THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF JENNY KENDERES,

COMPLAINANT,

v.

CASE NO. 18-922-EL-CSS

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,

Respondent.

OPINION AND ORDER

Entered in the Journal on May 6, 2020

I. SUMMARY

{¶ 1} The Commission finds that Complainant has not met her burden of proof to demonstrate that The Cleveland Electric Illuminating Company billed Complainant incorrectly for her electric usage from October 2017 to April 2018.

II. PROCEDURAL BACKGROUND

 $\{\P 2\}$ On May 24, 2018, Jenny Kenderes (Ms. Kenderes or Complainant) filed a complaint against The Cleveland Electric Illuminating Company (CEI), alleging that in October 2017 her meter was "running loud." Complainant asserts that CEI investigated the meter and "*** said all was fine," but her November 2017 bill indicated triple her typical usage and "*** remained consistently high." Ms. Kenderes contends that two electricians could not determine a cause for the high usage and emphasizes that her furnace, stove, dryer, and hot water tank are not electric. Complainant states that, after CEI replaced her meter, her recorded consumption decreased by 1,600 kilowatt hours (KWH) and returned to normal. Ms. Kenderes describes her home as a "*** small bungalow ***" and emphasizes that her electrical usage prior to the high bill "*** has always been fine."

{¶ 3} CEI filed its answer on June 14, 2018. CEI denies that Complainant contacted CEI in October 2017 concerning noise from the meter and contends that Ms. Kenderes

initially contacted CEI on March 23, 2018, to discuss her higher bill. CEI admits that Ms. Kenderes' usage during November 2017-March 2018 exceeded her usage for those months during the prior year, but denies that her usage decreased 1,600 KWH in the first month after installation of a new meter. CEI contends that Complainant's meter, which was replaced April 5, 2018, indicated 99.76 percent accuracy during testing.

{¶ 4} By Entry issued July 2, 2018, a settlement conference was scheduled for July 19, 2018. At Complainant's request, the settlement conference was rescheduled to August 14, 2018; counsel for CEI was present for the conference, but Ms. Kenderes was not present. To provide Complainant another opportunity for mediation, another settlement conference was scheduled for October 18, 2018.

{¶ 5} The parties participated in the October 18, 2018 settlement conference, after which a May 9, 2019 hearing was scheduled. On April 25, 2019, CEI requested a continuance of the hearing pending the conclusion of discovery; the continuance was granted by Entry issued April 30, 2019. Following the resolution of the pending discovery issues, an August 26, 2019 Entry was issued that scheduled an October 17, 2019 hearing, at which both parties were present.

{¶ 6} The parties filed briefs on November 12, 2019, and November 22, 2019, respectively. Reply briefs were filed November 25, 2019 and December 13, 2019, respectively.

III. DISCUSSION

A. Applicable Law

{¶7**}** R.C. 4905.22 provides that every public utility shall furnish service and facilities that are adequate, just, and reasonable, and that all charges made or demanded for any service be just, reasonable, and not more than allowed by law or by order of the Commission.

{¶ 8} Pursuant to R.C. 4905.26, the Commission has authority to consider a written complaint filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 9} CEI is a public utility as defined in R.C. 4905.02, and, as such, CEI is subject to the jurisdiction of this Commission.

 $\{\P \ 10\}$ In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, in cases such as this, it is the responsibility of the complainant to present evidence in support of the allegations made in the complaint.

B. Summary of the Evidence and Commission Conclusions

1. COMPLAINANT'S TESTIMONY

{¶ 11} Ms. Kenderes testified that she called CEI in October 2017 because "* * * the meter was making a very loud noise when I would walk past it to the garage" and, in addition, her neighbor had noticed "* * * a shock or jolt * * *" when turning off a faucet at Complainant's home.¹ At that time, she added, she was not concerned with higher than usual bills from CEI. (Tr. at 19-20, 94-95; CEI Ex. 5 at 4.) According to Complainant, in response to her call, CEI dispatched a technician to check the meter. Ms. Kenderes asserts that the technician stopped by when she was not at home, so she later contacted CEI and was told that the inspection of the meter indicated no problems. (Tr. at 20-21.)

{**¶ 12**} Ms. Kenderes stated that, initially, she did not notice that her electric bill was higher than usual, because she had encountered a delay in paying her bill in timely manner (Tr. at 5). Complainant explained that she first contacted CEI regarding her high bills in

¹ The October 2017 date that Ms. Kenderes contends a CEI technician investigated noise from her meter, and the May 2018 date that she states a CEI technician replaced her meter, are inconsistent with the dates for investigation and replacement stated by CEI. During her testimony, Complainant explained that "** * [it] was months ago that I tried to comprise the dates. *** I could be wrong ***" (Tr. at 96).

February 2018; the period of time during which she questions the alleged high electric usage is October 2017 to April 2018 (Tr. at 19).

{¶ 13} Complainant explained that, given her history of electric usage in her home, she thought "* * * something inside the home * * * " had caused higher electric use. Ms. Kenderes added that, in March 2018, two electricians tried to determine what might have caused higher usage, but they could not find a source, nor could her father, who did "* * * a bunch of voltage amp tests * * *." (Tr. at 7-8, 25.) Complainant admitted that she does not have written inspection results from the two electricians, because they were "* * friends of friends that were certified, who offered to come in * * " informally (Tr. at 9). The electricians were not present to testify at the hearing.

{¶ 14} According to Ms. Kenderes, her usage as indicated on CEI's bills shows that she used "* * * probably 260 * * * percent [more energy] than my neighbors * * *." She contends, however, that no one is present at her home during the day, including during summer when her children are at day camp (Tr. at 22-24). Complainant added that her alleged usage was double what it typically would be for the period of time at issue (Tr. at 23; Kenderes Ex. 1).

{¶ 15} To further refute the alleged high usage, Ms. Kenderes explained that, following the purchase of her home, she replaced the dishwasher, stove, microwave, and refrigerator in 2017. In addition, she implements energy efficient measures such as changing air filters and using LED lights. As for outdoor lighting, Complainant stated that she never turned on the light on the lamp post in front of her home. (Tr. at 10-13, 56.) Complainant further explained that the furnace, dryer, hot water tank, and stove in her home are natural gas appliances (Tr. at 10). Complainant emphasized that space heaters were not in use, as she is concerned about safety issues associated with such heaters (Tr. at 11). In Ms. Kenderes' opinion, cold temperatures could not have caused higher electric usage, because "* * average daily temperatures were actually warmer * * " during the year in question than the following year (Tr. at 15). Although Ms. Kenderes acknowledges she is not an

electrician and has no engineering training, she questions how her home could have used such a large amount of power without overloading her home's electric system capacity or causing a fire (Tr. at 17, 22, 25).

{¶ 16} Complainant expressed doubts about the accuracy of the electric meter, but noted that it was tested at CEI's lab and was found to be accurate (Tr. at 12). Ms. Kenderes stated that, only after the meter testing was completed, did she learn that she could have been present to observe the testing; consequently, she had never asked to be at the meter testing lab when the tests were conducted (Tr. at 13-15, 26). According to Complainant, only after receiving a letter regarding the meter's test results, did she contact CEI to indicate that she would pay to have the meter tested again. Ms. Kenderes, doubts, however, that she made such a call immediately upon reading the test results, because of other matters to take care of at home (Tr. at 99).

2. TESTIMONY ON BEHALF OF CEI

{¶ 17] Robert Perkins, Manager of Meter Services for CEI, testified that a technician visited Ms. Kenderes' property on May 18, 2017, in response to her call to CEI that her meter was "running loud" and that her neighbor experienced a "shock" at the neighbor's home. The technician used a Beast of Burden tester, which puts an artificial load on the CEI line-side wires to check for loose connections, but none were found. The technician's notes concerning the visit also did not indicate any unusual sounds coming from the meter, that the meter was "'spinning fast,'" or that there was any damage observed in the meter socket (CEI Ex. 5 at 4, 9, 12-13; Tr. at 39-40, 83.) According to Mr. Perkins, the technician asked Ms. Kenderes to conduct a breaker test; she did so, but the results were inconclusive concerning the cause of the high usage (CEI Ex. 5 at 8 -10). Mr. Perkins added that, if there had been a problem with Complainant's breaker box, the electricians that assisted Ms. Kenderes would have "* * see[n] some visual effects of that, such as a conductor that looks like it's melting or something like that" (Tr. at 64).

[¶ 18] According to Mr. Perkins, meters sometimes make a loud noise while operating, but that does not mean that consumption is increasing; further, he stated, loud noises are not a condition that would occur intermittently, but rather would be constant. Mr. Perkins observed that the high consumption occurred from October 2017 to April 2018, five months after the loud noises. (CEI Ex. 5 at 12.) Regarding the alleged electric shock, Mr. Perkins explained that such a condition can originate from a ground fault condition which could cause higher usage. However, he added, a shock would not be a single incident; it would occur multiple times. Mr. Perkins noted that the CEI technician sent to Ms. Kenderes on May 18, 2017, concerning her allegation of the meter "running loud" found no loose connections or a ground fault condition on CEI's line-side wires. In addition, no damage was found to the meter socket. (CEI Ex. 5 at 12; Tr. at 83).

{¶ 19} Mr. Perkins contends that Complainant initially called CEI concerning high electric usage on March 23, 2018, and again on April 4, 2018, at which time she requested replacement of the meter. The meter was removed April 5, 2018, and replaced with a new meter; the meter that was removed tested 99.76 percent accurate. Mr. Perkins noted that the Commission inspects CEI's meter lab annually to ensure it complies with Commission rules. (CEI Ex. 5 at 5-6; Tr. at 83.) Mr. Perkins asserts that, when the technician came to Ms. Kenderes' home and removed the meter, the technician made no record of finding damage in the socket, a loose socket, or a hot socket that would cause the meter to malfunction (Tr. at 39, 58, 83). He explained that a hot socket "* * * is a condition where you might have a loose connection, a high resistant connection and when you push current through * * * it heats up and looks just like a load." He explained that, when current passes through a meter, it's seen as a "load" or consumption to the meter (Tr. at 40-41).

{¶ 20} To further explain meter testing, Mr. Perkins stated that the basic meter function measures the relationship of current and voltage known as "load," which is reflected as kilowatts over time. More specifically, the meter measures the kilowatt hours being drawn into CEI's service line through the meter and into the home by devices such as lights, fans, motors, and electronics. (CEI Ex. 5 at 5-6.) The testing consists of putting a

known voltage and amperage through the customer's untested meter and comparing the measured result to a meter standard of known test results (CEI Ex. 5 at 6). The result can be expressed as a percentage of measured load to known load; the meter that was removed from Complainant's residence tested at 99.76 per cent (CEI Ex. 5 at 6). Mr. Perkins explained that, while the electric usage in question by Ms. Kenderes is based on a billing month of 30 days, her meter was not tested to the degree that it was subjected to a comparable amount of KWH usage over a 30-day period, consistent with CEI's meter testing practices (Tr. at 47-48).

{¶ 21} According to Mr. Perkins, there is no defined schedule for meter replacement; instead, for residential meters, CEI "*** groups *** [the meters] into lots and *** sample[s] those lots every year * **" at CEI's test laboratory (Tr. at 36). Mr. Perkins added that, annually, CEI's lab creates "*** a list of meters to go out and pull and send to our test lab for testing" (Tr. at 38). The list is created "*** through a statistical sample," and test results are compiled "*** over a certain number of years to look at the accuracy of a meter over ** * a time frame" to determine the average accuracy for various meters still in use (Tr. at 38). Meters are also calibrated when they are pulled to determine accuracy (Tr. at 42-43). Mr. Perkins stated that "*** when we see meters that are starting to drop off in accuracy *** we deem that meter retirable *** and go out and exchange those retirable meters to replace them" (Tr. at 36). In addition to sampling of meters for their accuracy, Mr. Perkins stated his belief that calibration of meters occurs annually, but admitted that he is not certain of this (Tr. at 42).

{¶ 22} When asked whether, as a meter aged, it would speed up and become inaccurate, Mr. Perkins explained that "*** meters almost always slow down as they age * **" and that there is a retarding magnet in meters, which acts as a governor so that the meter "*** won't spin out of control ***." He explained that problems with the retarding magnet would be seen when a meter is tested, but there was no such problem found with the meter that was removed from Complainant's residence. (Tr. at 36, 49.) Mr. Perkins added that, in his 28 years of experience, there was only one model of meter that experienced problems

with the retarding magnet, but the meter still complied with the Commission requirement for meters to be within two percent of required accuracy (Tr. at 49-50, 58). Mr. Perkins reemphasized that "* * * almost always mechanical meters slow down due to age and friction, they very rarely speed up" (Tr. at 50). In addition, he contended, "[m]eters do not temporarily 'go haywire' and then revert to normal. When they break – which is relatively rare – they stay broken. If Ms. Kenderes' meter was malfunctioning as she claims it was, it would not have tested 99.76 percent accurate at the Meter Lab" (CEI Ex. 5 at 6-7).

{¶ 23} Mr. Perkins emphasized that electricity cannot be "pushed" through a meter; rather, it can only be "pulled" by devices that consume electricity for the customer (CEI Ex. 5 at 7). Therefore, Mr. Perkins asserts, he is certain that Complainant used the amount of electricity recorded by CEI from October 2017 to April 2018 (CEI Ex. 5 at 7). He is not sure what caused Complainant's higher usage, but he suggested several possibilities (Tr. at 92).

{¶ 24} First, Mr. Perkins noted, Complainant's meter was replaced in April 2018, which is toward the end of the winter heating season (Tr. at 63-64). What typically causes increased electric usage during winter, he explained, are devices that provide heat, such as space heaters and electric blankets, which can significantly increase electric usage (Tr. at 51-52, 58, 62).

{¶ 25} Second, Mr. Perkins testified, another possible source for higher usage is the grounding of electricity from a wire. For example, insulation on underground wires, such as wires leading to a garage or to a lamp post in front of a home, can degrade, and electricity can start leaking, resulting in a "* * * current that looks like a load to the meter." (Tr. at 55-56, 59; CEI Ex. 5 at 11.) Wet soil can further increase conductivity of such wires, he added (Tr. at 56).

{¶ 26} Third, Mr. Perkins opined, the cause of Complainant's higher usage"*** even could have been an issue with * ** [the] furnace itself, as many furnaces have an electric blower motor even if the furnace itself is powered by natural gas" (CEI Ex. 5 at 7).

{¶ 27} As to why Complainant's electric usage eventually decreased, Mr. Perkins stated that, during inspections by the electricians at Complainant's home, something could have been unplugged or turned off without Ms. Kenderes' knowledge; thus, the "* * check[ing] of wiring or electrical equipment [by Complainant's electricians] * * * cured some defect condition without having first been aware of [what caused] the problem" (Tr. at 60, 65; CEI Ex. 5 at 11). Another possibility, he surmised, for her eventual decrease in usage is that a resident or visitor to her home might have unplugged an appliance that caused the high consumption (CEI Ex. 5 at 11).

{¶ 28} In response to Mr. Kenderes' remarks that she had been willing to pay to have the meter tested again, Mr. Perkins noted that when a meter is pulled, tested, and found to be accurate, it is still scrapped about 10 days after testing is over. He explained that it costs CEI less to buy a new meter than to refurbish a mechanical meter. Mr. Perkins noted that Complainant's old meter was replaced with a digital meter; digital meters are "* * * recalibrated and repurposed back out into the field ***" (Tr. at 54-55, 86-87).

3. COMMISSION CONCLUSION

{¶ 29} The Commission finds that Ms. Kenderes did not meet her burden of proving that she was billed incorrectly during October 2017 through April 2018. This is not a novel issue before the Commission. The Commission has considered similar cases in which a complainant has alleged that his or her electric meter showed excessive usage which could only be explained by a meter malfunction. See, e.g., *In re the Complaint of Merle Davis v. The Cleveland Elec. Illum. Co.*, Case No. 81-1495-EL-CSS, Opinion and Order (Nov. 1, 1983), Entry on Rehearing (Dec. 19, 1983). As in the instant case, the company's evidence in *Davis* showed that the meter had been tested as accurate to Commission standards. However, although the Commission noted that the evidence provided by the utility's test as to the accuracy of the meter is strong, the weight accorded to such testimony is not a constant but rather is determined on a case by case basis. The reliability of meter tests in a "high billing" proceeding is always subject to attack and will not be summarily accepted on its face. Instead, in *Davis*, the Commission stated that it would continue to look to extraneous

circumstances presented on a case by case basis in order to determine the weight accorded to meter test evidence. *Davis,* Opinion and Order (Nov. 1, 1983) at 4. As a result, a complainant may attempt to overcome the evidence presented by the meter test by showing conservation measures or other usage inconsistent with the amount which is billed. The company may attempt to confirm the meter test evidence by presenting a plausible explanation as to how the contested usage may have occurred. See also *In re the Complaint of John and Billie Taylor v. Columbus and S. Ohio Elec. Co.,* Case No. 84-762-EL-CSS, Opinion and Order (Apr. 3, 1985); *In re the Complaint of Giovanni DiSiena v. The Cleveland Elec. Illum. Co.,* Case No. 09-947-EL-CSS, Entry (Dec. 8, 2010).

{¶ 30} In this proceeding, we note that the CEI technician that visited her residence in spring 2017 did not indicate finding that there were loose connections, unusual sounds coming from the meter, that the meter's blades were spinning quickly, or there was damage to the meter socket. (CEI Ex. 5 at 4, 9, 12; Tr. at 39-40, 83.) In addition, a breaker test did not indicate any possible cause for Ms. Kenderes' high usage (CEI Ex. 5 at 8-10). Similarly, in spring 2018, when a CEI technician came to Ms. Kenderes' home and removed the meter, the technician made no record of finding damage in the socket, a loose socket, or a hot socket that would cause the meter to malfunction (Tr. at 39, 58, 83).

{¶ 31} Further regarding the condition of the meter, we take into account Mr. Perkins' remark that, although meters may sometimes make a loud noise while operating, that does not mean that consumption is increasing. He also observed that the high consumption occurred from October 2017 to April 2018, five months after Complainant said she heard the loud noise. (CEI Ex. 5 at 12.) Also significant is Mr. Perkins' assertion that, as meters age, they almost always slow down, and that the retarding magnet in meters prevents the mechanisms in the meter from spinning out of control. Mr. Perkins noted that no issues were observed with the retarding magnet when it was tested, and that testing indicated that the meter was operating at 99.76 percent of accuracy which, he further noted, is within the Commission's acceptable range of 98 percent to 102 percent. (Tr. at 36, 49, 78-79; CEI Ex. 6.) Given Complainant's history of electric usage as indicated in Kenderes Ex. 1,

we can certainly understand the basis of her belief that CEI erred in determining how much electricity she used during October 2017 through April 2018. However, as noted by Mr. Perkins, it is plausible that the higher consumption occurred during the winter months, when customers may be using devices to provide additional heat; although Ms. Kenderes stated that she does not use space heaters, she did not respond to Mr. Perkins' remarks that electric blankets might have been in use (Tr. at 51-52, 58, 62; Kenderes Ex. 1). In addition, as Mr. Perkins opined, the cause of Complainant's higher usage could have been issues with the electric blower motor on her gas furnace; indeed, Ms. Kenderes did not indicate there had been any testing of the furnace components prior to the winter months of November 2017 through April 2018, when her gas usage tripled from November to January and February (CEI Ex. 2; CEI Ex. 5 at 7). Finally, Mr. Perkins testified, that another possible source for higher usage is the grounding of electricity from a wire. For example, he stated, insulation on underground wires leading to a garage or to a lamp post in front of a home can degrade and cause electricity to start leaking, resulting in a current that the meter registers as usage (Tr. at 55-56, 59; CEI Ex. 5 at 11.) Although Ms. Kenderes stated that she has not used the light on the lamp post in front of her home, she did not address whether her garage is detached, with underground wires leading to it (Tr. at 55-56, 58-59).

{¶ 32} Regarding the eventual decrease in Ms. Kenderes' recorded usage, we find significant Mr. Perkins' remarks that when Complainants' electricians investigated for possible sources of high usage, they might have unplugged or turned off the source, thus unknowingly correcting the problem. (Tr. at 60, 65; CEI Ex. 5 at 11). Similarly, we find significant Mr. Perkins' remarks that Complainant's eventual decrease in usage could be caused by a resident or other visitors to her home that unplugged an appliance that had caused the high consumption (CEI Ex. 5 at 11).

{¶ 33} We also observe that the electricians that visited Ms. Kenderes' property did not provide any written documentation of their findings and were not present to provide testimony during the hearing (Tr. at 9) In addition, although Complainant indicated that she had implemented energy conservation measures such as replacement of the dishwasher,

stove, microwave, and refrigerator, as well as changing air filters and using LED lights, she did not provide receipts indicating the date of purchase and installation of these appliances and other devices (Tr. at 10). Also, although Ms. Kenderes contended that cold temperatures could not have caused higher electric usage because "* * average daily temperatures were actually warmer * * * " during October 2017 to April 2018 than during the following year, she did not provide any weather records to substantiate her claim (Tr. at 15). In sum, while Kenderes Ex. 1 contains copies of Complainant's electric bills from October 2016-October 2019 and reflects a high increase in usage followed by an eventual decrease, Complainant did not provide evidence of the aforementioned measures she alleges having taken to reduce electric usage or to determine the source of the increased usage.

{¶ 34} Therefore, while the specific cause or causes for Complainant's high usage during the period of time at issue is open to conjecture, she did not carry her burden of proving that CEI billed her incorrectly. Thus, she failed to rebut CEI's evidence and testimony that CEI was not responsible for the increase in recorded usage, or that CEI failed to comply with statutory or regulatory requirements. Accordingly, lacking evidence that the cause of the increased usage was in CEI's control or that CEI failed to comply with statutory requirements, the Commission cannot conclude that CEI has rendered inadequate service pursuant to R.C. 4905.22. Accordingly, we find that this complaint should be dismissed.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 35} On May 24, 2018, Jenny Kenderes filed a complaint with the Commission.

[¶ 36] On June 14, 2018, AEP filed its answer.

{¶ 37} Settlement conferences were conducted on August 14, 2018, and October 18, 2018. A status conference was conducted on May 14, 2019. The parties were unable to resolve the matter.

{¶ 38} By Entry issued August 26, 2019, a hearing was scheduled for October 17, 2019. The hearing was conducted as scheduled.

{¶ 39} The parties filed briefs on November 12, 2019, and November 22, 2019, respectively. Reply briefs were filed on November 25, 2019, and December 13, 2019.

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

{¶ 41} Complainant did not meet her burden of proving that CEI incorrectly billed her for service from October 2017 through April 2018. Therefore, there is insufficient evidence to support a finding that CEI rendered inadequate service pursuant to R.C. 4905.22.

V. ORDER

 $\{\P 42\}$ It is, therefore,

{¶ **43}** ORDERED, That the complaint is dismissed. It is, further,

{¶ 44} ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

COMMISSIONERS: *Approving:* Sam Randazzo, Chairman M. Beth Trombold Lawrence K. Friedeman Daniel R. Conway Dennis P. Deters

JML/hac

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Case No(s). 18-0922-EL-CSS

Summary: Opinion & Order finding that Complainant has not met her burden of proof to demonstrate that The Cleveland Electric Illuminating Company billed Complainant incorrectly for her electric usage from October 2017 to April 2018 electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio