



## Confidential Release

Case Number: 22-0193-EL-CSS

Date of Confidential Document: 11/10/2022

Release Date: 4/13/23

Page Count: 14

Document Description: Initial Post-Hearing Brief of  
The Cleveland Electric Illuminating Company.

***"Consent to Release to the PUCO DIS Website"***

Name

*James M. Lynn*

Reviewing Attorney Examiner's Signature

Date Reviewed

*4/13/23*

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.

Technician *EL*

Date Processed

*4/13/2023*

PUCO

2023 APR 13 PM 5:25

RECEIVED-DOCKETING DIV



# Public Utilities Commission

Mike DeWine, Governor  
Jennifer French, Chair

## Commissioners

M. Beth Trombold  
Lawrence K. Friedeman  
Dennis P. Deters  
Daniel R. Conway

# CONFIDENTIAL

## Electronically Filed Document

*Case Number(s):* 22-0193-EL-CSS

*Page Count:* 13

*Date Filed:* 11/10/2022 1:17:14 PM

*Filed By:* Mr. John W. Breig

*On Behalf Of:* The Cleveland Electric Illuminating Company

*Summary of Document:* Confidential Document Target Initial Post-Hearing Brief  
(Confidential Version)

180 East Broad Street  
Columbus, Ohio 43215-3793

(614) 466-3016  
[www.PUCO.ohio.gov](http://www.PUCO.ohio.gov)

*An equal opportunity employer and service provider*

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of	)	
Lloyd Jackson,	)	
	)	
Complainant,	)	
	)	CASE NO. 22-0193-EL-CSS
vs.	)	
	)	
The Cleveland Electric Illuminating	)	
Company,	)	
	)	
Respondent.	)	

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

**CONFIDENTIAL VERSION**

## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>STATEMENT OF FACTS .....</b>	<b>2</b>
<b>III.</b>	<b>LAW AND ARGUMENT .....</b>	<b>4</b>
<b>A.</b>	<b>The Meter Servicing the Property Was Tested and Determined to be Within the Accuracy Parameters Established by the Commission. ....</b>	<b>5</b>
<b>B.</b>	<b>Complainant Failed to Meet His Burden of Demonstrating that His Meter Did Not Accurately Record his Consumption.....</b>	<b>6</b>
<b>C.</b>	<b>The Record Demonstrates a Plausible Explanation for Complainant’s Electric Usage and the Reconciled Charges for Actual Usage on Complainant’s September 2021 Utility Bill.....</b>	<b>7</b>
<b>IV.</b>	<b>CONCLUSION.....</b>	<b>8</b>

## **I. INTRODUCTION**

Complainant Lloyd Jackson alleges that his electric bills from The Cleveland Electric Illuminating Company ("CEI") were too high from April 2020 to September 2021. He believes (incorrectly) that the alleged high bills during this time period were the result of incorrect estimation of his usage and CEI's meter incorrectly 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 September 2021. The meter test demonstrates that Complainant's meter was operating at 99.99% 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-September 2021 usage is inaccurate. Nor does Complainant provide any evidence that the estimated readings during the time period were accurate or too high. Complainant's actual meter reading in September 2021 shows that the Complainant's actual electricity consumption had been underestimated, which resulted in a larger bill when the actual read was obtained, as the billing reconciled the actual usage compared to the estimated usage.

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 from April 2020 to September 2021 was due to allegedly inaccurate estimated meter readings.<sup>1</sup>

CEI's records show that Complainant's meter reads were estimated, pursuant to the Commission Orders in cases 20-591-AU-UNC (published March 20, 2020) and 20-1345-EL-WVR (published September 23, 2020), for most of the period at issue in Mr. Jackson's Complaint.<sup>2</sup> An actual meter reading was taken in August 2021, which resulted in Complainant's account being trued-up from the previous estimated meter readings.<sup>3</sup> After Complainant contacted CEI in September 2021 regarding a complaint about his perceived high electric consumption, CEI obtained a check reading on September 14, 2021, which showed advancement on the meter from the August 27, 2021 actual meter reading.<sup>4</sup> At Complainant's request, CEI removed the meter from Complainant's residence on September 20, 2021 and installed a new meter that same day.<sup>5</sup> The old meter was sent to the Meter Lab for testing and 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 99.99%.<sup>6</sup> CEI mailed a letter to Complainant notifying him of the test results.<sup>7</sup>

Complainant then filed this proceeding on March 14, 2022, alleging that the estimated charges for his electric consumption from April 2020 to September 2021 were inaccurate.<sup>8</sup> CEI timely answered the Complaint and admitted that pursuant to COVID procedures, estimated meter

---

<sup>1</sup> *In the Matter of Lloyd Jackson v. The Cleveland Electric Illuminating Co.*, PUCO No. 21-0193-EL-CSS, Complaint (Mar. 14, 2022) ("Complaint"); Record of Proceeding ("Tr."), 6:4-16.

<sup>2</sup> Pre-filed Testimony of Princess Davis ("Davis Testimony"), Company Ex. 3, 5:5-15.

<sup>3</sup> Davis Testimony, Company Ex. 3, 4:14-20.

<sup>4</sup> Davis Testimony, Company Ex. 3, 6:4-8.

<sup>5</sup> Davis Testimony, Company Ex. 3, 6:14-15.

<sup>6</sup> Davis Testimony, Company Ex. 3, 6:16-23.

<sup>7</sup> Davis Testimony, Company Ex. 3, 6:22-23.

<sup>8</sup> Complaint.

readings occurred until an actual meter reading took place on August 27, 2021; at which time Complainant's previous estimated readings were reconciled with the actual usage recorded and Complainant was billed for the reconciled amount.<sup>9</sup> CEI denied that its meter inaccurately recorded the amount of electricity Complainant used.<sup>10</sup>

During the hearing, Complainant argued against CEI's reliance on estimated meter readings and disputed his September 2021 bill that included a reconciliation between his estimated meter readings and the actual usage recorded on his meter.<sup>11</sup> Complainant failed to produce any competent evidence that CEI's actual meter readings on February 27, 2020, and on August 27, 2021, were inaccurate.<sup>12</sup> Nor did Complainant provide any evidence to dispute CEI's testing of Complainant's meter.<sup>13</sup>

In totality, the evidence demonstrates that Complainant's September 2021 bill was a result of usage Complainant's previous estimated readings being reconciled with the actual usage recorded and Complainant's removed meter—that tested at 99.99% accurate—was accurately recording his energy usage.

Complainant failed to satisfy his burden of proving that his September 2021 bill was inaccurate and that his meter recorded more energy than he actually used. Accordingly, the Commission should dismiss his Complaint.

---

<sup>9</sup> *In the Matter of Lloyd Jackson v. The Cleveland Electric Illuminating Co.*, PUCO No. 21-0193-EL-CSS, Answer (April 1, 2022) ("Answer").

<sup>10</sup> Answer.

<sup>11</sup> Tr. 6:4-25; Tr. 7:1-21.

<sup>12</sup> *See generally* Tr. 29-33; Tr. 33:7-11.

<sup>13</sup> Tr. 34:14-24

### 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, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained.<sup>14</sup>

It is well-established that the burden of proof rests with the Complainant in proceedings before the Commission.<sup>15</sup> To prevail, the Complainant must prove, by the preponderance of the evidence, that the services provided were unreasonable.<sup>16</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>17</sup> Thus, Complainant bears the burden of proving his allegation that CEI’s electric bills were somehow unjustly or unreasonably excessive.<sup>18</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

---

<sup>14</sup> R.C. 4905.26.

<sup>15</sup> *Grossman v. Pub. Util. Comm’n*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966).

<sup>16</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>17</sup> *Admin Net Tech LLC v. Med. Imaging Diagnostics, LLC*, 7th Dist. Mahoning, No. 18-ma-111, 2019-Ohio-3584, ¶ 28.

<sup>18</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).



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>19</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.

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

In September 2021, CEI tested Complainant's meter and found it to be 99.99% accurate.<sup>20</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 in September 2021 regarding his perceived high consumption.<sup>21</sup> After completing a check reading on September 14, 2021—which showed an actual meter reading of 28,382 kWh (an advancement on the meter from the August 27, 2021 actual reading of 28,299 kWh)—Complainant requested that CEI remove and test his meter.<sup>22</sup> CEI did so on September 20, 2021, when it removed his meter and replaced it with a new one.<sup>23</sup> The old meter was sent to the CEI Meter Lab for testing.<sup>24</sup> The Meter Lab tested the meter, which measured well within the accuracy thresholds established by the Commission, with an

---

<sup>19</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).

<sup>20</sup> Davis Testimony, Company Ex. 3, 6:16-23.

<sup>21</sup> Davis Testimony, Company Ex. 3, 6:14-15.

<sup>22</sup> Davis Testimony, Company Ex. 3, 6:4-15; see also Company Ex. 2 (entry date 09/01/21; read date 08/27/21).

<sup>23</sup> Davis Testimony, Company Ex. 3, 6:14-15.

<sup>24</sup> Davis Testimony, Company Ex. 3, 6:19.

average accuracy of 99.99%.<sup>25</sup> CEI mailed a letter to Complainant informing him of the test results on his meter.<sup>26</sup>

In her pre-filed testimony, Ms. Davis testified that the Meter Lab testing “consists of putting a known voltage and amperage through the customer’s untested meter and comparing the measured result with a meter standard with known test results.”<sup>27</sup> Ms. Davis further testified that “[t]he Public Utilities Commission of Ohio inspects the Meter Lab on an annual basis to ensure that CEI’s Meter lab is compliant with the Commission’s Rules,” further corroborating the accuracy of CEI’s meter testing process.<sup>28</sup>

Complainant introduced no testimony or evidence that contradicts the findings of CEI’s Meter Lab that his meter was 99.99% 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>29</sup> Here, that means that he must demonstrate that his meter was recording higher than his actual usage prior to September 2021. 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.<sup>30</sup> Complainant failed to meet his burden to demonstrate that his meter did not record his usage accurately.

As the records introduced at the hearing show, the two actual meter readings that bookend the period of Complainant’s estimated meter readings occurred on February 27, 2020, and on

---

<sup>25</sup> Davis Testimony, Company Ex. 3, 6:19-22.

<sup>26</sup> Davis Testimony, Company Ex. 3, 6:22-23.

<sup>27</sup> Davis Testimony, Company Ex. 3, 7:7-9.

<sup>28</sup> Davis Testimony, Company Ex. 3, 7:13-15.

<sup>29</sup> *Grossman*, 5 Ohio St.2d at 190.

<sup>30</sup> *See* Tr. 31-33.

August 27, 2021. On February 27, 2020, an actual meter reading of Complainant's meter resulted in a reading of 21,997 kWh.<sup>31</sup> The next actual meter reading of Complainant's meter occurred on August 27, 2021, and resulted in a reading of 28,299 kWh.<sup>32</sup> These actual meter readings are undisputed and Complainant has not put forth any evidence to dispute the amount of kWh his meter progressed from February 27, 2020 to August 27, 2021.<sup>33</sup>

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 and the Reconciled Charges for Actual Usage on Complainant's September 2021 Utility Bill.**

Contrary to Complainant's assertion that CEI incorrectly trued-up his electric bill for his actual electric usage between February 27, 2020, and August 27, 2021, the records admitted into evidence at the hearing and Ms. Davis's testimony provide ample support for Complainant's previous estimated readings being reconciled with the actual usage recorded. As shown in the records admitted into evidence at the hearing, and as Ms. Davis testified, one example of CEI's underestimation of Complainant's usage was in February 2021 when compared with Complainant's historical usage from February 2020.<sup>34</sup>

For instance, from January 30, 2020, to February 27, 2020, Complainant used 846 kWh, which was an average of 29 kWh per day, based on actual meter readings.<sup>35</sup> Whereas, a year later, from January 28, 2021, to March 1, 2021, Complainant's usage was only estimated at 781 kWh, which is an average of 24 kWh per day.<sup>36</sup> The same disparity between estimated usage in 2021

---

<sup>31</sup> Tr. 41:24-25; 42:1.; *see also* Company Ex. 1.

<sup>32</sup> Tr. 42:2-10; *see also* Company Ex. 2 (entry date 09/01/21; read date 08/27/21).

<sup>33</sup> *See* Tr. 33.

<sup>34</sup> *See* Tr. 47-49

<sup>35</sup> Tr. 18:22-25; *see also* Company Ex. 1.

<sup>36</sup> *See* Company Ex. 2 (entry date 03/02/21; read date 03/01/21).

and historic actual usage in 2020 is evident when comparing Complainant's actual usage in January 2020 and his estimated usage in January 2021. In January 2020, Complainant's usage was determined to be 819 kWh, based on actual meter readings.<sup>37</sup> Whereas, a year later in January 2021, Complainant's usage was only estimated at 571 kWh.<sup>38</sup>

Although Complainant testified that he doesn't "care what the records say" and the records "can say anything," Complainant presents no competent and admissible evidence to contradict CEI's records of Complainant electric usage.<sup>39</sup>

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>40</sup> While Complainant asserted time and again that he believes the estimations and CEI's reconciliation of his estimated readings with Complainant's actual usage recorded was improper, the evidence demonstrates that his utility bill was based on actual usage recorded on his meter that tested 99.99% accurate. Not only did Complainant fail to prove his meter failed to accurately capture his electric usage, CEI has set forth plausible explanations for the underestimation 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.

#### **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

---

<sup>37</sup> See Company Ex. 1.

<sup>38</sup> See Company Ex. 2 (entry date 02/02/21; read date 01/28/21).

<sup>39</sup> Tr. 28:14-16.

<sup>40</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).

Complainant's meter and presented evidence that his electricity usage was underestimated during the complained of period. 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. 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/ John W. Breig, Jr.

John W. Breig, Jr. (0096767)

BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP

200 Public Square, Suite 2300

Cleveland, Ohio 44114-2378

Telephone: 216.363.4500

Facsimile: 216.363.4588

Email: [jbreig@beneschlaw.com](mailto:jbreig@beneschlaw.com)

*Counsel for The Cleveland Electric Illuminating  
Company*

**CERTIFICATE OF SERVICE**

On November 10, 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. Certified Mail on this 10th day of November 2022 to the Complainant at the following address:

Lloyd Jackson  
24455 Lake Shore Bl. #1815  
East Euclid Ohio 44123

/s/ John W. Breig, Jr.  
John W. Breig, Jr. Breig (0096767)  
*One of the Attorneys for The Cleveland Electric  
Illuminating Company*

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on  
11/10/2022 1:17:14 PM**

**in**

**Case No(s). 22-0193-EL-CSS**

**Summary: CONFIDENTIAL Brief Post-Hearing Brief (Confidential Version)  
electronically filed by Mr. John W. Breig on behalf of The Cleveland Electric  
Illuminating Company**