

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
STEVEN PAINTER,

COMPLAINANT,

v.

CASE NO. 21-236-EL-CSS

OHIO EDISON COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on April 6, 2022

I. SUMMARY

{¶ 1} The Commission finds that Complainant has not met his burden of proving that Ohio Edison Company unreasonably denied his application for electric service. The Commission further finds that Complainant has not met his burden of proving that Ohio Edison Company unjustly shut off power to his residence.

II. PROCEDURAL BACKGROUND

{¶ 2} On March 11, 2021, Steven Painter (Mr. Painter or Complainant) filed a complaint against OEC, alleging that OEC failed to start electric service at his new residence located at 1028 Greenlea Drive (Greenlea) in Marion, Ohio. Mr. Painter stated that he had sent, at OEC's request, information concerning the Greenlea address and proof of ownership. Complainant contended that OEC did not turn on his service during cold temperatures in January 2021 and, as a result, water lines froze and burst. Mr. Painter added that he had to file an insurance claim to cover the cost of the damage. Further, Complainant asserted, he had no power for three days following a winter snowstorm, and he had to rely on a generator to provide electricity for heat during below freezing temperatures.

{¶ 3} On March 31, 2021, OEC filed a motion to stay and a memorandum in support. In the memorandum, OEC stated that Complainant had submitted a claim directly to Ohio Edison regarding his allegations. OEC added that Mr. Painter filed his complaint at the

Commission while his claim at OEC was still under review. OEC explained that it expected to respond to Complainant's claim soon. OEC requested, for efficiency, that a stay should be placed on the complaint at the Commission while OEC was reviewing the claim.

{¶ 4} On April 9, 2021, Mr. Painter filed a memorandum contra the motion to stay, disagreeing with the motion to stay. Complainant asserted that he wanted to continue with the process at the Commission.

{¶ 5} On April 16, 2021, OEC filed a reply memorandum and an answer to the complaint. OEC explained that, following investigation, its claims department had denied Complainant's claim, and that would proceed with the matter at the Commission. OEC further stated that it was contacted by Complainant by telephone on January 21, 2021, to request electric service at Greenlea. OEC added that, during the call, the OEC representative informed Mr. Painter that he needed to provide proof of owning Greenlea; during the call, the OEC representative checked the Marion County Auditor's website, which did not show that Complainant owned the home. OEC stated that, later on January 21, 2021, Complainant applied online for service at Greenlea, and OEC sent a response to Mr. Painter stating that he would have to contact the customer service department by telephone on business days. OEC asserted that it did not receive proof of Complainant's ownership on or before February 9, 2021, which resulted in OEC turning off electric service at the residence on that date. In addition, OEC asserted that it did not receive any communication from Mr. Painter between January 21, 2021, and February 13, 2021, despite OEC's attempts to contact Complainant regarding necessary steps to complete the application process. According to OEC, on or about Saturday, February 13, 2021, Complainant contacted OEC and requested to have electric service turned back on at the residence. OEC then informed Mr. Painter that requests for reconnection that are made after normal business hours, or on weekends or company holidays, are processed the following business day; because of the President's Day holiday on February 15, 2021, the next business day was Tuesday, February 16, 2021. OEC denied any other allegations made by Complainant.

{¶ 6} The parties participated in an April 28, 2021, telephonic settlement conference, which did not result in a settlement.

{¶ 7} The hearing was conducted on November 1, 2021.

{¶ 8} OEC filed a brief of December 3, 2021. Mr. Painter did not file a brief or a reply brief.

III. DISCUSSION

A. *Applicable Law*

{¶ 9} 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.

{¶ 10} 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.

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

{¶ 12} 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. *Issues Raised by Complainant*

{¶ 13} Mr. Painter alleges that, on January 21, 2021, and at OEC's request, he provided information concerning the address of Greenlea and proof of his ownership, but

OEC unreasonably refused to provide him service. Complainant further contends that, on February 9, 2021, OEC unjustly and without notice turned off power to Greenlea, causing water lines in the home to freeze and burst in very cold temperatures.

C. *Summary of the Evidence and Commission Conclusions*

1. WHETHER OEC UNREASONABLY FAILED TO APPROVE COMPLAINANT'S APPLICATION FOR SERVICE ON JANUARY 21, 2021

{¶ 14} Mr. Painter explains that, on January 20, 2021, he had closed on the purchase of Greenlea, and on January 21, 2021, he made calls to have utilities at Greenlea placed in his name. During the call to OEC, Complainant informed OEC's representative that the prior Greenlea owner canceled service on January 20, 2021; the OEC representative then checked the Marion County Auditor's website for proof of ownership, but a deed in Mr. Painter's name had not been filed. (Tr. at 6-7, 36-38.) Mr. Painter testified that it typically takes three to five days for a property deed to be filed with the county auditor by the title company, so he emailed a copy of the deed to fecoutbound@firstenergy.com. The deed did not contain any signatures; Complainant explained that a signed copy "doesn't come to you until * * * the title company sends you the final [version of the deed]" several days after the closing. Complainant contends that he was given the fecoutbound@firstenergy.com address by the OEC representative that he spoke with, as there was no other way for him to learn of that email address. Complainant noted that, as instructed by the OEC representative, he typed on the deed that he emailed to OEC "Attention Application Dept. Service Starting date 1/20/21 1:00 p.m." Mr. Painter added that OEC did not reply to his e-mail which included the deed. (Tr. at 7-8, 10, 30-31, 47-48, 81; Painter Ex. 1.) Complainant doubts that OEC instructed him to fax a copy of the deed, and adds that, even if he had been provided a fax number, he does not have a fax machine. Consequently, Complainant explained, he e-mailed the deed to fecoutbound@firstenergy.com (Tr. at 31-32.)

{¶ 15} Complainant added that, to ensure that OEC received proof that he owned Greenlea, he also applied for service online on January 21, 2021 (Tr. at 41-44). Mr. Painter

explained that he took a photo of the deed on his cell phone, sent the photo to his own email address, and then emailed the information to OEC at fecustomerservice@firstenergycorp.com (Tr. at 44). Complainant added that OEC sent an email back to him at 10:20 a.m., stating that OEC had received his request and would respond further in two business days (Tr. at 40-44; Painter Ex. 2). Mr. Painter emphasized that, although he received no more communication from OEC after its 10:20 email, he concluded that he did not need to do anything more. Complainant reasoned that OEC's e-mail reply proved that the online application had been received, and he observed that he had provided OEC with his deed, his name, and his Social Security number. (Tr. at 43-44.) Complainant disagrees with OEC's contention that OEC emailed him after its initial response to his online application (Tr. at 43). Mr. Painter further believed that OEC would follow up with any remaining questions by contacting the Marion County Auditor (Tr. at 7).

{¶ 16} Mrs. Painter contends that, after speaking with the OEC service representative, and also receiving an email reply to Complainant's online application that included the Greenlea deed, the Painters concluded that there was no reason to contact OEC further (Tr. at 67-68). Mrs. Painter conceded that she did not check Complainant's emails to find out if OEC had sent a second email concerning the online application. During the hearing, after listening to a recording of Complainant's January 21, 2021 call to OEC, Mrs. Painter stated that she did not hear the OEC representative provide an email address for Complainant to send the deed to, but she added that static on the recording prevented her from hearing parts of the conversation. (Tr. at 68-69.) Mrs. Painter similarly asserts that Complainant would not have known about the fecoutbound@firstenergy.com email address if it had not been provided to him (Tr. at 98). Mrs. Painter stated that on February 13, 2021, Mr. Painter discovered that there was no electricity at Greenlea; eventually, they realized it was turned off on February 9, 2021 (Tr. at 94-95).

{¶ 17} OEC witness Princess Davis testified that Mr. Painter called OEC at 9:22 a.m. on January 21, 2021, and informed the customer service representative that he had closed

on a home and wanted to have electric service transferred to his name (OEC Ex. B at 4; OEC Ex. C at 3-4). According to Ms. Davis, when the OEC representative checked the Marion County Auditor's website and found no record that Complainant owned Greenlea, Complainant was directed to fax a copy of the deed to OEC (Tr. at 37-38, 76; OEC Ex. B at 4). Ms. Davis explained that a deed to prove ownership is typically accepted by OEC only via fax (Tr. at 107-108). During a recording of Mr. Painter's January 21, 2021 call to OEC that was replayed at hearing, Ms. Davis noted that the OEC representative had stated "'I just looked at the [auditor's] website. Unfortunately (static) but . . . let me give you a fax number'" (Tr. at 37-38). Because the quality of the recording is poor, Ms. Davis remarked, she could not hear digits for the fax number being said (OEC Ex. B at 6).

{¶ 18} According to Ms. Davis, the Greenlea account "had a large outstanding balance," which was a primary reason that OEC needed proof of a change in ownership before providing service (Tr. at 76-77, 86; OEC Ex. B at 4; OEC Ex. C at 3). Ms. Davis noted that, if OEC had received a transfer of service request from the prior Greenlea owner, Complainant would not have needed to confirm that he owned Greenlea; it would have been evident that ownership of Greenlea had changed, and the unpaid balance would be added to the prior owner's account at his or her new address. However, Ms. Davis did not believe that the prior Greenlea owners had transferred service to another location served by OEC. (Tr. at 83-85.)

{¶ 19} Ms. Davis contends that OEC has no record of receiving Complainant's deed that he asserts was emailed to fecoutbound@firstenergycorp.com after his January 21, 2021 telephone call, because that email address is a "nonrecipient, unmonitored" address and is used by OEC to send out automated messages. Therefore, Ms. Davis emphasized, an email sent to fecoutbound@firstenergycorp.com is "not received by anyone at FirstEnergy or Ohio Edison. Ohio Edison has no means to check that email address." (Tr. at 77-79; OEC Ex. B at 4-5; OEC Ex. C at 3.) Ms. Davis further contends that OEC's records do not indicate that the Painters were given an email address to send the property deed to; she explained that the script read by OEC representatives during a call requesting service does not include

providing the fecoutbound@firstenergycorp.com email address. Instead, Ms. Davis added, OEC representatives typically follow a script in which a caller is given a fax number to which they may send a property deed. (Tr. at 97, 105, 107-108; OEC Ex. B at 5-6.)

{¶ 20} Ms. Davis stated that, at 10:20 a.m. on January 21, 2021, Mr. Painter also submitted an online service request (Tr. at 76-77; OEC Ex. C at 3). Upon OEC receiving the application, Ms. Davis explained, Complainant was immediately sent an automated email from feccustomerservice@firstenergycorp.com; the email indicated that OEC would respond within two business days (Tr. at 77, 103-104; Painter Ex. 2). Ms. Davis stated that the feccustomerservice@firstenergycorp.com address simply sends out “an automated message that confirms that an order for a web inquiry has been received”; it is not an email address to which customers may respond (Tr. at 104).

{¶ 21} Ms. Davis noted that Complainant’s online application was reviewed shortly after its receipt; because the Greenlea account had a large unpaid balance and ownership of Greenlea was not yet public record, an email was sent from fecoutbound@firstenergycorp.com to Complainant at 10:38 a.m. on January 21, 2021. The email stated that, to begin OEC service, Mr. Painter must contact OEC’s Customer Service Department at 1-800-633-4766 on weekdays from 8:00 a.m. to 6:00 p.m. The email also directed that, if Mr. Painter had questions or if he had not submitted the online service request, he should not reply directly to the address from which OEC’s email originated, but rather to contact OEC at www.firstenergycorp.com/content/fecorp/corporate/contact_us.html. (Tr. at 77-79; OEC Ex. B at 4-5; OEC Ex. C at 3.) Ms. Davis contends that, by directing Complainant to contact OEC regarding completing the online application, OEC was implicitly stating that the application was not approved (Tr. at 101).

{¶ 22} The Commission finds that Complainant has not met his burden of proving that, on January 21, 2021, OEC unreasonably failed to approve Complainant’s request to begin service. We initially observe, as noted above in Paragraphs 17 through 21 above, Mr.

Painter's January 21, 2021 attempts to have service placed in his name were not accepted, despite his applying for service on that date via telephone and online. OEC's tariff specifies that OEC will not supply service until an application for service is accepted (PUCO No. 11, Sheet 4, 1st Revised Page 2 of 21, sec. II(A)). More specifically, we note Ms. Davis' testimony that OEC needed proof of a change in ownership at Greenlea because of the large account balance. (Tr. at 76-77, 86; OEC Ex. B at 4; OEC Ex. C at 3.) The record in this case shows that, during Complainant's conversation with an OEC service representative to begin service, service representative Keana Seals (Ms. Seals) checked the Marion County Auditor property records and found no proof that Complainant owned Greenlea; consequently, service was denied, as Complainant had failed to provide proof of a change of ownership and there remained a large unpaid balance on the account. Ms. Seals informed Complainant during the call that the auditor's website did not indicate his ownership of Greenlea. Ms. Seals also provided Mr. Painter with a fax number that he could send proof of ownership to; Ms. Seals did not state that the request for service was accepted as complete. In addition, the record does not indicate that Ms. Seals provided Complainant with the fecoutbound@firstenergycorp.com address at which to send proof of ownership; rather, Ms. Davis stated that OEC service representatives follow a script that only allows for providing a fax number, with no mention of fecoutbound@firstenergycorp.com. (Tr. at 36-37, 97, 105, 107-108; OEC Ex. B at 5-6; OEC Ex. C at 3-4.) Finally, Ms. Davis asserted that the fecoutbound@firstenergycorp.com address is not monitored by OEC for incoming messages; instead, it is a source of outgoing emails from OEC (Tr. at 77-79; OEC Ex. B at 4-5; OEC Ex. C at 3). At any rate, even if this email address was a valid form of communication between a prospective customer and OEC, which it is not, the Company's tariff clearly notes that individuals must apply for service following the process required by the Company and that such service will not be supplied by the Company until after the application is accepted (Ohio Edison Co., P.U.C.O. No. 11, Sheet 4, 1st Revised Page 2 of 21).

{¶ 23} The record further shows that Complainant's January 21, 2021 online service application was acknowledged as received by OEC in a 10:20 email to Complainant (OEC

Ex. C at 3; Painter Ex. 2). The application was reviewed and was indicated as “Status-Cancelled” by OEC when a 10:38 email was sent to Mr. Painter. The 10:38 e-mail stated that, to place electric service in Complainant’s name, he must call 1-800-633-4766 Monday through Friday between 8:00 a.m. and 6:00 p.m. or email OEC at https://www.FirstEnergycorp.com/content/fecorp/corporate/contact_us.html. Neither the 10:20 nor the 10:38 email from OEC to Mr. Painter states that his application had been accepted as complete. (OEC Ex. C at 3.)

{¶ 24} We further note Mr. Painter’s remarks at hearing, as well as Painter Ex. 1, which indicate that the property deed was not signed by the grantor, i.e. the seller of the property, or by a notary public; such a signature is required by Ohio law for a deed to be valid. Thus, the deed emailed by Complainant to OEC was not valid to prove ownership. (Painter Ex. A.) We also observe that, although Complainant and Mrs. Painter testified that they received no more emails from OEC after the 10:20 email on January 21, 2021, Mrs. Painter admitted that she does not frequently check emails sent to Complainant’s email address (Tr. at 43, 68-69).

{¶ 25} Finally, Ohio Adm.Code 4901:1-18-01 defines a customer to be “any person who enters into an agreement, whether by contract or under a tariff, to purchase: electric, gas, or natural gas utility service.” Under the Commission’s rules, there is a simple two-step process by which service is established. Specifically, a prospective customer requests service by submitting an application and the utility approves the service by accepting the application. The company’s acceptance of such an application then brings the parties within the scope of the tariff, which constitutes the service contract and contains the mutual rights and obligations between the company and the customer. Thus, residential electric service is established only if a customer applies for service and the company accepts. See *In re Complaint of C. Richard Smith v. Ohio Edison Co.*, Case No. 10-340-EL-CSS, Opinion and Order (July 6, 2011), *aff’d* 137 Ohio St.3d7, 996 N.E. 2d 928 (2013). OEC never accepted a service application by Complainant prior to February 15, 2021, nor was there a valid application to accept before that date. Instead, Complainant emailed an incomplete copy of his deed to an

unmonitored email address and subsequently applied for services online without contacting customer service for additional information, as instructed (Painter Ex. 1; OEC Ex. B at 5; OEC Ex. C at 3). Thus, we find that the Company did not act unreasonably when denying Complainant's requests for service placed on January 21, 2021, based upon an incomplete application. As Mr. Painter failed to provide the required additional information through the Company's process, he was not a customer prior to February 16, 2021, pursuant to the Commission's rules or the Company's tariff. See *In re Complaint of Jane Ann Bidwell v Ohio Power Co.*, Case No. 15-1020-EL-CSS (*Bidwell*), Opinion and Order (Oct. 20, 2017).

2. WHETHER OEC UNJUSTLY TERMINATED POWER AT COMPLAINANT'S NEW RESIDENCE

{¶ 26} According to Mr. Painter, OEC turned off electric service at Greenlea on February 9, 2021, but it was not until Saturday, February 13, 2021, when he arrived at Greenlea, did he discover that there was no power (Tr. at 5-6, 23-24, 52, 94-95). Complainant alleges that, on February 13, 2021, he called OEC, but initially no one was present to take his call (Tr. at 23). Complainant added that OEC eventually called back, but he was unavailable because he was trying to start an electric generator. Mr. Painter emphasized that the OEC representative left two messages, but the messages did not indicate when a technician would arrive to turn the power back on. Complainant is uncertain whether the OEC representative provided a telephone number for Mr. Painter to return the call. (Tr. at 18, 21, 24-26.)

{¶ 27} Mr. Painter explained that, on most days when he was at Greenlea and there was no power, he did not use a thermometer to record temperatures, but "it was cold enough to break the [water] lines." On Saturday, February 13, 2021, however, he did have a thermometer while at Greenlea; the thermometer indicated a temperature of 18 degrees. (Tr. at 52-54.) Complainant contends that he was at Greenlea from February 13, 2021, through Monday, February 15, 2021, "in sub-degree temperatures" and had to "wire the generator into a heater * * * it was so cold it took * * * eight hours just to get it back to 60

[degrees].” Mr. Painter noted that he had no alternative but to rely on the generator for the February 15, 2021 President’s Day holiday, because OEC would not restore power on holidays. Complainant asserted that water had frozen and burst in the toilet valve and in pipes under the upstairs bathroom sink, so he had to shut off the main water valve. Mr. Painter contacted his home insurance carrier; an appraiser was sent out, verified the damage, and Complainant was compensated after a \$1,000 deductible. (Tr. at 26-27, 57.) Complainant adds that, on Tuesday, February 16, 2021, he called again, and OEC sent a technician to restore power. Because of the damage to Greenlea, Mr. Painter adds, he had to rent a residence for a time, and could not move into Greenlea until August 15, 2021 (Tr. at 6, 18, 27-28).

{¶ 28} In Mr. Painter’s opinion, he did all that he could to begin electric service when he took possession of Greenlea, and he was unaware that power would be turned off (Tr. at 20). Complainant contends that, until he called OEC to begin service, he did not know about the unpaid account balance for Greenlea that was accrued by the prior owners; in his opinion, “it’s not our balance” (Tr. at 27, 81-82). Mr. Painter argues that OEC, knowing of the unpaid balance, should have been more thorough in finding out if his service request was valid (Tr. at 86-87). Complainant asserts that OEC should have made one last telephone call to him before turning off the electricity, but he received no such call (Tr. at 89). Mr. Painter strongly objects to OEC turning off electric power in very cold weather (Tr. at 87-88).

{¶ 29} Ms. Davis explained that the prior owner of Greenlea had contacted OEC on January 21, 2021, and requested cancellation of service for January 22, 2021. After the cancellation, she added, there was no active account for Greenlea because Mr. Painter was not yet the customer of record, so power was turned off February 9, 2021. Ms. Davis added that OEC will turn off power in cold weather if there is no valid customer of record, and OEC will also absorb the cost of service provided prior to terminating power when there is no such customer. Ms. Davis stated that Complainant called OEC several times on Saturday, February 13, 2021, demanding that power be restored immediately, and asserting that OEC

had never informed him that any additional paperwork was needed. However, Ms. Davis stated, OEC new service accounts cannot be set up on a weekend or a holiday, and Complainant was directed to call during normal business hours, i.e. Monday through Friday. (Tr. at 84-85, 87, 99-100; OEC Ex. B at 6, 8.) Because Mr. Painter asked to speak with an OEC supervisor on February 13, 2021, Ms. Davis explained, a supervisor called Complainant back that same day at 2:29 p.m. and 4:48 p.m., but Complainant did not pick up the call (OEC Ex. B at 6-7).

{¶ 30} According to Ms. Davis, Mr. Painter called OEC again on February 16, 2021, and requested that power be turned on. Ms. Davis asserts that, during the call, Mr. Painter commented that he had never even started an OEC account. By checking the Marion County Auditor's website on February 16, 2021, OEC confirmed that Greenlea ownership was transferred to Complainant on January 26, 2021; with Complainant's ownership confirmed, OEC restored power to Greenlea on February 16, 2021. Ms. Davis noted that, during the February 16, 2021 call from Complainant, Mr. Painter asserted that OEC should have continued to check the Marion County Auditor website to verify that he owned Greenlea; however, Ms. Davis emphasized, OEC "does not have the resources to do this." (Tr. at 89, 91; OEC Ex. B at 7.) Ms. Davis added that once a customer's account application has been denied, OEC would not reopen the application simply on its own initiative (Tr. at 111).

{¶ 31} Ms. Davis explained that Mr. Painter did not receive a disconnection notice because such a notice is "only required for delinquent accounts," not when service is cancelled for an address at which there is no customer account. Ms. Davis added that on February 9, 2021, there was no customer account for service at Greenlea; consequently, with no one responsible to pay for electric service, a disconnection notice was not required. (OEC Ex B at 6, 8.) Similarly, Ms. Davis observed, because Complainant had not received approval for service when he contacted OEC on January 21, 2021, OEC did not act to restore service quickly under emergency procedures when Complainant called on February 13, 2021; instead, Complainant's new service account started on Tuesday, February 16, 2021, after the

President's Day holiday, when OEC confirmed his ownership of Greenlea (Tr. at 100-101, 108; OEC Ex. B at 7.)

{¶ 32} The Commission finds that Complainant has not met his burden of proving that, on February 9, 2021, OEC unjustly terminated service at Greenlea. In reaching this conclusion, we balanced OEC's efforts to inform Complainant of the status of his application, as well as the steps necessary to complete the application process, against Mr. Painter's responsibility to inquire about the status of his application. On balance, we find that the Complainant has failed to carry the burden of showing that OEC acted unjustly when it disconnected power to Greenlea on February 9, 2021.

{¶ 33} The Commission initially observes that the prior owners of Greenlea had contacted OEC and requested that their service be discontinued effective January 22, 2021 (OEC Ex. B at 6). In addition, as noted above in Paragraphs 18 through 21 above, Mr. Painter's January 21, 2021 attempts to have service placed in his name were not accepted, despite his applying for service on that date via telephone and online. OEC's tariff specifies that OEC will not supply service until an application for service is accepted (PUCO No. 11, Sheet 4, 1st Revised Page 2 of 21, sec. II(A)). Because there was no active account associated with the service address, OEC then proceeded with its disconnection process. (OEC Ex. B at 6.) Therefore, on February 9, 2021, because Complainant was not an OEC customer when electric service to his residence was terminated, OEC acted justly when it shut off power at Greenlea. Such a conclusion is consistent with prior Commission precedent in a case where a complainant applied for electric service but did not complete the application by providing all required information, resulting in disconnection of power to complainant's apartment. *Bidwell*, Opinion and Order (Oct. 20, 2017) at ¶43. Similarly, the Ohio Supreme Court determined that failure to complete an application for utility service bars an applicant's status as a customer. *In re Complaint of C. Richard Smith v. Ohio Edison Co.*, Case No. 10-340-EL-CSS, Opinion and Order (July 6, 2011), *aff'd* 137 Ohio St. 3d7, 996 N.E. 2d 927 (2013).

{¶ 34} Second, although Mr. Painter contends that OEC should have contacted him before turning off electric service to inform him that service termination was scheduled for February 9, 2021, Ohio Adm.Code 4901:1-18-06 only requires that notice of disconnection be sent to customers. There was no customer of record at Greenlea on February 9, 2021, because the prior owners of Greenlea canceled their OEC account effective January 22, 2021, and as discussed in the preceding paragraph, OEC had not accepted as complete Complainant's January 21, 2021 applications for service made over the telephone or online. (OEC Ex. B at 6; OEC Ex. C at 3.) With no customer of record at Greenlea after the prior owners discontinued service, OEC was not required to provide notice of disconnection. Commission precedent has established that a complainant has no standing to dispute disconnection of service or demand notice of disconnection when the complainant had not established service in complainant's name. *In re Complaint of James David Morrow v Dayton Power & Light Co.*, Case No. 81-1407-GE-CSS, Opinion and Order (Sept. 9, 1982); *Nationwide Mut. Fire Ins. Co. v. The East Ohio Gas Co.*, Case No. 86-453-GA-CSS, Entry (Apr. 28, 1986); *Sanders v. The Dayton Power and Light Co.*, No. 97-843-GE-CSS, Opinion and Order (July 15, 1999).

{¶ 35} Third, OEC's disconnection of service to Greenlea during winter months did not violate Ohio Statutes and Commission rules. R.C. 4933.121(a) and (c), as well as Ohio Adm.Code 4901:1-18-06(A)(3)(c), prohibit disconnection of residential service to a customer during a five-month period, from November 15 to April 15. However, as already determined by the Commission in this Opinion and Order, Complainant was not an OEC customer or occupant of Greenlea on February 9, 2021; thus, termination of service during the November 15 to April 15 time period was not prohibited. The Commission addressed this issue in *Bidwell*, a case in which the complainant requested service but failed to verify her identity to AEP-Ohio (AEP), after which AEP disconnected electricity at the service address because there was no customer of record. The Commission found that Complainant was not an AEP customer and that AEP did not act unreasonably when power was disconnected in late winter. *Bidwell*, ¶¶ 30, 42-43. Based on the foregoing, we agree

with OEC that Complainant was not a customer, and therefore, the protections enumerated in R.C. 4933.121 or the Commission's rules do not apply to Complainant.

{¶ 36} Having made the findings discussed in Paragraphs 32 through 35, we do not overlook that power to Greenlea was shut off during winter. The importance of maintaining power during cold weather is not only the basis for R.C. 4933.121(a) and (c) and Ohio Adm.Code 4901:1-18-06(A)(3)(c), as noted above in Paragraph 35, but also the Commission's Winter Reconnect Order (WRO), which applies to residential customers who have had gas and/or electric service disconnected during winter months because of an inability to pay bills.¹ While the WRO, R.C. 4933.121(a) and (c), and Ohio Adm.Code 4901:1-18-06(A)(3)(c) were not applicable to OEC on February 9, 2021, because Complainant was not yet an OEC customer, OEC could have voluntarily sent a U.S. Mail letter to Greenlea indicating the date that power would be terminated. In *Bidwell*, AEP-Ohio sent such a letter to the address where complainant Jane Ann Bidwell planned to reside; the letter indicated that if Ms. Bidwell did not provide additional information necessary for her application for service, service may be disconnected on or after a specified date. *Bidwell*, Complainant's Ex. C. OEC certainly would not have needed Complainant's name in order to send such a letter to Greenlea. Given the likelihood of property damage to a residence that has no power during winter, for OEC to voluntarily mail such a letter would certainly be appropriate and would require minimal effort. In sum, while OEC did not unjustly violate Commission rules and Ohio statutes by terminating service to Greenlea, we believe that OEC could have easily undertaken this minimal effort to attempt to contact any potential resident of the seemingly unoccupied service location, especially since it was aware that Mr. Painter attempted to initiate service there. If OEC had undertaken such effort, the property damage incurred by Mr. Painter might have been avoidable.

¹ See *In re the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 21-750-GE-UNC, Finding and Order (September 8, 2021), Entry on Rehearing (November 3, 2021), Second Entry on Rehearing (November 17, 2021).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 37} On March 11, 2021, Mr. Painter filed a complaint against OEC.

{¶ 38} On March 31, 2021 OEC filed a motion to stay and a memorandum in support.

{¶ 39} On April 9, 2021, Mr. Painter filed a memorandum contra the motion to stay.

{¶ 40} On April 16, 2021, OEC filed a reply memorandum and an answer to the complaint.

{¶ 41} The parties participated in an April 28, 2021, telephonic settlement conference, which did not result in a settlement.

{¶ 42} The hearing was conducted on November 1, 2021.

{¶ 43} OEC filed a brief of December 3, 2021. Mr. Painter did not file a brief or a reply brief.

{¶ 44} 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).

{¶ 45} Complainant has not met his burden of proving that OEC unreasonably denied his application for service.

{¶ 46} Complainant has not met his burden of proving that OEC unjustly disconnected power to his residence during the winter.

V. ORDER

{¶ 47} It is, therefore,

{¶ 48} ORDERED, That Complainant has not met his burden of proving that OEC unreasonably denied his application for service. It is, further,

{¶ 49} ORDERED, That Complainant has not met his burden of proving that OEC unjustly disconnected power to his residence during the winter. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JML/hac

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Case No(s). 21-0236-EL-CSS

Summary: Opinion & Order finding that Complainant has not met his burden of proving that Ohio Edison Company unreasonably denied his application for electric service. The Commission further finds that Complainant has not met his burden of proving that Ohio Edison Company unjustly shut off power to his residence electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio