

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Jimmy)	
Hayes,)	Case No. 15-1662-EL-CSS
)	
Complainant,)	
)	
v.)	
)	
The Cleveland Electric Illuminating)	
Company,)	
)	
Respondent.)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S
POST-HEARING REPLY BRIEF**

I. INTRODUCTION

Complainant has failed to satisfy his burden of proof¹ in this case, and the Commission should deny the relief he requests. The evidence, including the Customer Itemized Statement covering the period January 1, 1998 to August 31, 2000,² demonstrates that since at least January 1, 1998, Respondent The Cleveland Electric Illuminating Company (“CEI”) is not holding a security deposit on Complainant’s account.³ Any deposit Complainant paid to CEI in October 1996 would have been refunded to him or applied to his account prior to January 1, 1998, in accordance with CEI’s Tariff at that time.⁴ The Detailed Statement of Account⁵ and bill excerpts provided by Complainant⁶ further demonstrate that no security deposit was held by CEI at the times covered by those documents.⁷

On its face, the Complaint fails to state any cognizable claims against CEI as a matter of law, and the limited evidence provided by Complainant during the hearing on June 7, 2016 confirms that the claim also lacks factual support. As established by the evidence, CEI’s service to Complainant was in compliance with all applicable laws, Commission rules, and its Tariff. Moreover, CEI’s actions were not unjust, unreasonable, inadequate, or in violation of any law, rule, or Commission order. Put simply, Complainant, without evidence, is requesting that the Commission order a refund of a security deposit, plus interest, based on his word that he did not receive it. The Commission should deny the requested relief.

¹ See *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189 (1966).

² Testimony of Deborah Reinhart on Behalf of The Cleveland Electric Illuminating Company (“Reinhart Testimony”), p. 9 and Attachment DLR-3 thereto.

³ Reinhart Testimony, pp. 9-10.

⁴ *Id.*, pp. 9-10; Attachment DLR-1.

⁵ Complainant’s Hearing Ex. 2.

⁶ Company’s Hearing Ex. 2.

⁷ Hearing Transcript (“Tr.”), pp. 62-63.

II. LAW AND ARGUMENT

A. Complainant Has Not Been Requesting the Return of His Security Deposit Since the Late 1990s.

In his post-hearing brief, Complainant now alleges that he has been requesting a return of his security deposit since the late 1990s.⁸ This allegation is not only unsupported, but illogical. Complainant claims that he provided his security deposit on October 10, 1996.⁹ The Deposit Receipt upon which he relies provides in pertinent part that “[u]pon the closing of your account, The Illuminating Company will apply the deposit and any interest to the final bill and refund the difference within 30 days.”¹⁰ Complainant closed his account in 2009.¹¹ Therefore, there is no reason – and Complainant offers no explanation – for why he would allegedly have begun requesting a refund of a security deposit just two or three years after opening a commercial account that he maintained for 13 years.

Complainant’s assertion is further contradicted by his own Complaint, where he alleged that he has been inquiring about the return of a security deposit since closing his business in 2009: “*Since the 2009 sale of my business . . . and subsequent prompt, full payment of my last electric bill for that business, I have been trying to obtain the \$5900.00 security deposit (plus interest) I paid to The Illuminating Company October 10, 1996 . . .*”¹²

At the hearing, Complainant was unable to say exactly when he first contacted CEI to ask about a refund of a security deposit:

⁸ Complainant’s Post-Hearing Brief, pp. 4, 6, 9.

⁹ Hearing Transcript (“Tr.”), p. 7; Complainant’s Hearing Ex. 5.

¹⁰ Complainant’s Hearing Ex. 5 (emphasis added).

¹¹ Reinhart Testimony, p. 6.

¹² See Complaint, p. 1 (emphasis added).

EXAMINER FULLIN: Okay. While I am at it if I could ask you do you know when you first began asking about it? You have been a little unclear when you started. It was years later you say.

THE WITNESS: '98, around 2000, something like that, you know, I just called.

EXAMINER FULLIN: I want you to be as specific as you can but, again if you can't recall—

THE WITNESS: I can't say exactly the date. It would have been a year or two after they should have refunded my money because they said in a letter¹³ that it wasn't no disconnection and I paid on time and they said – all of them said that I should have received it, my money back. They said this, you know, but they didn't show me that they did and the reason I called because I didn't receive it.¹⁴

Furthermore, if Complainant had begun requesting a security deposit refund in the late 1990s, but had (allegedly) not received a satisfactory response from CEI, it does not make sense that he would wait approximately 16 years – until 2015 – to file the within case.

Complainant states – without personal knowledge, foundation, or citation to record evidence or Commission rule – that his (alleged) 1998 inquiry “fully constituted a customer service inquiry and that records should have been maintained....”¹⁵ However, as Deborah Reinhart, Senior Customer Services Compliance Specialist, testified:

Section 4901:1-10-03(A)(2) provides in pertinent part that “[u]nless otherwise specified in this chapter, each electric utility shall maintain, for *three years*, records that are sufficient to demonstrate compliance with the rules of this chapter.” ***CEI typically maintains customer service records for six years.*** After

¹³ The only “letter” from CEI introduced into evidence in this case is Complainant’s Exhibit 8, to which CEI objected. Exhibit 8 is an email dated October 1, 2012. It is unclear whether Complainant’s testimony is that this “letter” was the impetus for his inquiries regarding a security deposit. If it was, then this further demonstrates that he did not begin inquiring in the late 1990s.

¹⁴ Tr., p. 31.

¹⁵ Complainant’s Post-Hearing Reply Brief, p. 3.

that time, customer service records are deleted or disposed of in the ordinary course of business.¹⁶

CEI retains customer service records for six years.¹⁷ Even if Complainant had contacted CEI in 1998 about a security deposit (which he did not do), records of any such contact would not have been retained into 2015 when Complainant's PUCO complaint was filed. While not relevant to the within complaint or even a fact at issue, Complainant now also questions CEI's ability to determine the date that his account was opened.¹⁸ CEI was able to determine that Complainant opened his account on June 26, 1996¹⁹ because that information is not solely contained in a *customer service* record. At all times, CEI complied with all Commission rules and its own policies regarding document retention, and there is no evidence to the contrary.

CEI's witness, Ms. Reinhart, testified that Complainant contacted CEI in 2009, 2011, and 2012 and inquired about a security deposit.²⁰ On each occasion the contact center representatives reviewed and investigated his account.²¹ When the representatives reviewed the account records in response to Complainant's inquiry in 2009, they were able to review records from 2003 until the account was closed in 2009.²² They did not find any record of a security deposit being held during that time or of the accrual or payment of security deposit interest during that time.²³ They explained their findings to Complainant.²⁴ They advised him that there

¹⁶ Reinhart Testimony, p. 5 (emphasis added).

¹⁷ *Id.*

¹⁸ Complainant's Post-Hearing Reply Brief, p. 4.

¹⁹ Reinhart Testimony, p. 6.

²⁰ Reinhart Testimony, p. 6.

²¹ *Id.*, p. 6.

²² *Id.*, p. 8.

²³ *Id.*, pp. 8-9.

²⁴ *See* Attachment DLR-2.

was nothing on the account to indicate a security deposit was being held.²⁵ Even if Complainant had contacted CEI about a security deposit in 1998, he would have been told – as he was in 2009, 2011, and 2012 – that there was no deposit on the account. Any deposit would have been refunded or applied to his account prior to January 1, 1998.²⁶

There is no evidence in the record to support Complainant’s brand new assertion that he began inquiring about a security deposit refund in the late 1990s.

B. Complainant’s Documents Support CEI’s Position that it is Not Holding a Security Deposit on His Account.

In his post-hearing brief, Complainant claims that his documentation demonstrates that “the monies were apparently still being held by CEI []” and that he has “provided financial transaction records between the parties that show security deposit was not returned.”²⁷ Both contentions are incorrect. First, Complainant has not directed the Commission to a single document that shows that CEI is continuing to retain a security deposit on his account, and second, if any conclusion can be drawn from Complainant’s piecemeal document production, it is that CEI is **not** holding a security deposit on his account.

Specifically, Complainant’s Exhibit 1/Company Attachment DLR-3 is a Customer Itemized Statement for the period January 1, 1998 to August 30, 2000.²⁸ If CEI had been holding a security deposit for Complainant during this time frame, the security deposit amount would have been reflected on this document in the column entitled “Transaction Amount,” denoted with the letter “S.”²⁹ No deposit is indicated; thus, this document

²⁵ Tr., pp. 73-74.

²⁶ Reinhart Testimony, pp. 9-10.

²⁷ Complainant’s Brief, p. 5.

²⁸ Reinhart Testimony, p. 9 and Attachment DLR-3.

²⁹ Reinhart Testimony, p. 9; Tr., pp. 83-84.

demonstrates that as of January 1, 1998, CEI was not holding a security deposit on Complainant's account.³⁰ Any deposit Complainant paid would have been refunded or applied to his account prior to January 1, 1998.³¹

Complainant's Exhibit 2 is a Detailed Statement of Account covering the time frame of August 9, 2007 through June 9, 2009.³² As with the Customer Itemized Statement, if CEI were holding a security deposit on Complainant's account, it would be reflected on this document.³³ The deposit is not indicated; thus, this document demonstrates that as of August 9, 2007,³⁴ CEI was not holding a security deposit on Complainant's account.

Company's Exhibit 2 contains, among other things, a number of partial bills from Complainant's account,³⁵ the earliest of which is dated January 31, 2003.³⁶ If CEI were holding a security deposit on Complainant's account, his bills would reflect "[s]ecurity deposit interest" in a section of the bill entitled "Charges from The Illuminating Company."³⁷ No such indication appears on any of the partial bills produced by Complainant.³⁸ Thus, these documents demonstrate that CEI was not holding a security deposit on Complainant's account during any of the times for which he provided copies of his CEI bills.

Based on the Customer Itemized Statement and its Tariff in place at the time, CEI concluded that any security deposit Complainant may have paid would have been returned to

³⁰ Reinhart Testimony, pp. 9-10.

³¹ Tr., pp. 86-87.

³² Complainant's Hearing Ex. 2.

³³ Tr, pp. 61-62.

³⁴ *Id.*

³⁵ Company's Hearing Ex. 2.

³⁶ Company's Hearing Ex. 2 at Bates No. 000094.

³⁷ Tr., pp. 61-64.

³⁸ Tr., pp. 63-64.

him or applied to his account prior to January 1, 1998.³⁹ Yet, other than the Deposit Receipt⁴⁰ and the 1996 check,⁴¹ Complainant has not provided a single document dated prior to January 1, 1998, despite CEI's requests for all historical bills in Complainant's possession⁴² (and despite Complainant's suggestions that he has bills or documents from this timeframe).⁴³ Thus, if the documents produced by Complainant do not reflect the return of any security deposit, it is because he has not provided any documents from the time frame when a security deposit would have been refunded or applied to his account. Pursuant to Commission rules and its document retention policies, CEI did not, and was not required to, retain documents related to Complainant's account from 1996 and 1997.⁴⁴ Complainant cannot on the one hand fail to produce any documents from the time frame most relevant to his Complaint, and on the other hand argue that the documents he has provided support his case because they do not reflect the return of a security deposit.

Complainant's reliance on Exhibit 8 is misplaced. Complainant's Exhibit 8 is an email dated October 1, 2012⁴⁵ – nearly three years before this case was filed and long before CEI had the opportunity to review the Customer Itemized Statement (which was produced by Complainant under a letter dated April 7, 2016.)⁴⁶ This email is hearsay and not reliable; it is not testimony and is not a substitute for testimony. The sworn testimony in this case establishes, that

³⁹ Reinhart Testimony, pp. 9-10.

⁴⁰ Complainant's Hearing Ex. 5.

⁴¹ Complainant's Hearing Ex. 6.

⁴² Reinhart Testimony, pp. 10-11. (Note that at the hearing, Ms. Reinhart added to pages 10 and 11 of her prefiled testimony to reference additional documents that were produced by Complainant the evening before the hearing. *See Tr.*, pp. 59-60. However, that addition is not pertinent here, because, as Ms. Reinhart further testified, the additional documents only dated as far back as 2003. *See Tr.*, p. 61.)

⁴³ *Tr.*, pp. 12-13, 32.

⁴⁴ Reinhart Testimony, p. 5.

⁴⁵ *See Ex. 8.*

⁴⁶ *See CEI's Supplemental Brief Regarding Motion to Compel Discovery (4/20/2016), p. 1.*

based upon her review of the available documentation – including Complainant’s limited document production and CEI’s Tariff – Ms. Reinhart concluded that any security deposit Complainant may have paid was either returned to him or applied to his account prior to January 1, 1998.⁴⁷

While it is true, as Ms. Reinhart testified, that CEI does not have the exact document from 19 or 20 years ago⁴⁸ that shows a refund of a deposit or its application to Complainant’s account,⁴⁹ she made it clear in attempting to answer the Attorney Examiner’s question, that the documentation that CEI does have shows that as of January 1, 1998, no deposit was being held.⁵⁰

III. CONCLUSION

For all of the foregoing reasons and for the reasons set forth in CEI’s Initial Post-Hearing Brief, the Complaint should be dismissed with prejudice and/or The Cleveland Electric Illuminating Company should be granted judgment in its favor on the Complaint.

⁴⁷ Reinhart Testimony, pp. 9-10.

⁴⁸ Requiring utilities to keep and pay for the retention of records this long is neither practical nor cost effective.

⁴⁹ Tr., p. 82 (“I cannot say that I have seen an exact document with that information on it....”).

⁵⁰ Tr., pp. 81-83.

Respectfully submitted,

/s/Christine E. Watchorn

Carrie M. Dunn

Counsel of Record

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

(330) 761-2352

Fax: (330) 384-3875

cdunn@firstenergycorp.com

(Willing to accept service by email)

Christine E. Watchorn (0075919)

Ulmer & Berne LLP

65 East State Street, Suite 1100

Columbus, Ohio 43215

(614) 229-0034

Fax: (614) 229-0035

cwatchorn@ulmer.com

(Willing to accept service by email)

*On behalf of The Cleveland Electric Illuminating
Company*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *The Cleveland Electric Illuminating Company's Post-Hearing Reply Brief* was served via U.S. Mail this 22nd day of July, 2016 upon:

Mr. Jimmy Hayes
2723 Green Road
Shaker Heights, Ohio 44122
Complainant, pro se

/s/Christine E. Watchorn

On behalf of The Cleveland Electric Illuminating
Company

COL1997 269226v1
29414.00072

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/22/2016 3:55:53 PM

in

Case No(s). 15-1662-EL-CSS

Summary: Reply Post-Hearing Reply Brief electronically filed by Ms. Christine E. Watchorn on behalf of The Cleveland Electric Illuminating Company