

FILE

RECEIVED-DOCKETING DIV
2006 NOV 17 PM 4:14
PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

JAMES R. LOCKER,)
)
Complainant,)
)
v.)
)
OHIO EDISON COMPANY,)
)
Respondent.)

Case No. 05-1469-EL-CSS

RESPONDENT OHIO EDISON COMPANY'S POST-HEARING BRIEF

David A. Kutik
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: 216-586-3939
Facsimile: 216-579-0212

Mark A. Whitt (Trial Counsel)
JONES DAY
Mailing Address:
P.O. Box 165017
Columbus, OH 43216-5017
Street Address:
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-2673
Telephone: (614) 469-3939
Facsimile: (614) 461-4198

Arthur E. Korkosz
Senior Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5849
Facsimile: (330) 384-3875
ATTORNEYS FOR RESPONDENT


This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician  Date Processed 11-20-06

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF FACTS	5
III. ARGUMENT	9
A. Ohio Edison Terminated Service At 1212 Lagonda At Mr. Locker's Request And Is Not Seeking To Collect Any Arrearage For Service At This Property.....	10
B. Mr. Locker Has Failed To Meet His Burden Of Showing That He Attempted To Terminate Service At Any John Street Account	11
C. Mr. Locker Has Failed To Meet His Burden Of Showing That He Attempted To Terminate Service At Any Oaklawn Avenue Account	13
D. Ohio Edison Did Not Violate Any Commission Regulations By Disconnecting Service At Western Avenue For Non-Payment, Or Transferring Balances To That Account.....	14
IV. CONCLUSION.....	15

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

JAMES R. LOCKER,)	
)	
Complainant,)	
)	
v.)	Case No. 05-1469-EL-CSS
)	
OHIO EDISON COMPANY,)	
)	
Respondent.)	

RESPONDENT OHIO EDISON COMPANY'S POST-HEARING BRIEF

Pursuant to the schedule issued by the Attorney Examiner, Respondent Ohio Edison Company ("Ohio Edison" or "Company") submits this post-hearing brief.

I. INTRODUCTION

This case arises from Complainant James R. Locker's admitted failure to pay for electric service that he asked to be put in his name at various rental properties he used to own. These properties are located at John Street, Oaklawn Avenue, Maiden Lane and Lagonda Avenue in the Springfield, Ohio area. The total outstanding arrearage for service to these properties (and there is no dispute that service was in fact rendered to these properties) is \$3,431.41.

Mr. Locker claims he owes the Company nothing because he sold these properties or let them go into foreclosure, called Ohio Edison multiple times to terminate service, but that the Company refused to act on his requests. The reason Ohio Edison refused to terminate service, he says, is because there is a Company-wide conspiracy to harass and defraud him. He also claims fraud and discrimination by the Company in not immediately terminating service when he stopped paying his electric bills.

The record in this case shows that contrary to “discriminating” against or “defrauding” Mr. Locker, Ohio Edison displayed substantial patience with this customer. At Mr. Locker’s request, Ohio Edison agreed to a “landlord reversion” agreement which provided that when a tenant moved out of a rental property, electric service would continue, but responsibility for payment would be transferred from the tenant to Mr. Locker until a new tenant leased the property. Mr. Locker wanted this arrangement in order to avoid freezing pipes and other problems that can occur when a unit is vacant. Mr. Locker testified that he began having trouble renting units after 9/11. As a result, the electric accounts for many of his rental units were transferred to Mr. Locker’s name. Mr. Locker freely admits that during the period when he had difficulty renting units, he didn’t pay his electric bills for these units on time, if at all. In fact, he says that his refusal to pay at least one of the accounts was intentional just to “see whether Ohio Edison would turn the service off.” (Tr. at 50.) He eventually paid the bill because he wanted to continue service. (*Id.*; *see also* Compl. Br., p. 18.)

Ohio Edison lived up to its end of the landlord reversion agreement, but Mr. Locker did not. Ohio Edison provided continuous service to Mr. Locker’s rental properties, just as he had requested, and even though he was behind on his electric bills. Mr. Locker refuses to pay for that service because he says he called the Company numerous times to terminate service but the Company refused to do so. Mr. Locker admits that he has no documentation of even one such telephone call. At hearing he failed to provide any testimony about the date of any call, who he talked to, which property he was calling about, or what was said during the call.

The reason Mr. Locker has presented no evidence to document alleged telephone calls to Ohio Edison requesting termination of service at various properties is because he never made them. Ohio Edison documents every contact with customers, be it by telephone, correspondence

or through direct contact at a service center. The Company's records only show telephone calls from Mr. Locker requesting termination of service for an account at Lagonda Avenue, which Ohio Edison terminated as requested. The Lagonda Avenue account is not at issue in this case. The Company has no records of any other contacts from Mr. Locker for any other account.

When confronted with the lack of evidence to support his claim that Ohio Edison ignored his requests to terminate service, Mr. Locker responds that an unidentified rogue employee at Ohio Edison – someone connected to a tenant that Mr. Locker might have evicted, he speculates – hacked the Company's computer system and altered Mr. Locker's account files to erase evidence of repeated attempts to cancel service. (*See Compl. Br.*, pp. 11-12, 21-23.) Ohio Edison presented evidence that its customer account files cannot be altered once a contact is entered.

The only "evidence" produced at hearing regarding attempts by Mr. Locker to contact Ohio Edison consists of two letters, one regarding accounts at Oaklawn Avenue (which are not mentioned in the Complaint), the other regarding accounts at John Street. Curiously, despite the lengthy recitation of grievances against Ohio Edison alleged in the Complaint, neither letter is ever mentioned. The Company has no record of receiving them, despite numerous procedures in place to document receipt of this type of correspondence.¹

Although not specifically mentioned in the Complaint, Mr. Locker also claims in his brief that Ohio Edison violated Commission rules by terminating service to his office on N. Western Avenue. He does not dispute that his N. Western Avenue account was (and still is) in arrears, nor does he point to any procedural deficiency in the disconnection process. Ohio Edison did

¹ As for the John Street letter, it is dated more than four months *after* the accounts at those properties were final billed and sent to collections. And the Oaklawn letter is addressed to "Ohio Edison" but with no street address. The record, obviously, permits the inference either that the letters were lost or are fabrications.

nothing wrong in terminating service for nonpayment. And, when Mr. Locker finally paid the undisputed portion of the bill on the N. Western Avenue account, Ohio Edison turned the service back on.

Mr. Locker simply has failed to produce any evidence to show that Ohio Edison is “guilty” of “fraud” or “discrimination” or otherwise violated any statute, regulation, order or tariff provision. There is no credible evidence that Mr. Locker took appropriate steps to terminate service at his properties. To the contrary, Ohio Edison’s records demonstrate conclusively that he never did so. What the record *does* show is that Mr. Locker simply quit paying his electric bills after he allegedly sold the properties or allowed them to be foreclosed, without telling Ohio Edison that service should be terminated or transferred to someone else. Notably, Mr. Locker provided no evidence that he actually sold any of these rental properties, such as copies of transfer documents or testimony about who he sold the properties to and when. But even if he did in fact sell the properties, simply failing to pay an electric bill is not a proper or responsible way to cancel service.

Though substantial, the amount of the outstanding arrearage that Mr. Locker owes to Ohio Edison is irrelevant to this case. Mr. Locker previously filed a lawsuit against Ohio Edison in the Clark County Court of Common Pleas challenging, *inter alia*, Ohio Edison’s efforts to collect the arrearage. The court not only dismissed his claims with prejudice, but also imposed against Mr. Locker over \$9,000 in litigation sanctions. Thus, while the record in this case clearly demonstrates that Mr. Locker owes the arrearages, this is not an issue that the Commission needs to concern itself with. Mr. Locker’s challenge of the outstanding arrearages has already been determined by a court of competent jurisdiction.

For these reasons, explained at greater length below, the Complaint should be dismissed.

II. STATEMENT OF FACTS

Mr. Locker started buying rental properties in Ohio Edison's service territory beginning around 1990. (Tr. at 39.) By 1994 he acquired approximately 70 units. (*Id.*) These properties include a complex of five buildings with 56 units on John Street in Springfield, Ohio, a building with 8 units on Oaklawn Avenue in Springfield, and a single-family rental home on Lagonda Avenue, also in Springfield. (*Id.* at 40.) Mr. Locker also receives service from Ohio Edison at his office on Western Avenue. In addition, Mr. Locker also owned rental property in Dayton Power & Light's service territory. (*Id.*)

At Mr. Locker's request, all of his rental properties were subject to a "landlord revert agreement." (Tr. at 41.) Under this agreement, electric service is maintained in the tenant's name. When a tenant moves out, service is continued, but a new account is created in Mr. Locker's name. When a new tenant arrives, an account is created for the new tenant. (*Id.*) Mr. Locker requested this arrangement so that he could maintain continuous service at his rental properties and avoid freezing pipes and similar problems with unoccupied units. (*Id.* at 42.)

Mr. Locker's rental business went along fine from 1990 to 2001. (Tr. at 42.) He described his dealings with Ohio Edison during this time period as "perfectly routine." (*Id.* at 10.) But "then 9/11 happened." (*Id.* at 42.) Following 9/11, Mr. Locker had difficulty renting units. (*Id.* at 43) His rental business began to suffer. (*Id.*) He started having difficulty keeping up with his rental properties financially, forcing him to try to sell some of his properties. (*Id.*) Over the next three and a half years he sold "about three quarters" of his properties. (*Id.*) He "walked away" from the remaining properties, letting them go into foreclosure. (*Id.* at 43-44.) Mr. Locker also had personal problems during this time period and, as well, had no secretary to help manage his properties. (*Id.* at 44.) Because of these problems, "I will confess that my records for the period of 2003 and 2004 are somewhat in disarray." (*Id.* at 16.)

As explained above, under the landlord reversion agreement, service to the vacant units was placed in Mr. Locker's name while he tried to sell the properties or find new tenants. During this time, Mr. Locker's practice was to round up all of the Ohio Edison bills in his name and write one check for all of them. (Tr. at 40.) Sometimes the payment would include charges for his personal accounts; sometimes they would not. (*Id.* at 40-41.) Ohio Edison Exhibit 7 is a list of all payments made by Mr. Locker to Ohio Edison from January 2002 to October 2004. (Tr. at 45; OE Ex. 7.) He made no payments to Ohio Edison in October 2002, and in 2003, he made no payments for the months of January, March, April, May, July, September or November. (*Id.* at 45-46.) His payment record in 2004 was even worse. He made no payments in January, February, March, May, July, August or September in that year. (*Id.* at 46.)

Mr. Locker does not dispute that he received service at his rental properties throughout the time period involved in this case. Rather, he alleges that he called Ohio Edison several times to cancel service at various properties. He has no record of telephone calls to Ohio Edison. (Tr. at 46.) He also claims to have sent letters requesting termination of service at his properties on John Street and Oaklawn Avenue (*See* Compl. Exs. 2, 3.) These two letters are the only occasions where Mr. Locker claims to have written to Ohio Edison to request termination of service. (Tr. at 50.)

Mr. Locker's spotty payment history in 2003 and 2004 coincided with a lawsuit he filed against Ohio Edison in Clark County Common Pleas Court. (OE Ex. 10.) The lawsuit, filed in April 2003, alleges "identical issues" to those alleged in the Commission Complaint. (Tr. at 51.) In the common pleas action, Mr. Locker alleged that because of his prior complaints against Ohio Edison at this Commission, "he has been singled out by [Ohio Edison] for unusual

retaliatory action.” (OE Ex. 10, para. 5.)² These “retaliatory actions,” according to the Clark County Complaint, included turning off service to Mr. Locker’s business, charging meter tampering fees, failing to credit payments to various accounts, and failing to terminate service at rental properties when requested. (OE Ex. 10, para 5-8.) The Clark County action was dismissed in December 2004 after the Court determined that Mr. Locker willfully failed to respond to discovery and ignored court-imposed deadlines. The Court imposed Rule 11 sanctions against Mr. Locker of over \$9,000. (OE. Ex. 11.)

Mr. Locker filed the Complaint in the present action in December 2005. He suggests that if he had gone forward with his Clark County lawsuit, “it wouldn’t have been necessary” to file a Complaint with the Commission. (Tr. at 53.) The Commission Complaint alleges “roughly a dozen examples” since 2000 where Ohio Edison allegedly refused to terminate service despite numerous verbal and written requests by Mr. Locker. (Complaint, p.1, first paragraph.) The only “examples” specifically mentioned in the Complaint, however, pertain to accounts at 1212 Lagonda Avenue and 1110 E. John St., # 48. (*Id.*) Mr. Locker admitted at hearing that he hasn’t researched any of the other “examples” alluded to in the Complaint. (Tr. at 38-39.) He asks the Commission to order Ohio Edison to “abandon any claims to accounts at 1110-1138 E. John St., Springfield OH that have balances in my name after 15 November 2003 (date of sale)” and also to cease all collection or credit reporting activities. (Complaint, last paragraph.) In his brief, he also asks the Commission to refer Ohio Edison to the appropriate authorities for criminal prosecution. (Compl. Br., p. 23.)

² In Case No. 99-977-EL-CSS, Mr. Locker sued Ohio Edison under the theory that he should have only been charged one meter tampering fee for stealing service, instead of three fees for three separate meters at rental property on Maiden Lane. The Commission dismissed his complaint after a hearing.

Mr. Brad Bell, Manager of Revenue Operations, testified on behalf of Ohio Edison. Mr. Bell testified about the types of records Ohio Edison maintains for all customer accounts. (Tr. at 61.) Mr. Bell reviewed these records and compiled a list of all overdue accounts in the name of "James R. Locker" and his company, "LJ Properties." (Tr. at 61-63, OE Ex. 1.) As shown on Ohio Edison Exhibit 1, the total overdue balance on these accounts is \$3,431.41. No part of this balance reflects any service incurred by a tenant and subsequently transferred to one of Mr. Locker's accounts. (Tr. at 64.) Mr. Locker admitted at hearing that he has not calculated any specific amount that he claims the Company is trying to collect improperly. (*Id.* at 53.)

Business Analyst Carlos Vidal also testified on behalf of Ohio Edison. Mr. Vidal investigated all of Mr. Locker's accounts to determine whether Mr. Locker had ever requested the Company to terminate service. (Tr. at 91-92.) He explained Ohio Edison's systems and processes for documenting customer contacts, whether by telephone, correspondence or at a walk-in office. (*Id.* at 93-96.) Documentation of customer contacts is largely an automated process, and the records of these contacts cannot be altered once entered into the Company's system. (*Id.* at 94, 107.) Mr. Vidal sponsored Ohio Edison Exhibit 2, which shows two contacts from Mr. Locker regarding 1212 Lagonda. (Tr. at 97.) The entry in Exhibit 2 for a contact in November 2002 shows that Mr. Locker called Ohio Edison for something, but then hung up when he received another call. (OE Ex. 2.) Mr. Locker called again in July 2004, stating that the property had been sold two years ago and that service should be cancelled. (Tr. at 97-98.) Ohio Edison cancelled service. (Tr. at 97-98.) Because the customer service agent inadvertently neglected to remove the landlord reversion agreement, however, a new account was opened in Mr. Locker's name. (Tr. at 98.) When Mr. Locker called about the account again in November 2004, Ohio Edison terminated the account and removed the landlord reversion agreement. (OE

Ex. 3, Tr. at 98-99.) Ohio Edison Exhibit 1 shows that the Company is not seeking to collect any balance for the Lagonda Avenue account.

Mr. Vidal also found a record of contact between Ohio Edison and Mr. Locker in February 2003 regarding 1110 East John Street. (Tr. at 101, OE Ex. 4.) This call was not by Mr. Locker requesting a termination of service. Instead, the call was by Ohio Edison to Mr. Locker, in an attempt to collect an overdue bill for the John Street property. (OE Ex. 4.) When Mr. Locker told the collection agent that he wanted to cancel service at this property, Mr. Locker refused to take the number and hung up. (*Id.*) Mr. Vidal found no other evidence of contacts between Ohio Edison and Mr. Locker regarding any of his accounts. (Tr. at 103.)

III. ARGUMENT

As the Complainant in this matter, Mr. Locker bears the burden of proving his allegations. *Grossman v. Public Util. Comm'n.* (1966), 5 Ohio St. 2d 189; *Locker v. Ohio Edison Co.*, No. 99-977-EL-CSS (Order of Apr. 27, 2000). He has failed to meet that burden.

A threshold problem in this case is figuring out exactly what it is that Mr. Locker is complaining about. In his Complaint, Mr. Locker claims there are a “dozen examples” of instances where Ohio Edison allegedly refused to terminate service despite repeated requests. (Tr. at 37.) But the only examples mentioned in the Complaint pertain to accounts at Lagonda Avenue and John Street. Mr. Locker admits that he has never “fully investigated” the other examples. (Tr. at 38-39.) At hearing, however, he also testified about accounts at Oaklawn Avenue. (*E.g.*, Tr. at 33.) Ohio Edison will therefore address Mr. Locker’s claims with respect to all accounts at Lagonda, John Street and Oaklawn. Ohio Edison will also address Mr. Locker’s claim that the Company violated the Commission’s disconnection rules in terminating service at his office on N. Western Avenue.

In his brief, Mr. Locker argues that Ohio Edison violated R.C. 1302.04(A), R.C. 1335.05 and R.C. 1345.02. (Compl. Br., pp. 3-5.) The allegations of violations of these statutes are not contained in the original Complaint, and the Attorney Examiner granted Ohio Edison's motion to strike an amended complaint that attempted to interject these statutes into the case. (Tr. at 7-8.) Moreover, the Commission lacks jurisdiction to hear claims of violations of these statutes. Accordingly, there is no need to respond to Mr. Locker's claims that allege violations of these statutes.

A. Ohio Edison Terminated Service At 1212 Lagonda At Mr. Locker's Request And Is Not Seeking To Collect Any Arrearage For Service At This Property.

There are no outstanding issues for the Commission to resolve regarding the account at 1212 Lagonda. As explained at hearing, Ohio Edison received a telephone call from Mr. Locker in July 2004 stating that he sold the property and that the account should be cancelled.³ Because the customer service agent inadvertently neglected to remove the landlord reversion agreement, however, a new account was created in Mr. Locker's name. (Tr. at 73-74.) Mr. Locker called Ohio Edison in November 2004 to again request cancellation of service. (*Id.* at 98-99; OE Ex. 2.) Ohio Edison did so, this time canceling the landlord revert agreement. (Tr. at 98-99.) Between July and November 2004, the charges to the Lagonda account totaled \$17.62. Mr. Vidal confirmed at hearing that this amount has been withdrawn from collection and that Ohio Edison is not seeking to recover it from Mr. Locker. (*Id.* at 100.)

Contrary to Mr. Locker's claims, based on the undisputed record, there is no violation of Rule 4901:1-10-21, O.A.C., which requires Ohio Edison to investigate customer complaints. (Compl. Brief, p. 5.) Ohio Edison investigated the complaint about the Lagonda Avenue account

³ When asked by the Attorney Examiner whether he had documentation of the sale of this property, Mr. Locker responded, "I didn't bring it." (Tr. at 15.)

and resolved it. There also is no violation of 4901:1-10-15, O.A.C. This rule establishes standards to be observed in *establishing* service; it has nothing to do with *termination* of service, as alleged by Mr. Locker. (See Compl. Br., p. 4.) Thus, based on the undisputed record, Mr. Locker has failed to present evidence to show a violation of any provision of Ohio Revised Code Title 49, Commission rule or tariff provision regarding the account for 1212 Lagonda.

B. Mr. Locker Has Failed To Meet His Burden Of Showing That He Attempted To Terminate Service At Any John Street Account.

Mr. Locker alleges that he called Ohio Edison in November 2002 to terminate service at 1112 East John Street; (Tr. at 19); that the Ohio Edison representative told him that the Company would have to give 10 days notice to the tenant (Tr. at 19);⁴ and that he responded, “[F]ine. Turn it off.” (*Id.*) Service, however, was not terminated after 10 days. (*Id.* at 20.) Mr. Locker claims that he called “a couple of times” about the account but that it was not terminated until the apartment was re-rented in July 2003. (Tr. at 21.)

As before, Ohio Edison has no record of receiving “a couple” of calls from Mr. Locker regarding 1112 East John Street, or any other units on John Street. Mr. Vidal testified that Ohio Edison’s routinely logs customer contacts in the “business partner” database. (Tr. at 93.) The database maintains a record of all customer contacts, whether by telephone, mail or walk-in at a customer service center. (*Id.* at 94-96.) Mr. Vidal researched all contacts under the name of Mr. Locker or LJ Properties. (*Id.* at 92.) He did not find records of any contacts by Mr. Locker for any account on John Street. (*Id.* at 101-102.) He was, however, able to locate a record of a collection call made by Ohio Edison to Mr. Locker regarding an account at 1110 East John St. (OE Ex. 4.) The summary of this call, which occurred on February 6, 2003, is as follows:

⁴ The record does not address whether the rental unit was occupied by a tenant at the time Mr. Locker claims to have made this telephone call.

DAILER CALL – MR SAID ACCT SHOULD NOT BE IN HIS NAME, HE WAS VERY RUDE AND SAID HE IS SUEING OE FOR OTHER MISTAKES ON HIS ACCOUNT, ADV MR 10-DAY NOTICE, ADV NO EXACT DATE FOR DISCON MR REFUSED TO TAKE # TO HAVE SERVICE TAKEN OUT OF HIS NAME BUT TOLD ME TO DISCON SERVICE, ADV MR AGAIN HE WOULD HAVE TO CALL ANOTHER #, MR STILL REFUSED, ADV MR OF BALANCE, ADV HE IS RESPONSIBLE FOR AMOUNT DUE NOW AND ANY OTHER CHARGES, MR STARTED YELLING AND HUNG UP. (OE Ex. 4.)

The record thus demonstrates that contrary to Mr. Locker's claims, he did not make repeated request to Ohio Edison to terminate service at any John Street accounts. The Company's records show that there was only one contact between Mr. Locker and the Company regarding this account, and this call was initiated by Ohio Edison, not Mr. Locker. When Mr. Locker told Ohio Edison he wanted to cancel service at this account, the Company attempted to explain to him what he needed to do to accomplish this. Mr. Locker refused to listen. What else was Ohio Edison supposed to do?

Mr. Locker alleges that he sent a letter to Ohio Edison, dated November 16, 2003, requesting termination of service at various John Street units. (Compl. Ex. 2.) The letter was purportedly sent "Ohio Edison/First Energy Corporation" at 76 South Main Street in Akron. Mr. Vidal testified that Ohio Edison documents receipt of all customer correspondence. (Tr. at 95.) Ohio Edison has no record of receipt of Complainant's Exhibit 2. (*Id.* at 102.)

Even if the Company had received Complainant's Exhibit 2, it is irrelevant. In his Complaint, Mr. Locker requests an order directing Ohio Edison to "abandon any claims to accounts at 1110-1138 E. John St., Springfield OH that have balances in my name after 15 November 2003 (date of sale)." As shown on Ohio Edison Exhibit 1, all of the John Street accounts were sent to collections by not later than July 2003. (*See also* Tr. at 102.) Thus, Ohio Edison is not seeking to collect any charges after November 2003, when Mr. Locker claims he

sold these properties. Mr. Locker failed to present any evidence to dispute his liability for service rendered prior to the time he claims he sold these properties. There is no evidence in the record to support any finding of a violation of a statute, regulation, tariff provision or order regarding the John Street accounts.

C. Mr. Locker Has Failed To Meet His Burden Of Showing That He Attempted To Terminate Service At Any Oaklawn Avenue Account.

Although not mentioned in the Complaint, Mr. Locker testified at the hearing that Ohio Edison also refused to terminate service at properties on Oaklawn Avenue in Springfield. There was no testimony from Mr. Locker that he ever called or even attempted to call Ohio Edison to terminate service at any Oaklawn Avenue account. Mr. Vidal's testimony confirms that Ohio Edison did not receive any such calls. (Tr. at 103.)

The only thing that Mr. Locker relied on to support his claim that he tried to terminate service at Oaklawn Avenue is a letter, dated February 9, 2005. (Compl. Ex. 3.) This letter, purportedly sent to "Ohio Edison" (with no address indicated on the letter) requests termination of service at various Oaklawn Avenue accounts. As with the letter regarding the John Street accounts, Mr. Vidal could not locate any record of receipt of this letter, either.⁵ (Tr. at 103.)

The wording of Complainant Exhibit 3 is curious. The letter says that as of February 1, 2005, "we no longer control the property at 30-40 Oaklawn Ave., Medway OH." Mr. Locker testified that he "walked away" from some of his properties, meaning that he let them go into foreclosure. (Tr. at 43-44.) The Oaklawn Avenue properties was one of the foreclosure

⁵ In his brief, Mr. Locker states that given the number of accounts he had with Ohio Edison, errors on his part "were absolutely inevitable." (Compl. Br., p. 13.) "[W]e might lose a bill; we might set aside a bill for special handling due to something about it, then mislay it or fail to follow up." (*Id.* at 14.) He also alleged in his Clark County complaint that "There have been a few occasions where, through error, such set-asides did not receive the further review and therefore were not paid." (OE Ex. 10, ¶ 6.) Given these admissions, and giving Mr. Locker the benefit of the doubt, it is not inconceivable that Mr. Locker wrote Complainant's Exhibits 2 and 3 and subsequently, through "error" or "failure to follow up," he "mislaidd" the letters and failed to send them to Ohio Edison.

properties. (*Id.* at 33.) “Walking away” from a property doesn’t mean that mortgage holders immediately assume ownership of the property. The foreclosure process takes time. Mr. Locker would have still held title to the Oaklawn property until the foreclosure process was completed – whenever that was. In any case, regardless of who owned the Oaklawn Avenue property, the fact remains that Mr. Locker never called Ohio Edison to terminate service. Ohio Edison violated no statute, rule, regulation or tariff provision by attempting to collect the arrearage owed on this property.

D. Ohio Edison Did Not Violate Any Commission Regulations By Disconnecting Service At Western Avenue For Non-Payment, Or Transferring Balances To That Account.

Mr. Locker argues that Ohio Edison violated the Commission’s disconnection rules, 4901:1-10-16 and -17, O.A.C., by “repeatedly” terminating service at his office on N. Western Avenue. The only thing in the record about disconnection of service at Mr. Locker’s office was this: “They transferred a balance onto the office’s account, and when I didn’t pay it, in fact, when I refused to pay it, they terminated the service, so I filed this complaint. I had thought – I did not know where this balance came from. It could have come from any place, but I did not know where it came from.” (Tr. at 33.)

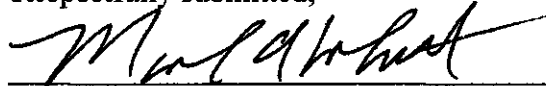
These facts do not state a claim, let alone prove a claim, for violation of the disconnection procedures contained in O.A.C. 4901:1-10-16 and -17. The disconnect rules clearly allow Ohio Edison to disconnect service for non-payment. Mr. Locker admits that he “refused” to pay the bill at his office. There is no claim that he failed to receive any required disconnection notice. In his Complaint, he alleges only that service to his office was disconnected “in the statutory minimum time.” (Compl., p. 2.) Mr. Locker has failed completely to substantiate his claim that Ohio Edison violated any disconnection rules.

There also is no evidence to show that any balance transfers to the N. Western Avenue account were improper. Any transfers that occurred were for transfers of a delinquent account in Mr. Locker's name to an active account in his name. (Tr. at 123.) No part of any balances for charges incurred by tenants was transferred to Mr. Locker's account. (Tr. at 64.) No statute or Commission rule prohibits balance transfers from one account to another involving the same customer.

IV. CONCLUSION

Mr. Locker's spurious, unsupported claims cannot support a finding that Ohio Edison violated any statute, Commission regulation or order, or tariff provision. The Complaint should be dismissed.

Respectfully submitted,



David A. Kutik
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: 216-586-3939
Facsimile: 216-579-0212
E-mail: dakutik@jonesday.com

Mark A. Whitt (Trial Counsel)
JONES DAY
Mailing Address:
P.O. Box 165017
Columbus, OH 43216-5017
Street Address:
325 John H. McConnell Boulevard, Suite 600
Columbus, OH 43215-2673
Telephone: (614) 469-3939
Facsimile: (614) 461-4198
E-mail: mawhitt@jonesday.com

Arthur E. Korkosz
Senior Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5849
Facsimile: (330) 384-3875
E-mail: korkosza@firstenergycorp.com

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Ohio Edison Company's Post Hearing Brief was sent by regular U.S. mail, postage prepaid, to James R. Locker, 223 N. Western Ave., Springfield, Ohio 45504, with a courtesy copy by e-mail to support@softwareforlandlords.com, this 17th day of November, 2006.



Michael W. Wood
An Attorney for Respondent