

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

GREGORY MCKINNEY

Complainant,

v.

OHIO EDISON COMPANY,

Respondent.

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Case No. 18-496-EL-CSS

POST-HEARING BRIEF OF OHIO EDISON COMPANY

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I. INTRODUCTION

Complainant Gregory McKinney alleges that his electric bills from Ohio Edison Company (“Ohio Edison,” “OE,” or “Company”) were too high from approximately October 2017 through February 2018. He believes (incorrectly) that the alleged high bills were the result of Ohio Edison’s meter temporarily registering high usage during that time. He is wrong for at least two reasons.

First, the evidence in this proceeding supports the conclusion that Complainant’s electric bills were, at all relevant times, just, reasonable, and accurate. As an initial matter, Complainant’s bills make sense in light of the remodeling that was being performed on his home throughout the period in question. Complainant’s bills also make sense from the standpoint that other sources of potential electric usage were not thoroughly investigated and therefore cannot be ruled out as the cause.

Second, and more notably, is the fact Complainant’s electric bills were the result of usage that was proven accurate by a meter test conducted in February 2018. The meter test, which Ohio Edison conducted free of charge at Complainant’s request, proved that Complainant’s meter was operating accurately at 99.88%, well within the accuracy parameters established by the Commission. In other words, the meter servicing Complainants’ home was operating properly during the relevant time period, and Complainant presented no evidence at the hearing showing otherwise. His electric bills, therefore, are just and reasonable.

For all of the reasons set forth in more detail below, Complainant failed to meet his burden in this proceeding and the Complaint should be dismissed against Ohio Edison, with prejudice.

II. BACKGROUND

Complainant first moved into his residence at 264 Ashland Avenue, Elyria, OH 44035, (“Property”) in August 2017. Complainant received a monthly bill based on an actual meter read in September 2017. The next three monthly bills, however, were based on estimated usage because the Complainant had locked a gate preventing the Company’s access to the meter.¹ In February 2018, Complainant received a monthly bill based on an actual meter read obtained in January 2018. Prior to receiving the February bill statement, Complainant “wasn’t paying attention” to the fact that the bills were based on estimated usage.² There were no reports of meter inaccuracy or high bill complaints prior to Mr. McKinney’s occupancy of the home, nor for his first bill based on an actual meter read received in September 2017.³ Renovation work on Complainant’s home began in November 2017.⁴

In early February 2019, Complainant contacted the Commission Staff to make an informal complaint, and requested of them that his meter be tested for accuracy.⁵ Complainant’s meter was removed from service and sent to the Meter Lab in Akron, Ohio for testing.⁶ The Meter Lab conducted the standard tests on the meter, which at 99.88% measured well within the accuracy thresholds established by the Commission.⁷ Tests were performed under various loading conditions, all of which tested within plus or minus 2%.⁸ Complainant was contacted by telephone and by letter with the results, and the Company offered to allow him or his electrician to witness further testing, which Complainant declined.⁹ Complainant does not

¹ Hearing Tr. p. 6, ll. 7-9. (Complainant Direct); *see also* Direct Testimony of Jason T. Horst on Behalf of Ohio Edison Company, (August 30, 2018), (“Horst Testimony”), p.5.

² Hearing Tr., p.6, at ll. 4-6.

³ Horst Testimony, p. 5.

⁴ *Id.* at ll. 1-2.

⁵ Horst Testimony, p.3.

⁶ *Id.* at p.4.

⁷ *Id.*

⁸ *Id.* at p.4-5, and Attachment JTH-2.

⁹ *Id.*

dispute the meter test results.¹⁰

Complainant filed this proceeding against Ohio Edison on March 26, 2018. The Attorney Examiner conducted a one-day evidentiary hearing on September 6, 2018. Ohio Edison presented its case through the testimony of Jason T. Horst. Complainant presented his case through his own testimony and Exhibits 1A, 1b, and 1C, comprising letters from an electrician, the construction contractor, and the pool equipment invoice, respectively. The Attorney Examiner closed the record in this case at the close of all testimony. Pursuant to the Attorney Examiner's directive, Ohio Edison now submits this initial brief in support of its position in this proceeding.

III. LAW AND ARGUMENT

Complainant has failed to satisfy his burden in this proceeding. Section 4905.26 of the Ohio Revised Code requires that the Commission set for hearing a complaint against a public utility when grounds appear that:

[A]ny rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, 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 the 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 obtained¹¹

It is well-established that the burden of proof rests with the complainant in proceedings before the Commission.¹² Thus, Complainant bears the burden of proving his allegation that Ohio

¹⁰ Hearing Tr., p.7, ll. 21-24 (Complainant Direct).

¹¹ O.R.C. §4905.26.

¹² *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214, 214 N.E.2d 666 (1966).

Edison's electric bills from October 2017 through February 2018 were somehow unjustly or unreasonably excessive.¹³ Complainant must make this showing by a preponderance of the evidence.¹⁴ This is a burden Complainant cannot meet in this case. As set forth below, the evidence in the record demonstrates that Complainant's electric bills during the relevant time period were just, reasonable, and accurate. Because Complainant cannot meet his burden, the Commission must dismiss the Complaint in its entirety and find in favor of Ohio Edison.

Complainant's Ohio Edison Bills Were Just and Reasonable.

The Commission analyzes "high bill" complaints by looking at two specific factors: (1) whether the meter servicing the property has been tested and determined to be within the accuracy parameters established by the Commission; and (2) whether the record demonstrates a plausible explanation for the Complainant's electric usage.¹⁵ Here, both factors undoubtedly favor Ohio Edison.

First, it is undisputed that Ohio Edison tested the meter servicing Complainant's property during the relevant time frame which was determined to be functioning accurately, and at 99.88% was well within the accuracy parameters established by the Commission.¹⁶ Complainant admitted that he does not dispute the accuracy of his meter when it was tested at the Company's Meter Lab.¹⁷ The Commission permits the Company to test meter accuracy at its Meter Lab and regularly inspects the Meter Lab for compliance,¹⁸ and the Commission has relied upon Meter

¹³ O.R.C. §§4905.22, 4905.26; *see also DiSiena v. The Cleveland Electric Illuminating Company*, Case No. 09-0947-EL-CSS, Opinion and Order, 2 (Dec. 8, 2010).

¹⁴ *Ohio Bell Telephone Co. v. Pub. Util. Comm.*, 49 Ohio St. 3d 123, 126 (1990); *Grossman*, 5 Ohio St. 2d at 190.

¹⁵ *See, e.g., In re the Complaint of Kingsville Apartments a/k/a Center Court Apartments, LLC v. Columbia Gas of Ohio, Inc.*, Case No. 05-1229-GA-CSS, Opinion and Order, 19-20 (Apr. 4, 2007) ("Further, the Commission has held that, in addition to the utility company's proof as to the accuracy of the meter, the company must provide at least a 'plausible explanation' to support the consumption for which the customer was billed.") (citing *In re the Complaint of Merle Davis v. The Cleveland Electric Illuminating Company*, Case No. 81-1495-EL-CSS, Opinion and Order (Nov. 2, 1983)).

¹⁶ Horst Testimony, p. 4, 5.

¹⁷ Hearing Tr., p. 7 (Complainant Direct).

¹⁸ Hearing Tr., p.24, ll. 12-19; Horst Testimony, p. 5.

Lab test results in other high bill complaint proceedings.¹⁹ Mr. Horst explained that the testing conditions in the Meter Lab do not create a different result than if the meter had been tested in the field.²⁰ As Mr. Horst testified, meters do not temporarily “go haywire” and then begin measuring accurately again without repair.²¹

For these reasons, the first factor of the Commission’s “high bill” test is satisfied.

For the second factor, there exists a plausible explanation for the metered usage provided to Complainant. Mr. Horst testified that electricity cannot be “pushed” through a meter, but, rather, it must be “pulled” by electricity consuming equipment or wiring on the customer load side of the meter.²² Indeed, Complainant’s temporary high usage corresponds almost exactly with the time period of renovation to his home.²³ Similarly, the replacement of old pool equipment occurred closely following the period of high consumption.²⁴ Mr. Horst also testified that faulty or grounded wiring could have been remedied without awareness by the electrician.²⁵

Conversely, the evidence offered by Complainant cannot persuade that the measured electricity did not flow through his meter, or that the meter somehow went haywire for three months. First, the letter from Complainant’s electrician does not document any details about his “inspection” to indicate that the investigation was sufficiently thorough to draw the conclusions presented.²⁶ The letter is undated, unsworn, and the electrician was not present at the hearing and therefore not available to give testimonial evidence. As Mr. Horst testified, it is certain that at least one important possible source of electricity consumption was omitted from the electrician’s investigation, because Ohio Edison was not contacted to request permission to inspect the meter

¹⁹ *Adkins v. Ohio Edison Company*, Case No. 16-1543-EL-CSS, Opinion and Order, p. 11 (March 26, 2017).

²⁰ Horst Testimony, p. 5.

²¹ *Id.*

²² *Id.* at p. 6.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at p.7.

²⁶ Hearing Tr., p. 25-26.

base and socket for bad connections on the customer's side of the meter.²⁷ Furthermore, Mr. Horst testified as to several reasons why the simple descriptions in the letter do not support the electrician's conclusion that the meter was faulty.²⁸

Second, the letter from the renovation contractor also does not provide sufficient details upon which to conclude that renovation activity was not the source of high electricity consumption. As Mr. Horst noted, the letter does not describe whether space heaters were used, nor whether doors or windows left open for extended periods.²⁹ Similarly, the letter does not contain any meaningful standard by which to gauge the threshold necessary to interpret what "no outstanding power consumption" is supposed to mean.³⁰ As with the electrician, the construction contractor was not present at the hearing and therefore was not available to give testimonial evidence.

Finally, Mr. Horst testified that the pool equipment invoice, which was illegible in part, does not describe any investigation of the related equipment or wiring.³¹ Mr. Horst testified as to the possibility that faulty or unconventional wiring of the pool equipment could have contributed to high electricity consumption as well as erroneous conclusions by the electrician.³² No one from the pool company was present at the hearing, and therefore no one was available to further elucidate the partially illegible document nor to give testimonial evidence.

III. CONCLUSION

The evidence presented in this proceeding demonstrates that Complainant's Ohio Edison electric bills during the relevant time period were just, reasonable, and accurate. Indeed, the

²⁷ Hearing Tr. at p. 26.

²⁸ Hearing Tr. at p. 25, 26.

²⁹ Hearing Tr. at p. 27, ll. 4-12.

³⁰ Complainant's Exhibit 1C.

³¹ Hearing Tr., at p.27, ll. 13-25, p.28, line 1.

³² Horst Testimony at p. 6, 8.

record demonstrates that the meter serving Complainant's property was functioning properly and reading accurately within the parameters established by the Commission. Moreover, Complainant's electric usage is explained by a combination of many factors, including the construction Complainant was performing on his home throughout the relevant time period. As a result, Complainant has been charged properly and accurately for his electricity usage at 269 Ashland Avenue, Elyria, Ohio. Having presented insufficient evidence to the contrary, Complainant failed to meet his burden.

Accordingly, Ohio Edison respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted,

/s/ Robert M. Endris

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Brief of Ohio Edison Company was sent to the following by U.S. mail on this 12th day of October, 2018.

Gregory McKinney
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/s/ Robert M. Endris

Attorney for Ohio Edison Company

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