity, we refer to these as pages 12 and 13.

with a notation of “Notification Completion” refers to the notification Ohio Edison’s offices receive when work is completed (Tr. at 132). Ms. Davis further explained that a February 1, 2018 entry in Ohio Edison Exhibit 2 indicating “Activity: Reverse Disconnection” was “an order that a supervisor processed to reverse the original order to reenter an order based upon the customer advising us that the service was turned off” (Tr. at 138-39). In pre-filed testimony, Ms. Davis stated that the noted system error did not cause any disruption in service for Mr. Enyart (Ohio Edison Exhibit 1 at 6). Witness Davis reiterated during hearing that service was never disconnected from either of the meters on Mr. Enyart’s account at the Property between January 26 and February 1, 2018 (Tr. at 141, 142).

C. Post-Hearing Briefs

{¶ 31} Complainant asserts in brief that the Commission should find that Ohio Edison rendered unreasonable service to Mr. Enyart and violated Ohio Adm.Code 4901:1-10-14 and 4901:1-10-15. Complainant avers that the forgoing violations, individually and collectively, constitute a failure to render adequate service as required by R.C. 4905.22.

1. ALLEGED INADEQUATE SERVICE

{¶ 32} Initially, Complainant asserts that he was a customer as defined by Ohio Edison’s tariff on January 26, 2018. Complainant points out that, on January 26, 2018, he applied for service; Ohio Edison collected a security deposit; and Respondent emailed an electronic billing confirmation. Complainant contends that these actions constituted an acceptance of Mr. Enyart’s service application as of January 26, 2018, and that he was entitled to reasonable, adequate service from that day forward. (Complainant Br. at 7.)

{¶ 33} Continuing, Mr. Enyart maintains that Respondent is bound by its prior admissions and that Ohio Edison’s brief implies that the Claims Department never investigated the incident or admitted to disconnecting his power. Complainant asserts that the Claims Department’s June 22, 2018 Letter is an admissible statement against interest (Complainant Ex. 6B). Complainant contends that the letter should be considered as an

admission in a pleading, as it was attached to the Complaint filed in late November 2018, and Respondent's answer admitted the averments alleging termination of the prior owner's account. Further, Complainant states that in August 2019, Ohio Edison served responses to interrogatories and request for admission and admitted it terminated service (Complainant Ex. 2). Complainant notes that in May 2020—six months after the filing of testimony in October 2019—Ohio Edison amended its original answer and the supplemental discovery responses. Complainant claims that Respondent's amended answer and supplemental discovery responses introduced no new facts but did lead to contradiction. Complainant argues that according to Ohio Evid. R. 804(D)(2), averments in an answer or discovery responses are admissible against the responding party but not usable by the responding party to prove a disputed fact. (Complainant Reply Br. at 7-9.)

{¶ 34} Responding, Ohio Edison acknowledges that it first believed that service to Meter UB was blocked from January 29 to February 1, 2018, but after subsequent investigation and discovery, determined that belief was mistaken. Ohio Edison explained that its initial determination was premised upon records relating to Meter UB which indicated a "system error" (Ohio Edison Ex. 6B). Ohio Edison noted that witness Davis corrected this assumption and testified that a customer's move-out request generates a work order for the meter to be "blocked" while a move-in order requests an order for the meter to be "unblocked" (Ohio Edison Ex. 1 at 5, Tr. at 131). Ohio Edison asserts that when a move-in and move-out process occurs simultaneously, it is not necessary to disconnect the service and the flow of power is not interrupted. Ohio Edison explains that on January 29, 2018, the meter worker processed the unblock first and then the block, which caused the system to report the error but it did not impact electric service delivered to the Property. Respondent asserts that the documentation properly disputes Mr. Enyart's claims and that there are no records indicating that any meter at the Property was reconnected or needed to be reconnected on February 1, 2018. Ohio Edison submits that, to the contrary, the meter worker's log from February 1, 2018, confirms that Meter UB was already turned on and was

not blocked, and Mr. Enyart's first bills from Ohio Edison likewise showed that service began on January 29, 2018 (Ohio Edison Ex. 7). (Ohio Edison Br. at 6-7.)

{¶ 35} In the alternative, Complainant argues that a preponderance of the evidence demonstrates that Ohio Edison disconnected service to the meter serving the Property's pump house sometime between January 26 and January 31, 2018. Here, Complainant claims that Ohio Edison initially admitted that it disconnected service in a June 22, 2018 letter sent to Mr. Enyart from Michael Lindlow, Ohio Edison's Corporate Claims Manager (Complainant Ex. 6B). Complainant emphasizes that the letter stated that the electricity was disconnected per the previous customer's request on January 29, 2018, and Ohio Edison should have unblocked the meter that same day. Further, the letter says Ohio Edison did not establish service nor unblock the meter at the Property until February 1, 2018. (Complainant Ex. 6B.) Complainant represents that these statements were against Respondent's interests. As such, Complainant concludes that Ohio Edison cannot dispute the letter, as it did not proffer any testimony from Mr. Lindlow or any other clarifying testimony to this point. Therefore, Complainant states that the statements and representations in Mr. Lindlow's letter are entitled to presumptions of truth and accuracy. (Complainant Br. at 8.)

{¶ 36} Complainant also disputes Ohio Edison's representation that Respondent never disconnected Mr. Enyart's service. Complainant states that Ohio Edison's work orders and consumer contact history confirm that Ohio Edison disconnected Mr. Enyart's service. Complainant relies on Ohio Edison's Exhibit 6 that indicates the electric service was turned on ("unblocked") at 9:50 a.m. and turned off ("blocked") at 9:52 a.m. on January 29, 2018. Mr. Enyart points out that these records demonstrate that Ohio Edison reversed the order of the disconnection and reconnection orders of the electric service to Mr. Enyart's Property. (Ohio Edison Ex. 6 at 12, 13.) Moreover, Complainant claims that Ohio Edison Exhibit 6 demonstrates Mr. Enyart's order to connect service was not processed until February 1, 2018. And, according to the Customer Contact History for Meter UB, Complainant indicates that Mr. Enyart's initial call on January 26 was documented and that

the next entries for Mr. Enyart were not dated until February 1, 2018 (Ohio Edison Ex. 2). According to the February 1, 2018 entries, Mr. Enyart's power was on and then turned off "causing pipes to burst." Complainant argues subsequent entries dated February 1, 2018, confirm the power was previously disconnected by Ohio Edison. Complainant noted that the re-connect order was completed at 1:11 p.m., so the fact that a worker reported the meter as "turned on" as of 1:52 p.m. was of little importance. (Complainant Br. at 8-10.)

{¶ 37} Furthermore, Mr. Enyart argues that there are no records showing that service was turned on prior to February 1, 2018 (Complainant Br. at 12). Mr. Enyart refutes Ohio Edison's claim that it never disconnected service. He claims that Ohio Edison's meter records, admitted as Ohio Edison Exhibits 4 and 5, only reflect readings taken on different dates and that there is no hourly or daily data reflecting continued service between January 29, 2018, and February 1, 2018 for Meter UB. Mr. Enyart argues that the records for Meter U1 show no usage between January 26, 2018, and January 29, 2018, and as such, there is no evidence that Meter U1 was read on February 1, 2018. (Complainant Reply Br. at 6-7.) Complainant asserts that "if the Meter UB records create an inference that Meter UB was active during the relevant period, then these same records create an inference that Meter U1 meter was not active." (Complainant Reply Br. at 4-5.) As such, Complainant argues that Ohio Edison witness Davis's hearing testimony concerning Meter U1 is illogical and unsupported. Complainant disputes witness Davis's conclusion that Meter U1 was never disconnected as irrelevant because the absence of information in Meter U1's records does not implicate one fact or another (Ohio Edison Ex. 1 at 6). Rather, Complainant contends that the lack of evidence regarding Meter U1's connection status suggests that Meter U1's service was actually disconnected. (Complainant Reply Br. at 6-7.) Relatedly, Complainant argues that the only contemporaneous record of a service connection is the work order indicating Mr. Enyart's request was completed on February 1, 2018, at 1:11 p.m. (Ohio Edison Ex. 6). Complainant asserts that the record demonstrates that a meter worker did not work at the Property until 1:52 p.m. on February 1, 2018. Complainant states if a different meter worker performed the connection request at 1:11 p.m. when Mr. Enyart's

request was completed, then the meter would have already been connected when the meter worker, “May,” appeared for the 1:52 p.m. entry (Ohio Edison Ex. 6 and Ohio Edison Ex. 2). Complainant concludes that these records do not explain how long the meter had been connected since the time “May” verified it was “turned on previously.” (Complainant Br. at 12.)

{¶ 38} Ohio Edison disputes Mr. Enyart’s claims that Ohio Edison physically disconnected service on January 29, 2018, when it processed both the previous owner’s move-out order and Mr. Enyart’s move-in order. Respondent explains that Ms. Davis testified that it is not necessary to disconnect service while processing both a move-in and move-out request simultaneously (Tr. at 121). Ohio Edison states that all the meter worker needs to do is enter a meter reading and complete the order, which is what Respondent asserts happened on January 29, 2018 (Tr. at 131). Ohio Edison claims that Complainant misread the Work Order Trackings for Meter UB that states “Notification completed” at 1:11 p.m. on February 1, 2018 (Ohio Edison Ex. 6). Respondent explains that the 1:11 p.m. entry upon which Complainant relies indicates that the work order was closed in the office at that time and if the work was completed in the field, it would be noted so in the work order log (Tr. at 131-133). Lastly, Ohio Edison explains that a meter worker only checked Meter UB because Complainant expressly told Ohio Edison that only UB Meter was disconnected, and the other meter was not inspected (Tr. at 43). Ohio Edison affirms that there was no meter to reconnect at the Property, as confirmed by the meter worker’s log (Ohio Edison 2). (Ohio Edison Reply Br. at 5-8.)

{¶ 39} Complainant argues that Ohio Edison failed to explain the discrepancy in its narrative where Ms. Davis’s testimony differs from Ohio Edison’s account records. Complainant claims that Ms. Davis’s speculation and hindsight concerning what she thought the presented account records could mean is not a proper substitute for “previous, contemporaneous investigation.” Further, Mr. Enyart insists that Ohio Edison has a responsibility to explain the discrepancy between the Claims Department documents and Ms. Davis’s testimony but fails to do so. (Complainant Br. at 12)

{¶ 40} Furthermore, Mr. Enyart asserts that his case does not rely merely on the fact that an outage occurred, but rather that the outage was a consequence of a series of Ohio Edison's alleged violations of its tariff and Commission rules. Complainant further distinguishes his case from a situation in which a complainant's disconnect was a result of their failure to pay the minimum amount for service, as addressed in *In re Brenda & Gerard Fitzgerald*, Case No. 10-791-EL-CSS, Opinion and Order (Sept. 14, 2011) at 8. Rather, Mr. Enyart presents that his disconnection at issue was, instead, the result of Ohio Edison processing block and unblock orders out of sequence. Complainant explains that Ohio Edison had missteps several times between January 25, 2018, and February 1, 2018, in which it failed to transfer service to Mr. Enyart the day he called, and that Ohio Edison did not read both meters on January 29, 2018. (Complainant Reply Br. at 10.)

{¶ 41} On the other hand, Ohio Edison points out that Complainant does not contend that service was not active following the meter worker's dispatch to the Property on February 1, 2018. Ohio Edison states that since the outage that allegedly caused the flooding on January 31, 2018, was cured by February 1, 2018, without requiring Respondent to reestablish service to either meter, one can conclude that the alleged lack of electric service was not at issue. Ohio Edison asserts that neither it nor the Commission need to speculate as to what caused Mr. Enyart's flooding on January 31, 2018, and absent evidence to determine that a lack of electric service caused a pipe to freeze and burst, Mr. Enyart cannot prove inadequate service. (Ohio Edison Br. at 8.)

{¶ 42} Lastly, Mr. Enyart argues that Ohio Edison's reliance on the call center history records for Meter UB, which stated that the meter was turned on previously, is improper. Complainant notes that when Ohio Edison was notified of Mr. Enyart's loss of service at the Property, the company should have checked both meters when dispatched. Complainant states that the record maintains that only Meter UB was checked. Complainant concludes that even if the Commission accepts Ohio Edison's contention that Meter UB was never disconnected, there is no evidence that Meter UB served the pump house, or that Respondent checked the status of Meter U1. Mr. Enyart asserts that Ohio

Edison assumed Meter U1 was running, and Mr. Enyart argues that the actual conclusion may not be as clear. (Complainant Reply Br. at 5-6.)

{¶ 43} In reply, Ohio Edison argues that even if Mr. Enyart's claims were assumed to be true, they do not demonstrate inadequate service. Respondent asserts that even if the Commission took all of Mr. Enyart's claims at "face value," he at most experienced an isolated mistake, which was addressed the same day that Complainant raised his concerns with Ohio Edison. As such, Ohio Edison states that this does not constitute inadequate service. (Ohio Edison Br. at 9-10.)

2. ALLEGED UNREASONABLE SERVICE TRANSFER POLICY

{¶ 44} Mr. Enyart further argues that Ohio Edison failed to render adequate service such that the company's policy for service transfers is unreasonable. Complainant asserts that Respondent's policy to process requests for service termination or establishment the next business day is unnecessary when both the previous customer and new customer have notified Ohio Edison of a change of ownership. Complainant further explains that there is no reason to physically disconnect and then reconnect service in these situations, which Ohio Edison conceded to during the hearing (Tr. at 121). Mr. Enyart maintains that there is no legal requirement for Ohio Edison's next-day service transfer policy. Instead, Complainant submits that requests for service at a location already serviced by Ohio Edison are governed by its tariff, which simply states that a fee will apply if the customer requests service for the same day on which the request is made where service is not presently connected (Complainant Ex. 5, Sheet 4, 1st Revised Page 2 of 21). Mr. Enyart acknowledges that although the tariff does not say the company must honor every request for same-day connection, it appears that Ohio Edison contemplates same-day service at no charge where service is presently connected. For the case at hand, Complainant states that if Ohio Edison had transferred service the same day, which is authorized by the tariff, there would have been no need for conflicting field orders to disconnect and reconnect service. Complainant concludes that under Mr. Enyart's circumstances—where the Respondent had knowledge

that there were tenants in the building and service was requested during the middle of the winter – Ohio Edison’s policy is unreasonable. (Complainant Br. at 13-14.)

{¶ 45} In response, Ohio Edison asserts that its practices for transferring services are reasonable. Ohio Edison notes that Complainant is unable to cite to any Commission rule requiring electric utilities to transfer service the same business day on which a new service request is received; nor can he demonstrate that Ohio Edison’s transfer policies operate inconsistent to any law, Commission rule, or other standard. Ohio Edison contends that requiring it to make same-day connections for new service requests is impractical and unreasonable. Respondent submits that Complainant’s argument that Ohio Edison’s practice to “physically connect and reconnect service” is incorrect and there is nothing in the record to support this practice. Ohio Edison states that witness Davis’s testimony clarifies that the opposite is the case and that it is not necessary to physically disconnect and then reconnect service. (Ohio Edison Reply Br. at 9-10.)

3. ALLEGED OHIO ADM.CODE VIOLATIONS

{¶ 46} In addition, Complainant alleges that Ohio Edison violated Ohio Adm.Code 4901:1-10-14 and 4901:1-10-15. Complainant argues that Ohio Edison violated Ohio Adm.Code 4901:1-10-14 by requesting Mr. Enyart to pay a cash deposit to establish service. Complainant notes that under 4901:1-10-14(E)(1), the electric utility can only require a deposit for an applicant “who fails to establish creditworthiness to make a deposit.” Complainant contends that when a company demands a deposit, they must tell the customer why the deposit is required, what other options are available, and notify the customer of the right to appeal. Complainant states that the recording of Mr. Enyart’s call to Ohio Edison establishes that Respondent did none of these things. (Complainant Br. at 16.)

{¶ 47} In response, Ohio Edison asserts that the Commission should reject Complainant’s claim that Ohio Edison violated Ohio Adm.Code 4901:1-10-14. Respondent states that the Commission has previously determined that it would be improper to consider

additional allegations that are not raised in an original complaint during a post-hearing briefing. *Cleveland Elec. Illuminating Co. v. Med. Center Co.*, Case No. 95-458-EL-UNC, Entry on Rehearing (Oct. 5, 1995) at 4. Ohio Edison asserts that other authorities maintain this restriction and that, policy wise, it is inappropriate because Ohio Edison had no opportunity to engage in discovery, prepare witnesses, or conduct cross-examination regarding this claim. Ohio Edison recognizes that Complainant seeks to justify this delay in raising its claim because the security deposit policy was not disclosed until discovery. Ohio Edison refutes Complainant's argument and states that Complainant neither took nor attempted to take any discovery of its security deposit policy. Respondent also contends that Complainant misinterprets the rule by concluding that payment of a deposit is only used for a "last resort" for proving credit worthiness. Ohio Edison asserts that it may deem an applicant creditworthy if any of the four options listed in Ohio Adm.Code 4901:1-10-14(C) is satisfied, with no preference being given to any option. Respondent further submits that this case is an improper vehicle to address Ohio Edison's safety deposit policy because Complainant failed to create a proper record of what the policy actually is and because the allegation is unrelated to the issue of whether Ohio Edison's service was inadequate to Mr. Enyart. (Ohio Edison Reply Br. at 11-13.)

{¶ 48} As to Ohio Adm.Code 4901:1-10-15, Complainant argues that "system errors" are not among the listed reasons for when an electric utility may refuse or disconnect service to nonresidential customers. As such, Complainant acknowledges that the Ohio Edison meter worker may have intended to process the work orders correctly on January 29, 2018, but states this does not negate the point that Ohio Edison negligently disconnected Mr. Enyart's electricity. (Complainant Br. at 15.) Complainant concludes that regardless of whether these violations were alleged in the pleadings, the Commission has authority to address these issues. Complainant states that when confronted with evidence of a violation of its rules, the Commission cannot ignore the violation. (Complainant Br. at 16.)

{¶ 49} Ohio Edison responds that it never disconnected service to the Property and did not violate Ohio Adm.Code 4901:1-10-15. The Respondent claims that the Property had

service the entire time Complainant asserts power was disconnected, which was confirmed by testimony and documents that shows the allegedly disconnected meter registered usage between January 29, 2018, and February 1, 2018. Ohio Edison explained in its brief and in Ms. Davis's testimony that the initial finding that Meter UB was without service from January 29, 2018, to February 1, 2018, was mistaken. Ohio Edison first thought the service was not running to Meter UB between January 29 and February 1, 2018 due to a "system error" reported in the meter's work order records. However, Ohio Edison contends that, during her investigation of the case, Ms. Davis determined that this error did not affect service to the Property. Respondent explains that for operational purposes, the occurrence in which Complainant's move-in was entered before the prior customer's move-out into the Ohio Edison system created a "system error" and that it made no difference for electricity delivery. Ohio Edison notes that the meter readings on January 29, 2018, showed usage for Meter UB (87,242 kWh) and Meter U1 (Ohio Edison Ex. 4 and Ohio Edison Ex. 5). Respondent observes that three days later, on February 1, 2018, the meter worker who was dispatched to address Mr. Enyart's disconnection claim recorded a reading for Meter UB (87,491 kWh) and determined that it had been turned on previously and was not blocked (Ohio Edison Ex. 2). Respondent thus explains that, on the days Complainant claims no power was flowing to the pump house, the assigned Meter UB registered usage of 249 kWh (Ohio Edison Ex. 7). Respondent additionally states that the evidence supports a finding that Meter U1 had continuous service, noting that the records for Meter U1 are silent on the issue and that none of the Property's tenants complained of not having heat or electricity during the relevant period (Ohio Edison Ex. 3; Tr. 63). Ohio Edison further contends that Complainant has nothing to refute the above-mentioned record nor Ms. Davis's testimony to this matter since Mr. Enyart's contemporaneous support was hearsay statements from a handyman. (Ohio Edison Reply Br. at 3-5.)

D. Commission Conclusion

1. **INADEQUATE SERVICE AND UNREASONABLE POLICY ALLEGATIONS**

{¶ 50} Our review requires us to determine whether the Complainant has carried their burden of proving that Ohio Edison provided inadequate service with the account transfers and resulting transactions " * * * in light of the conditions and circumstances which were known or reasonably should have been known at the time the decision was made" by Ohio Edison. *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm. of Ohio*, 86 Ohio St.3d 53, 711 N.E.2d 670, 675 (1999). Considering the nature of this case, we will first set forth the pertinent facts reconciled from the record before making our conclusions.

{¶ 51} On January 25, 2018, the previous owner of the Property called Ohio Edison to communicate that they no longer wished to be the customer of record for that Property. The request generated a work order for Ohio Edison to physically disconnect the service for the Property. (Ohio Edison Ex. 1 at 4-5; Tr. at 134.) Mr. Enyart testified that he bought the Property on January 26, 2018 (Tr. at 57). Complainant explained that on the same day, he called Ohio Edison to transfer electric service to the Property under his name. Mr. Enyart was told by an Ohio Edison representative that service could not begin until the next business day, January 29, 2018, which he agreed would be acceptable (Tr. at 59; Ohio Edison Ex. 2a). On January 31, 2018, the Property's pump house, which was heated solely by one plug-in heater, flooded, and Mr. Enyart explained that his service contractor found that there was no electricity running to the pump house (Complainant Ex. 1 at 6; Tr. at 70). During the hearing, Mr. Enyart acknowledged that prior to his purchase of the Property, he did not personally inspect the pump house (Tr. at 58). On February 1, 2018, Mr. Enyart called Ohio Edison in response to the flooding and stated that his contractor indicated that the power was completely shut off to the pump house (Tr. at 51). However, Mr. Enyart did not personally observe that the plug-in heater did not have power and was unaware whether the heater needed to be manually turned back on after the flooding incident (Tr. at 71). During his call to the company, Mr. Enyart told Ohio Edison that the City of Norwalk shut off the water main at the street in response to the flooding and that he requested Ohio Edison to reconnect service to Meter UB, the meter in the pump house (Tr. at 43, 49).

{¶ 52} During the hearing, Company witness Davis clarified that in response to both the previous owner's and Mr. Enyart's inquiry regarding transfer of service, an Ohio Edison technician performed the in-person meter read according to Company standards (Tr. at 131). Here, the Commission understands from the record that a move-out request with Ohio Edison requires a meter technician to perform a final meter read for the final bill, and then when a new name takes over an account, a preliminary meter reading must be conducted, as well. Ms. Davis confirmed that on January 29, 2018, a final reading was performed for the previous owner's last billing statement. On the same day, the meter technician took a reading for the initial meter reading under Mr. Enyart's name for the account associated with his new Property. Furthermore, witness Davis clarified that when customers call to cancel service without another name on the account, Ohio Edison's system automatically generates a work order to disconnect the service (Tr. at 128). However, she explained that the "error in processing" message as logged was a result of the meter technician not completing the automatically populated work orders for the move-out and move-in requests in the "normal path" (Ohio Edison Ex. 6). In any event, Ms. Davis testified that at no time between January 26, 2018, and February 1, 2018, was the Property in question without power (Ohio Edison Ex. 1 at 6; Tr. at 141, 142). Furthermore, Ohio Edison provided the customer contact history notes for Meter UB and Meter UB reading results, which show that the meter registered usage of 249 kWh from the actual reading performed on January 29, 2018, through February 1, 2018, when a second actual reading was performed (Ohio Edison Ex. 2,4).

{¶ 53} We distill from the record the following. First, Ohio Edison's meter technician properly processed the last meter read for the previous owner's final statement and, on the same day, processed the preliminary meter reading for the account for Mr. Enyart. We note that ordinarily, in the event that there is a request to cancel service on an account without an alternative name, Ohio Edison disconnects the service from the meters (Tr. at 128). We infer that because Mr. Enyart's request to assume the preexisting account was in the queue, there was no need to physically disconnect service and then reconnect

service. We also note that the record demonstrates that Meter UB registered actual usage of 249 kWh from January 29, 2018 to February 1, 2018 (Ohio Edison Ex. 2, 4, 7).

{¶ 54} We acknowledge Complainant's argument that the record contains evidence in the record suggesting that Ohio Edison did disconnect Mr. Enyart's power, since Ohio Edison inadvertently processed the block after the unblocking of service from the Property. The sequence of those activities could be interpreted as causing a disconnection of service. Ohio Edison Exhibit 6 suggests that on January 25, 2018, at 1:15 p.m. a work order was created in response to the previous owner's call requesting a move-out. Then pursuant to that same work order, on January 29, 2018, at 9:52 a.m., the move-out request was implemented. Furthermore, Ohio Edison Exhibit 2 demonstrates that on January 26, 2018, a work order was created after Mr. Enyart called to reconnect service, and the workflow in the reconnect order states that the reconnect was completed in the field on January 29, 2018, at 9:50 a.m. As such, Complainant argues that these records show that the disconnect order was completed after the reconnect was made on January 29, 2018. Complainant contends that Respondent processed the disconnect and reconnect service in reverse order, which would have resulted in a disconnection. (Tr. at 129-30; Ohio Edison Ex. 6.) Complainant also raises that Ohio Edison Exhibit 3, the customer contact history for Meter U1, shows a notation of "installation changed" on January 31, 2018 (Ohio Edison Ex. 3). Further, Complainant alleges that Ohio Edison's change in position and amended answer in the pleadings demonstrates that Ohio Edison attempted to walk back admissions to "damage control" the situation (Ohio Edison Br. at 10). Mr. Enyart opines that witness Davis's testimony is contrary to what the evidence suggests in Ohio Edison Exhibits 2 and 6.

{¶ 55} We understand Complainant's point that Ms. Davis's testimony does not eliminate all ambiguity regarding the facts that support the Company's position that at no time did it disconnect power. For example, she conceded that Ohio Edison deviated from the normal order to reconnect the power to the Property. (Tr. at 131.) Further, we note that Ohio Edison did not do all that it might have done to explain the discrepancy in its account, as Ms. Davis admitted that she did not speak with the Claims Department to clarify how the

two conflicting orders were reconciled. However, we note that Meter UB—the meter Mr. Enyart alleges was disconnected—registered 249 kWh of usage between January 29, 2018, and February 1, 2018 (Ohio Edison. Ex. 2, 4, 7). We also find that Complainant’s argument demands speculation to conclude that Ms. Davis’s assessment of the situation undermined Ohio Edison’s case in chief. Ms. Davis testified to the fact that order notification can be delayed in its completion, since the work order is completed in the field and then the notification of the completion is routed to Ohio Edison’s offices for confirmation (Tr. at 132). As such, we find it compelling that the two work orders were essentially conducted at the same time.

{¶ 56} Additionally, we take notice of the letter addressed to Mr. Enyart from Mr. Lindlow on behalf of Ohio Edison. Mr. Lindlow’s letter indicated that Ohio Edison did not establish service and unblock/re-energize the meter at the Property until February 1, 2018, which is inconsistent with Ms. Davis’s testimony under oath and Ohio Edison’s submitted records which show that a meter technician performed the move-out request and transfer request on January 29, 2018. (Ohio Edison Ex. 6b.) The Commission notes, however, that Mr. Lindow’s letter contains information that is not otherwise supported by the record, and it predates Respondent’s amended answer, which indicated that Ohio Edison had conducted further investigation and had revised its ultimate conclusions as to what had occurred with regard to the events at issue.

{¶ 57} While considering Mr. Enyart’s allegations of inadequate service, the Commission also underscores its precedent involving alleged power surge and outage events. In *Santos v. The Dayton Power and Light Co.*, Case No. 03-1965-EL-CSS, Opinion and Order (Mar. 2, 2005), the Commission outlines four criteria used to discern whether a utility is liable for property damage due to an alleged power outage/surge.² While not completely

² The criteria used by the Commission in such cases include whether the 1) cause of the surge or outage was in the company’s control; 2) company failed to comply with any statutes or regulations regarding the

analogous to the situation at hand, we note that the Commission's first determination in those types of cases is necessarily whether there is evidence that the power surge or outage event even occurred, thus, resulting in a loss of power. See *Patricia Raymond v. Ohio Edison Co.*, Case No. 21-787-EL-CSS, Opinion and Order (Jan. 11, 2023); *Mark Barta v. Ohio Power Co.*, Case No. 20-1466-EL-CSS, Opinion and Order (May 4, 2022); *Ed Luu v. Ohio Power Co. d/b/a AEP Ohio*, Case No. 20-1407-EL-CSS, Opinion and Order (Feb. 9, 2022); *Edward L., Galewood v. Ohio Edison Co.*, Case No. 20-1606-EL-CSS, Opinion and Order (May 18, 2022); *Double K. Kirby Farms v. Ohio Edison Co.*, Case No. 18-691-EL-CSS, Opinion and Order (Aug. 24, 2022); *Roger Lesh v. the Cleveland Elec. Illum. Co.*, Case No. 18-1519-EL-CSS, Opinion and Order (Jan. 26, 2022); *Matt and Allison Kubitz v. Ohio Edison Co.*, Case No. 17-1435-EL-CSS, Opinion and Order (May 6, 2020). In this case, we similarly find it necessary to determine whether power was actually disconnected and, based on the record evidence, we do not believe that Mr. Enyart has sufficiently proven this essential fact. Contrarily, we note that the record evidence presented at hearing, as well as the lack of some crucial details, bolsters this finding. Most importantly, we find Ohio Edison's expert witness Davis's testimony persuasive in rebutting the theory that Ohio Edison disconnected Mr. Enyart's meter in question. Ms. Davis indicated that Respondent may have accidentally reversed work orders to populate the resulting work orders but that power never stopped flowing to Mr. Enyart's property from January 26 to February 1, 2018 (Tr. at 141, 142; Ohio Edison Ex. 1 at 6). The Commission also recognizes that Mr. Enyart testified that his contractor determined that electricity was not flowing to the pump house, but Mr. Enyart conceded that he was unaware how his contractor reached this conclusion (Tr. at 67). Further, according to Complainant, the pump house was heated by a single plug-in heater at the time he purchased the Property, which Mr. Enyart could not verify was even turned on or plugged in since he did not inspect the Property before the flooding (Tr. at 57, 67, 70). Relatedly, the Commission observes that the incident occurred during late January in northern Ohio. We

operation of its system that could have caused the problem; 3) company's actions amounted to unreasonable service; and 4) company corrected the problem responsibly.

note that it is possible that the winter weather conditions could have frozen the pipes, resulting in the pump house flood, since the pump house was heated by a single plug-in heater. However, the likelihood of such a scenario remains unclear since neither party produced information related to the temperatures outside or inside the pump house at the time of the incident. Accordingly, we find that Mr. Enyart has failed to establish by a preponderance of the evidence that service was disconnected, resulting in the flooding incident.

{¶ 58} Furthermore, in determining the adequacy of Ohio Edison's service in this case, we give significant weight to the testimony by witness Davis and Ohio Edison's work logs which demonstrate that Company's personnel adequately handled the previous owner's move-out request and the addition of a new account holder. We note that the record suggests that there is ambiguity regarding the timing of the meter technician's processing of both the move-out and new account request on January 29, 2018, and Ohio Edison's automatic processing system that created the work orders for the Property. We note that on January 25, 2018, the previous owner of the Property called Ohio Edison to request a move-out (Tr. at 134; Ohio Ex. 1 at 5). On the following day, Mr. Enyart called Ohio Edison to establish himself as the new account holder (Tr. at 32, 59; Complainant Ex. 2a). In other words, at the time the previous owner called Ohio Edison regarding their move-out request, Mr. Enyart had not yet called to request his service. Consequently, as Ms. Davis testified, the Ohio Edison automatic processing system generated a disconnect order when the move-out request was made, without an additional name or landlord associated with the account (Tr. at 135). Therefore, we find that on January 25, 2018, the previous owner of the Property called Ohio Edison to request a move-out (Tr. at 134; Ohio Ex. 1 at 5). And on the following day, Mr. Enyart called Ohio Edison to establish himself as the new account holder (Tr. at 32, 59; Complainant Ex. 2a).

{¶ 59} We recognize Ohio Edison's authority pursuant to its tariff to implement policies, including the permissible business practice to add a new name on an account on the next business day (Tr. at 120). Moreover, as previously discussed, the Commission

cannot determine that a preponderance of the evidence shows that Ohio Edison de-energized the meters to the Property after the technician performed their actual meter read to close out the previous owner's account and to start Mr. Enyart's account over the Property. Ms. Davis testified multiple times that, according to her review and knowledge of the situation, service was never disconnected from Mr. Enyart's Property between January 26, 2018, through February 1, 2018 (Ohio Edison Ex. 1 at 4; Tr. at 141-142).

{¶ 60} We can discern from the record that Ohio Edison conformed with its normal course of business by performing in-person meter readings regarding move-out requests and adding new account holders. As determined above, it is not clear whether Ohio Edison disconnected the meter to the pump house. As such, we find that Complainant did not meet his burden of proof to demonstrate inadequate service because there is no documentation or other evidence that demonstrates Ohio Edison, more likely than not, disconnected Mr. Enyart's power. Even so, regardless of whether Ohio Edison made an error and reverse the order of the reconnect, we cannot determine that one error comprises inadequate service.

{¶ 61} As Complainant raised, "[i]nadequate service' is not defined in R.C. Title 49, that determination being left to the commission and dependent upon the facts of each case." *Miami Wabash Paper LLC v. The Cincinnati Gas & Elec. Co.*, Case No. 02-2162-EL-CSS, et al., Opinion and Order (Sept. 23, 2003) at 6, quoting *Ohio Bell Telephone Co. v. Pub. Utilities Comm. of Ohio*, 14 Ohio St.3d 49, 50, 471 N.E.2d 475 (1984). Under the facts of this case, we find Ohio Edison's disconnect and transfer policies adequate. As Ms. Davis testified, when a previous owner requests a move-out, it is not always that Ohio Edison processes a disconnect order. Rather, when there is no alternative name on the account after the move-out request is made, then Ohio Edison will issue a disconnect notification. We note that in Ohio Edison's work orders, it appears that a meter technician processed both the move-out request reading and preliminary reading to transfer the account to Mr. Enyart. As such, witness Davis made it clear that it is not necessary to physically disconnect and then reconnect existing service in order to transfer it from an old customer to a new one. We are

not persuaded by Complainant's arguments that Ohio Edison's business practices, as described by Ms. Davis, are unreasonable.

{¶ 62} Furthermore, as stated in Ohio Edison's tariff, Respondent is permitted to perform same day connections, but we agree with Ohio Edison that such connections should not be required. This kind of restriction could lead to unfavorable results, including customer and billing complications. However, we note that as the facts present themselves in this case, it appears that on January 29, 2018, the move-out request and account name transfer were completed. Regardless, we recognize that Ohio Edison's tariff in no way restricts Ohio Edison from performing same-day connections, as the tariff includes provisions addressing Same Day Connection (Complainant Ex. 5; Tr. at 119).

{¶ 63} Provided the evidence in this case, it has not been proven that Ohio Edison violated its tariffs, the Commission's administrative rules, or any applicable state or federal law. As such, we do not find that Ohio Edison's service was inadequate or unreasonable.

2. ALLEGED CODE VIOLATIONS

{¶ 64} Complainant also alleges that Ohio Edison violated specific Commission rules under the Ohio Administrative Code. Mr. Enyart alleges that Ohio Edison violated Ohio Adm.Code 4901-1-10-15, which provides: "Each electric utility may refuse or disconnect service to nonresidential customers for only the following reasons." Mr. Enyart states that "system errors" are not among the listed reasons. Complainant argues that one may presume that the meter worker who visited the Property on January 29, 2018, processed a disconnect and reconnect in the wrong order, thereby rendering inadequate service by disconnecting service due to an alleged system error. As we summarized above, Ohio Edison admits that the meter worker processed the disconnect and reconnect orders in reverse on January 29, 2018, but it was confirmed both in Ohio Edison witness Davis's live and prefiled testimony that power never stopped flowing to the Property despite the order reversal (Tr. at 142; Ohio Edison Ex. 1 at 6). As determined above, Complainant failed to meet his evidentiary burden to demonstrate his theory was the true sequence of events.

While it is evident that an “error in processing” did occur, it must be proven that the system error caused there to be no electricity running to the meters. The evidence does not persuasively demonstrate this occurred. Without a determination that service was actually de-energized/disconnected, there can be no finding that Ohio Edison violated Ohio Adm.Code 4901:1-10-15.

{¶ 65} Next, Mr. Enyart alleges that Ohio Edison violated Ohio Adm.Code 4901-10-14 because Respondent’s call records show a violation of Commission rules and regulations concerning cash security deposits. Ohio Adm.Code 4901:1-10-14(E)(1) states that “An electric utility may require an applicant who fails to establish creditworthiness to make a deposit.” In brief, Complainant claims that the payment of a deposit is only a last resort measure to prove creditworthiness. Complainant argues that when a deposit is required from a new customer, the utility must tell the customer why the deposit is required, other available options, and the customer’s right to appeal the decision to require a cash deposit. Mr. Enyart claims that the audio recording of his call on January 26, 2018, plainly reveals that Ohio Edison did not tell him any of those three requirements (Ohio Edison Ex. 2a).

{¶ 66} The Commission agrees with Ohio Edison that the alleged violation of Ohio Adm.Code 4901-10-14 was not sufficiently raised until Complainant’s initial post-hearing brief. In past proceedings we have disregarded claims that have been raised in briefs for the first time in complaint cases. *See In re Complaint of Pat Nussle v. Ohio Power Company d/b/a AEP Ohio*, Case No 14-1659-EL-CSS, Opinion and Order (Jan. 15, 2020) at ¶ 51 (emphasizing that raising issues after the hearing in brief was prejudicial to the public utility, as the utility had no opportunity during the hearing to address the issues); *In re Complaint of Buckeye Fresh, LLC v. FirstEnergy Corp.*, Case No. 20-1607-EL-CSS, Opinion and Order (July 12, 2023) at ¶ 31. For the case at bar, the Commission is persuaded that the alleged violation of Ohio Adm.Code 4901-10-14 concerning security deposits was improperly raised for the first time in Complainant’s initial brief; as such, we are not required to address it.

{¶ 67} Notwithstanding that error, the Commission finds that the evidence does not support Mr. Enyart's complaint on this point. The recording presented by Mr. Enyart reveals that the Ohio Edison employee, Eva, informed Complainant that "in order to process your application for electric service, your credit rating will be part of the process" and asked for permission to continue (Tr. at 23, Complainant Ex. 2a). The recording further reveals that, after verifying Complainant's social security number, Eva informed him that "they are requesting a security deposit" (Tr. at 23, Complainant Ex. 2a). Mr. Enyart questioned then why he had to provide a deposit and stated that he had good credit (Tr. at 23-24; Complainant Ex. 2a). In response, the Ohio Edison employee stated, "it's not always about - it's not with, it's the credit history with our company" (Tr. at 24; Ohio Edison Ex. 2a). The recording also demonstrates that Ohio Edison directed Mr. Enyart's attention to online resources containing further information (Tr. at 27; Complainant Ex. 2a). We find that Mr. Enyart had every opportunity during this exchange to ask for further clarification, but instead he chose not to, and consented to two deposits correlating with the two accounts he was assuming (Tr. at 24, 30). Additionally, Respondent correctly notes that Ohio Edison's security deposit practices are nowhere in the record for the Commission to properly discern whether such practices are in violation of Ohio Adm.Code 4901-10-14. Given the record before us, the Commission cannot find that Ohio Edison violated Ohio Adm.Code 4901:1-10-14 in requiring a security deposit.

{¶ 68} In the absence of evidence showing that Ohio Edison failed to comply with statutory requirements as well as its tariff, the Commission's rules, regulations, and order, the Commission cannot render a finding that Ohio Edison provided inadequate service to Mr. Enyart.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 69} Ohio Edison is a public utility as defined in R.C. 4905.02 and 4905.03 and, as such, is subject to the jurisdiction of the Commission.

{¶ 70} On November 11, 2018, Mr. Enyart filed a complaint against Ohio Edison.

{¶ 71} On December 12, 2018, Ohio Edison filed its answer to the complaint, in which it affirmed and denied Complainant's allegations.

{¶ 72} On June 19, 2019, Ohio Edison filed a partial motion to dismiss.

{¶ 73} On May 20, 2020, Ohio Edison filed an amended answer which corrected its answer, clarifying the record.

{¶ 74} A settlement conference was held by telephone on April 2, 2019. The parties were unable to resolve the matter at that time.

{¶ 75} By Entry dated April 5, 2019, the attorney examiner issued a procedural schedule establishing a deadline for filing testimony and a hearing date.

{¶ 76} On October 29, 2019, Complainant filed a notice of voluntary dismissal of his request for damages.

{¶ 77} On May 20, 2020, Ohio Edison filed an unopposed motion for leave to file an amended answer along with the proposed pleading. On May 21, 2020, the attorney examiner granted the motion and accepted the amended answer as of its filing date.

{¶ 78} On June 24, 2020, the attorney examiner issued an Entry denying as moot Respondent's June 19, 2019 partial motion to dismiss.

{¶ 79} Although originally scheduled for August 20, 2019, the evidentiary hearing was continued through numerous Entries, either in response to a motion for continuance or due to the intervening COVID-19 pandemic and related health emergency. Ultimately, the evidentiary hearing was held on April 27, 2021, via Webex.

{¶ 80} The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 81} Complainant failed to meet his burden of proof to demonstrate that Ohio Edison's actions in this matter were unjust, unreasonable, or in violation of law or Commission rules.

V. ORDER

{¶ 82} It is, therefore,

{¶ 83} ORDERED, That this matter be decided in favor of Ohio Edison for failure of Complainant to sustain his burden of proof. It is, further,

{¶ 84} ORDERED, That the complaint thus be denied and dismissed as a matter of record. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
John D. Williams

PAS/IMM/dmh

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Case No(s). 18-1734-EL-CSS

Summary: Opinion & Order that the Commission finds that the complaint should be dismissed for failure of the complainant to demonstrate that Ohio Edison Company engaged in any unlawful, inadequate, or unreasonable practices or otherwise violated any Commission rule electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.