

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
Larry Peterson,)
)
 Complainant,)
)
 v.) Case No. 14-744-EL-CSS
)
 Duke Energy Ohio, Inc.,)
)
 Respondent.)

OPINION AND ORDER

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

APPEARANCES:

Larry Peterson, 3944 Roosevelt Boulevard, Middletown, Ohio 45044, pro se.

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

OPINION:

I. Background

On April 21, 2014, Larry Peterson (Mr. Peterson or Complainant) filed a complaint against Duke Energy Ohio, Inc. (Duke), alleging that he rents only the upstairs of an apartment building, yet Duke is also billing him for a storage room and garage. In addition, he asserts that he "used only 500-700 KWH to January this year."

Duke filed its answer on May 12, 2014. Duke states that Complainant started service at his apartment at 3944 Roosevelt Boulevard in Middletown, Ohio, account number 0530-0272-40-3 (the "apartment account"), on August 20, 2013. According to Duke, on or about September 5, 2013, Complainant called again and requested service to be placed in his name at the same address. Duke adds that its service representative did not realize Mr. Peterson

already had service at 3944 Roosevelt Boulevard, and thus mistakenly believed that Complainant wanted service at account number 9430-0272-25-2 (the "garage account"). Later, Duke asserts, Complainant realized that he was being billed for two accounts and brought the error to Duke's attention, upon which Duke promptly applied to the apartment account all payments that Mr. Peterson had made to the garage account.

By entry issued May 20, 2014, the attorney examiner scheduled a June 19, 2014 settlement conference.

On May 22, 2014, Duke filed a motion to dismiss, stating that it had resolved the matter by applying to Complainant's apartment account every payment made to the garage account. Duke adds that it also placed the account number for the storage room and garage in the landlord's name.

Ohio Adm.Code 4901-9-01(F) states that if a utility complained against files a motion asserting the complaint has been satisfied, the complainant shall file a written response within twenty days after service of the motion. If no response is filed, the Commission may presume that satisfaction has occurred and dismiss the complaint. Because Complainant did not file any response within twenty days, the attorney examiner issued a June 11, 2014 Entry cancelling the June 19, 2014 settlement conference.

On July 15, 2015, Complainant filed a letter indicating that a disability caused by his back problems made travel difficult. In addition, during a telephone call to the attorney examiner, Mr. Peterson reemphasized that the matter had not been resolved. Therefore, the attorney examiner issued a July 16, 2014 Entry rescheduling the settlement conference to August 11, 2014, and requiring the parties to participate by telephone. The parties participated in the teleconference and in several subsequent teleconferences on October 6, 2014, and November 5, 2014, but could not reach an agreement.

By Entry issued December 30, 2014, a hearing was scheduled for March 24, 2015. Complainant filed a letter March 11, 2015, indicating that the March 24, 2015 hearing date conflicted with a medical appointment at the Veterans Administration. In a March 31, 2015 Entry, the attorney examiner rescheduled the hearing to May 21, 2015, at which time both parties made appearances.

II. The Law

Section 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, fare, charge * * * or service rendered, charged,
demanded * * * is in any respect unjust, unreasonable,

unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by said public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained * * * .

Duke is an electric company as defined in R.C. 4905.03(C), and a public utility by virtue of R.C. 4905.02. 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.W. 2d 666 (1966).

The statutory obligation of a public utility relative to the service and facilities it must provide is set forth in R.C. 4905.22 which states, in pertinent part, that:

[e]very public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respect just and reasonable.

III. Summary of the Evidence and Testimony of the Parties

Complainant's Position

Mr. Peterson reemphasized that that he was billed for a portion of the apartment building that he did not live in (Tr. at 15, 19). He added that Duke reimbursed him in mid-January 2014 with a one-time credit on his bill for all payments that he had made to the garage account. However, he still believes that he overpaid Duke from December 2013 to April 2015 "three times what it should have been," and that Duke has not made all necessary corrections to his bill (Tr. at 6-7, 12-13, 16-17, 18, 28, 43-44). More specifically, he asserts, beginning in December 2013 he was overcharged for 17 months, including bills of \$300 to \$375 per month that should have been \$80-\$120 per month (Tr. at 7-8, 20, 37-38). Complainant conceded that he does not have any evidence to indicate the amount of electricity he should have been billed for (Tr. at 23). Mr. Peterson also stated that there is electric heat in his apartment (Tr. at 8).

Duke's Position

Melissa Coffman, Consumer Affairs Specialist, reasserted contentions made in Duke's May 12, 2014 answer, while also providing additional details. After Duke placed the garage account in Complainant's name, she explained, Duke mailed separate monthly statements for both accounts. Payments made by Mr. Peterson in November 2013, December 2013, and January 2014 were only applied to the garage account, making the apartment account subject to disconnection (DE Ex. A at 4-7). According to Ms. Coffman, after disconnection notices were mailed to Mr. Peterson, service for the apartment account was terminated January 13, 2014, prompting Complainant to call Duke. During the January 13, 2014 discussion, Duke recognized the billing error, applied the November 2013 through January 2014 payments as a credit to the apartment account, and informed Mr. Peterson of these corrective actions. Duke also transferred the garage account out of Complainant's name and into the property owner's name, restoring service to Mr. Peterson on January 13, 2014. (DE Ex. A at 6-7, 10-11; Ex. MC-1a, Ex. MC-2, Ex. MC-4, Ex. MC-5.)

Ms. Coffman contends that Duke's corrective actions were also explained to Complainant on January 21, 2014, during a telephone call from Complainant to Duke Consumer Affairs Specialist Alicia Jones, and subsequently in a telephone call from Complainant to Duke's Victoria King, which Complainant made via the Commission's customer service line. Ms. Coffman noted that Ms. King offered Complainant a payment plan for the apartment account, which he accepted. (DE Ex. A at 10-11; Ex. MC-4.)

According to Ms. Coffman, despite Duke's corrections to Complainant's bill, Mr. Peterson filed an informal complaint on February 6, 2014, followed by a formal complaint on April 21, 2014. Ms. Coffman asserts that, even after filing the formal complaint, Mr. Peterson never provided more information to better support his claims. Further, she contends, she has reviewed bank records provided by Complainant and reconciled every payment he made with the information in Duke's records for the garage account and the apartment account. (DE Ex. A at 11-15, 17-18.)

Regarding Complainant's contention that the usage indicated on the apartment account bills is inaccurately high, Ms. Coffman explained that Duke installed an AMI meter for the apartment account on November 13, 2012. She added that Duke performs two to three months of actual reads to confirm that the meter is functioning properly; if the meter is working correctly, it is certified by Duke. Complainant's meter was certified in early 2013, months before Mr. Peterson applied for service at his apartment. Ms. Coffman contends that the usage measured by Complainant's meter is accurate, and that Mr. Peterson never states the time period for this allegation or whether he believes that the meter is defective. Ms. Coffman observes that there are not sharp fluctuations in usage for the apartment account during January 2014-April 2014, and contends that the absence of sharp variations in usage during those months confirm that Mr. Peterson's meter was

operating accurately before, during, and after January 2014–April 2014. She further asserts that Complainant likely did not take into account much colder than normal weather during January 2014–April 2014, when his usage was much higher than during a comparable period in 2015. (DE Ex. A at 13-16; Ex. MC-6.)

Ms. Coffman notes that, in addition questioning the usage for which he was billed at his apartment, Mr. Peterson contended shortly after filing his informal complaint that he was being billed for a master meter at the apartment complex. Duke investigated and found no merit to this allegation. Ms. Coffman added that the AMI meter for Complainant's apartment account serves only his apartment and nothing else (DE Ex. A at 11-12).

IV. Discussion and Conclusion

As noted in Part II of this Opinion and Order, in complaint proceedings the burden of proof is on the complainant. For reasons explained below, we find insufficient evidence to support a conclusion that Duke acted unreasonably, or in violation of any tariff, rule, regulation, law, or accepted standard or practice in the electric utility industry. Therefore, based on the record in this proceeding, Mr. Peterson has failed to sustain his burden of proof.

Mr. Peterson's complaint focuses on two alleged errors by Duke, namely, that he was incorrectly billed for a portion of the apartment building that was not his residence, and that the bills for the apartment account did not accurately reflect his usage. Duke does not deny that it erroneously billed Complainant for the garage account, but contends that the billing error was corrected; copies of Complainant's bills, as well as Mr. Peterson's testimony, confirm that after Complainant's January 13, 2014 telephone call, Duke promptly credited his apartment account with the November 2013–January 2014 payments that had been applied to the garage account. (Tr. at 27-28, 43; Ex. MC-1a, Ex. MC-4, Ex. MC-5.)

Regarding Complainant's assertion that his billed usage for the apartment account was inaccurately high during December 2013–April 2015, we first note that Mr. Peterson filed his complaint on April 21, 2014; consequently, the period of time for which his bills may be in dispute can extend no later than April 21, 2014. We further take notice of Complainant's admission that he has electric heat in his apartment, Duke's observation that temperatures were much colder than normal from January 2014–April 2014, and Duke's contention that the AMI meter at Complainant's residence has been certified as accurate. Finally, Duke investigated Complainant's claim of being billed for a master meter and found this allegation to be without merit. Mr. Peterson did not produce any evidence to the contradict these assertions by Duke. (Tr. at 8, 11-12, 14-15).

In sum, a review of the record indicates no evidence demonstrating that Duke has violated any tariff, rule, regulation, law, or accepted standards and practices in the electric industry. The Commission finds that Mr. Peterson has failed to sustain his burden of proof and the complaint should be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On April 21, 2014, Mr. Peterson filed a complaint with the Commission.
- (2) On May 12, 2014, Duke filed its answer.
- (3) By Entry issued May 20, 2014, a prehearing conference was scheduled for June 19, 2014. At Complainant's request, the conference was rescheduled for August 11, 2014. Additional conferences were held on October 6, 2015, and November 11, 2015, but the parties were unable to resolve the matter.
- (4) By entry dated December 30, 2014, the attorney examiner found reasonable grounds for complaint and scheduled a hearing for March 24, 2015. At Complainant's request, the hearing was rescheduled to May 21, 2015.
- (5) At the May 21, 2015, hearing, Complainant testified on his own behalf and Duke presented the testimony of one witness.
- (6) In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Public Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).
- (7) We find insufficient evidence to support a conclusion that Duke acted unreasonably, or in violation of any tariff, rule, regulation, law, or accepted standard or practice in the electric utility industry. Complainant has not met the burden of proof regarding his complaint.

ORDER:

It is, therefore,

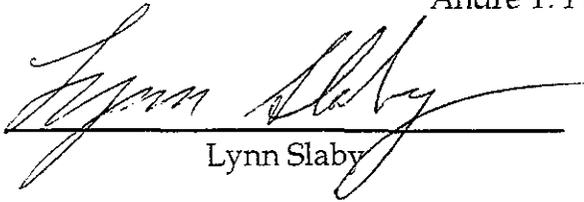
ORDERED, That the complaint be denied. It is, further,

ORDERED, That a copy of this decision be served upon Complainant, Duke, and any interested persons of record.

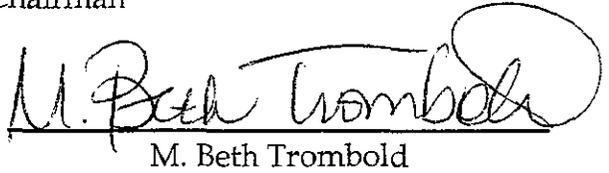
THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman

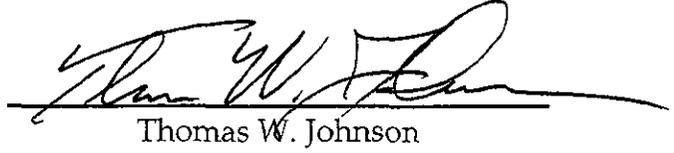


Lynn Slaby



M. Beth Trombold

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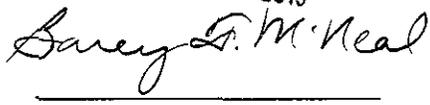


Thomas W. Johnson

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Barcy F. McNeal
Secretary