

FILE

Case No. 15-1662-EL-CSS
The Public Utilities Commission of Ohio
Jimmy Hayes,
Complainant,

V.
Cleveland Electric Illuming Company,
Respondent

Complainant Request for Appeal

Submitted to
The Public Utilities Commission of Ohio
and
Attorney Christine Watchorn
Counsel for the Cleveland Electric Illuminating Company

Submitted by Jimmy Hayes
Complainant
2723 Green Road
Shaker Heights, OH 44122
216.269.4304

Due December 29, 2017

PUCO

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I. INTRODUCTION

The Complainant, Jimmy Hayes, has reviewed The Public Utilities of Ohio Opinion and Order dated November 29, 2017 in case of Jimmy Hayes (Complainant) v. The Cleveland Electric Illuminating Company (CEI) (Respondent) and respectfully requests an appeal of the PUCO decision that was declared in favor of the Respondent. Mr. Hayes believes that it is reasonable for the commissioners to again review the case based on the need to physically see a full document that was shown to the PUCO but not presented to the commissioners.

II. BASIS FOR APPEAL AND BACKGROUND

CEI informed Complainant in 1996 that Complainant needed to pay a deposit to secure service at his McDonald's restaurant. The requested deposit was \$5900.00 and was paid with check #3077 in the amount \$11,571.75. The reason for that amount was for the \$5900.00 security deposit and \$5671.75 for utility service. There is no question CEI received these funds: the bank statement (New Complainant Ex. 14) shows funds withdrawn and corresponds to check #3077 on Oct. 10, 1996. This clearly confirms that the funds were withdrawn from Complainant's account and received by CEI. Further, upon payment of the deposit, Complainant received a receipt, a two-sided document addressed to Complainant's home address, 2723 Green Road, Shaker Heights, OH, 44122. (New Complainant -Ex. 15) CEI has repeatedly and unfairly challenged the validity of the receipt and reason for the \$11,571.75 payment to CEI. Complainant has previously stated the existence of, and shown on June 7, 2016 to the attorney examiner assigned to this case, the original receipt. While Mr. Hayes repeatedly presented mailed, faxed, handed a copy of the front of the receipt with all full

details re: amount paid and CEI's steps to follow for a refund, to CEI and its representatives including its attorneys and in materials submitted to the PUCO, it has come to our attention that the commissioners did not review the two-sided document. The two-sided, tri-fold style receipt shows that the receipt was addressed to Jimmy Hayes at his home business address and is formatted in a manner, with CEI letterhead plainly legible, to further support Complainant's view of a legitimate receipt. While this two-sided document was shown to the attorney examiner, for the purpose of mass photocopying of materials and exhibits, a copy of the two-sided receipt was not entered as an exhibit. Again, photocopies of the document were presented for the purpose of communication and electronic transmission of materials for this case. Contrary to the OPINION AND ORDER, FACTS AND PROCEDURAL Background, Sec. 12, the copy of the check and the deposit receipt re photocopies of true and legitimate documents to pay for the security deposit and the utility service. They are not representative as stated in Sec. 12, "alleged deposit check" and in Sec. 16, pertaining to the receipt, a document "CEI is unable to verify or authenticate the Deposit Receipt 9 Co. Ex. 1, 7-8)." To clarify, Complainant has proof that the funds were paid, received and through the receipt issued by CEI, \$5900 was without a doubt applied to a deposit. The original canceled check is also available for viewing. At the time of the deposit, the receipt stated that "Interest at the annual rate of 5% will be paid on this deposit as long as it remains with the Illuminating Company. Upon 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."

With this document, please note the following new attached documents:

- Deposit receipt-two sided (Complainant Ex. 14)
- Bank statement showing funds paid to CEI on 10/15/96;
National City Bank statement with end date 10/31/96
(Complainant Ex. 15)

CEI attorney Carrie Dunn stated in her letter to Complainant's attorney on Oct. 1, 2012 that "In 1996, it was CEI's policy that after a customer paid a security deposit for new service, the customer was given twelve months to establish themselves as an active, good paying customer. If the customer was an active and good paying accounting, starting on the 13th month, the security deposit was refunded plus 5%. Since Mr. Hayes was a good paying customer, this policy would have applied. Thus, based on CEI's policy, Mr. Hayes should have received reimbursement by June 1998. Our records do not go back that far, but there are no records or reasons that CEI would not have applied to refund this money to Mr. Hayes in 1998. "

Complainant maintains he was not refunded the deposit per this practice as referenced by Ms. Dunn. Approximately two years after paying the deposit, which would have been a few months after it was due to be returned by CEI, Complainant repeatedly began calling CEI's customer service numbers to inquire about the return of the refund. Still, the deposit was not refunded. Over a period of years, through periodic calls, Complainant accumulated eighteen phone numbers and various customer service contacts in trying to get the refund. Cleveland attorney Kenneth Lumpkin was secured by the Complainant in 2012 and on August 6, 2012 wrote to CEI to inquire about the security deposit. Eventually, Complainant was put in touch with Carrie Dunn. A series of other CEI employees and representatives also were involved over a period of time including communication with Lorna Wisham, Donna Skulski and others who were trying to assist. Responses varied from CEI's records are no longer available from that period, to promises of returned calls to referrals to other colleagues, etc. complainant always complied and followed up requests with additional information, via fax, email, certified USPS mail, etc. Complainant maintains inquiries were made starting within two years of the time the deposit was paid due to information received that deposit should have been returned starting after the 13th month of good payment status. The deposit receipt noting payment due upon close of account was again presented when the business was closed

because the deposit had not been returned over a period of thirteen years: from the time the deposit was paid until the account was closed.

CEI said it reviewed all records from 2003 until account closed in 2009 and found no evidence the deposit was being held. CEI said it would pay amount plus interest. CEI has no proof it did not pay Respondent, because CEI did not pay respondent. CEI representatives, throughout the customer service direct contact with customer service and throughout the case hearings and documents, stated it would have paid Respondent per its policy. But in fact, CEI did not pay Respondent nor produced evidence of payment.

To use Ms. Dunn's own explanation of CEI's practice, if the security deposit had been refunded through a credit to Complainant's account, it would show on the customer itemized statement that shows transactions between December 1997 and August 2000 when the account closed.

- Deposit paid: October 10, 1996, the account was paid in full and current at this time, including both the security deposit and monthly bill. Payment was received by the Illuminating Company as evidenced by the deposit receipt and National City bank statement (Complainant Ex. 15.)
- Deposit refund due by November, 1997: Per the CEI policy in place that as a "good paying customer" the deposit would have been refunded in 13 months, as stated in the June 7, 2016 hearing and in testimony by CEI witness Deborah Rhinehart.
- Report does not display a credit in the amount of \$5900, which would have been applied to the bill if the account was not in "good standing" per CEI policy. Therefore, the amount due as of 12/23/97 goes to prove that the account remained current and the security deposit had not yet been refunded.
- III. CONCLUSION
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We have followed procedures as set forth by CEI. We asked for a refund, per Carrie Dunn's explanation, repeatedly called over a period of time to show

proof that the deposit was made. With this request for an appeal, Complainant requests CEI be directed to show proof that the refund was made or promptly pay Complainant plus interest.

PUCO's OPINION AND ORDER states that the burden of proof is on the Complainant but that is not possible to accomplish if Complainant was not paid.

Complainant has proven over and over through presentation of deposit receipt, canceled check, bank statement showing funds withdrawn for check paid to and negotiated by CEI that beyond a shadow of a doubt, CEI still owes Complainant a refund of the deposit plus interest.

Complainant paid the security deposit in good faith and asks that the Respondent be directed by PUCO to do the same: act in good faith, honor its responsibility and commitment as stated on the receipt and refund the deposit.

Complainant worked diligently over a period of more than a year with assigned attorney examiner Daniel Fullin and presented 13 pieces of evidence at the hearing and other documents in discussion. It was Complainant's expectation that Mr. Fullin's full review of these materials and the hearing testimony would result in a recommendation to PUCO to direct CEI to refund the deposit to the Complainant plus interest. Complainant respectfully requests PUCO carefully review the two new exhibits, two-sided receipt and bank statement, and reconsider its decision and find in favor of Complainant.

Complainant knows of no better way to prove that CEI received the deposit other than presentation of a cancelled check and bank statement with a promise to refund the deposit, than the documents displayed in this case. Documents that in basic business transactions stand to show a financial

transaction was conducted between two parties and that both parties, not just one, should live up to their end of the bargain.

National City

National City Bank
Post Office Box 5756 • Cleveland OH 44101-0756

THE MONEY STATEMENT

J R E MCDONALDS
C/O JIMMY HAYES
2723 GREEN RD
SHAKER HTS OH 44122-2137

Comp. Ex. #14

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TIN ACCT

00014

DATE	AMOUNT	AMOUNT	AMOUNT
10/31	1,259.38	1,321.83	1,407.87
	1,447.66	1,990.76	

MISCELLANEOUS CREDITS

DATE	AMOUNT
10/04	43.52

DESCRIPTION
ANDERSON-DUBOSE

CHECKS

DATE	CHECK NO.	AMOUNT
10/01	03067	7,003.41
10/04	03065	12,500.00
	03068	200.00
10/08	03069	229.86
10/09	03070	134.33
	03071	103.00
10/15	03077	11,571.74

DATE	CHECK NO.	AMOUNT
10/17	03074	52.01
	03083	12,500.00
10/22	03079	22,809.00
10/23	03073	69.00
	03080	2,348.59
10/28	03075	300.00
10/31	03076	200.00

DEBITS/CHARGES

DATE	AMOUNT
10/01	43.52
	6,953.92
10/03	456.89
	4,171.58
10/04	6,822.84
10/09	7,986.31
10/10	786.58
10/16	2,457.09
	6,989.26
10/17	671.26
	3,985.27
10/21	2,311.12
	4,169.69

DESCRIPTION
ANDERSON-DUBOSE
ANDERSON-DUBOSE
NEW HORIZONS BAK INVOICE
ANDERSON-DUBOSE
ANDERSON-DUBOSE
NEW HORIZONS BAK INVOICE
OPNAD FUNDS
ANDERSON-DUBOSE
NEW HORIZONS BAK INVOICE

- CONTINUED -

13269



Member FDIC



DEPOSIT RECEIPT

Service For:

28711 EUCLID AVE
WICKLIFFE OH 44092

Account Number : 175-0001217-013
Deposit Number : 0000001
Deposit Amount : \$5,900.00
Date Paid : 10/10/96

Account Name:

JIMMY HAYES

Comp. Exp. #15

Dear Customer:

This is your receipt for payment of a security deposit. Please keep this until your deposit is refunded to you. This receipt is neither negotiable nor transferable.

This certificate acknowledges receipt of the amount shown above as security for payment of bills rendered for electrical service supplied to the above premise.

Interest at the annual rate of 5% will be paid on this deposit as long as it remains with the Illuminating Company.

Upon 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.

Sincerely,

THE ILLUMINATING COMPANY
P. O. BOX 5000
CLEVELAND, OHIO 44101-2000

JIMMY HAYES
2723 GREEN RD
CLEVELAND OH 44122-2137

714.49.4407