

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Judy Alexander,)	
)	
Complainant,)	
)	
v.)	Case No. 11-5601-GA-CSS
)	
The East Ohio Gas Company d/b/a)	
Dominion East Ohio,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the evidence of record and applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Judy Alexander, 4391 East 86th Street, Cleveland, Ohio 44105, on her own behalf.

Whitt Sturtevant LLP, by Mark A. Whitt and Andrew J. Campbell, PNC Plaza, Suite 2020, 155 East Broad Street, Columbus, Ohio 43215, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

OPINION:

I. Procedural History

On November 2, 2011, Judy Alexander (complainant) filed a complaint against The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or the Company), alleging that the amounts of some of complainant's bills are incorrect for properties located at 8207 and 8209 Beman Avenue, Cleveland, Ohio (downstairs unit and upstairs unit, respectively). In the complaint, complainant asserts that she called DEO to have gas service to both the downstairs unit and the upstairs unit placed in her name in November 2010. Complainant further claims that there has been no heat in the upstairs unit, which is still in the process of being completed, and, accordingly,

complainant disputes the billed amounts. On November 23, 2011, DEO filed its answer to the complaint.

A settlement conference was held on January 23, 2012; however, the parties were unable to resolve this matter. By entry issued on February 28, 2012, this matter was scheduled for hearing on April 24, 2012. At the request of the parties, the hearing was subsequently rescheduled several times to commence on May 8, 2012, June 14, 2012, and June 21, 2012.

The hearing was held as rescheduled on June 21, 2012. Complainant testified on her own behalf at the hearing, and also offered the testimony of Joseph Cooper, Bertha Boyd, and Yvonne Lawrence. Roxie A. Edwards (DEO Ex. 1.0) and Michael A. Kazmer (DEO Exs. 2.0 and 2.1) testified on behalf of DEO. A post-hearing initial brief was filed by DEO on August 2, 2012. Complainant did not file an initial brief. Neither party filed reply briefs, which were due on August 16, 2012.

II. Applicable Law

DEO is a public utility as defined by Sections 4905.02 and 4905.03, Revised Code. DEO is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code.

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.

In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966). Therefore, in cases such as this, it is the responsibility of the complainant to present evidence in support of the allegations made in a complaint.

III. Evidence of Record

Complainant received service from DEO on two accounts, one for the upstairs unit and the other for the downstairs unit, which are located in the same building. Service was established at the downstairs unit on November 19, 2010. (DEO Ex. 1.0 at 2.) Gas was already on at the downstairs unit and, accordingly, DEO provided an initial meter read to transfer service to complainant (DEO Ex. 3.0; Tr. at 37, 39). DEO's service records indicate that a woman, which DEO believes may have been complainant, allowed a DEO employee into the properties. Complainant testified,

however, that the properties were vacant and that there was no one there to grant access to a DEO employee, although she admitted that there were workers renovating the properties at the time. According to DEO, its employee found that the gas meter was turned on, with gas able to flow through the meter into the house lines. DEO's employee also found a working furnace, although it was turned off. (Tr. at 15-16, 33-35, 43-44; DEO Ex. 3.0.) At the time, DEO did not note any leaks in complainant's house or service lines (DEO Ex. 3.0).

On January 6, 2011, DEO established service at the upstairs unit (DEO Ex. 1 at 4). Complainant testified that the upstairs unit also had a furnace (Tr. at 16, 18). For several months, DEO sent bills to both service addresses (DEO Ex. 1.0 at 2-5). Complainant, however, did not pay anything towards either account (DEO Ex. 1.0 at 2, 4).

Complainant testified that she noticed a faint odor of gas at some point during September 2010 (Tr. at 15-16, 20, 22). Complainant did not call DEO to report the suspected leak until April 18, 2011 (DEO Ex. 2.0 at 2; Tr. at 22). A DEO service technician promptly arrived at the properties, tested numerous lines at both units, and discovered leaks (DEO Ex. 2.0 at 2). The service technician turned off the meter for the upstairs unit and disconnected the necessary lines in the downstairs unit (DEO Ex. 2.0 at 2-3). All of the leaks that were discovered were in the house lines, downstream of the meter (DEO Ex. 2.0 at 2-3). On May 5, 2011, DEO disconnected complainant's service for both the upstairs unit and the downstairs unit at her request (DEO Ex. 1.0 at 2, 4). According to DEO, complainant currently owes \$397.88 for the upstairs unit and \$803.19 for the downstairs unit (DEO Ex. 1.0 at 2, 4).

On May 11, 2012, DEO tested the meters for accuracy in complainant's presence (DEO Ex. 2.1 at 3). The tests revealed that the meter for the downstairs unit was running slow by 0.55 percent, while the meter for the upstairs unit was running fast by 1.6 percent (DEO Ex. 2.1 at 3; Tr. at 30-32).

IV. Discussion and Conclusion

In her complaint, complainant alleges that the amounts on certain bills are incorrect. During her testimony, complainant clarified that she was charged by DEO from November 2010 to May 2011, although she believes that gas was only used in the downstairs unit from March 2011 to April 2011 (Tr. at 21, 25-26). Complainant did not offer any bills into evidence, although the billing statements were provided in DEO's testimony (DEO Ex. 1.0). Instead, to prove her claim, complainant attempted to demonstrate that she did not use the metered gas, at least for the upstairs unit, because the gas was not turned on (Tr. at 21, 23-24). Specifically, complainant and her other witnesses testified that the upstairs unit and downstairs unit were not occupied and

that the properties had been abandoned by the prior owner (Tr. at 7-8, 42). Complainant also tried to show that the gas consumption, as measured by DEO, must have been incorrect, because the upstairs unit and downstairs unit were both in deplorable condition (Tr. at 7-9, 19), and the furnaces were not in use (Tr. at 10, 13-14, 19).

In response, DEO asserts that the condition of the properties has no bearing on whether gas was consumed. DEO notes that properties in poor condition are often less energy efficient and consume more gas than properties in better condition. DEO further notes that complainant conceded that the properties were equipped with gas-consuming appliances (Tr. at 16, 18-21; DEO Ex. 3.0). According to DEO, the evidence shows that gas service was established in complainant's name for both accounts (DEO Ex. 1.0 at 2, 4); the meters measured gas consumption (DEO Ex. 1.0 at 2-5); and the meters proved accurate (DEO Ex. 2.1 at 2-4). DEO concludes that the Company accurately measured complainant's gas consumption and that complainant, as the customer of record, is responsible for payment of the amounts owed for the gas consumed, pursuant to Rules 4901:1-18-01(G) and 4901:1-18-04, Ohio Administrative Code (O.A.C.) (DEO Ex. 1.0 at 2-5; DEO Ex. 2.1 at 2-4).

DEO also contends that complainant's bills, in addition to correctly reflecting gas consumption, are accurate in all other respects. DEO notes that Rule 4901:1-13-11(B), O.A.C., requires that bills be accurate and rendered at monthly intervals. DEO further notes that, pursuant to Rule 4901:1-13-04(G)(1), O.A.C., the Company must obtain actual readings of its meters at least once every 12 months; make reasonable attempts to obtain actual readings of its meters every other month; and calculate the amount due using the applicable rates in effect for each period during which a bill is based on estimated usage. DEO maintains that the Company fully complied with these rules in rendering complainant's bills. DEO argues that, for both the upstairs unit and downstairs unit, the Company made reasonable attempts to obtain an actual meter reading every other month (DEO Ex. 1.0 at 3, 5); billed complainant for estimated consumption when the Company was unable to obtain an actual meter read and billed for actual consumption when an actual meter read was obtained (DEO Ex. 1.0 at 3, 5-6); and rebilled complainant when the Company overestimated her consumption (DEO Ex. 1.0 at 4, 6). DEO concludes that complainant's bills are accurate (DEO Ex. 1.0 at 6).

Upon review of the record, the Commission finds no evidence that DEO inaccurately measured complainant's gas consumption or incorrectly billed complainant for her usage. As DEO notes, complainant's sole allegation in her complaint is that the amount of her bills is incorrect. Complainant, however, offered insufficient evidence in support of her claim. The testimony of complainant and her other witnesses reflects a belief that there was no gas service because there was no heat

and the furnace was either not working or not in use (Tr. at 10, 13-14, 19, 21). Complainant's testimony indicates that there were furnaces, believed to be non-working, when complainant began to renovate the properties in November 2010, and that new furnaces were installed later that month, although only one was in use and not until March 2011 (Tr. at 16, 18-19). Complainant also testified that, because there was no electricity for the upstairs unit, there was no way to light the furnace (Tr. at 21-23). Additionally, complainant explained that, because there was nothing in the upstairs unit, the gas service must have been off (Tr. at 23-24). We agree with DEO that complainant's testimony does not show that the Company misread her meters, miscalculated her bill, or charged her under the wrong rate. Neither does the evidence reflect that the meters were functioning improperly. Rather, the meter tests performed by DEO indicate that the meters were operating in compliance with the requirements of Section 4933.09, Revised Code, and Rule 4901:1-13-04, O.A.C. (DEO Ex. 2.1 at 2-4). The record also reflects that the properties were equipped with gas-consuming appliances (Tr. at 16, 18-21; DEO Ex. 3.0); the meters measured gas consumption (DEO Ex. 1.0); and complainant was charged for the metered gas usage (DEO Ex. 1.0).

As we have previously noted, in complaint proceedings such as this one, the complainant has the burden of proof. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966). Based on the evidence of record in this case, the Commission finds that complainant has not sustained her burden of proof. Complainant has not demonstrated that DEO acted in any manner that was unjust or unreasonable, as required by Section 4905.26, Revised Code, or that the Company otherwise violated any provision of Title 49, Revised Code, or any Commission rule. Accordingly, the Commission concludes that the complaint should be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DEO is a public utility as defined by Sections 4905.02 and 4905.03, Revised Code.
- (2) On November 2, 2011, complainant filed a complaint against DEO, alleging that the Company incorrectly billed complainant.
- (3) DEO filed an answer denying the material allegations of the complaint.
- (4) A settlement conference was held on January 23, 2012; however, the parties were unable to resolve this matter.
- (5) A hearing was held on June 21, 2012.

- (6) In a complaint case, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966).
- (7) Complainant has not met her burden of proof that DEO violated any Commission rule or any provision of Title 49, Revised Code.

ORDER:

It is, therefore,

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

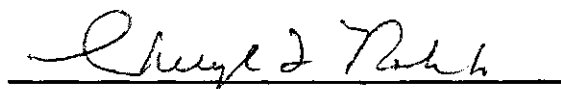
ORDERED, That a copy of this opinion and order be served upon each party of record.

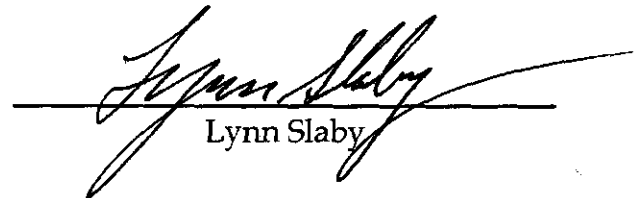
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


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SJP/sc

Entered in the Journal

OCT 24 2012



Barcy F. McNeal
Secretary