

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

THOMAS GALLAGHER,	)	
	)	
Complainant,	)	
	)	
vs.	)	CASE NO. 21-0864-EL-CSS
	)	
THE CLEVELAND ELECTRIC	)	
ILLUMINATING COMPANY,	)	
	)	
Respondent.	)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S  
INITIAL POST-HEARING BRIEF**

**PUBLIC VERSION**

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## **I. INTRODUCTION**

Complainant Thomas Gallagher alleges that his electric bills from The Cleveland Electric Illuminating Company (“CEI”) were too high prior to April 14, 2021. He believes (incorrectly) that the alleged high bills were the result of CEI’s meter registering high usage during this time. He is wrong for several reasons.

First, and most importantly, Complainant’s electric bills were the result of usage that was proven accurate by a meter test conducted in April 2021. The meter test demonstrates that Complainant’s meter was operating at 99.96% accuracy, well within the accuracy parameters established by the Commission. In other words, the meter servicing Complainant’s home was operating properly during the relevant time period and Complainant presented no competent evidence demonstrating otherwise. His electric bills, therefore, are just and reasonable.

Second, Complainant’s electric usage was consistent before and after CEI exchanged his meter and Complainant makes no allegation that his post-April 2021 usage is inaccurate. The variation in his electrical usage is easily explained by temperature and normal variations between the winter heating months, when Complainant uses an electric heat pump to heat his residence, and the summer months, when Complainant does not use an air conditioning unit. Although he testified that he is a licensed electrician and he contends, without evidence, that his usage decrease by 42% after April 2021, CEI’s records demonstrate that his usage across years has been consistent, and, in some instances, his usage increased from the prior year. Accordingly, Complainant failed to satisfy his burden of proving that his electric meter did not accurately record his usage. The Commission should therefore dismiss this Complaint.

## II. STATEMENT OF FACTS

Complainant filed this Complaint against CEI alleging that his electric usage decreased by 42% after CEI tested and exchanged his meter.<sup>1</sup>

CEI's records show that Complainant contacted CEI on April 9, 2021 to complain about his perceived high electric consumption on his recent bills and CEI's notice of intent to disconnect his electric service because of his high unpaid balance.<sup>2</sup> At the time, CEI had estimated his bills for a few months and his most recent bill from March 17, 2021 estimated a meter read of [REDACTED] kWh for a monthly usage of [REDACTED] kWh.<sup>3</sup> During the call, Complainant also provided a self-read of [REDACTED] kWh and requested that CEI test the accuracy of the meter.<sup>4</sup> CEI removed the meter from Complainant's residence on April 14, 2021 and installed a new meter that same day.<sup>5</sup> The old meter was sent to the Meter Lab in Akron, Ohio for testing and recorded a read of [REDACTED] kWh when it was removed from Complainant's residence.<sup>6</sup> The Meter Lab conducted standard tests on the meter, all of which measured well within the accuracy thresholds established by the Commission with an average accuracy of 99.96%.<sup>7</sup> CEI mailed a letter to Complainant on April 16, 2021 notifying him of the test results.<sup>8</sup>

Complainant then filed this proceeding on August 13, 2021 alleging that his removed meter did not work and recorded too much electrical use.<sup>9</sup> CEI timely answered the Complaint and denied that its meter inaccurately recorded the amount of electricity Complainant used.<sup>10</sup>

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<sup>1</sup> *In the Matter of Thomas Gallagher v. The Cleveland Electric Illuminating Co.*, PUCO No. 21-864-EL-CSS, Complaint (Aug. 13, 2021) ("Complaint"); Record of Proceeding ("Tr."), 6:8-13.

<sup>2</sup> Pre-filed Testimony of Princess Davis ("Davis Testimony"), Company Ex. 1, 5:5-15.

<sup>3</sup> Davis Testimony, Company Ex. 1, 5:7-9 & Ex. C.1.

<sup>4</sup> Davis Testimony, Company Ex. 1, 5:7-16.

<sup>5</sup> Davis Testimony, Company Ex. 1, 6:1-4.

<sup>6</sup> Davis Testimony, Company Ex. 1, 6:4-7.

<sup>7</sup> Davis Testimony, Company Ex. 1, 6:5-7.

<sup>8</sup> Davis Testimony, Company Ex. 1, Ex. A.

<sup>9</sup> Complaint.

<sup>10</sup> *In the Matter of Thomas Gallagher v. The Cleveland Electric Illuminating Co.*, PUCO No. 21-864-EL-CSS, Answer (Sept. 1, 2021).

During the hearing, Complainant alleged that after his meter was exchanged, his usage decreased by 42% compared to the prior year.<sup>11</sup> He testified that he calculated this decrease by comparing his usage after his meter was exchanged, to the same month the year prior before his meter was exchanged.<sup>12</sup> Based on this type of month-to-month comparison, Complainant requests a refund of over \$1,000.<sup>13</sup> Complainant failed to produce any competent evidence that CEI's meter readings prior to April 2021 were inaccurate.<sup>14</sup> Nor did Complainant provide any evidence of what his actual claimed usage was prior to April 2021 to support his claimed savings.<sup>15</sup>

In totality, the evidence demonstrates that Complainant's usage both before and after CEI exchanged his meter is consistent and supports the conclusion that his removed meter—that tested at 99.96% accurate—was accurately recording his energy usage.

Complainant failed to satisfy his burden of proving that his meter recorded more energy than he actually used. Accordingly, the Commission should dismiss his Complaint.

### **III. LAW AND ARGUMENT**

Complainant failed to carry 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,

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<sup>11</sup> Tr. 6:8-13.

<sup>12</sup> Tr. 11:13-20.

<sup>13</sup> Tr. 14:1-2.

<sup>14</sup> *See generally* Tr.

<sup>15</sup> *See* Tr. 32:18-33:4.

unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained.<sup>16</sup>

It is well-established that the burden of proof rests with the Complainant in proceedings before the Commission.<sup>17</sup> To prevail, the Complainant must prove, by the preponderance of the evidence, that the services provided were unreasonable.<sup>18</sup> “A preponderance of the evidence is defined as that measure of proof that convinces the judge or jury that the existence of the fact sought to be proved is more likely than its nonexistence.”<sup>19</sup> Thus, Complainant bears the burden of proving his allegation that CEI’s electric bills prior to April 2021 were somehow unjustly or unreasonably excessive.<sup>20</sup> This is a burden Complainant cannot meet in this case.

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) if the Complainant attempts to overcome the strong weight of the meter test by presenting evidence that his usage was inconsistent with the amount billed, whether the record demonstrates a plausible explanation for the Complainant’s electric usage.<sup>21</sup> Here, these factors undoubtedly favor CEI. 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 CEI.

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<sup>16</sup> R.C. 4905.26.

<sup>17</sup> *Grossman v. Pub. Util. Comm’n*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966).

<sup>18</sup> *Ohio Bell Tel. Co. v. Pub. Util. Comm’n of Ohio*, 49 Ohio St. 3d 123, 126, 551 N.E.2d 145, 148 (1990); *In the Matter of the Complaint of WorldCom et al. v. City of Toledo*, PUCO Case No. 02-3207-AU-PWC, 2003 WL 21087728, Opinion and Order at 18 (May 14, 2003).

<sup>19</sup> *Admin Net Tech LLC v. Med. Imaging Diagnostics, LLC*, 7th Dist. Mahoning, No. 18-ma-111, 2019-Ohio-3584, ¶ 28.

<sup>20</sup> R.C. 4905.22, 4905.26; *see also DiSiena v. The Cleveland Electric Illuminating Company*, PUCO Case No. 09-0947-EL-CSS, Opinion and Order at 2 (Dec. 8, 2010).

<sup>21</sup> *See, e.g., In re the Complaint of Jenny Kenderes v. The Cleveland Electric Illuminating Co.*, Case No. 18-922-EL-CSS, Opinion and Order, ¶ 29 (May 6, 2020).

**A. The Meter Servicing the Property Was Tested and Determined to be Within the Accuracy Parameters Established by the Commission.**

In April 2021, CEI tested Complainant's meter and found it to be 99.96% accurate.<sup>22</sup> To find in Complainant's favor would require the Commission to disbelieve the results of CEI's meter test and the testimony of its expert witness, Princess Davis.

Ms. Davis testified that Complainant contacted CEI on April 9, 2021 regarding his perceived high consumption.<sup>23</sup> After providing a manual read of his meter—which was higher than CEI's estimated reads—Complainant requested that CEI remove and test his meter.<sup>24</sup> CEI did so on April 14, 2021, when it removed his meter and replaced it with a new one.<sup>25</sup> The old meter was sent to the Meter Lab in Akron, Ohio for testing.<sup>26</sup> The Meter Lab tested the meter, which measured well within the accuracy thresholds established by the Commission, with an average accuracy of 99.96%.<sup>27</sup> CEI notified Complainant of the test results in a letter dated April 16, 2021.<sup>28</sup>

In her pre-filed testimony, Ms. Davis testified that “[t]he Meter Lab’s tests use the same delivery-side electrical connections and measurement relationships as in the field” and that “there is no difference in result between testing in the field and testing in the lab.”<sup>29</sup> Ms. Davis also testified that “[m]eters do not temporarily ‘go haywire’ for a few months and then revert to normal. When meters break—which is relatively rare—they stay broken. If Mr. Gallagher’s meter was malfunctioning, as he claims, it would not have tested 99.96% accurate at the Meter Lab.”<sup>30</sup> Ms.

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<sup>22</sup> Davis Testimony, Company Ex. 1, 6:7, Ex. A.

<sup>23</sup> Davis Testimony, Company Ex. 1, 5:19-22.

<sup>24</sup> Davis Testimony, Company Ex. 1, 5:12-13, 5:19-6:2

<sup>25</sup> Davis Testimony, Company Ex. 1, 6:2-4.

<sup>26</sup> Davis Testimony, Company Ex. 1, 6:4-5.

<sup>27</sup> Davis Testimony, Company Ex. 1, 6:5-7, Ex. A.

<sup>28</sup> Davis Testimony, Company Ex. 1, Ex. A

<sup>29</sup> Davis Testimony, Company Ex. 1, 7:4-13.

<sup>30</sup> Davis Testimony, Company Ex. 1, 7:15-18.

Davis further testified that “Commission Staff inspects our Meter Lab annually for compliance” with the Commission’s meter test standards, further corroborating the accuracy of CEI’s meter testing process.<sup>31</sup>

Complainant introduced no testimony or evidence that contradicts the findings of CEI’s Meter Lab that his meter was 99.96% accurate. Accordingly, Complainant has not met his burden of proving that his meter did not accurately record his usage.

**B. Complainant Failed to Meet His Burden of Demonstrating that His Meter Did Not Accurately Record his Consumption**

Complainant, as in all Complaint proceedings, bears the burden of proving his case.<sup>32</sup> Here, that means that he must demonstrate that his meter prior to April 2021 was recording a higher usage than his actual use. He failed to do so. He conceded, at the hearing that he had no proof that his usage was anything other than what CEI calculated:

Q. Do you have any other -- do you have any proof that your usage is anything other than what was calculated by CEI?

A. No.<sup>33</sup>

Complainant failed to meet his burden to demonstrate that his meter did not record his usage accurately.

Instead, Complainant’s sole “evidence” that prior to April 2021 his meter was not recording accurately was his inadmissible opinion<sup>34</sup> that his usage decreased by 42% when compared to the same month the year prior, thereby indicating that his removed meter was malfunctioning.<sup>35</sup> Complainant did not provide an independent calculation of what his actual usage was beyond a

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<sup>31</sup> Davis Testimony, Company Ex. 1, 7:1-3, 7:12-13.

<sup>32</sup> *Grossman*, 5 Ohio St.2d at 190.

<sup>33</sup> Tr. 33:1-4.

<sup>34</sup> Complainant failed to pre-file written expert testimony as required, Ohio Adm. Code 4901-1-29(A); Entry, ¶ 8 (June 14, 2022); Tr. 33:17-19, and therefore his opinion testimony should be excluded.

<sup>35</sup> Tr. 6:8-13, 11:16-19.



too simple and misleading month-to-month comparison.<sup>36</sup> Complainant failed to establish that his comparison is even a valid means to determine whether the meter was malfunctioning (it is not).<sup>37</sup>

However, Complainant's month-to-month comparison is flawed for several reason. First, as demonstrated at the hearing, and uncontroverted by any evidence or testimony offered by Complainant, a month-to-month comparison cannot be used to accurately demonstrate whether a meter is incorrectly calculating usage. Many factors go into how much energy a house uses in a given month. For example, a few exceptionally cold days in a month could cause an electric heat pump<sup>38</sup> to work more than usual, which would increase usage.<sup>39</sup> Similarly, leaving a light on overnight will also increase usage.<sup>40</sup> Additionally, warmer or colder weather compared to previous months can impact the amount of energy used.<sup>41</sup> To control for such normal variations, Complainant needed to conduct a statistical analysis to determine whether his usage was outside standard variations—he did not.<sup>42</sup> Because there are too many variables at play, and Complainant did not demonstrate that his use of electricity was exactly the same between the two months that he compared, a month-to-month comparison does not demonstrate anything except that he used more electricity one month than another for any number of reasons. Unlike the Meter Lab in

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<sup>36</sup> *Infra*; see also Tr. 11:13-12:9.

<sup>37</sup> See *Renaud v. Martin Marietta Corp.*, 972 F.2d 304, 307 (10th Cir. 1992) (use of single data pint is insufficient).

<sup>38</sup> Complainant has an electric heat pump to heat his house. Tr. 14:6-11; Davis Testimony, Company Ex. 1, 8:5-7, Ex. B.

<sup>39</sup> Davis Testimony, Company Ex. 1, 8:21-23.

<sup>40</sup> Davis Testimony, Company Ex. 1, 8:23-9:1.

<sup>41</sup> Davis Testimony, Company Ex. 1, 8:21-23; Tr. 30:22-31:12 Although Complainant denied, without proof, that colder weather would have increased his usage, CEI does not have to prove that it does, only provide a plausible explanation. See, e.g., *In the Matter of the Complaint of Arthur M. Shuster v. Columbia Gas of Ohio, Inc.*, 1988 Ohio PUC LEXIS 587, PUCO Case No. 87-2080-GA-CAA, Opinion & Order at \*20 (Jun. 14, 1988); *In the Matter of the Complaint of John Taylor et al. v. Columbus and Southern Electric Company*, 1985 Ohio PUC LEXIS 228, PUCO Case No. 84-762-EL-CSS, at \*11-12 (July 2, 1985). This is a plausible explanation.

<sup>42</sup> See *Albaugh v. City of Columbus, Div. of Police*, 10th Dist. Franklin No. 02AP-687, 2003-Ohio-1328, ¶¶ 13, 22 (“Standard deviation is a measure of the extent to which an observed result is likely to vary from an expected result. The larger the number of standard deviations an observed result is from an expected result, the lower the probability that the observed result is random.... Without proper analysis, these statistics are meaningless.”).

Akron, Complainant did not utilize a control against which to compare the accuracy of hit meter.<sup>43</sup> This failure renders his comparison meaningless.<sup>44</sup>

Second, Complainant's methodology is flawed. He testified that he merely took the amount of kWh recorded each month and compared it to the number of kWh hours used the same month the previous year, which showed a 42% decrease in usage.<sup>45</sup> However, he failed to demonstrate that the billing cycles of the two months he compared, even for the same month in different years, were the same. For example, the number of days in the March 2021 bill, just prior to the meter switch, contained only 30 days.<sup>46</sup> In contrast, the March 2022 bill contained only 29 days.<sup>47</sup> Similarly, June 2020 contained 33 days in its billing period, while June 2021 contained only 30 days.<sup>48</sup> A failure to account for this is fatal to his analysis and will create misleading results. Accordingly, his calculations are not reliable and cannot be used.<sup>49</sup>

Third, the evidence does not support a finding that his usage decreased by 42% every month. Although it is accurate that his May 2021 usage (████ kWh) was 40.6% lower than his May 2020 usage (████ kWh), this is not consistent across months.<sup>50</sup> For example, his March 2022 usage (████ kWh) was higher than his March 2021 usage (████ kWh) by 0.8%.<sup>51</sup> However,

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<sup>43</sup> See Davis Testimony, Company Ex. 1, 6:17-20 (testifying that the removed meter was compared against a meter with known test results using a known voltage and amperage).

<sup>44</sup> See *State v. Waddy*, 10th Dist. Franklin, No. 96APA07-863, 1997 WL 318032, at \*7-8 (Ohio Ct. App. June 10, 1997) (noting that the lack of a control group is a “fatal flaw[]”); see also *In the Matter of the Application of the Cincinnati Gas & Elec. Co. to File Temp. Experimental Elec. Tariff Schedules.*, PUCO No. 78-720-EL-ATA, 1978 WL 442499, Finding & Order ¶ 3 (May 11, 1978) (requiring a study to have a control group). This is the type of junk science that must be excluded under *Daubert*. See *Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997) (failure to conduct statistical analysis with consideration of other variable renders the analysis inadmissible). Ohio has adopted the federal *Daubert* standard to assess the reliability of an expert's methodology. *Terry v. Caputo*, 2007-Ohio-5023, ¶ 25, 115 Ohio St. 3d 351, 356, 875 N.E.2d 72, 78. Complainant's analysis is unreliable and inadmissible.

<sup>45</sup> Tr. 11:13-20.

<sup>46</sup> Davis Testimony, Company Ex. 1, Ex. C.1.

<sup>47</sup> Davis Testimony, Company Ex. 1, Ex. C.2.

<sup>48</sup> Davis Testimony, Company Ex. 1, Exs. C.1 & C.2.

<sup>49</sup> See *State v. Whites Landing Fisheries, LLC*, 2017-Ohio-7537, ¶¶ 28-33, 96 N.E.3d 1236, 1243-44 (opinion testimony excluded when it is based on a too small sample size and unreliable methodology).

<sup>50</sup> Davis Testimony, Company Ex. 1, Ex. C.1

<sup>51</sup> See Davis Testimony, Company Ex. 1, Exs. C.1 & C.2.

accounting for the 30-day billing period in March 2021 (■■■ kWh daily average) and the 29-day billing period in March 2022 (■■■ kWh daily average), his daily usage actually increased by 4.6%.<sup>52</sup> Complainant has not explained how an increase in his usage supports his contention that his usage decreased by 42% after his meter was exchanged. This failure eviscerates his position and prevents the Commission from finding in his favor.

A more accurate comparison is a comparison over several months. In the record are 31 months of Complainant's usage data, from September 2019 through March 2022. In comparing the December through March usage for each year, Complainant's usage is consistent<sup>53</sup>:

	Total Usage	Number of Days	Daily Average
December 2019 – March 2020	■■■ kWh	120	■■■ kWh
December 2020 – March 2021	■■■ kWh	124	■■■ kWh
December 2021 – March 2022	■■■ kWh	116	■■■ kWh

These numbers do not support Complainant's theory. When controlling for the number of days in these 4-month periods, the daily averages are consistent. Comparing the new meter data to the two periods prior to the meter exchange, the new meter is within 88.77% of his usage from December 2020 through March 2021, and within 96.17% of his usage from December 2019 through March 2020. His usage from December 2020 to March 2021 was only 8.33% higher than his usage from December 2019 to March 2020. Accordingly, although his December 2021 to March 2022 usage was slightly lower than his previous year's usage, this does not demonstrate

<sup>52</sup> Davis Testimony, Company Ex. 1, Exs. C.1 & C.2.

<sup>53</sup> Davis Testimony, Company Ex. 1, Exs. C.1 & C.2; App'x A; *see also* Tr. 38:10-25. Ms. Davis's calculations performed during the hearing appear to be slightly off. The average daily usage from January 2021 through April 2021 was ■■■ kWh. The average daily usage from January through March 2022 was ■■■ kWh. The 2022 average was 91.9% of the 2021 average, demonstrating the consistency of his usage.

that his meter was inaccurate. At most, these differences account for normal variation in usage especially during the COVID pandemic.<sup>54</sup> Complainant failed to demonstrate otherwise.

Complainant failed to prove by a preponderance of the evidence that his meter was inaccurately recording his usage. Accordingly, the Commission should dismiss his Complaint.

**C. The Record Demonstrates a Plausible Explanation for Complainant's Electric Usage.**

Contrary to Complainant's assertion that his energy usage decreased by 42% after his meter was replaced, his usage did not have such a dramatic or consistent decrease. As shown above, and as Ms. Davis testified, "his usage has been consistent over the past 3 years, both before and after his meter was exchanged and tested. His usage consistently increases during the winter and decreases during the summer."<sup>55</sup>

Complainant presents no competent and admissible evidence to contradict this. Although he testified that he is a licensed electrician and does not believe that he could have used this much electricity, he failed to comply with Commission rules and orders regarding the submission of expert testimony, and therefore cannot testify as an expert.<sup>56</sup>

Regardless, Complainant proffered no evidence that the meter readings were inaccurate. He did not independently measure his usage to demonstrate that his meter was recording inaccurately and testified that he has no proof that his usage was anything other than what was calculated by CEI.<sup>57</sup> Instead, his sole support is the demonstrably false contention that his usage decreased by 42% after his meter was replaced. It did not and he provided no competent evidence

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<sup>54</sup> Davis Testimony, Company Ex. 1, 8:18-9:17. CEI notes that between March 09, 2020 and June 18, 2021, Ohio was under a state of emergency due to the COVID pandemic. *Compare* Executive Order 2020-01D (March 9, 2020) (declaring a state of emergency in Ohio), *with* Executive Order 2021-08D (June 18, 2021) (ending COVID state of emergency in Ohio). The Commission may take judicial notice of these Executive Orders. *McCartney v. Ake*, 22 Ohio Misc. 2d 32, 33, 489 N.E.2d 1079, 1080 (Com. Pl. 1984), *superseded by statute on other grounds*.

<sup>55</sup> Davis Testimony, Company Ex. 1, 8:3-5.

<sup>56</sup> Ohio Adm. Code 4901-1-29(A); Entry, ¶ 8 (June 14, 2022).

<sup>57</sup> Tr.32:22-33:4.

that it did. Moreover, the comparison he claims that he did, between the same months in different years, is not an appropriate comparison.<sup>58</sup> As Ms. Davis stated in her written testimony:

Many factors go into the determining how much energy a house uses in a given month. For example, a few exceptionally cold days in a month could cause a heat pump to work more than usual, which would increase usage. Similarly, leaving a light on overnight will also increase usage. Although the usage from the same period the previous year is helpful when estimating bills, it is not conclusive to whether the meter is functioning properly.<sup>59</sup>

The consistency of Complainant's usage, the normal fluctuations between months based on usage patterns, and the repeating pattern that his usage consistently increased during the winter months and decreased during the summer months satisfies CEI's burden under the second factor of the Commission's high bill complaint test, as the Commission has found a utility's "hypothes[is] that the drop in usage after March 23, 1984 was attributable to warming outside temperatures" to be plausible.<sup>60</sup> Here, a four-month comparison of Complainant's usage over three years is consistent, and demonstrates no significant decrease in electrical usage after his meter was exchanged.

Ms. Davis also testified that CEI "cannot 'push' electricity through a meter—it can only be drawn through or 'pulled' by electric-consuming devices on the customer's side of the meter.... Electricity, somewhat like pushing on a rope, doesn't go anywhere until it is pulled."<sup>61</sup> Accordingly, because the meter tested at 99.96% accurate, any usage recorded was the result of electrical usage on Complainant's side of the meter.

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<sup>58</sup> See *supra* Part III.B.

<sup>59</sup> Davis Testimony, Company Ex. 1, 8:18-9:3.

<sup>60</sup> *In the Matter of the Complaint of John Taylor et al. v. Columbus and Southern Electric Company*, 1985 Ohio PUC LEXIS 228, PUCO Case No. 84-762-EL-CSS, at \*11-12 (July 2, 1985).

<sup>61</sup> Davis Testimony, Company Ex. 1, 7:19-8:2.

Moreover, the difference between his estimated usage and actual usage in April 2021, which concerned Complainant,<sup>62</sup> is because CEI likely underestimated his bills in February and March 2021.<sup>63</sup> CEI obtained an actual read in April 2021, both from Complainant's self-read and the meter removal,<sup>64</sup> which would have resulted in a higher April 2021 bill to account for underestimates from previous bills.

The Commission is clear that a utility "need not 'prove' its 'plausible explanation,'" and that "[t]he burden of proof remains on the customer" to demonstrate an excessive bill.<sup>65</sup> While Complainant asserted time and again that his usage decreased after CEI exchanged his meter, the evidence demonstrates that his usage was consistent across a three-year period, and in some instances actually increased. Not only did Complainant fail to prove a decrease in his usage that could be contributed to his meter, CEI has set forth plausible explanations for the variations in Complainant's usage. Complainant has not met his burden of proving this factor of the Commission's high bill complaint test and the Commission should dismiss his Complaint.

#### **D. Complainant Is Not Entitled to A Return of His Security Deposit**

In his Complaint, Complainant seeks a return of his security deposit.<sup>66</sup> However, he presented no evidence or testimony on why CEI should return his deposit during the hearing.<sup>67</sup> Accordingly, because Complainant failed to prosecute this claim, the Commission should dismiss it.<sup>68</sup>

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<sup>62</sup> Tr. 21:4-13.

<sup>63</sup> See Davis Testimony, Company Ex. 1, 5:19-23.

<sup>64</sup> Davis Testimony, Company Ex. 1, 5:7-9, 6:2-5; Tr. 38:14-16.

<sup>65</sup> *In the Matter of the Complaint of Arthur M. Shuster v. Columbia Gas of Ohio, Inc.*, 1988 Ohio PUC LEXIS 587, PUCO Case No. 87-2080-GA-CAA, Opinion & Order at \*20-21 (Jun. 14, 1988).

<sup>66</sup> Complaint.

<sup>67</sup> See generally Tr.

<sup>68</sup> As noted in the Testimony of Princess Davis and exhibits thereto, Complainant has a large outstanding balance, Davis Testimony, Company Ex. 1, 5:13-16, Exs. C.1 & C.2, and he testified that even with the relief he requested, he would still have an outstanding balance of at least [REDACTED] Tr. 29:10-30:1. This justifies the security deposit.

#### IV. CONCLUSION

Complainant did not meet his burden of proof under the Commission's two-factor test for high bill complaints. On the contrary, CEI presented ample evidence of the accuracy of Complainant's meter and presented evidence that his electricity usage was consistent over a three-year period and that the normal fluctuations in bill readings were due to numerous factors unrelated to CEI's meter. Complainant's high bill complaint should be dismissed.

The evidence presented in this proceeding demonstrates that Complainant's CEI electric bills during the relevant time period were just, reasonable, and accurate. Indeed, the record demonstrates that the meter serving Complainant's property was functioning properly and reading accurately within the parameters established by the Commission. Complainant's electric usage is explained by a combination of many factors, most notably the fact that the period of high usage coincided with the winter heating season. As a result, Complainant has been charged properly and accurately for his electricity usage. Having presented insufficient evidence to the contrary, Complainant failed to meet his burden.

Accordingly, The Cleveland Electric Illuminating Company respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

Respectfully submitted,

/s/ Christopher A. Rogers

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**APPENDIX A**  
**Excerpts from Exhibits C.1 and C.2 of the**  
**Pre-Filed Testimony of Princess Davis, Company Ex. 1**

<b>Read Date</b>	<b>Cons Usage</b>	<b>Days</b>	<b>Daily Average</b>
12/16/2019		31	
1/17/2020		32	
2/15/2020		29	
3/14/2020		28	
<b>Totals</b>		120	

<b>Read Date</b>	<b>Cons Usage</b>	<b>Days</b>	<b>Daily Average</b>
12/16/20		33	
01/16/21		31	
02/15/21		30	
03/17/21		30	
<b>Totals</b>		124	

<b>Read Date</b>	<b>Cons Usage</b>	<b>Days</b>	<b>Daily Average</b>
12/14/21		29	
01/13/22		30	
02/10/22		28	
03/11/22		29	
<b>TOTALS</b>		116	



### **CERTIFICATE OF SERVICE**

On September 30, 2022, the foregoing document was filed on the Public Utilities Commission of Ohio's Docketing Information System. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties of record in this proceeding. A service copy has been sent by U.S. Mail on this 30th day of September 2022 to the Complainant at the following address:

Thomas P. Gallagher  
8484 Stearns Road  
Olmsted Falls, OH 44138

/s/ Christopher A. Rogers  
*Attorney for The Cleveland Electric  
Illuminating Company*

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**9/30/2022 10:41:01 AM**

**in**

**Case No(s). 21-0864-EL-CSS**

Summary: Brief THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S  
INITIAL POST-HEARING BRIEF - PUBLIC VERSION electronically filed by Mr.  
Christopher Rogers on behalf of THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY