

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
THOMAS GALLAGHER,

COMPLAINANT,

v.

CASE NO. 21-864-EL-CSS

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on April 5, 2023

I. SUMMARY

{¶ 1} The Commission finds that Complainant has not met his burden of proof to demonstrate that The Cleveland Electric Illuminating Company billed him incorrectly for his electric usage from January 16, 2021, to April 14, 2021.

II. PROCEDURAL BACKGROUND

{¶ 2} On August 13, 2021, Thomas Gallagher (Mr. Gallagher or Complainant) filed a complaint against The Cleveland Electric Illuminating Company (CEI or the Company), alleging that on April 5, 2021, CEI “noticed a problem” with the analog meter at his residence. Complainant asserts that the meter was replaced with a digital meter on April 14, 2021, and that the Company stated it would refund part of his bill based on usage indicated on the digital meter. Complainant contends that the estimated meter reading on the analog meter was 14,158 kilowatt hours (kWh) from January 16, 2021 to April 14, 2021, while the actual meter reading from April 14, 2021 to August 5, 2021 was approximately 2,600 kWh. Mr. Gallagher explains that his home has only two residents and that CEI incorrectly claims that over 24,000 kWh of electricity was used. Complainant emphasizes that the analog meter did not work correctly from the time it was installed. Mr. Gallagher seeks a refund on his

bill from the time that the analog meter was installed until it was removed, as well as a refund of his \$351 security deposit, which he states that CEI requested because of his usage.

{¶ 3} The Company filed its answer on September 1, 2021. CEI states that an actual read was obtained on January 16, 2021, and that an estimated read did not take place until February 15, 2021. CEI notes that on April 9, 2021, Complainant provided an actual read of 26,810 kWh, which was higher than the March 17, 2021 estimated read of 23,920 kWh. CEI admits that a new meter was installed at Mr. Gallagher's home on April 14, 2021. In addition, the Company states that it was contacted by Complainant to discuss billing and meter reading issues, and that the analog meter was replaced with a digital meter at Mr. Gallagher's request; CEI notes that the analog meter tested at 99.96 percent accuracy. CEI recalls that it informed Complainant of the analog meter's accuracy and that, therefore, high bills were caused by his usage; consequently, a refund on his bill was not warranted. CEI observes that Mr. Gallagher filed a similar complaint in 2016, in which Complainant alleged overcharges and inaccurate meter readings. CEI states that Complainant's 2016 complaint was dismissed after the parties agreed to a settlement. In CEI's opinion, Mr. Gallagher's complaint filed on August 13, 2021 violates the 2018 Commission Entry dismissing his prior complaint, including terms and conditions of the confidential settlement agreement. CEI denies any other allegations made by Complainant.

{¶ 4} An Entry was issued on September 13, 2021, scheduling a September 23, 2021 settlement conference. However, prior to the scheduled date, the settlement conference was rescheduled to November 17, 2021; the parties participated in the conference but could not resolve the matter. At the conference, Complainant indicated interest in obtaining counsel to represent him.

{¶ 5} On February 14, 2022, an Entry was issued directing Complainant to file information regarding the name and contact information of his attorney, as well as dates of his availability for a hearing. Mr. Gallagher replied to the attorney examiner shortly thereafter, stating that he would proceed to hearing without counsel.

{¶ 6} An Entry was issued March 7, 2022, scheduling a May 10, 2022 hearing. At Complainant's request, the hearing was rescheduled in a June 14, 2022 Entry to August 9, 2022.

{¶ 7} On May 3 2022, CEI filed a motion for protective order, seeking to protect certain confidential information contained in the testimony of CEI's witness filed for the Commission's consideration in this case.

{¶ 8} Both parties participated in the evidentiary hearing on August 9, 2022.

{¶ 9} Mr. Gallagher filed a brief on August 19, 2022. CEI filed its brief on September 30, 2022. CEI's reply brief was filed on October 14, 2022. Complainant did not file a reply brief.

{¶ 10} On September 30, 2022, CEI filed a motion for protective order, seeking to protect certain confidential information contained in the Company's initial brief filed for the Commission's consideration in this case.

III. DISCUSSION

A. *Applicable Law*

{¶ 11} 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.

{¶ 12} 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.

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

{¶ 14} 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

{¶ 15} Mr. Gallagher testified that, during February through April 2021, and upon receiving his CEI bill, he would call CEI to make a bill payment. Complainant added that each of the bills contained an estimated reading. Complainant noted that the February through April 2021 bills were higher than typical usage and charges. Complainant recalled that he made an actual reading of his original meter on March 17, 2021 for 23,920 kWh. Mr. Gallagher explained that when he called CEI to make the April 2021 payment, he spoke to a CEI agent about his observed higher bills from February to April. Mr. Gallagher confirmed that on April 9, 2021, he provided the Company agent an actual meter reading of 26,810 kWh. Complainant noted that there was cause to be alarmed because the amount that was estimated was lower than the actual read that Complainant provided to the CEI agent (Tr. at 21). Consequently, Mr. Gallagher agreed to have his meter replaced on April 14, 2021. (Tr. at 6-10, 20-21.) Mr. Gallagher stated that after the meter was replaced on April 14, 2021, he compared his April 2021 bill to his April 2020 bill and noticed "a substantial amount of difference" (Tr. at 11-12). Mr. Gallagher recalled that he authorized testing so long as CEI deemed it necessary, and afterwards, he was notified that his original meter tested with an approximately 99 percent accuracy (Tr. at 22). During the hearing, Complainant agreed that the meter's accuracy was in compliance with the Commission's requirements for meter accuracy, which is within two percent of 100 percent (Tr. at 23). However, Mr. Gallagher re-emphasized his assertion that the old meter readings were

inaccurate during the period at issue, given that bills following replacement of his meter indicate less usage and less expense than bills prior to meter replacement (Tr. at 23).

{¶ 16} Complainant explained that his total payments from April 2020 to April 2021 were \$2,664.35, but he contends that he was overcharged by 42 percent for a total of \$1,119.02 (Tr. at 13-14). Mr. Gallagher explained that his calculations are based on the amount of energy used, as well as payments he made (Tr. at 16). Complainant added that his calculations accounted for CEI's charge per kWh and any changes in CEI's tariff rate (Tr. at 16). In his opinion, the discrepancy in charges and usage, when comparing bills generated from the prior meter to the current meter clearly indicates that the prior meter was not working correctly. Further, Complainant reemphasized his desire for a refund of the cost difference (Tr. at 11-13). Complainant noted that, while he is not paying the amount in dispute, he continues to pay CEI for monthly usage (Tr. at 29-30).

{¶ 17} According to Mr. Gallagher, he has electric heat in his home, which was installed in 1992 when his house was built. As a certified electrician, Mr. Gallagher explained that he undertakes annual maintenance on the heating system. Mr. Gallagher added that he also relies on "a fireplace insert" for heat. Complainant noted that he does not use space heaters or electric blankets; his laptop computer is not plugged in overnight and is rarely used. Complainant emphasized that he does not use air conditioning in the summer months and that only two people live in the home (Tr. at 14, 26-29, 33). Mr. Gallagher testified that he sets the thermostat at 65, sometimes at 50 and supplements the heat with his "fireplace insert," resulting in an indoor temperature of about 75 (Tr. at 32). Complainant further noted that in April 2020, the average afternoon temperature was 46 and in April 2021 the average afternoon temperature was 53 (Tr. at 31). He further added that lights in his home are LED and are approximately seven years old (Tr. at 26). Mr. Gallagher also confirmed that he performed some electrical rewiring of the residence (Tr. at 28). During cross-examination, Mr. Gallagher conceded that he does not have any device connected to his electrical system to independently measure his electric usage (Tr. at 32). However, he does not believe that the warmer temperatures in April 2021 caused the

lower bill, because “[i]t does not make a difference” on how he heats his house (Tr. at 31). Mr. Gallagher attested that the disputed bills are incorrect, nonetheless, because his usage remains unchanged (Tr. at 33).

2. TESTIMONY ON BEHALF OF CEI

{¶ 18} Princess Davis, Advanced Customer Services Compliance Specialist, testified on behalf of CEI. In her pre-filed testimony, Davis explained that when CEI cannot obtain an actual reading of a meter, an algorithm is used to estimate usage; the estimate is based in part on historical usage by the customer. She noted that the meter still records actual usage, “so when an actual read is obtained, this will reconcile the estimated reads.” She added that sometimes CEI did estimate Gallagher’s usage; during one month of estimated usage, Gallagher called in with an actual reading. (CEI Ex. 1 at 4-5).

{¶ 19} According to Davis, on April 9, 2021, Complainant contacted CEI, with an actual self-reading which was higher than the previous estimate. Ms. Davis explained that the Company created a customer request work order for the meter to be exchanged and tested without charge to Complainant. Davis testified the meter was removed on April 14, 2021, and a new meter was installed the same day. The old meter was sent to the meter lab that is inspected by the Commission annually. The testing showed that the meter was performing with a 99.96 percent accuracy. CEI mailed Complainant a copy of the results on April 16, 2021. (CEI Ex. 1 at 6-7.)

{¶ 20} To further explain meter testing, Ms. Davis 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. 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. 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

99.96 percent accurate. The tolerance allowed by Commission rules is plus or minus 2.0 percent of 100 percent. (CEI Ex. 1 at 6.)

{¶ 21} During the hearing, Ms. Davis believed that Mr. Gallagher was under the impression that after his meter was replaced on April 14, 2021, his usage decreased. However, witness Davis noted that there are some months in which the Complainant's usage did decrease, but overall, the usage on his new meter was in line with his old meter (Tr. at 38).

{¶ 22} Davis asserted that it is not possible for a meter to register more electric usage than what is actually used. First, she testified that "there is no difference in result between testing in the field and testing in the lab." Second, witness Davis contended, "[m]eters do not temporarily 'go haywire' for a few months and then revert to normal." Davis also said that, "[i]f Mr. Gallagher's meter was malfunctioning as he claims it was, it would not have tested 99.96% accurate at the Meter Lab." (CEI Ex. 1 at 7.) Third, Ms. Davis explained, electricity cannot be "pushed" through a meter; rather, it can only be "pulled" by devices that consume electricity for the customer. "Electricity, somewhat like pushing on a rope, doesn't go anywhere until it is pulled." (CEI Ex. 1 at 7-8). Fourth, she stated that Mr. Gallagher's usage has been consistent over the past three years, both before and after replacement of the meter. Davis noted that Complainant's usage consistently increases during the winter and decreases during the summer, and she observed that he uses a heat pump for heat, which is an electrical appliance. (CEI Ex. 1 at 8). Witness Davis expressed that during some months after replacement of the meter his usage decreased but overall the usage on the new meter is consistent with the old meter. For example, actual readings by a CEI meter reader in January 2021 and April 2021 averaged 116 kilowatts (kW) per day, and in 2022 actual readings indicate from January to March the daily average was 118 kW daily. (Tr. at 38, 40).

{¶ 23} Given the foregoing, Ms. Davis concluded that there is no evidence that Complainant's meter was not operating properly and that he is not entitled to a refund. (CEI

Ex. 1 at 8). She added that just because only two people live in a home “is not determinative of the amount of electricity that is consumed.” (CEI Ex. 1 at 9). Witness Davis emphasized that energy usage from the same month and different year cannot demonstrate that a meter incorrectly calculated usage. She confirmed that many factors contribute to how much energy a house uses per month, such as exceptionally cold days, leaving a light on overnight, etc. In her opinion, although usage from the same period the prior year is helpful when estimating bills, it is not conclusive as to whether a meter is operating properly. (CEI Ex. 1 at 8-9.) In conclusion, witness Davis testified that “[t]o a reasonable degree of professional certainty,” Mr. Gallagher’s meters were working properly (CEI Ex. 1 at 10).

{¶ 24} Davis explained that if there is a ground condition and a customer is not even using electricity, the customer is still responsible for the usage, because “customers are responsible for all equipment ‘behind the meter,’ including the wiring leading from the meter to any terminus on the premises.” She testified that “[t]his is necessary because even a grounding condition requires generation to produce – and transmission and distribution circuits to deliver – the electricity.” (CEI Ex. 1 at 9-10.) Witness Davis stated that because Mr. Gallagher frequently misses payments and has had a high unpaid balance for several years, CEI required a security deposit as a condition of continuing to provide services to Mr. Gallagher. She added that Complainant had not yet met the criteria in Ohio Adm.Code 4901:1-17-06(B) to qualify for a return of his deposit, and pursuant to CEI’s tariff and Commission rules, Mr. Gallagher’s bill is credited the accrued interest. Witness Davis concluded that to her knowledge, CEI did not violate Commission rules and that the Company complied with its tariff. (Ex. 1 at 10).

C. *Post-Hearing Briefs*

{¶ 25} Mr. Gallagher submitted a post-hearing brief. In the brief, Complainant reiterates his concern that CEI did not submit proof of the accuracy of his meter and claimed that there has been a significant decrease in his reported current usage. Mr. Gallagher articulates that his CEI account should be adjusted to reflect current actual usage. (Complainant Initial Br. at 1.)

{¶ 26} On reply, CEI asserts that it is not the Company's burden to disprove Complainant's allegations and that it only needs to offer a plausible hypothesis of what caused the alleged differences in energy consumption. Further, CEI claims that Mr. Gallagher's brief failed to demonstrate that his actual usage was inconsistent with the usage recorded by CEI's meter. The Company indicates that CEI does not dispute that Complainant's usage in May 2021 was approximately 40% of what his usage was in May 2020 but this decrease is not supported by the evidence after May 2021. Rather than proving that his consumption decreased, CEI states that a comparison of Complainant's usage demonstrates that his usage has been consistent before and after CEI exchanged his meter. The Company presents that Complainant offered no evidence or testimony to demonstrate that his usage was not what was recorded by his meter. Furthermore, as discussed in its initial brief, the Company believes that it establishes a plausible explanation in which Complainant's usage is consistent across years and follows normal patterns of increasing during the winter and decreasing during the summer, consistent with his use of an electric heat pump. (CEI Reply Br. at 1-5.)

{¶ 27} In its post-hearing brief, CEI argues that Mr. Gallagher failed to meet his burden pursuant to R.C. 4905.26 because he cannot prove the Company's bills were unjustly or unreasonably excessive. First, CEI offers that the meter servicing the property was tested and determined to be within the Commission's established accuracy parameters. CEI notes that when Complainant agreed to have his meter removed and tested, the Company did so on April 14, 2021. The meter lab in Akron, which is inspected by the Commission annually for compliance, confirmed that the average accuracy of Mr. Gallagher's meter was 99.96 percent, which is within the Commission's established threshold for meter accuracy. CEI concludes that if Complainant's meter was malfunctioning, as he claims, it would not have tested 99.96 percent accurate at the meter lab. (CEI Ex. 1 at 7; CEI Initial Br. at 5-6.)

{¶ 28} Next, the Company raises that Mr. Gallagher failed to meet his burden of demonstrating that his meter did not accurately record his consumption. CEI notes that during the hearing, Complainant conceded that he has no proof that his usage was anything

other than what CEI calculated. The Company believes that Mr. Gallagher's sole evidence to prove that prior to April 2021 his meter was not recording accurately, was his opinion that his usage decreased by 42% when compared to the same month the year prior, and thereby indicating that his removed meter was malfunctioning. CEI stated that Complainant did not offer an independent calculation of what his actual electrical usage was beyond his own month-to-month comparison. CEI explains that Mr. Gallagher's month-to-month comparison is flawed for several reasons, including that many factors go into how much energy a house uses in a given month. CEI discusses that colder days during the months, leaving on lights overnight, and varying warmer or colder weather compared to previous months can impact the amount of energy used per home. The Company attests that for Mr. Gallagher to control for such normal variations, he needed to conduct a statistical analysis to determine whether his usage was outside of standard deviations, which he did not. (CEI Initial Br. at 6-8.)

{¶ 29} In addition, CEI asserts that Mr. Gallagher's methodology is incorrect because he failed to demonstrate that the billing cycles of the two months he compared were the same. For example, CEI points out that the number of days in the March 2021 bill contained 30 days and, in contrast, the March 2022 bill contained only 29 days. CEI contends that this mistake resulted in misleading results. CEI also raises that the decrease in usage, as alleged by Mr. Gallagher, is inconsistent across months. Moreover, when the Company conducted a comparison over several months, the numbers do not support Complainant's theory. Comparing the new meter data to the two periods prior to the meter exchange, the new meter is within 88.77% of Complainant's 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, CEI proclaims that it does not demonstrate that Mr. Gallagher's meter was inaccurate. (CEI Initial Br. at 8-10.)

{¶ 30} Lastly, CEI explains that the record includes a plausible explanation for Mr. Gallagher's electric usage. Here, the Company emphasizes that Mr. Gallagher offered no admissible evidence to contradict witness Davis's observations in her pre-filed testimony and testimony during the evidentiary hearing. CEI acknowledges that Complainant presented himself as a licensed electrician; however, CEI notes that Complainant failed to comply with Commission rules and orders regarding the submission of expert testimony and, therefore, did not testify as an expert. Further, the Company believes that Mr. Gallagher offered no evidence of meter inaccuracy, because he did not independently measure his usage to show the meter's inaccuracy and he testified that he has no proof of usage outside of the Company's calculations. (CEI Initial Br. at 10-11.)

{¶ 31} CEI contends that evidence in the record shows the consistency of Complainant's usage, normal fluctuations between months based on usage patterns, and 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. The Company points out that 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, citing *In re the Complaint of John Taylor et al. v. Columbus and Southern Electric Co.*, Case No. 84-762-EL-CSS, Opinion and Order (April 3, 1985) at 11-12. 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. Moreover, CEI infers that the difference between Mr. Gallagher's estimated usage and actual usage in April 2021 is because the Company likely underestimated his bills in February and March 2021. CEI notes that the Company obtained an actual read in April 2021, both from Mr. Gallagher's self-read and the meter removal, which would have resulted in a higher April 2021 bill to account for underestimates from previous bills. (CEI Initial Br. at 11-12.)

{¶ 32} Lastly, CEI contends that Mr. Gallagher is not entitled to a return of his security deposit because he did not present any evidence or testimony on why the Company should return his deposit during the hearing (CEI Initial Br. at 12).

D. Commission Conclusion

{¶ 33} The Commission finds that Mr. Gallagher did not meet his burden of proving that he was billed incorrectly during January 16 to April 14, 2021. The Commission has considered similar cases in which a complainant has alleged that their 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 (*Davis*), Opinion and Order (Nov. 1, 1983), Entry on Rehearing (Dec. 20, 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 NewGen Legacy Properties Services v. The Cleveland Elec. Illum. Co.*, Case No. 19-2092-EL-CSS, Opinion and Order (Feb. 8, 2023); *In re the Complaint of John Taylor et al. v. Columbus and Southern Electric 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, Opinion and Order (Dec. 8, 2010).

{¶ 34} We note that Mr. Gallagher testified that his February through April 2021 bills were higher than his typical usage and charges. Complainant stated that after his meter was replaced on April 14, 2021, he compared his April 2020 bill with his April 2021 bill and noticed a “substantial” difference (Tr. at 11-12). Further, the Commission understands that Complainant undertakes annual maintenance of his home’s heating system that was installed in 1992 and also performed some electrical rewiring of the residence. Mr. Gallagher also clarified that he does not use air conditioning during the summer and that he sets the thermostat at 65, sometimes at 50 degrees Fahrenheit, because he supplements his heating with a fireplace insert. Further, the Complainant stated that he does not use space heaters nor electric blankets at his residence, and that he limits use of his laptop at home, without plugging it in overnight. We also consider that Mr. Gallagher confirmed that all of his home lights are LEDs and are seven years old. (Tr. at 14, 26-29, 32-33.)

{¶ 35} Mr. Gallagher’s old meter was tested and confirmed to have approximately 99 percent accuracy, and he still asserted that his old meter was inaccurate, given that his current bills following the meter replacement showed less usage and less expensive bills (Tr. at 23). We note that the Complainant concluded his bills were incorrect by basing his calculations on the amount of energy he used and CEI’s charge per kWh and current tariff rate; and then comparing same-month bills in different years. Complainant explained that he paid approximately \$2,664.35 for an entire year’s usage from April 2020 to April 2021 (Tr. at 13). He stated that he made his calculations by monitoring his meter and believes that he was overcharged by 42 percent which amounts to \$1,119.02 (Tr. at 14). Furthermore, Mr. Gallagher asserts that CEI’s bills are incorrect because his usage from year to year did not change (Tr. at 33).

{¶ 36} On balance, we consider CEI’s arguments. First, CEI raises that Mr. Gallagher’s original meter tested at 99.96 percent accuracy (CEI Initial Br. at 3). In fact, Mr. Gallagher conceded that not only did he understand that his original meter was reading at approximately 99 percent but also that this accuracy was well within the Commission’s

required threshold (Tr. at 23). In addition, CEI presents that Mr. Gallagher agreed on cross-examination that he has no other proof outside of the usage provided by CEI to demonstrate that his usage was anything other than what CEI calculated (Tr. at 32, CEI Initial Br. at 10). CEI explains that Complainant's month-to-month comparison is flawed because it was too simplistic and did not account for the many factors that go into how much energy is used by a home. The Company asserts that colder days during the months, leaving on lights overnight, and varying warmer or colder weather compared to previous months can impact the amount of energy used per home. The Commission agrees with the Company's point that for Mr. Gallagher to control for normal variations, he would have needed to conduct a proper statistical analysis. We are persuaded by CEI's point that some of the monthly bills Mr. Gallagher compared would not have the same number of days, which would also impact a comparative study of his household energy usage.

{¶ 37} The Commission considers Ms. Davis's pre-filed testimony compelling in support of the fact that it is impossible for a meter to register more electricity usage than what is actually used. Specifically, we are persuaded by Ms. Davis's four points: 1) there is no difference in result between testing in the field and in the lab; 2) meters stay broken and a malfunctioning meter could not be performing at 99.96 percent accuracy; 3) electricity can only be pulled by devices and not pushed through the meter to create false usage levels; and 4) Mr. Gallagher's usage has been consistent over the past three years, in which there are increases during the winter and decreases during the summer (CEI Ex. 1 at 7-8).

{¶ 38} Therefore, the Commission is convinced that Complainant did not satisfy his burden to show that his usage was inconsistent with the amount billed by CEI for the following reasons. First, Mr. Gallagher admitted on cross-examination that he does not have any device connected to his electrical system to independently measure his electric usage, which means that he cannot provide evidence independent of CEI's calculated usage on his bills. In addition, we are persuaded by CEI's point that Mr. Gallagher did not perform a sufficient statistical analysis to account for all of the factors involved with household electricity usage. Further, we agree with witness Davis's assessment that the meters are

unable to register more electricity usage than what is actually used by the consumer. Because Complainant's old meter tested as 99.96 percent accurate and is within the Commission's two percent deviation requirement, which was acknowledged by both parties, we are confident that Mr. Gallagher's meter was not the source of usage inconsistency. Lastly, because Mr. Gallagher could not provide any other evidence besides his sole opinion and limited self-calculations, we do not find that his electricity usage was inconsistent with CEI's billing.

{¶ 39} In conclusion, while Complainant provided a detailed account of how he ensures that his electricity usage remains consistent from year-to-year, he did not carry the burden of proving that CEI's meter was malfunctioning or that CEI billed him incorrectly. Thus, he failed to rebut CEI's evidence and testimony to show that the Company's billing was unjustly and unreasonably excessive for his measured usage. The Commission is convinced that CEI offered an appropriate and plausible explanation for Mr. Gallagher's concern, by presenting expert testimony that demonstrated that Mr. Gallagher's meter was operating within Commission requirements and that Mr. Gallagher's personal calculations of billing and usage were exclusive of the many variable factors that go into calculating a household's usage. Accordingly, lacking evidence that there was an increase in electricity usage in CEI's control, or that CEI failed to comply with statutory or regulatory requirements, the Commission cannot conclude that CEI has rendered inadequate service pursuant to R.C. 4905.22.

{¶ 40} As a final matter, on May 3, 2022 and September 30, 2022, CEI filed motions for protective order, seeking to protect certain confidential information contained in the Company's witness testimony and initial brief filed for the Commission's consideration in this case. Specifically, CEI asserts that these two documents contain the Complainant's electric consumption history and outstanding account balance. CEI states that the identified information constitutes customer-specific information that is prohibited from disclosure under Ohio Adm.Code 4901:1-10-24(E).

{¶ 41} Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, “to the extent that state or federal law prohibits release of the information, including where the information is deemed *** to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code.”

{¶ 42} Ohio law defines a trade secret as “information *** that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 43} The Commission has reviewed the information that is the subject of CEI’s motions for protective order, as well as the assertions set forth in the supportive memoranda. We note that during the course of the evidentiary hearing, the parties freely discussed Mr. Gallagher’s usage on the public transcript (Tr. at 17-21, 24-25, 38). Mr. Gallagher voluntarily engaged in these discussions and at no time did CEI or Mr. Gallagher move for confidential treatment of the exhibits discussed on the record. The transcript from the evidentiary hearing has been publicly filed in the docket for approximately six months. In similar cases, the Commission has found that protective treatment is not warranted where the customer-specific information has already been publicly disclosed, especially when the complainant has effectively waived protective treatment by citing to the information in pleadings or the public transcript, thus availing himself to a more transparent disposition of his case. *See In re the Complaint of Doug Mink v. Duke Energy Ohio, Inc.*, Case No. 19-1305-EL-CSS, Opinion and Order (July 15, 2020) at ¶ 13-16. Thus, we reverse the attorney examiner’s ruling during hearing and find that the motions for protective order should be denied as moot (Tr. at 42). The Commission’s docketing division should release into the public record the unredacted version of Princess Davis’s testimony filed under seal on May 3, 2022 and CEI’s post-hearing brief filed under seal on September 30, 2022.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 44} On August 13, 2021, Thomas Gallagher filed a complaint against CEI alleging that CEI's billing was unjustly and unreasonably excessive.

{¶ 45} On September 1, 2021, CEI filed its answer to the complaint in which it admits some and denies others of the Complainant's allegations and sets forth several affirmative defenses.

{¶ 46} An Entry was issued September 13, 2021, scheduling a September 23, 2021 settlement conference. However, prior to the scheduled date, the settlement conference was rescheduled to November 17, 2021; the parties participated in the conference but could not resolve the matter. An evidentiary hearing was held on August 9, 2022.

{¶ 47} As is the case in all Commission complaint proceedings, Complainant had the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 48} Complainant did not meet his burden of proving that CEI incorrectly billed him for service from January 16 to April 14, 2021. Therefore, there is insufficient evidence to support a finding that CEI rendered inadequate service pursuant to R.C. 4905.22.

V. ORDER

{¶ 49} It is, therefore,

{¶ 50} ORDERED, That the docketing division release and file in this docket the unredacted testimony of Princess Davis, previously filed confidentially on May 3, 2022, as stated in Paragraph 7. It is, further,

{¶ 51} ORDERED, That the docketing division release and file in this docket the unredacted CEI brief, previously filed confidentially on September 30, 2022, as stated in Paragraph 10. It is, further,

{¶ 52} ORDERED, That this matter be decided in favor of CEI, as Complainant has failed to sustain his evidentiary burden of proof. It is, further,

{¶ 53} ORDERED, That a copy of this Opinion and Order be served upon CEI and Complainant.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

IMM/JML/dr

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

4/5/2023 2:27:52 PM

in

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

Summary: Opinion & Order finding that Complainant has not met his burden of proof to demonstrate that The Cleveland Electric Illuminating Company billed him incorrectly for his electric usage from January 16, 2021, to April 14, 2021 electronically filed by Debbie S. Ryan on behalf of Public Utilities Commission of Ohio.