BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Jane A. Bidwell,	)	
	)	
Complainant,	)	Case No. 15-1020-EL-CSS
	)	
v.	)	
	)	
Ohio Power Company,	)	
	)	
Respondent.	)	

POST-HEARING BRIEF OF OHIO POWER COMPANY

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I. INTRODUCTION

Ohio Power Company ("AEP Ohio" or the "Company") should prevail. Complainant has failed to carry her burden. AEP Ohio's actions were reasonable and lawful. The hearing demonstrated that, as a part of her application for electric service, and due to a fraud alert on her identity, Complainant was required to positively identify herself through the Experian Questionnaire in order to complete her application. The hearing also demonstrated that Complainant failed to complete this task, despite reasonable measures taken by AEP Ohio to inform Complainant of her deficient application, including a disconnect notice. Complainant was never a customer of AEP Ohio prior to the disconnection at issue.

Moreover, the location at issue was disconnected because there was no customer of record and usage showed on the meter. The disconnection was not for fraudulent use, nor did AEP Ohio know of any occupancy at the disconnected location in question. AEP Ohio had no reasonable means to know an individual was living at the location in question since usage on the meter does not equate to occupancy.

Throughout the hearing, Complainant displayed an aversion to accountability and reasonability. She failed to complete her application; she received no bill from AEP Ohio while using electric for six months; she received a returned deposit two months after attempting to apply, and cashed that check; and she knew pursuant to her lease that she was solely responsible for paying for electric service. In spite of this, Complainant never called AEP Ohio during the six month period in which she received electric without receiving a bill. Therefore, in conjunction the reasons cited herein, the Commission should deny this Complaint in its entirety.

In the alternative, the Commission should find that Complainant did not take reasonable action to mitigate the alleged harm and that she suffered no monetary injury. Evidence at hearing shows that Complainant had several viable locations available to store her medication while electric service was disconnected, including her home in Dayton, her apartment complex, and her workplace. She instead chose to only close the refrigerator door in her apartment which was without electric service. Additionally, Complainant's insurance paid for the medicine allegedly ruined and thus Complainant suffered no monetary injury. Thus, no damages should be awarded.

II. STANDARD OF REVIEW

AEP Ohio is a public utility by virtue of Ohio Revised Code 4905.02, subject to the jurisdiction of the Commission in this matter. Pursuant to Ohio Revised Code 4905.26, a complaint against the Company that alleges unjust, unreasonable or unlawful billing practices must state reasonable grounds upon which relief can be granted in order to avoid dismissal. *See Brock v. Ohio Edison Co.*, Case No. 11-6805-EL-CSS, Opinion and Order at 2 (March 6, 2013). Even if reasonable grounds for a complaint are stated, the burden of proof still lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966). It is

therefore the complainant's responsibility to present superior, persuasive evidence supporting an allegation made in a complaint. In the absence of such evidence, Respondent must prevail. [1]

III. APPLICABLE LAW

The Ohio Revised Code delineates law on the disconnection of electric service and notice thereof. A plain reading of the relevant statutes indicates that a "consumer" of electric, to which the statutes' requirements generally apply, is either the customer of record or the tenant of a landlord who is the customer of record. It does not include an applicant who failed to complete her application for electric service, especially when the electric utility company knows of no occupancy and attempted multiple times to contact that applicant to notify her of (1) her deficient application for lack of positive identification post-fraud-alert on her identity and (2) that a disconnection of electric service would occur if her application remained incomplete.

According to Ohio Revised Code ("ORC") §4933.121(A), an electric light company cannot disconnect a residential consumer between November 15 and April 15 unless theft of electricity has occurred or the account is in arrears for thirty days or more. The fact that the statute mentions an account infers that the consumer in that circumstance is already a customer of record. This contention is further evidenced by ORC §4933.121(C), which addresses disconnection of a residential premises for failure to pay the amount due for electricity. Disconnection for failure to pay the amount due also implies that a customer of record exists.

The other circumstance in which a proper disconnection may occur is mentioned in section (A)(2) of the statute. This circumstance is when the landlord is the customer of record. It states that that "if the occupant of residential premises is a tenant whose landlord is responsible

[1] It should be noted that a mistake exists on page 3 of the certified transcript. On that page is the index where it lists the "Company's Case" and the "Respondent's Case". AEP Ohio is the Company and the Respondent. It should therefore read that there is a "Company's Case" and a "Complainant's case". Ms. Bidwell is the Complainant and not the Respondent; thus, all of the events listed in the index on page 3 under "Respondent's Case" should be listed as the "Complainant's Case". As such, it would read "Company's Case" starting on page 143, and "Complainant's Case" starting on page 9.

for payment for the service provided by the company, the company has, five days previously, notified the occupant of its intent to discontinue service to the occupant". (ORC §4933.121(A)(2)) A "consumer", therefore, is (1) the customer of record or (2) the tenant of a landlord who is the customer of record.

ORC §4933.122 discusses the procedure for disconnecting residential service. That section further indicates that "consumer" means customer of record or tenant of a landlord who is the customer of record. Section 4933.122 states that no electric light company shall disconnect service to a residential consumer except after reasonable prior notice, "after which a customer's account is considered to be in arrears if unpaid, that is less than fourteen days after the mailing of the billing." (ORC §4933.122(A)) Section 4933.122 therefore explicitly refers to the "consumer" as a "customer" since the consumer's customer account is the discussed reason for disconnection. The ORC, thus, only requires an electric light company to notify a consumer if there is a customer of record, whether that customer of record be the actual consumer or the tenant of the customer—the landlord. Neither statute discussed herein provides rights to occupants at a location without a customer of record, especially when that occupant's existence is unknown.

The Commission's rules in Ohio Administrative Code ("OAC") 4901:1-18 strengthen the notions advanced herein. OAC 4901:1-18-01 defines "applicant", "consumer", and "customer". An applicant is "any person who requests or makes application with a utility company for any of the following residential services: electric, gas, or natural gas." (OAC 4901:1-18-01(A)). A consumer is "any person who is an ultimate user of electric, gas, or natural gas utility service." (OAC 4901:1-18-01(F)). And a customer is "any person who enters into an agreement, whether

by contract or under a tariff, to purchase: electric, gas, or natural gas utility service." (OAC 4901:1-18-01(G)).

The rules of OAC 4901:1-18 *only apply to customers of record and tenants of customers of record.* As the rule states, "[t]he rules in this chapter apply to all electric, gas, and natural gas utility companies that provide service to residential *customers*, including residential consumers in master-metered premises, and residential consumers whose utility services are included in rental payments." (emphasis added) (OAC 4901:1-18-02(A)) The OAC therefore reflects the directive of the ORC in that electric-service disconnection laws and rules do not apply to occupants at locations without a customer of record, especially when that occupant's existence is unknown. (Special rules apply for tenants whose landlords pay for the electric service.) (*See* OAC 4901:1-18-08).

Throughout this chapter of the OAC, the Commission consistently expresses that only customers are subject to the full breadth of the disconnection rules. In OAC 4901:1-18-06(A), the rules state a number of circumstances in which residential *customers* may be disconnected. According to OAC 4901:1-18-06, an electric utility company shall not disconnect residential *customers* for nonpayment between November 1 and April 15 unless certain circumstances apply. (OAC 4901:1-18-06). OAC 4901:1-18-06(E) specifically addresses circumstances where an electric utility leaves service on between customers; it only applies, however, when the electric utility receives a request for disconnection from the customer of record. (OAC 4901:1-18-06(E)). This rule, therefore, and the rules and laws discussed previously, do not apply if the disconnection of electric service takes place for usage on the meter without a customer of record where the previous customer of record made no request for disconnection.

The rules for a disconnection due to fraudulent use do not apply here as that was not the reason for the disconnection at issue; nevertheless, a disconnection for such a reason requires notice. OAC §4901-10-20(C) states that a utility may disconnect the service of a customer when the customer uses any fraudulent act to obtain or maintain service, but, before doing so, the utility must deliver notice to an adult customer or consumer at the service location.

The Commission has echoed similar conclusions to those expressed above. For example, *In the Matter of the Complaint of James David Morrow*, Mr. James Morrow alleged that a public utility arbitrarily disconnected gas and electric service without prior notice. (*In the Matter of the Complaint of James David Morrow v. The Dayton Power & Light Co.*, Case No. 81-1407-GE-CSS, Opinion and Order at 1 (Sept. 9, 1982)) The Commission found that Mr. Morrow did not have standing to complain about the notice, in part, because the service was not in Mr. James Morrow's name, but was instead in Mr. Jeff Morrow's name. *Id.* at 3. Thus, a consumer who is not a customer of record, in certain circumstances, does not have standing to levy a complaint.

The Supreme Court of Ohio has also weighed in on a relevant issue, stating that an incomplete application for electric service does not make that applicant a customer of an electric public utility. In the *Complaint of Smith*, a case before the Ohio Supreme Court, Smith, the complainant, alleged that a formal application was not necessary to become a customer of a public utility. (*Complaint of Smith v. Ohio Edison Co.,* 137 Ohio St. 3d 7, 2013-Ohio-4070, 996 N.E.2d 927, at ¶29) The Commission and the Court disagreed, stating that, from the evidence, it was clear that Smith knew he needed to apply to establish service in his name. (*See id.* at ¶30) Furthermore, since Smith never completed the instructions given to him by the utility to complete his application for service, the court affirmed the Commission's finding that he failed to properly apply for service. (*See id.* at 31-32) Smith also maintained, however, that he was not

required to complete a formal application for service in order to receive said service. (*Id.* at ¶35) The Court dismissed this contention because, in part, Smith failed to submit a completed application to establish service; therefore, he was never a customer. (*See id.* at ¶¶36-37) As such, a failed applicant is not entitled to the services, rights and protections of customers. This makes sense because all users of a public utility's electric service should be customers or tenants of customers; otherwise, a public utility would have no reasonable means of knowing that user exists.

Furthermore, AEP Ohio's tariff requires a completed application before an individual becomes a customer. As the tariff states, "[e]lectric service shall be made available to a prospective customer within this Company's area of service upon request or execution of a contract therefore and its acceptance by an officer or authorized representative of the Company." (P.U.C.O. No. 20, Terms and Conditions of Service §2, 1st Revised Sheet No. 103-(1-2) (eff. June 1, 2015)) An incomplete application thus will not suffice. An incomplete application is not accepted by an authorized representative of the company and, as such, the failed applicant is not a customer.

The tariff also limits Complainant's available damages. Moreover, AEP Ohio is only liable if it negligently interrupted Complainant's electric service. The tariff states:

> the Company shall be liable to the customer for damage directly resulting from interruptions . . . of electric service [if] caused by the negligence of the Company or its employees or agents, but any such liability shall not exceed the cost of repairing, or actual cash value, whichever is less, of equipment, appliances, and perishable food stored in a customer's residence damaged as a direct result of such negligence.

(P.U.C.O. No. 20, Terms and Conditions of Service §19, 1st Revised Sheet No. 103-(16) (eff. June 1, 2015))

Further, AEP Ohio "shall not be liable for consequential damages of any kind. This limitation shall not relieve the Company from liability which might otherwise be imposed by law with respect to any claims for personal injuries to the customer." *Id.* In this case, then, Complainant is only entitled to the actual damages caused by Company negligence. But no negligence occurred on the part of the Company, AEP Ohio.

IV. ARGUMENT

AEP Ohio should prevail. Complainant failed to carry her burden. The Complaint should be denied. For several reasons, the Commission should reach this result: (A) Complainant failed to complete her application for electric service; (B) AEP Ohio took reasonable measures to notify Complainant of her deficient application for electric service; (C) Complainant's actions before and after the disconnection event at issue, and her explanations thereof, seek to avoid all accountability and are unreasonable, while, contrarily, AEP Ohio took reasonable and lawful action; (D) Applying these facts to the law demands that the Complaint be denied in its entirety; and (E) In the alternative, the Commission should find that Complainant failed to take reasonable action to mitigate any alleged harm and that she suffered no monetary injury.

A. Complainant failed to complete her application for electric service.

On October 8, 2014, Complainant called AEP Ohio to apply for electric service. (AEP Ohio Ex. 12 at 6:17-18; MLJ-1; MLJ-2; Transcript (Tr.) at 9:20-22; 59:21-60:1) On that initial phone call, Complainant gave myriad information, including a service address, a mailing address, one phone number, and a request for paper statements. (AEP Ohio Ex. 12, MLJ-2 at 3:17-22, 4:5-8, 5:1-3, 7:9-8:4; Tr. at 10:17-22, 11:3) Complainant therefore only gave one address and one phone number at which to contact her, and asked that AEP Ohio contact her via paper instead of electronically.

Despite starting the application process, Complainant never finished it, and was thus never a customer of record at the address in question. (*See* AEP Ohio Ex. 12 at 7:3-8). Complainant never finished her application because she never completed the Experian Questionnaire,[2] a process initiated when an applicant, like Complainant, has a fraud alert on her name.[3] (*Id.*) This requirement is in addition to the deposit she had to pay, a requirement which also did not take place over the phone during the initial call (Tr. at 60:9-19; AEP Ohio Ex. 12, MLJ-2 at 6:15-24)

B. AEP Ohio took reasonable measures to notify Complainant of her deficient application for electric service.

AEP Ohio took reasonable measures to notify Complainant of her deficient application, including calling her and mailing her a letter. Procedure necessitates that AEP Ohio is not aware of a fraud alert on an applicant's name until after the initial application call. (AEP Ohio Ex. 12 at 8:5-13) Once aware, however, AEP Ohio must positively verify the applicant's identification before that applicant can become a customer. (AEP Ohio Ex. 12 at 7:9-8:4) Otherwise, an imposter could open an account in that supposed applicant's name. In this case, AEP Ohio became aware of the fraud alert on Complainant's name the same day she applied for electric service. (AEP Ohio Ex. 12 at 8:5-13, MLJ-12). In an efficient and effective manner thereafter, AEP Ohio sought reasonable avenues to contact Complainant about her incomplete application in order to complete the Experian Questionnaire and thereby her application for service.

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[2] The Experian Questionnaire is a protective measure taken by AEP Ohio and given to all applicants whose name prompts a fraud alert. (AEP Ohio Ex. 12 at 3:9-19) The Experian Questionnaire asks applicants questions that no one would know but the actual applicant. (AEP Ohio Ex. 12 at 9:8-14) For example, it may ask what city the applicant resided in 1994. (*Id.*) AEP Ohio does not generate the questions; Experian does, hence the name. (Tr. at 145:21-146:13)

[3] In July of 2014, Complainant's primary residence in Dayton, Ohio was robbed. (Tr. at 79:11-14) The robber had access to a plethora of personal information and, consequently, Complainant wrote a letter to the three major credit agencies, including Experian, ordering the placement of a fraud alert on her identity. (Tr. at 79:11-81:24)

An AEP Ohio representative attempted to call Complainant on October 9, 2014 at the only number she provided, but the call went straight to a full voicemail box and, as a result, AEP Ohio was unable to leave a message. (AEP Ohio Ex. 12 at 8:14-21, MLJ-1, MLJ-3, MLJ-12) During hearing, Complainant acknowledged that AEP Ohio had provided a recording of such an occurrence, to which Complainant commented, "[y]ou [] have a recording that says my voice mail box was full, which is really weird because it's never full." (Tr. at 61:24-62:4) The evidence, however, shows that it was full that day.

In addition to the phone call made to Complainant, on October 10, 2014, AEP Ohio mailed a letter to Complainant at the only mailing address she provided, imploring her for additional information, for without that information, the application would be incomplete and electric service would be disconnected. (AEP Ohio Ex. 12 at MLJ-4). To expand, the letter acknowledged Complainant's request to open an account for electric service; warned and notified Complainant that the application was incomplete absent additional information; and that additional information was needed by October 19, 2014 or the request for service would be cancelled and electric service disconnected. (AEP Ohio Ex. 12 at 8:22-9:7; MLJ-4) Further, a phone number was given at which Complainant could call AEP Ohio in order to complete the application. (*Id.*) AEP Ohio therefore took reasonable action to procure the necessary information from Complainant so that she could complete the application and become a customer.

C. *Complainant's actions before and after the disconnection event at issue, and her explanations thereof, seek to avoid all accountability and are unreasonable, while, contrarily, AEP Ohio took reasonable and lawful action.*

AEP Ohio sent multiple letters to Complainant at the time she attempted to apply for service, pleading for additional information and action. On October 9, 2014, AEP Ohio sent two

letters to the proper address regarding a request for a deposit. (AEP Ohio Ex. 12 at 11:1-10, MLJ-5, MLJ-6) AEP Ohio also sent the aforementioned October 10th letter requesting additional information in order to complete her application. (AEP Ohio Ex. 12 at MLJ-4) Evidence that these letters were sent exists in the form of copies of those letters held within our system and presented at hearing. (AEP Ohio Ex. 12 at 11:1-10, MLJ-4, MLJ-5, MLJ-6)

Complainant acknowledges that the two October 9 deposit letters and the October 10 letter seeking additional information were generated.[4] (Tr. at 11:11-13:3) Despite this, Complainant denies receiving the letters. (Tr. at 121:3-11, 61:4-23, 14:3-8) Her explanations for why she did not receive the letters, notwithstanding their generation and recordation in AEP Ohio's system, are puzzling and speculative. Complainant first supposes that "[m]aybe the mailman didn't know any of the people" at the apartment complex. (Tr. at 121:16-22) She then resigns to say that she does not know why she did not get the mail and that it is "hard to believe a mailman misplaced three letters." (Tr. at 121:18-122:7)

Furthermore, Complainant received a returned deposit check in December of 2014, which she cashed, and she received all bills after she became a customer for the first time in March of 2015, all sent to the same address as the aforementioned October of 2014 letters. (Tr. at 121:12-15, 72:15-20, 63:12-64:3; AEP Ohio Ex. 12 at 11:1-11, MLJ-7; AEP Ohio Ex. 1; AEP Ohio Ex. 2) It is thus more likely than not that Complainant received the letters AEP Ohio sent in October of 2014 seeking a deposit, and that she received the letter sent in October of 2014 seeking additional information so that she could complete the Experian Questionnaire and become a customer.

[4] Please recall, also, that she acknowledged that AEP Ohio attempted to call her phone on October 9, 2014. Please see Section IV(B).

From October of 2014 to March of 2015, AEP Ohio sent Complainant no bills because there was no customer of record at the address in question. (Tr. at 62:5-63:1-4; AEP Ohio Ex. 12 at 12:22-13:2) Complainant, however, received electric service and failed to call AEP Ohio to inquire as to why she was not receiving a bill. (AEP Ohio Ex. 12 at 13:3-7, MLJ-1) Nor did Complainant call after she received a returned deposit from AEP Ohio in December of 2014, about two months after attempting to apply for service. (AEP Ohio Ex. 12 at 13:8-11, MLJ-1, MLJ-7; Tr. at 64:4-65:10)

Complainant's reasons for not inquiring into these warning signs are suspect and unreasonable. She claims that despite previously using electric with another Ohio public utility, she did not know AEP Ohio would bill her monthly if she was a customer. (Tr. at 65:6-66:1) So after not receiving a bill for six months of electric use and after receiving a returned deposit check, and cashing that check, Complainant claims she had no reason to think she was not a customer. This excludes the fact that she more than likely received the October 10, 2014 letter pleading for additional information in order to complete her application, and which stated that if she did not give that information, her application would be cancelled and service disconnected. It is more likely than not then, that, at the very least, Complainant knew something was wrong with her account, which should have prompted a call, a call that would have avoided this disconnection and which AEP Ohio had pleaded for.

Ultimately, Complainant contends that, despite the aforementioned notices, warning signs and fraud alert, she had no other obligation than to make a call in October of 2014 attempting to apply for service and pay a deposit which was returned to her two months later. (*See* Tr. at 14:9-14)

The disconnection of service and the events after continue this section's theme—AEP Ohio took reasonable and lawful action. Complainant returned to her apartment in Columbus from her home in Dayton on Friday, March 20, 2015, where she discovered the Columbus apartment no longer had electric service. (Tr. at 17:21-18:3) The disconnection had occurred that day, Friday, March 20, 2015, prior to noon. (AEP Ohio Ex. 12 at 13:12-19) Despite the October 10, 2014 letter requesting additional information, which contained a disconnect notice, Complainant claims that this was the first date on which she received a disconnect notice. (Tr. at 18:15-19)

Disconnection at the location in question occurred *because there was no customer of record and usage showed on the meter.* (AEP Ohio Ex. 12 at 13:14-16, 18-11-12) The disconnection *did not occur because of fraudulent use.* (*Id.*) Moreover, *AEP Ohio had no reasonable means to know an individual was living there.* (AEP Ohio Ex. 12 at 14:5-7, 18:12-13)[5] Usage on the meter does not equate to occupancy. (AEP Ohio Ex. 12 at 12:11-21). Therefore, although usage showed on the meter, that *did not indicate to AEP Ohio that there was occupancy at this location.* (*Id.*) As Company witness Ms. Jeunelot states in her direct testimony:

> Usage did show, but that usage did not indicate that someone was occupying the residence. Many times customers move out and leave on a heater or air-conditioner, or leave all the appliances plugged-in. Also, realtors or apartment managers leave lights on after showing properties to prospective buyers. In all of these cases, usage will occur and fluctuate when the residential property is vacant. Therefore, even though the meter showed usage at the service address in question,

[5] During hearing, in an exchange between Company witness Michele Jeunelot and the Attorney Examiner, Ms. Jeunelot explained how usage on the meter does not equate to occupancy. (Tr. at 204:8-11) Ms. Jeunelot stated she was unsure as to what "triggers" there were that might indicate occupancy. (Tr. at 204:12-18) A few months of usage could be a sign, but she has seen usage on a meter for months only to discover the location is vacant. (Tr. at 204: 12-25). At this point, she then repeats that she does not know what *the triggers are which tell AEP Ohio employees to look for occupancy or disconnect.* (Tr. at 204:22-25) The Attorney Examiner responds by mentioning the ambiguous "that trigger", to which Ms. Jeunelot responded it was triggered. (Tr. at 205:1-14) The Attorney Examiner interpreted that to response to mean AEP Ohio knew there was occupancy at the apartment in question. (Tr. at 205:15-16). *This interpretation is not AEP Ohio's assertion.* In an ambiguous exchange, consistency with prior testimony should be assumed. All of AEP Ohio's prior testimony unambiguously and conspicuously claims that AEP Ohio did not know there was occupancy at the location in question. (AEP Ohio Ex. 12 at 13:14-16, 14:5-7, 18:11-13)

there was no way for AEP Ohio to know someone was occupying that location. (*Id.*)

AEP Ohio normally would have disconnected this location sooner; however, AEP Ohio usually waits before disconnecting a vacant residence just in case a new customer arrives and cold weather caused further delay. (AEP Ohio Ex. 12 at 11:18-12:10; Tr. at 175:5-21, 205:1-14) During the months of January and February of 2015, consistently low temperatures caused AEP Ohio to keep personnel from making disconnections for the safety of those workers. (Tr. at 175:5-21, 205:1-14)

In summary, AEP Ohio disconnected because it deduced that appliances and other devices that use electronics were on; that no customer of record existed to assume responsibility for that use; and that no one was occupying the apartment.

Furthermore, the apartment at issue was a brand new apartment when Complainant moved-in. (Tr. at 13:4-11) In fact, Complainant was the first to move-in to her unit. (Tr. at 60:2-5) Service was already on at the apartment because service was originally in the apartment complex's name. (Tr. at 151:6-12) Prior to Complainant's initial call to apply, however, there was never a call to disconnect by the apartment complex. (*Id.*, 197:1-7) Thus, if service was removed from the apartment and then cancelled during the application process, it would not be returned to the apartment's name. As Company witness Ms. Jeunelot stated, to her understanding, no contract existed at the time of disconnect between the landlord and AEP Ohio which would place Complainant's failed pending account (because of her failed application) back into the apartment's name. (*See* Tr. at 176:5-21)

As a result, when Complainant attempted to apply for electric service, the account in the apartment complex's name was foreclosed and a pending account was opened for Complainant. (Tr. at 151:6-16, 203:15-204:7) That pending account never became an actual account because

the application was never completed due to the fraud alert and Complainant's nonresponse to AEP Ohio's information request (*See* Tr. 203:15-204:7) Therefore, upon the failure of Complainant to complete her application, that location had no customer of record.

Importantly, Complainant had no reason to believe that electric service had passed back into the apartment complex's name prior to the March 20, 2015 disconnection; moreover, such a contention is inconsistent with her argument. Complainant's lease conspicuously states that the tenant is responsible for the electric bill. (AEP Ohio Ex. 3; AEP Ohio Ex. 4; Tr. at 78:10-18) Further, Complainant acknowledged during cross-examination that she knew she was responsible for her electric bill under the agreement between herself and her apartment complex. (Tr. at 78:19-79:7) And Complainant also acknowledged during cross-examination that the apartment complex never billed her for electric service. (Tr. at 91:13-16)

Notwithstanding these acknowledgments, Complainant *changed her narrative* later in the hearing. When asked why she did not call AEP Ohio despite not receiving a bill for six months, Complainant replied, "Well, to be very honest, I thought they left it in the name of the apartment complex, which was not an issue because I was paid up months in advance on my rent." (Tr. at 124:17-23) She continued with this story moments later, again citing it a reason why not receiving a bill from AEP Ohio for six months did not prompt her to make an inquiry. (Tr. at 125:11-22)

Complainant nowhere claims that she had knowledge of some sort of contract between her landlord and AEP Ohio at the time of disconnect. In fact, immediately after disconnect in March of 2015, she tried to set up an account in her name, indicating that she knew the apartment complex was not responsible for service. (Tr. at 19:1-27:4). *In sum*, she failed to complete her application; she received no bill from AEP Ohio while using electric for six months; she received

a returned deposit two months after attempting to apply, which she cashed, and all of which prompted no call to AEP Ohio; and, lastly, she first claims to know she is responsible for paying her own electric pursuant to her lease, but when questioned as to why she did not call AEP Ohio despite the described circumstances, she claims the apartment complex was responsible for the electric service. All of this evidence strongly points to one conclusion: she knew she should have been paying for her electric and she chose not to call AEP Ohio in order to continue to receive free electric. This, however, is only a conclusion AEP Ohio could deduce after the fact, for AEP Ohio knew of no occupant at the time of disconnect.

After the Friday, March 20, 2015 disconnect, Complainant applied for service, completed the application, and service was turned on for this new, first-time customer within one business day on Monday, March 23, 2015. (AEP Ohio Ex. 12 at 14:22-15:2)[6] The timeliness within which the application was processed and service turned on was consistent with what Complainant was told by AEP Ohio, as an AEP Ohio representative initially told Complainant her electric service would start in one to three business days. (Tr. at 26:9-13)[7]

Furthermore, in order to complete the application for electric service in March of 2015, Complainant had to pay a deposit and complete the Experian Questionnaire, which positively identified Complainant and completed all the tasks necessary for an applicant, like Complainant, with a fraud alert on her name. (AEP Ohio Ex. 12 at 15:3-9, MLJ-13) Complainant acknowledges that in order to complete her application in March of 2015, she had to answer the

[6] Whether or not there was any confusion between AEP Ohio and Complainant as to what steps were necessary to complete Complainant's March of 2015 application is of no consequence. The bottom line is service was turned on for this new, first-time customer after one business day.

[7] One of Complainant's calls with AEP Ohio took place the night of March 20, 2015 at 10:23pm . (AEP Ohio Ex. 12 at MLJ-1) During that call, she acknowledges that electric service had not been established, and it is the *first time* she mentions to AEP Ohio anything about her medicine despite the initial call that afternoon in which she was told it would take one to three business days to connect her. (Tr. at 31:9-34:12; 19:1-27:3; AEP Ohio Ex. 12 at MLJ-1) The fact that she called at 10:23pm and knew electric service was not established is inconsistent with her claim that she worked until 11:00pm that night. (Tr. at 30:14-15) Her work schedule also disputes this claim. (AEP Ohio Ex. 5)

Experian Questionnaire, though she casts doubt on its efficacy despite her lack of expertise. (Tr. at 43:20-22, 70:6-71:8)

As these facts show, Complainant sought, by her actions and explanation of the events at issue, to avoid all accountability. As such, she has put forth an unreasonable argument. The bottom line is she did not complete her application for service, and she ignored all warning signs and notices. Contrarily, AEP Ohio demonstrated that its actions were reasonable and lawful. Without a customer of record at the location in question, and no knowledge of an occupant at the location, AEP Ohio had no other reasonable actions to take, as it had previously informed Complainant of her application's deficiency. AEP Ohio should thus prevail.

D. Applying these facts to the law demands that the Complaint be denied in its entirety.

The Ohio Revised Code states that the applicable disconnection laws—the process and notices required therewith—apply to customers of record or tenants of landlords who are customers of record. Thus, when no customer of record exists, no notice is required, especially when the utility is unaware of occupancy.

Here, Complainant had a fraud alert on her name prior to applying for service. When applying, then, she had to complete the Experian Questionnaire in order to positively identify herself and complete the application. It follows then that since she did not complete the Experian Questionnaire, she failed to complete her application. The *Complaint of Smith* informs that completing an application is necessary to become a customer. The tariff, too, requires that AEP Ohio accept Complainant's application, which it did not do here in light of its incompleteness. As such, Complainant was never a customer prior to the March of 2015 disconnection and there was no customer of record at the location in question.

Furthermore, AEP Ohio took reasonable measures to notify Complainant of her deficient application. An AEP Ohio representative called Complainant, only to have that call diverted to an automated voicemail box which was full and therefore AEP Ohio was unable to leave a message. A letter, too, was sent to Complainant's given address, imploring Complainant to give the additional requested information or the request for service would be cancelled and service disconnected.

It is more likely than not that Complainant received the October 10, 2014 letter pleading for additional information. She received the returned deposit check in December of 2014 and cashed it. She also received all bills from AEP Ohio after becoming a customer in March of 2015. Complainant, moreover, should have called AEP Ohio in light of the returned deposit check and the absence of bills received during six months of electric usage.

Service was disconnected at the location in question because usage showed on the meter and there was no customer of record. Furthermore, AEP Ohio knew of no occupant because usage on the meter does not equate to occupancy—there are several reasons why usage would show on the meter during vacancy. Additionally, AEP Ohio did not disconnect for fraudulent use, so the notice required for a disconnection due to fraudulent use does not apply here.

Thus, no law or rule, to which AEP Ohio is subject to, or which Complainant is entitled to invoke, was violated by AEP Ohio. Complainant did not complete her application; AEP Ohio took reasonable measures to inform Complainant of her deficient application; and Complainant's actions before and after the events at issue, and her explanations thereof, seek to avoid all accountability and are unreasonable, while, contrarily, AEP Ohio took reasonable and lawful action. The Complaint should therefore be denied in its entirety.

E. In the alternative, the Commission should find that Complainant failed to take reasonable action to mitigate any alleged harm and that she suffered no monetary injury.

As established throughout this Argument, Complainant's alleged harm was not the result of AEP Ohio's actions, but that of her own. In the alternative, AEP Ohio requests that this Commission make findings that Complainant failed to mitigate any alleged harm and that she suffered no monetary injury.

Firstly, Complainant failed to mitigate any alleged harm. Complainant "always has access to [her] home" in Dayton. (Tr. at 85:23-86:1) And the travel time from her apartment in Columbus to her home in Dayton is approximately an hour and a half. (Tr. at 86:6-10) It is a trip Complainant frequently makes, traveling there once every week to ten days. (Tr. at 13:17-21, 89:1-18)[8] In spite of the frequency of her trips, Complainant claims she does not transfer medicine back-and-forth between Dayton and Columbus. (Tr. at 66:7-13) Complainant claims she does not transfer the medicine because she does not want to have to put the medicine in ice, a tacit admission that transferring medicine in ice is a viable option. (*Id.*) Moreover, Complainant transfers medicine from the pharmacy to her home without refrigeration. (Tr. at 66:20-67:1)

Thus, if Complainant was truly worried about her medicine spoiling over the weekend in which her Columbus apartment did not have electric service, she could have easily transferred the medicine in ice over an hour-and-a-half drive. Despite this truth, Complainant claims it was not possible to provide suitable refrigeration for her medication. (Tr. at 40:23-25)

It is odd, moreover, that Complainant claims to have stayed at her apartment in Columbus (Tr. at 68:5-8), which was without electric service, when she had a house an hour-and-a-half away, and when she had no reason to stay in Columbus. Complainant contends that she had had to work Saturday and Sunday, March 21st and 22nd. (*Id.*, 82:1-20) However, her work schedule

[8] Complainant denies that she goes to her Dayton home "frequently", despite the fact that she goes there once every week to ten days. (Tr. at 13:17-21, 89:1-18)

provides a different picture: her work schedule states that she worked for four (4) hours on March 20th and four (4) hours on March 24th. (AEP Ohio Ex. 5)[9] Therefore, she did not work that weekend and had no reason to stay in Columbus if her medicine truly needed to be refrigerated over the period in which Complainant had no electric service.

All the medicine at issue, whether unopened or opened, can be stored at room temperature for twenty-eight (28) days without spoiling (AEP Ohio Ex. 8 at 27; AEP Ohio Ex. 9 at 13; AEP Ohio Ex. 10 at 2-3) So when Complainant claims that the medicine was ruined after about one day without refrigeration (Tr. at 30:4-9, 96:8-20), her assertion is false. Complainant claims that her medicine would not have been ruined if her service was restored the day of disconnection. (*Id.*) If such is the case, she certainly could have mitigated her alleged harm by driving her medicine to her home in Dayton the day of disconnection.

Inconsistent with the import of her medicine, Complainant claims that she did not have to drive to Dayton because she felt she didn't have to. (Tr. at 87:4-14) As she says, "[w]hy transport [the medicine] an hour-and-a-half each direction when I don't have to?" (*Id.*) This explanation quickly became another as she said she was working that weekend, which is false according to her produced work schedule, and she had an animal to care. (Tr. at 87:18-24; AEP Ohio Ex. 5) That explanation, too, was quickly replaced with yet another: "It can also be I don't drive at night typically. I don't like driving at night, there's too much risk of deer in the road." (Tr. at 88:1-5)

[9] Complainant claims that the work schedule she provided is not accurate, though she also states that it "gives the best representation that [she] was actually there beyond hours". (Tr. at 83:3-85:20) Complainant blames the inaccuracy of the produced work schedule on a "lazy "manager. (*Id.*)

Her reasons, therefore, for not mitigating the alleged harm are myriad, ever-changing, inconsistent and unreasonable.[10] And that is if one assumes that the harm even existed, a wrongful assumption in light of the preservation standards delineated in the paragraph above—her medicine would not be spoiled from a weekend outside the refrigerator. Consequently, Complainant's only alleged mitigation efforts were to close the refrigerator door in the apartment. (Tr at. 88:12-17) This is insufficient.

Additionally, Complainant was offered by her apartment complex a place to store her medicine in the apartment complex's clubhouse, or a vacant or model unit. (AEP Ohio Ex. 6 at 16:8-16) The property manager, moreover, said that Complainant was taking the medicine back-and-forth between Columbus and Dayton. (Tr. at 15:20-24) Complainant also did not attempt to store her medicine at work, despite her work having a refrigerator. (Tr. at 138-:11-142:13) In conjunction with the aforementioned reasons, Complainant did not take reasonable action to mitigate her alleged harm.

Secondly, the tariff limits damages to a complainant's monetary injury. In this case, Complainant had none. Complainant claims reimbursement for approximately $3,000 worth of medicine. (Tr. at 74:3-12) But this is contrary to the evidence. The medicine allegedly ruined show the date filled was January 8, 2015. (AEP Ohio Ex. 7) The next time Complainant received medicine was in April of 2015. (AEP Ohio Ex. 11) For the medicine received in January of 2015, Complainant received a ninety (90) day supply and paid nothing for the medicine. (*Id.*) The next time Complainant received medicine was approximately ninety (90) days later in April of 2015. (*See id.*) And on that occasion, also, she paid nothing for the medicine at issue. (*Id.*)[11]

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[10] Even if she did work that weekend, a contention AEP Ohio strongly contests, it is unreasonable for her not to drive an hour-and-a-half after work to preserve her medication.

[11] Complainant claimed at the hearing that she paid for the medicine allegedly lost and that insurance did not pay for it. (Tr. at 74:13-75:2) When shown the evidence that it was her insurance that paid for the medication at issue in full,

Therefore, Complainant suffered no monetary injury as her insurance paid for all the medicine allegedly spoiled.

V. CONCLUSION

For the reasons above, AEP Ohio should prevail and the Complaint should be denied in its entirety. In the alternative, the Commission should find that Complainant did not take reasonable action to mitigate her alleged harm and that she suffered no monetary injury.

Respectfully submitted,

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both before and after the disconnection, Complainant questioned aloud her assertion, though she did not admit she had made false statements under oath. (*See* Tr. at 119:14-22)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via regular mail and email upon Complainant at the addresses listed below on this 8th day of July, 2016.

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Michael J. Benza

Summary: Brief of Ohio Power Company electronically filed by Michael J Benza on behalf of Ohio Power Company