

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Debbie)	
Malloy,)	
)	
Complainant,)	
)	
v.)	Case No 10-158-EL-CSS
)	
Duke Energy Ohio,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission hereby issues its opinion and order.

APPEARANCES:

Debbie Malloy, 4725 Fairfield Business Drive, Fairfield, Ohio 45014, on her own behalf.

Robert McMahon, Eberly McMahon, 2321 Kemper Lane, Suite 100, Cincinnati, Ohio 45206, on behalf of Duke Energy Ohio.

I. HISTORY OF THE PROCEEDINGS

On February 9, 2010, Debbie Malloy (Ms. Malloy) filed a complaint against Duke Energy Ohio (Duke), alleging that her Duke bill was excessively high. Ms. Malloy explained that she was rarely at her home and used little heat or air conditioning. She also asserted that she "sent Duke proof of payment" and "kept the payment arrangements," yet Duke failed to credit her account and shut off her electricity. Ms. Malloy stated that she seeks reimbursement "for the overpayment."

Duke filed its answer on February 26, 2010. Duke contended that while Ms. Malloy had made payments on May 26, 2009, August 27, 2009, October 23, 2009, and February 4, 2010, she also defaulted on several payment plan agreements. Duke further stated that Ms. Malloy did not provide evidence to Duke of any payments that were not applied to her account. Duke denied any other allegations by Ms. Malloy and asserted that it provided reasonable and adequate service in accordance with Ohio law and its tariff.

By entry issued March 22, 2010, the attorney examiner scheduled a prehearing conference for April 7, 2010. Because the parties did not resolve matters at the conference, the attorney examiner issued an April 9, 2010, entry, scheduling a June 8, 2010 hearing. Ms. Malloy filed a letter on May 28, 2010, requesting a continuance of the hearing; the attorney examiner granted the continuance in a June 7, 2010 entry.

Ms. Malloy contacted the attorney examiner in July 2010 to request a new hearing date. The attorney examiner issued a July 27, 2010, entry, scheduling a September 21, 2010, hearing. On September 20, 2010, counsel for Duke filed a motion for continuance, which was granted by the attorney examiner in an entry issued September 20, 2010. On September 24, 2010, the attorney examiner issued an entry for an October 19, 2010, hearing. The hearing was conducted on October 19, 2010.

II. APPLICABLE LAW

Duke is a public utility, as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission.

Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable. The Commission also notes that the burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189. Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

III. SUMMARY OF THE TESTIMONY

Ms. Malloy's Position

Ms. Malloy stated that, after moving into her residence at 2455-B Fox Sedge Way, West Chester, Ohio (Fox Sedge), on January 31, 2004, she did not receive any bills from Duke for a time (Tr. at 5, 7-8, 35). Because of this, she contacted Duke and was told what to send as payment (*Id.* at 23). As stated by Ms. Malloy, "I wanted to pay a bill, so I would pay whatever they told me," even though she disagreed with Duke concerning the electricity she allegedly used in her one bedroom apartment (*Id.* at 14, 23, 25). While at Fox Sedge, she asserts, her electric usage was only for a refrigerator, television, and small lamp, as she did not use her air conditioner (*Id.* at 37). Aside from her testimony, she was unable to provide any evidence of using less electricity than alleged by Duke (*Id.* at 36-37).

According to Ms. Malloy, Duke eventually resumed mailing bills, and, in April 2008, she received bills with two different account numbers. She also received "four bills at one time, huge bills," including a bill for \$1,000.00. She explained that the bills indicated usage at Fox Sedge and at her prior address, located at 4579-16 Lakes Edge Drive, West Chester, Ohio (Lakes Edge), where she resided from November 4, 2002 to January 29, 2004 (*Id.* at 5, 7-9, 25-27, 34; Malloy Ex. 3). Ms. Malloy stated that she continued to make payments, even after bills with separate account numbers appeared (*Tr.* at 5, 26-27). As evidence of the two account numbers, Ms. Malloy introduced Malloy Ex. 1, consisting of Duke bills with an account number ending in 10-1 that were due July 6, 2009 and Dec. 3, 2009, and Duke bills with an account number ending in 15-2 that were due April 5, 2010 and May 5, 2010. Ms. Malloy observed that all of the bills in Malloy Ex. 1 indicate the Fox Sedge address, despite the presence of two different account numbers (*Id.* at 39-40).

Ms. Malloy asserts that her electricity was shut off three times at Fox Sedge, including a disconnection on January 20, 2010 lasting at least a month. She stated that she used gift certificates donated by her church to pay \$150.00 to replace spoiled food, but she produced no evidence of any such purchase (*Id.* at 19, 37, 38, 69). Ms. Malloy disputes the testimony at hearing of Duke witness Alicia Jones, a Duke Customer Relationship Specialist, that her Fox Sedge service was briefly placed in the name of her apartment complex after the January 20, 2010 disconnection for nonpayment (*Id.* at 49-40, 68). Instead, stated Ms. Malloy, service remained in her name, and she continued to pay Duke's bills despite disagreeing with Duke's calculations of the electricity used (*Id.* at 68). Ms. Malloy added that she vacated Fox Sedge on April 15, 2010 (*Id.* at 35).

Ms. Malloy also introduced Malloy Ex. 2, documents which she asserts indicate her payments to Duke. Malloy Ex. 2 contains an undated \$153.00 money order receipt payable to Duke, a letter from Fifth Third Bank that reflects Ms. Malloy's payment of \$265.50 to Duke on February 2, 2010, and a bill from Duke's predecessor Cinergy with a due date May 3, 2008, upon which is written "money order #08-435529660, \$153.00 Sunday May 28."

In addition, Ms. Malloy contends that her parents made two payments on her behalf during 2009-2010, and that a benefactor paid her Duke bill in full prior to her vacating Lakes Edge in January 2004 (*Id.* at 13, 17-18, 44). Therefore, she contends, Duke Att. AJ-1, a bill due April 6, 2004, indicating a transfer to Fox Sedge of her unpaid Lakes Edge balance, is in error (*Id.* at 42-43). Ms. Malloy admitted that she has no evidence of the two payments made by her parents, nor does she have evidence of a benefactor paying the final amount due at Lakes Edge, because the Lakes Edge payment occurred "almost seven years ago" (*Id.* at 17-18, 42-43). She explained that she could not produce many records of her payments to Duke because the billing dispute forced her to move several times, with her records "tossed in a storage unit" (*Id.* at 18,

27, 35-38). She also contends that family members have disposed of her records (*Id.* at 43).

Ms. Malloy believes that, when she vacated Fox Sedge, she had followed Duke's payment recommendations and had actually overpaid (*Id.* at 28-29, 47). In support, Ms. Malloy introduced Malloy Ex. 4, her calculations of the amount of her overpayment at Fox Sedge. Ms. Malloy stressed that she has maintained every payment agreement that she made with Duke and stated that "there is no way . . . that I had that huge amount of bill to begin with," but she made payments "to keep me out of trouble, to keep me from being disconnected" (*Id.* at 45, 47).

Duke Energy Ohio's Position

As discussed above, Duke Customer Relationship Specialist Alicia Jones (Ms. Jones) testified on Duke's behalf. In addition, Duke introduced Duke Energy Ohio Exhibit A, a copy of Ms. Jones' direct testimony and supporting Attachments AJ-1 through AJ-9.

At the hearing, Ms. Jones stated that Ms. Malloy had service at Lakes Edge starting in May 2003, and while her usage was low, Ms. Malloy did not pay consistently. As a result, Ms. Malloy's Lakes Edge account had an unpaid balance of \$182.47 when she moved out. The unpaid balance was transferred to Ms. Malloy's Fox Sedge account (*Id.* at 53).

Ms. Jones stated that Ms. Malloy was generally current with payments at Fox Sedge from 2004 through 2006, but her payments began to fall behind in 2007; by January 2, 2008, she owed \$430.66 (*Id.* at 54; Duke Ex. A at 5). In 2008, according to Ms. Jones, Ms. Malloy made only one payment, and by January 2, 2009, she owed \$765.37 (*Id.* at 54; Duke Ex. A at 5-6). Ms. Jones stated that Ms. Malloy did not make any payments from January 2009 through May 2009, even though she continued to receive and use electricity provided by Duke (Duke Ex. A at 6).

According to Ms. Jones, in June 2009, Ms. Malloy entered into payment plan #2916345 for \$1,038.26 (Tr. at 56; Duke Ex. A at 6). With a payment plan, Ms. Jones explained, Duke applies any unpaid prior balance to a customer's account as a credit, so that the customer can make installment payments. The customer is also expected to pay for current usage. If a customer pays only for current usage but not for any prior unpaid balance, stated Ms. Jones, "the total plan . . . [will] default. Everything will become due, and the customer will receive a disconnect notice" (Tr. at 55-57). In sum, under the June 2009 payment plan Ms. Malloy's account was credited \$1,038.26, and a payment of \$87.00 toward her most current usage was also credited. Bills generated for the rest of 2009 identified the amount due for current usage and under the payment plan (Duke Ex. A at 6).

Ms. Jones confirmed that Ms. Malloy defaulted on the June 2009 payment plan, and was notified "on multiple occasions that her electric account was subject to disconnection for nonpayment" (*Id.* at 7; Tr. at 56). Disconnection did ultimately occur, confirmed Ms. Jones, as seen on the bill generated on September 14, 2009, indicating the reconnection charge and the security deposit for the disconnected account (Duke Ex. A at 7).

According to Ms. Jones, in October 2009, Ms. Malloy paid a reconnect charge and entered into payment plan #2968543. Ms. Jones stated that Ms. Malloy did not abide by this payment plan either, so disconnection notices were posted to subsequent bills, and the Fox Sedge account was disconnected again on January 20, 2010. The final bill for Fox Sedge, due February 17, 2010, reflects a balance due of \$858.67, but following a \$262.00 payment by Ms. Malloy on February 4, 2010, the balance decreased to \$596.67 (*Id.*; Duke Att. AJ-7; Tr. at 57). When combined with the unpaid balance of \$182.47 from Ms. Malloy's Lakes Edge account, Ms. Malloy owed a total of \$733.20 (Tr. at 57-58; Duke Ex. A at Att. AJ-8).

Ms. Jones also addressed Ms. Malloy's confusion about two account numbers for Fox Sedge. Ms. Jones stated that the first disconnection of Ms. Malloy's service occurred on July 13, 2009, at Fox Sedge (Tr. at 59). A second disconnection occurred on January 20, 2010. However, stated Ms. Jones, because the Preserve, the name of the apartment complex in which Ms. Malloy lived, did not want the power off, service was restored and placed in the Preserve's name and account number on February 5, 2010 (*Id.* at 60, 62, 69-70). Ultimately, stated Ms. Jones, the Preserve "was unhappy with having to place the service in their name, so we put the service back on in Ms. Malloy's name, which generated a new account number that ends in 15. That's why there are two different account numbers for the same address" at Fox Sedge (*Id.* at 62-63, 66-67). According to Ms. Jones, service went back to Ms. Malloy's name on February 11, 2010 (*Id.* at 70). In sum, Ms. Malloy's first account number at Fox Sedge ended in 10-1, while her second account number at Fox Sedge ended in 15-2 (*Id.* at 65).

Ms. Jones stated that a final bill was sent to Ms. Malloy when she vacated Fox Sedge. For several months thereafter, although Ms. Malloy was sent a reminder to pay the past due balance, she was not billed for any further usage at Fox Sedge. After February 4, 2010, stated Ms. Jones, Ms. Malloy made no more payments (*Id.* at 57-58).

Ms. Jones is unaware of any complaints by Ms. Malloy that the meter was defective (*Id.* at 57). Ms. Jones contends that Duke accurately measured Ms. Malloy's electric usage at Fox Sedge, because Duke "has never received any evidence showing otherwise and the meter readings have been fairly consistent throughout the billing history on Ms. Malloy's Fox Sedge account" (Duke Ex. A at 9). Ms. Jones stated that

Ms. Malloy's usage ranged from approximately \$20.00 to \$55.00, with a peak in the coldest months (*Id.*).

IV. DISCUSSION AND CONCLUSIONS

As noted in Part II of this Opinion and Order, in complaint proceedings the burden of proof is on the complainant. Ms. Malloy contends that Duke incorrectly determined her electric usage and that she fully paid, and ultimately overpaid, for her electricity (Tr. at 14, 23, 28-29, 45, 47). For reasons explained below, we find that there is insufficient evidence in the case to support a conclusion that Duke acted unreasonably, in violation of any tariff, rule, regulation, law, or accepted standard or practice in the electric utility industry, or that charges for Ms. Malloy's electric service were determined incorrectly and in violation of any tariff or law. Therefore, based on the record in this proceeding, Ms. Malloy has failed to sustain her burden of proof.

The Commission will first examine Ms. Malloy's belief that she fully paid for her service (*Id.*). Malloy Ex. 2 does indicate a \$153.00 payment by Ms. Malloy on May 28 of an unspecified year; Duke Ex. A at Att. AJ-3 reflects this payment in a bill due July 3, 2006. Malloy Ex. 2 also includes a letter from Fifth Third Bank indicating Ms. Malloy's \$265.50 payment to Duke on February 2, 2010; although the dollar value varies slightly, Duke credited Ms. Malloy for \$262.00 in early February 2010 (*Id.* at 13, 44-45.)

Still, Ms. Malloy's evidence is insufficient to contradict Duke Ex. A at Att. AJ-1 through AJ-7, which indicate that, while her payments were generally current at Fox Sedge from 2004 through 2006, the payments began to fall consistently behind late in 2007. More specifically, as shown in Duke Att. AJ-4 bill due August 31, 2007, Ms. Malloy's \$193.00 payment from July 17, 2007 was returned for insufficient funds; by early 2008, as seen in the Duke Att. AJ-4 bill due January 2, 2008, Ms. Malloy owed \$430.66 (*Id.* at 54; Duke Ex. A at 5). During 2008, Ms. Malloy's only payment was for \$200.00, as shown in Duke Att. AJ-5 bill due April 2, 2008; by January 2, 2009, as reflected in Duke Att. AJ-6 bill due January 2, 2009, she owed \$765.37. Ms. Malloy made no payments in 2009 until the \$87.00 payment indicated on Duke Att. AJ-6 bill due July 6, 2009. Although Ms. Malloy made two subsequent payments in 2009, as seen on the Duke Att. AJ-6 bills due October 6, 2009, and December 3, 2009, by early January 2010 she owed \$747.75, as indicated in Duke Att. AJ-7 bill due Jan 4, 2010. Duke Att. AJ-7 does not indicate any payments made by Ms. Malloy in early 2010. When her service was disconnected for the final time, as Duke Att. AJ-7 bill due February 17, 2010, reflects, she owed \$858.67.

Further, Ms. Malloy provided no evidence to support her testimony that a benefactor paid the remaining balance owed to Duke when she vacated Lakes Edge (Tr. at 17-18). In contrast, Duke Ex. A at Att. AJ-8 indicates a balance due of \$182.47 for the final bill at Ms. Malloy's Lakes Edge address; the \$182.47, plus a late payment fee, was

transferred to Ms. Malloy's first bill at Fox Sedge, as seen in Duke Att. AJ-1 bill due April 6, 2004.

The Commission will now focus upon Ms. Malloy's contention that she fully honored all payment agreements (*Id.* at 44, 46-47). The attachments to Duke Ex. A refute this assertion by Ms. Malloy. Duke Att. AJ-1 bill due June 2, 2004, indicates that Ms. Malloy's prior bill was not paid in full, and that she was removed from payment agreement #2114040, with the entire balance of \$186.81 due immediately. In addition, Duke Ex. A at Att. AJ-6 bill due July 6, 2009, indicates that payment agreement #2914519 was entered into on May 19, 2009, and that the entire unpaid balance of \$1,038.26 was transferred to payment agreement #2916345, which was entered into on May 23, 2009. Next, Duke Ex. A at Att. AJ-6 bill due August 6, 2009, indicates that Ms. Malloy's prior bill was not paid in full, and that she was removed from payment agreement #2916345, with the entire agreement balance due immediately. Finally, Duke Ex. A at Att. AJ-7 bill due January 4, 2010, indicates that Ms. Malloy did not pay her prior bill in full, and that she was removed from payment agreement #2968543, with the entire agreement balance due immediately.

Finally, the Commission examines Ms. Malloy's assertion that she did not use the amount of electricity alleged by Duke (*Id.* at 14, 23, 37 45, 47). The record contains no evidence of inaccurate meter readings. In addition, Duke Att. AJ-1 through AJ-7 indicate that Ms. Malloy's Fox Sedge usage was generally consistent during 2004 through 2010, with usage often above 450 kwh from early December through early March, and usage from mid-March through early December usually at 200 to 300 kwh. In sum, the evidence supports Duke's argument that its meter accurately measured the usage, as there was no evidence to the contrary, and the meter readings were generally consistent during Ms. Malloy's residency at Fox Sedge (Duke Ex. A at 8-9).

Upon review of the record in this proceeding, the evidence does not fully support Ms. Malloy's assertions. Moreover, we find nothing in this record to indicate that the charges for Ms. Malloy's bills were calculated in violation of any tariff or state law, or that Duke has acted unreasonably or in violation of the Commission's rules and regulations, state laws, or accepted standards and practices in the electric utility industry. Accordingly, lacking evidence demonstrating that Duke has violated any rule, regulation, law, or acted unjustly or unreasonably, the Commission finds that Ms. Malloy has failed to sustain her burden of proof and the complaint should be dismissed.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) On February 9, 2010, Debbie Malloy filed a complaint against Duke Energy Ohio, alleging that her bill was excessively high. She also asserted that she had made payments, but Duke failed to credit her account, and she requested reimbursement for overpayment.
- (2) Duke filed its answer on February 26, 2010, admitting that, while Ms. Malloy did make payments for several months in 2009 and for one month in 2010, she defaulted on several payment plan agreements.
- (3) A settlement conference was held on April 7, 2010, and a hearing was held October 19, 2010.
- (4) Duke is a public utility, as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission.
- (5) In a complaint case, the burden of proof is on the complainant. *Grossman v. Public Utilities Commission* (1966), 5 Ohio St.2d 189.
- (6) There is insufficient evidence to support a finding that the charges for Ms. Malloy's electric service have increased in violation of any tariff or state law, or that Ohio Edison has acted unjustly or unreasonably or in violation of any rule, regulation, or law, or that any practice affecting or relating to any service furnished was unjust or unreasonable.
- (7) Based on the record in this proceeding, Ms. Malloy has failed to sustain her burden of proof and the complaint should be dismissed.

It is, therefore,

ORDERED, That the complaint be dismissed. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman


Paul A. Centolella


Valerie A. Lemmie

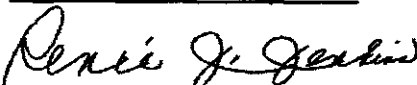

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Entered in the Journal

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Renee J. Jenkins

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Secretary