

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

JOE E. SNELL)	
)	
COMPLAINANT,)	
)	
vs.)	CASE NO. 09-187-EL-CSS
)	
OHIO EDISON COMPANY)	
)	
RESPONDENT.)	
)	

**POST-HEARING BRIEF OF
RESPONDENT THE OHIO EDISON COMPANY**

I. INTRODUCTION

It is well established that the complainant has the burden of proving the allegations set forth in its complaint. However in this case, Complainant, Joe Snell ("Complainant") failed to present any evidence during the hearing on October 1, 2009, that would satisfy his burden of proof. Complainant provided no expert testimony or other evidence that Ohio Edison Company ("Ohio Edison") or its employees provided inadequate or unreasonable service or breached any duty owed to Complainant. On the contrary, as Ohio Edison established at the hearing, Ohio Edison at all times complied with its policies and procedures, as well as its tariffs and the Public Utilities Commission of Ohio ("PUCO") rules and regulations. As such, Ohio Edison is entitled to entry of an order in its favor because there is no evidence that it provided inadequate or unreasonable service.

II. PROCEDURAL HISTORY

Complainant filed a complaint with the Commission on March 9, 2009, alleging that Ohio Edison allowed his name to be used to establish service without his consent – identity theft. Ohio Edison answered the complaint on March 26, 2009, by denying the allegations set forth in the

Complaint. After a pre-hearing conference, the attorney examiner scheduled a hearing first for September 10, 2009, and subsequently upon Respondent's request for an extension, for October 1, 2009. Pursuant to Rule 4901-1-29(A)(1)(h) of the Ohio Administrative Code, Ohio Edison pre-filed the testimony of its expert witness, Rick L. Tobias.

III. STATEMENT OF FACTS

Complainant established electric service with Ohio Edison on May 13, 1986 at 719 Victoria Avenue. Tr. p. 44; 3-7. Complainant was the customer of record at that address and the electric service invoices were sent to that address bearing Complainant's name as addressee and account holder. Company Ex.1, lines 29-53. Complainant resided at 719 Victoria Avenue with his girlfriend Rita Tanner, and except for a four year period from approximately 1990 to 1994, Complainant resided at 719 Victoria Avenue from 1986 to 2006. Tr. p. 35; 8-20; Tr. p. 23; 1-6. During this period of time Complainant received a number of benefits, including workers compensation and Supplemental Security Income. Tr. p. 23; 9-10; Tr. p. 25; 7-17. Complainant received this income in the form of a check that was mailed to his residence at 719 Victoria Avenue. Tr. p. 22; 11-18. Complainant admits that he received such checks. Id. On March 17, 2006, Rita Tanner collapsed and passed away. Tr. p. 8; 6-9. Complainant remained at 719 Victoria Avenue for approximately three months after Ms. Tanner died, until he was ultimately evicted. Tr. p. 10; 8-18; Tr. p. 9; 11-14. Complainant alleges that Rita Tanner stole his identity and placed electric service in his name without his consent. Compl. at ¶ 1. Complainant further alleges that he did not discover that the electric bill was in his name until after Rita Tanner passed away. Tr. p. 31; 4-7. Complainant claims that at that time he discovered the electric bill and a variety of credit cards that Rita Tanner accumulated in his name. Tr. p. 8; 15-17. Complainant filed a police report on April 4, 2006 claiming theft of identity. Tr. p. 32.

Ohio Edison's records indicate that Complainant applied for service at 719 Victoria Avenue and was the customer of record. Tr. 60; 79. Complainant was mailed invoices for his electric service usage at 719 Victoria Avenue on a monthly basis from 1986 through 2006¹— representing a 20 year period and well over 200 invoices. Company Ex. 1, lines 46-53; Tr. p.44; 3-7 ; Tr. p. 54; 21-25. Ohio Edison's procedure for assigning a customer of record includes a number of identify verification measures, including the customer's name, birth date, mailing address, social security number, contact number, and the name of any individuals the customer would like to have added as a contact person. Tr. p. 49; 8-12; Company Ex. 1, lines 55-64. Ohio Edison did not treat Complainant different from any other customer. Ex. 1, lines 102-104. Ohio Edison at all times complied with its tariffs and the PUCO rules and regulations.

IV. LAW AND ARGUMENT

A. Complainant Has Not Satisfied Its Burden Of Proof With Probative Evidence Presented At Hearing.

The burden of proof in a complaint proceeding is on the complainant. *In the Matter of the Complaint of Charlene Rundo v. Duke Energy Ohio, Inc.*, Case No. 06-940-GE-CSS, 2008 WL 647808 (Mar. 5, 2008), *citing Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189 (1966). However, in this proceeding, Complainant provided no evidence, via witnesses or documents, to support his allegation that Ohio Edison allowed his name to be used by Rita Tanner to establish service in his name without his consent. Compl. at ¶ 1. Complainant's claim of identity theft simply does not add up. First, Complainant admits that he resided at 719 Victoria Avenue for the period in question. Tr. p. 6; 2-9; Tr. p. 8; 6-8; Tr. p. 10; 8-18. Second, Complainant admits that electric service invoices

¹ Electric service remained in Complainant's name until the account final billed in December 2005 with an outstanding balance of \$3,801.56. Id.; Tr. p. 46; 2-4. Invoices received in 2006 were for services rendered through December 2005.

were sent to his address at 719 Victoria Avenue. Tr. p. 8; 10-15. Third, Complainant admits he was aware of, and received his workers compensation (every two weeks) and Supplemental Security Income (every month) checks through the mail at his 719 Victoria Avenue address. And, finally, the only substantive document to evidence the occurrence of the alleged identity theft, Complainant's police report, makes no mention of theft of electric service. Company Ex. 3. Complainant testified that he filed the police report after discovering the electric bill and all the credit cards. Tr. p. 31; 21-25. Complainant testified that there was basically no process, he merely told the police what he believed happened and they filled out the form and that the information in the report is what he told the police had happened. Tr. p. 33. The police report states that the "identity theft" began January 1, 2000 and ended February 2, 2006. Company Ex. 3. The police report describes the identity theft as follows: "USED INFO ON INTERNET. OBTAINED CREDIT TO GAMBLE". The police report includes a victim statement which provides:

"VICTIM STATES THAT SUSPECT, (RECENTLY DECEASED) RAN UP CREDIT ON GAMBLING WEB SITES AND CREDIT CARDS IN HIS NAME. HE SAID THAT HE THINKS THE TOTAL IN ALL IS AROUND TWENTY THOUSAND DOLLARS. HE WAS UNAWARE OF THIS UNTIL HE APPLIED FOR AN APARTMENT AND HIS CREDIT REPORT REVEALED IT."

Company Ex. 3.

Complainant admits that the police report is accurate. Tr. p. 36; 20-21. Given that Complainant was admittedly aware that electric service was in his name before filing his police report, why if it was part of the identity theft, did he fail to mention it in his police report. The answer is simple. The electric service was not part of any alleged identity theft. Therefore, based simply on the fact that Complainant has no evidence – not to mention competent evidence – to support his allegation of identity theft pertaining to electric service, the complaint should be denied.

Complainant wishes to have this Commission believe that he never assumed responsibility

for the electric service or any other bill at Ms. Tanner's house, but rather that he stayed there for free.

Unfortunately, Ms. Tanner is no longer alive to dispute Mr. Snell's claim. In fact, Mr. Tanner brought his claim shortly after Ms. Tanner's untimely death. While, Ms. Tanner is not able to present the truth to the Commission, Mr. Snell's own past practice is telling. Mr. Snell admits that while living with his sister he used his Supplemental Security Income check to pay for his rent and his utilities. Tr. p. 28; 10-17. Mr. Snell also admits a responsibility to pay for rent and utilities, testifying:

Q. Is it correct to say that you helped [your sister] out with her bills?

A. No.

Q. You were staying with your sister at that time, correct?

A. Yes. But I didn't help her out. My sister worked. I didn't help her out with her bills, she was helping me.

Q. So, I'm just trying to understand what rent. I guess were you renting a room in your sister's house?

A. I had to pay to live there, yeah.

Q. So you had to pay to live there and you had to pay some utilities to live there.

A. Well, that's what they expected of me and that's what I done. That's what my sister wanted.

Tr. p. 29; 6-21.

The difference here is that his sister, Inez Snell, was sitting in the hearing room on October 1, 2009. His sister could confirm or correct Mr. Snell's statements. Ms. Tanner cannot. Complainant presented no evidence that Ohio Edison acted unreasonably, and thus his claim should be denied.

A. The evidence establishes that Ohio Edison acted reasonably when it established and maintained Complainant's account.

The evidence demonstrates that Ohio Edison properly established and maintained Complainant's account according to industry standards and in compliance with PUCO rules and regulations. Mr. Tobias testified that he reviewed and was familiar with Complainant's complaint.

Company Ex. 1. Mr. Tobias' testimony demonstrates that he has been involved with the credit and collection process for over 13 years, and has completed several training courses dealing with analyzing customer accounts, and many other topics related to customer accounts and customer service. Mr. Tobias testified that he did not believe that Ms. Tanner established service in Complainant's name. In support of his position, Mr. Tobias first set forth the following three principles:

First, Ohio Edison does not permit an individual to put electric service in a name other than his/her own. Second, I believe the operator that took the call would have distinguished the difference between a female caller (Ms. Tanner) from a male caller (Mr. Snell). Third, Ohio Edison requires the caller to verify the caller's identity by providing home address, phone number, and social security number.

Company Ex. 1.

Mr. Tobias then provided a more lengthy description of the process stating:

A consumer must contact Ohio Edison and request that the electric service be put into his/her name. The consumer becomes Ohio Edison's customer of record. The customer of record is required to provide Ohio Edison with the address of the property the customer wishes electric service, certain purchase or rental agreement, if applicable, and certain personal information that is placed on the account. This personal information includes the customer's name, mailing address, social security number, contact number, and the name of any individuals the customer would like to have added as a contact person.

Company Ex. 1.

Mr. Tobias testified further that Ohio Edison does not permit an individual to put electric service in a name other than his/her own, and that Mr. Snell never notified Ohio Edison before his service was ultimately terminated in December 2005, that he no longer wanted the electric service in his name. Mr. Tobias further testified:

we have hundreds to thousands of those contacts daily, and as I stated earlier, in the normal course of business just like other utilities throughout the state we're trying to work with the customer, trying to do this in a timely manner. Now this could -- if we forced everyone to provide let's say a written document stating that

that's who and we confirm who we're talking to, instead of a day to two days, the process, this move-in for our customers, it could be anywhere from maybe seven to 14 days to do that. And it would just, it would be I guess in terms, a nightmare.

Tr. p., 57.

Mr. Tobias is extremely familiar with the manner in which Ohio Edison trains its personnel to handle customer inquiries and analyze customer accounts. He is also extremely familiar with the PUCO regulations and the internal policies and procedures of Ohio Edison as they relate to Complainant's complaint before the PUCO.

IV. Conclusion

The Ohio Edison Company is entitled to an opinion and order concluding that there is insufficient evidence to support a finding that it provided inadequate service or that Complainant is entitled to any judgment in his favor. The uncontested evidence demonstrates that Ohio Edison complied with its policies and procedures, industry standards, and Commission's rules and regulations. There is no evidence that Ohio Edison violated any Commission rules pertaining to the establishment of electric. There is no evidence that Ohio Edison's actions or inactions constituted unreasonable service. And, there is no evidence that Ohio Edison acted unreasonably, that Ohio Edison failed to institute reasonable measures that could have prevented such an unsubstantiated claim of identity theft. The Commission should deny Complainant's complaint.

Respectfully submitted,



EBONY L. MILLER (0077063)

FIRSTENERGY SERVICE COMPANY
76 South Main Street, Akron, Ohio 44308
(330) 384-5969
Attorneys for Respondent,
Ohio Edison Company

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing Post-Hearing Brief filed on behalf of Ohio Edison Company was served by regular U.S. Mail, postage prepaid, to Joseph E. Snell, 2561 Romig Road, Apt. 14, Akron, Ohio 44320, this 20th day of November, 2009.



Ebony Miller

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Case No(s). 09-0187-EL-CSS

Summary: Brief POST-HEARING BRIEF
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