

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
GREGORY MCKINNEY,**

COMPLAINANT,

CASE NO. 18-496-EL-CSS

v.

OHIO EDISON COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on February 6, 2019

I. SUMMARY

{¶ 1} The Commission, considering the complaint and the evidence admitted into the record, finds that Gregory McKinney has not demonstrated that Ohio Edison Company caused his high electric consumption, acted in any manner that was unjust or unreasonable as required by R.C. 4905.26, or that Ohio Edison Company otherwise violated any provision of R.C. Title 49 or any Commission rule or order.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On March 26, 2018, Gregory McKinney (Complainant or Mr. McKinney) filed a complaint with the Commission against Ohio Edison Company (Ohio Edison or Company). In the complaint, Complainant alleges that, based on a faulty meter, Ohio Edison has attributed incorrect electric usage to his account. Further, Complainant alleges that Ohio Edison has failed to provide him with adequate service.

{¶ 3} On April 16, 2018, Ohio Edison filed its answer to the complaint, including a request that the complaint be dismissed. In its answer, Ohio Edison admits some and denies other allegations in the complaint. The Company also states that it lacks knowledge or information sufficient to form a belief as to the truth of still other allegations and, therefore, denies those allegations. Ohio Edison also denies any remaining allegations in the complaint and sets forth in the answer several affirmative defenses. Further, Ohio Edison

claims the complaint fails to set forth reasonable grounds to sustain a complaint pursuant to R.C. 4905.26 and Ohio Adm.Code 4901-9-01(C)(3). Ohio Edison argues that it has not breached any legal duty owed to Complainant and that Complainant has not identified any rule or regulation that Ohio Edison has violated. Therefore, Ohio Edison reasons that the complaint fails to state reasonable grounds upon which relief may be granted and requests that the complaint be dismissed, with prejudice.

{¶ 4} By Entry issued May 2, 2018, this matter was scheduled for a settlement conference on May 22, 2018, at the office of the Commission, in Columbus, Ohio. The settlement conference was held, as scheduled; however, the parties were unable to resolve the dispute informally.

{¶ 5} Pursuant to an Entry issued July 12, 2018, a hearing in this matter was convened on September 6, 2018. On August 30, 2018, consistent with Ohio Adm.Code 4901-1-29(A)(1)(h), Ohio Edison filed the written direct testimony of Jason T. Horst, including attached exhibits of a photograph of Complainant's meter (Attach. JTH-1) and the results of meter tests on Complainant's meter (Attach. JTH-2).

{¶ 6} At the hearing, Mr. McKinney testified on his own behalf and Ohio Edison presented the testimony of Jason T. Horst (Mr. Horst). Admitted into evidence at the hearing were copies of letters to Mr. McKinney from his electrician and his construction contractor, an invoice from a swimming pool company utilized by Mr. McKinney (Complainant Exs. 1A, 1B, and 1C), and the written testimony of Mr. Horst filed on August 30, 2018 (Co. Ex. 1). Following the hearing, Ohio Edison filed its brief on October 12, 2018.

III. DISCUSSION

A. *Applicable Law*

{¶ 7} Ohio Edison is a public utility and an electric light company, as defined in R.C. 4905.02 and 4905.03, and, as such, is subject to the jurisdiction of this Commission. R.C. 4905.26 requires that the Commission set for hearing a complaint against a public utility

whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable. In complaint proceedings, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, it is the responsibility of a complainant, in this instance, Mr. McKinney, to present evidence in support of the allegations made in his complaint.

B. *Summary of the Testimony and Evidence*

{¶ 8} Mr. McKinney and his wife reside at 264 Ashland Avenue, Elyria, Ohio. They moved into their house in August 2017, and remodeling work began in November 2017. Mr. McKinney avers that during their first four months in the residence, living in the basement and drawing very little power, their electric bills were 35 to 40 dollars per month. Although unknown to the McKinneys at the time, these bills were estimated because Ohio Edison personnel could not gain access to the electric meter behind a locked gate. Then, in January or February 2018, the McKinneys were billed almost \$1,400 for using 14,000 kilowatt-hours of electricity in six months. After contacting Ohio Edison about the billing, and being placed by the Company on an installment payment plan, Mr. McKinney retained the services of a licensed electrician to inspect the circuits in the house. During inspection, no problem was discovered; however, the meter disk continued to spin even when the breakers in the house were shut off. Mr. McKinney contacted Ohio Edison again, and the meter on his house was switched out and replaced with a new digital meter. Mr. McKinney testified that, according what he has read on the Internet, an option was to have the meter tested when it was still attached to his house, and he was never offered that option. (Tr. at 5-7; Complainant Ex. 1A.)

{¶ 9} Mr. McKinney is not disputing that, within the confines of the Company's meter lab, the meter ran accurately. His dispute is that the meter malfunctioned when it was attached to his house. Mr. McKinney testified that, even now, with his house fully functional, and with a pool pump and central air conditioner running, his electric bill is approximately \$200 per month. So, to be billed for 14,000 kilowatt-hours' worth of electricity

usage in a four to six month time frame is, in Mr. Kinney's estimation, beyond his comprehension. (Tr. at 7-8.)

{¶ 10} In addition, Mr. McKinney introduced letters from an electrician (Complainant Ex. 1A) and a building contractor (Complainant Ex. 1B), and an invoice from a swimming pool company (Complainant Ex. 1C) in support of his complaint. The letter from the electrician states that, on February 3, 2018, he inspected the electrical system in Mr. McKinney's house and could not find any problem. Further, the electrician states in the letter that the electric meter still ran when the circuit breakers were turned off; so, after seeing this, he informed Mr. McKinney that there was a problem with the meter. The letter from the building contractor states that, from approximately November 2017 thru January 2018, construction work was performed at Mr. McKinney's residence with power tools that required no outstanding power consumption. Lastly, the invoice from a swimming pool company details the costs involved in performing repair work on Mr. McKinney's swimming pool.

{¶ 11} Mr. Horst, supervisor of meter testing for FirstEnergy Service Company, testified on behalf of Ohio Edison. Mr. Horst testified that Mr. McKinney contacted Commission Staff about his high-bill complaint and requested that his meter be tested. Staff then relayed Mr. McKinney's request to Ohio Edison and the meter was removed and sent to the Company's Meter Lab in Akron, Ohio for testing. At the Meter Lab, standard tests were performed on the meter, which measured within the accuracy thresholds established by the Commission. Mr. Horst testified that the opportunity for Mr. McKinney or his electrician to witness further testing was presented to him, but he declined the offer. (Co. Ex. 1 at 3-4.)

{¶ 12} Mr. Horst testified that, for three reasons, it is not possible for the meter to have registered more electricity than Mr. McKinney actually used. First, tests in the Meter Lab use the same electrical connections and measurements as in the field and that there is no difference between testing in the lab and in the field, which is why the lab is able to verify

meter accuracy as required by law. Further, he noted that Staff inspects the Meter Lab annually for compliance. Second, meters do not temporarily malfunction for a few months and then revert to normal. Although relatively rare, when meters do malfunction, they stay broken. Prior to Mr. McKinney's occupancy of his residence, and for his first bill received in September 2017, there were no reports of meter inaccuracy or high-bill complaints. Also, in light of the test results, it is clear that the meter registered accurately before October 2017 and after its removal in February 2018. Third, the Company cannot push electricity through a meter, it can only be drawn through by electric devices on the customer's side of the meter. The amount of electricity flowing through a meter is determined solely by a customer's usage. (Co. Ex. 1 at 5-6.)

{¶ 13} Mr. Horst also presented reasons why he believes it is certain that Mr. McKinney used the amount of electricity registered on the meter. He noted that Mr. McKinney's home was being remodeled during the time period of high consumption, and it is possible that there was some impact on electric usage from the remodeling construction activity. Moreover, he testified that something like an irregularity in old pool equipment in Mr. McKinney's back yard, which was replaced shortly after his meter was sent for testing, or even a simple switch left on inadvertently, could draw current and cause high consumption. (Co. Ex. 1 at 6.)

{¶ 14} In response to Mr. McKinney's allegation that the meter was still spinning when all the circuit breakers in his house were turned off, Mr. Horst noted that, with an analog meter, the mechanical dial does not stop immediately when all load is removed. Instead, the dial slows down first before stopping, which could explain Mr. McKinney's observation that the meter dial continued to spin when the power was shut off. Mr. Horst also noted that the following conditions could have caused the dial to keep spinning: 1) the electrician could have failed to shut off all of the breakers, leaving some connected load still drawing current; 2) one or more of the breakers could be faulty, allowing current to pass through even in an "off" position; 3) one or more load devices could be connected such that the wiring did not pass through a breaker; and 4) there could be a ground condition in the

customer's wiring, causing current not to flow through a breaker or even to any equipment or device. Mr. Horst testified that any one of these conditions could cause electricity to flow through the meter and be properly measured as electricity consumed by the customer. (Co. Ex. 1 at 7-8.)

{¶ 15} Mr. Horst testified that, pursuant to the Ohio Edison's Commission-approved tariff, customers are responsible for all equipment on the customer's side of the meter, including the wiring leading from the meter to any electric-powered device at the customer's location. He noted that, if a wire becomes grounded on the customer's side of the meter and draws current, it is the customer's responsibility, and it is the same as using electricity to power any appliance or device. Mr. Horst explained that even a grounding condition requires generation, transmission and distribution to deliver the electricity and that, if the customer with the grounded wire does not pay for the electricity flowing through his or her meter, then other customers would be required to make up the difference. (Co. Ex. 1 at 8.)

C. Commission Conclusion

{¶ 16} Mr. McKinney alleges that his electric meter malfunctioned and caused his high electric bill. He alleges that, even though the meter later tested as running accurately in Ohio Edison's meter lab, it malfunctioned when it previously was attached to his house. However, Mr. McKinney did not offer any evidence at hearing to support his contention that the meter could malfunction in one environment (i.e., while attached to his house) and then, without remedial measures being performed on the meter by Ohio Edison, begin functioning accurately in the Company's meter lab. The only evidence that we have pertaining to this issue is that the meter did test as being 99.88 percent accurate, which is within the allowable accuracy tolerances established by the Commission (Co. Ex. 1 at 4, Attach. JTH-2). Ohio Adm.Code 4901:1-10-05. We, therefore, find that the meter in question was not the cause of Mr. McKinney's high electric bill. Furthermore, on that issue, we find Mr. Horst's testimony regarding the possible reasons for the alleged higher electric usage to be very persuasive (Co. Ex. 1 at 6-7). The Company's testimony of the accuracy of the meter

coupled with the unchallenged results of the test conducted at Ohio Edison's meter lab, as well as the plausible explanation for the kilowatt hours billed, leads us to conclude that Mr. McKinney received the contested amount of electricity.

{¶ 17} As we have previously noted, in complaint proceedings such as this one, the complainant has the burden of proof. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Based on the evidence of record in this case, the Commission finds that Complainant has not sustained his burden of proof. Complainant has not demonstrated that Ohio Edison acted in any manner that was unjust or unreasonable, as required by R.C. 4905.26, or that the Company otherwise violated any provision of R.C. Title 49 or any Commission rule or order. The Commission thus finds that this matter should be dismissed.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 18} Ohio Edison is a public utility, as defined in R.C. 4905.02 and 4905.03 and, as such, is subject to the jurisdiction of the Commission.

{¶ 19} On March 26, 2018, Mr. McKinney filed this complaint against Ohio Edison.

{¶ 20} On April 16, 2018, Ohio Edison filed an answer denying the allegations in the complaint.

{¶ 21} A settlement conference was held on May 22, 2018.

{¶ 22} A hearing was convened on September 6, 2018.

{¶ 23} In a complaint case, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 24} The Complainant failed to sustain his burden of proof to establish that Ohio Edison violated its tariff, any Commission rule, or order, or any provision of R.C. Title 49 applicable to Ohio Edison.

{¶ 25} The Complainant failed to sustain his burden of proof to demonstrate that Ohio Edison acted unlawfully or unreasonably regarding the provision of electric service at his residence.

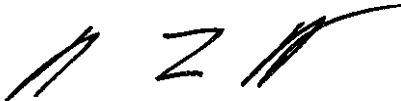
V. ORDER

{¶ 26} It is, therefore,

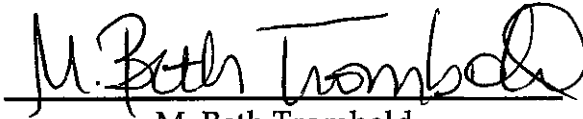
{¶ 27} ORDERED, That the complaint be denied and closed of record. It is, further,

{¶ 28} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

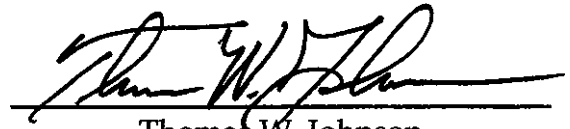
THE PUBLIC UTILITIES COMMISSION OF OHIO



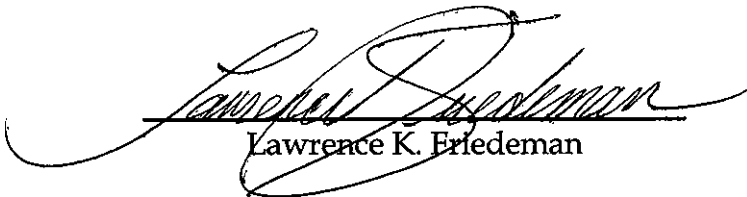
Asim Z. Haque, Chairman



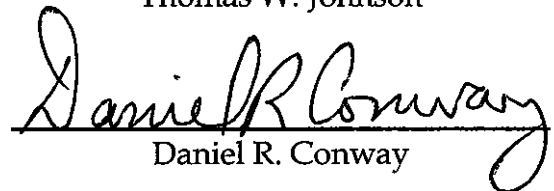
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

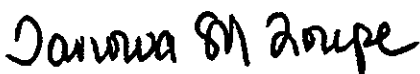


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Tanowa M. Troupe
Secretary