

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )	
Marilyn J. Rhodes, )	
Complainant, )	
v. )	Case No. 14-834-GA-CSS
Duke Energy Ohio, Inc., )	
Respondent. )	

OPINION AND ORDER

The Commission, considering the evidence of record, arguments of the parties, and applicable law, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Marilyn J. Rhodes, 9846 Arvin Avenue, Cincinnati, Ohio 45236, pro se.

Eberly, McMahon, Copetas LLC by Robert A. McMahon, 2321 Kemper Lane, Suite 100, Cincinnati, Ohio 45206, on behalf of Duke Energy Ohio, Inc.

OPINION:

I. Background

On May 6, 2014, Marilyn J. Rhodes (Complainant) filed a complaint alleging Duke Energy Ohio, Inc. (Duke) improperly transferred a \$791.26 balance due from her ex-husband's account to her account. Attached to her complaint were copies of her bills for various months between 2006 and 2010, a payment history prepared by Duke dating from June 2006 through February 2014, Duke payment plan letters, cancelled checks for payments to Duke and other entities, credit reports, and health care coverage statements. In addition, Ms. Rhodes alleged there were instances involving fraud, identity theft, and mail diversion related to her complaint. On May 12, 2014, Ms. Rhodes filed a supplement to her complaint that included copies of the bills previously filed with her complaint, in addition to copies of her bills for various months between 2011 and 2014. On May 23, 2014, Duke filed an answer to the complaint.

By Entry of June 5, 2014, the attorney examiner directed Duke to provide historical information on the Complainant's gas and electric account. The June 5, 2014 Entry also directed the Complainant to file a response to Duke's filing. On June 16, 2014, Duke filed the ordered response and a spreadsheet with information on Ms. Rhodes' account, dating from February 2003 through June 2014. The spreadsheet included the issue date of each bill, monthly charges, assessed late fees, payments received, dates on which Ms. Rhodes' payments posted to her account, balance due, billing due date, as well as all payment plans entered into by Ms. Rhodes. Duke indicated that its records demonstrated that the Complainant had not made a payment on her account since February 19, 2014, and her unpaid account balance was \$3,063.20. On June 26, 2014, Duke filed a motion to dismiss the complaint and a request to disconnect service to Ms. Rhodes. Duke attached to its June 26, 2014 motion, two pages of what it claimed was the response of the Complainant to its June 16, 2014 pleading. According to Duke, these two pages indicated Ms. Rhodes also contested the \$210 security deposit charge applied to her account in February 2003. The Complainant did not file a responsive pleading.

By Entry of July 8, 2014, the attorney examiner determined that the disputed amount in this case was \$1,001.26 (the total of the initial \$791.26 disputed amount plus the subsequent disputed amount of \$210) and the undisputed amount was \$2,061.94 (the difference between the unpaid balance of \$3,063.20 and the identified disputed amount of \$1,001.26). The July 8, 2014 Entry directed the Complainant to pay the undisputed amount and all current charges and reminded the Complainant that she could face disconnection if she failed to pay the undisputed amount and all current charges. On September 19, 2014, the Commission held a settlement conference; however, the parties failed to resolve the issues in this case. By Entry issued September 30, 2014, this matter was scheduled for hearing on December 9, 2014. On December 2, 2014, Duke filed the testimony of Melissa Coffman with an attachment to her testimony (Duke Ex. MC-1) that updated the information in the spreadsheet through October 30, 2014. At the December 9, 2014 hearing, Ms. Rhodes testified on her own behalf and Melissa Coffman testified on behalf of Duke.

## II. The Law

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 allowed by law or by order of the Commission. R.C. 4905.26 requires, among other things, that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate, charge, or service rendered is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law.

Duke is a public utility by virtue of R.C. 4905.02, an electric company as defined in R.C. 4905.03(C), and a natural gas company as defined in R.C. 4905.03. As such, Duke is subject to the jurisdiction of the Commission pursuant to R.C. 4905.04 and 4905.05. In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

### III. Summary of the Evidence and Testimony of the Parties

#### A. Complainant's Position

Ms. Rhodes testified that she never called Duke in February 2003 to have service put in her name because she was still legally married and in divorce court, and her divorce was not final until February 27, 2003. She maintained that she first called to establish service in her name on March 1, 2003, and that her service began March 1, 2003. (Tr. at 8, 36.) She claimed that, when she began service with Duke, Duke improperly transferred \$791.26 from her ex-husband's Duke account to her account; although she provided no evidence related to this allegation (Tr. at 57-58). She also claimed that the meter reading should not have occurred until March 2003 and she should have had a new account (Tr. at 10).

She asserted that Duke's spreadsheet and history were in error because there were payments that did not appear on those documents. For example, she claimed that her August 2013 bill indicated that she made a payment of \$1,500, but this payment never appeared in Duke's payment history. (Tr. at 23, 31.) Nevertheless, she acknowledged that she received credit for \$1,500 in payments and that Duke's records identified two payments, one for \$700 and the other for \$800, in the same billing period, and that the sum of those amounts equal \$1,500 (Tr. at 32, 49-50). Ms. Rhodes also claimed that Duke's records were incorrect because there were three checks written that did not show on the spreadsheet or Duke Ex. MC-1; however, she did not produce any of the three checks for which she alleged she had not received credit. She further claimed that she never owed Duke \$4,000 because her gas and electric bills never exceeded \$300 per month. (Tr. at 10.)

Ms. Rhodes admitted that she did not always pay her bills on time and she acknowledged that she had no checks or receipts for payments on her account for which she alleged she was not given proper credit. She also acknowledged that her last payment to Duke was on February 19, 2014, for \$386, even though she continued to reside at her address and receive gas and electric service. (Tr. at 45-46, 54-55.) She further agreed that she had entered into payment plans with Duke, but had not always fulfilled the terms of the payment plans (Tr. at 56-57). While Ms. Rhodes alleged in the pleadings that Duke improperly charged her \$210, she did not raise this issue or provide any evidence related to this issue at the hearing.

Ms. Rhodes claimed that she was the victim of identity theft, fraud, and forgery in February 2010 and that her credit report identified incorrect addresses and telephone numbers for her. She also asserted that someone looked at her credit file without permission. (Tr. at 7-8, 14.) She testified that, once she became the victim of identity theft, she paid her Duke bills with cash at the Kroger store and received receipts for the payments. Ms. Rhodes admitted that whoever was involved with the instances of identity theft, fraud, and forgery, those people did not work for Duke. She also admitted that no one with Duke had anything to do with the allegations and she had no evidence that Duke was involved with any conduct that constituted the theft of her identity, forgery, or fraud against her. (Tr. at 59-62.)

B. Duke's Position

Melissa Coffman, a consumer affairs specialist for Duke, testified that she prepared the spreadsheet and Duke Ex. MC-1, based on a review of Ms. Rhodes' actual bills back to 2006, and other account billing and payment information that date to when Ms. Rhodes began service with Duke (Duke Ex. A at 1, 5-6). According to Ms. Coffman, Duke's records confirm that Ms. Rhodes established gas and electric service in her name at the property under her account number on February 12, 2003 (Duke Ex. A at 6). Ms. Coffman stated that, because Ms. Rhodes was a new customer without established credit, Duke imposed a security deposit of \$210, based on the gas and electric usage at the property during the prior 12 months, as authorized by Duke's tariffs. Ms. Coffman testified that Duke allowed Ms. Rhodes to enter into a payment plan to pay the security deposit over a three-month period. (Duke Ex. A at 6, 8.)

With respect to the allegation related to a transfer of \$791.26, Ms. Coffman testified that no such transfer occurred because Ms. Rhodes' ex-husband paid the due amount on the account in full. She also indicated that Duke's records established that no unpaid usage for gas or electric charges were transferred or placed on Ms. Rhodes' account when she established service in her name or at any other time, from either her ex-husband or anyone else. (Duke Ex. A at 8.) Ms. Coffman indicated that Ms. Rhodes entered into 13 separate payment plans between 2008 and 2012, but she fully paid only one six-month payment plan in 2009. According to Ms. Coffman, all unpaid payment plans became part of new payment plans; however, other than one payment plan, Ms. Rhodes defaulted on every other payment plan. (Duke Ex. A at 8-9.) Further, Ms. Coffman noted that Duke's records show that Ms. Rhodes has not made a payment to Duke for her gas or electric service since February 19, 2014, when she paid \$386. According to Ms. Coffman, due to the Commission's prohibition against shutting off Ms. Rhodes, her unpaid balance reached \$3,325.47 when Duke generated her July 2, 2014 bill, and increased to \$4,111.40 as of her December 4, 2014 bill. (Duke Ex. A at 9-10.) Ms. Coffman also stated that Ms. Rhodes never contacted

Duke to make any claims regarding unauthorized charges on her account or identity theft, mail diversion, or fraud until she started receiving disconnection notices in March 2014 (Duke Ex. A at 11, 13). Further, Ms. Coffman explained that Ms. Rhodes paid Duke \$175 under the Commission's winter disconnect rule to reconnect her service and agreed to pay \$657 per month for her past due gas and electric charges (Duke Ex. A at 15-16).

Ms. Coffman testified that, when Duke receives more than one payment during the billing cycle, Duke adds the entire total of payments and generates a bill that reflects the total of all payments as a total credit. With respect to the issue related to the \$1,500 credit, she claimed that the payments of \$700 and \$800 payments referred to by Ms. Rhodes were recorded as a single \$1,500 payment and shown as a single \$1,500 credit on Ms. Rhodes' August 2013 bill. (Tr. at 77-78.)

#### IV. Discussion and Conclusion

There were five allegations raised in this proceeding. First, Ms. Rhodes alleged that Duke improperly transferred a balance of \$791.26 for service at her ex-husband's residence or from a customer residing at an address at Vera Avenue to her account. The Complainant failed to provide any evidence that Duke transferred to her account any unpaid balance from any customer, including her ex-husband. The Complainant also could not identify the date of any unauthorized transfer of any billed amount. In addition, the spreadsheet and Duke Ex. MC-1 did not show any amounts ever transferred to the Complainant's account and Ms. Rhodes did not identify any discrepancy in her bills, the spreadsheet, or Duke Ex. MC-1. Therefore, we find no merit to this allegation.

Second, Ms. Rhodes alleged that Duke imposed an improper \$210 billed amount to her account. The evidence shows that, in February 2003, Duke imposed a \$210 security deposit charge in accordance with its tariff, because Ms. Rhodes was a new customer. Ms. Rhodes provided no evidence that it was improper to impose a security deposit upon her as a new customer and no evidence demonstrating any irregularity associated with that security deposit charge. Therefore, we find no merit to this allegation.

Third, Ms. Rhodes alleged that Duke's records were inaccurate because they did not reflect a \$1,500 payment. Ms. Rhodes provided her August 2013 bill that showed a credit of \$1,500; but she claimed that there was no corresponding \$1,500 amount in the spreadsheet or Duke Ex. MC-1. Ms. Coffman testified that Duke's records, as reflected in both the spreadsheet and Duke Ex. MC-1, show a payment of \$700 and a payment of \$800 for the same period as shown in the August 2013 bill and that Duke's billing practice is to list the total of the customer's payments, rather than individually list each

payment. In addition, Ms. Rhodes never provided any evidence, in the form of a cancelled check or receipt, showing that she made one \$1,500 payment not credited to her account. While Duke's records for Ms. Rhodes do not list a \$1,500 payment, the spreadsheet and Duke Ex. MC-1 have two payments listed, one for \$700 on June 18, 2013, and a second for \$800 on July 1, 2013, that total \$1,500. Further, the August 2013 bill pointed to by Ms. Rhodes indicated that she received a credit of \$1,500 for payments made. Therefore, we find no merit to this allegation.

Fourth, Ms. Rhodes alleged that Duke's records were incorrect because she claimed she began service in March 2003, rather than February 2003. Ms. Rhodes asserted that Duke was incorrect because she insisted that she would not have commenced service while she was married and she became divorced in March 2003. We find no merit to this allegation. Notwithstanding whether Ms. Rhodes began service in February or March 2003, she never established the relevance of when she began utility service with Duke, to the issue of whether Duke's provision of gas and electric service was in violation of R.C. 4905.26, Duke's tariff, or the Commission's rules. Ms. Rhodes also never demonstrated that the billed amounts for gas and electric service for February 2003 or at any other time were in error or that she did not receive full and appropriate credit for any amounts she paid on her Duke account.

Finally, with respect to Ms. Rhodes' allegation that she was the victim of fraud, identify theft, and mail diversion, Ms. Rhodes admitted at the hearing that Duke had no involvement or responsibility for anything related to these alleged events. Accordingly, we do not need to address this allegation in her complaint.

Therefore, there is insufficient evidence to support a finding that any charge for any service provided by Duke was unjust, unreasonable, or more than allowed by law or order of the Commission. There is also insufficient evidence to support a finding that the billing of the Complainant for gas or electric service was in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, as contemplated by R.C. 4905.22 or 4905.26. Accordingly, this matter should be decided in favor of Duke as the Complainant failed to sustain her burden of proof.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a public utility by virtue of R.C. 4905.02, an electric company as defined in R.C. 4905.03(C), and a natural gas company as defined in R.C. 4905.03. As such, Duke is subject to the jurisdiction of the Commission pursuant to R.C. 4905.04 and 4905.05.

- (2) On May 6, 2014, as supplemented on May 12, 2014, Marilyn J. Rhodes filed a complaint against Duke.
- (3) On May 23, 2014, Duke filed an answer to the complaint.
- (4) On June 16, 2014, Duke filed historical information on the Complainant's account.
- (5) By Entry of July 8, 2014, the attorney examiner determined that the disputed amount in this case was \$1,001.26 and the undisputed amount was \$2,061.94, and directed the Complainant to pay the undisputed amount.
- (6) On September 19, 2014, the Commission held a prehearing settlement conference; however, the parties were unable to resolve the issues in the complaint.
- (7) At the December 9, 2014 hearing, the Complainant testified on her own behalf and Duke presented the testimony of Melissa Coffman.
- (8) 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).
- (9) There is insufficient evidence to support a finding that any charge for any service provided by Duke was unjust, unreasonable, or more than allowed by law or order of the Commission.
- (10) There is insufficient evidence to support a finding that the billing of the Complainant for gas or electric service was in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential as contemplated by R.C. 4905.22 or 4905.26.

ORDER:

It is, therefore,

ORDERED, That this matter be decided in favor of Duke for failure of the Complainant to sustain her burden of proof. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Thomas W. Johnson, Chairman

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Steven D. Lesser

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Lynn Slaby

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M. Beth Trombold

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Asim Z. Haque

SEF/dah

Entered in the Journal  
**JAN 21 2015**

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Barcy F. McNeal

Barcy F. McNeal  
Secretary