

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
BOYCE PARKER,

COMPLAINANT,

v.

CASE NO. 21-25-EL-CSS

THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY,

RESPONDENT.

## OPINION AND ORDER

Entered in the Journal on July 26, 2023

### I. SUMMARY

{¶ 1} The Commission finds that Boyce Parker failed to carry the burden of proving that The Cleveland Electric Illuminating Company billed him incorrectly for his electric usage during December 2020.

### II. PROCEDURAL BACKGROUND

{¶ 2} On January 6, 2021, Boyce Parker (Mr. Parker or Complainant) filed a complaint against The Cleveland Electric Illuminating Company (CEI or the Company), alleging discrepancies between his electric meter reading and the usage indicated on his bills for November and December 2020. Complainant alleges that these discrepancies resulted in his being billed for a greater amount than the meter readings warranted.

{¶ 3} CEI filed its answer on January 25, 2021. In its answer, CEI denies all allegations in the complaint. CEI states that it denies or is without sufficient knowledge to ascertain the veracity of some of the allegations in the complaint. CEI avers that on or around October 15, 2020, Complainant's meter was removed and replaced by CEI, and as a result, Complainant's November 11, 2020 bill includes usage from both meters based on

actual readings. CEI states that Complainant's electric meter is an "advanced digital meter" and denies that Complainant's meter has "remote-reading" capabilities. CEI additionally avers that Complainant's December 14, 2020 bill includes only usage from his new meter and is based on an actual meter reading.

{¶ 4} By Entry dated March 2, 2021, the attorney examiner scheduled a settlement conference for March 23, 2021. The parties were unable to settle the matter during the conference.

{¶ 5} On June 16, 2021, Mr. Parker filed a memorandum providing updated information concerning his complaint.

{¶ 6} On March 14, 2022, Mr. Parker filed correspondence relative to his complaint, consisting of additional meter and billing information.

{¶ 7} On August 1, 2022 and again on August 15, 2022, Complainant submitted additional information to the docket.

{¶ 8} On September 19, 2022, the attorney examiner, by Entry, scheduled a hearing in this matter to commence via remote access technology on October 20, 2022, at 10:00 a.m.

{¶ 9} On October 6, 2022, counsel for Respondent filed both a notice of appearance and a motion to modify the procedural schedule, owing to a scheduling conflict with the October 20, 2022 hearing date. The Complainant did not oppose Respondent's motion.

{¶ 10} On October 17, 2022, the attorney examiner, by Entry, rescheduled the hearing to occur on November 10, 2022.

{¶ 11} By Entry dated November 2, 2022, the attorney examiner stated that an unanticipated scheduling conflict arose and rescheduled the hearing to take place on November 17, 2022, using remote access technology.

{¶ 12} Both parties participated in the evidentiary hearing on November 17, 2022.

{¶ 13} CEI filed its post-hearing brief on December 29, 2022. Complainant did not file a post-hearing brief.

{¶ 14} On December 29, 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.

### III. DISCUSSION

#### *A. Applicable Law*

{¶ 15} 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.

{¶ 16} 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.

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

{¶ 18} 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 ARGUMENTS**

{¶ 19} Mr. Parker disputed his December 2020 bill and the November 2020 readings which comprised it. Mr. Parker testified that in November 2020 his meter was removed and replaced by the Company. He conceded that as a result, his November 2020 bill includes readings from both the old meter and its replacement. (Tr. at 17.) Complainant states that his analog meter showed that he used 7 kilowatt hours (kWh), and that his monthly usage was 210 kWh (Tr. at 18). Mr. Parker mentioned that he is a qualified electronic technician, familiar with the pertinent elements that are at issue in this case (Tr. at 26-27, 65).<sup>1</sup> Complainant claims that he only uses an energy efficient refrigerator and his laptop. Additionally, he testified that he does not use any electric lights. As such, he claims that his electric usage is extremely consistent to the extent that he concludes that CEI is improperly inflating their meter readings on his bills. (Tr. at 31, 47, 54.) Complainant confirmed that during the time period of May, June, and August of 2020, his analog meter was not working, and the Company could not make actual readings (Tr. at 28). Moreover, Complainant made contentions that CEI pushes additional electricity usage through his refrigerator, such that he claims the Company is capable of pushing electricity through the meter to increase his usage (Tr. at 59).<sup>2</sup>

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<sup>1</sup> While Mr. Parker improperly attempted to testify during the cross-examination of the Company's witness, the Commission reviewed the full record, including the entirety of its hearing transcript, to glean a comprehensive understanding of his underlying complaint.

<sup>2</sup> During the hearing, Mr. Parker made other various arguments surrounding the facts of the complaint. However, these allegations did not relate to Complainant's pleadings that disputed the Company's meter reading in December 2020, and as such, these claims will not be considered in this Order. Mr. Parker opined on the issue of whether he covered his meter to prevent the Company from performing readings (Tr. at 5). In addition, Complainant testified that CEI improperly added wattage to his meter reading during August 2022 (Tr. at 11). Further, Mr. Parker asked CEI's witness Davis about his enrollment on the Percentage Income Payment Program, which is also out of scope of the purposes of these proceedings (Tr. at 71).

## 2. CEI'S ARGUMENTS

{¶ 20} 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." (CEI Ex. 1 at 4).

{¶ 21} According to witness Davis, CEI's records indicate that Mr. Parker's bills were estimated for May, June, and August 2020. Witness Davis testified that the meter located at Mr. Parker's premises during the disputed time period was a digital display meter with Encoder Receiver Transmitters (ERT) technology. Ms. Davis explained that this allowed for Complainant's meter to communicate with a hand-held receiver carried by CEI meter readers and register the reading remotely from a short distance away. During May, June, and August 2020, however, Mr. Parker's meter failed to register the reading remotely on the hand-held device. Witness Davis stated that the Company removed and replaced Mr. Parker's meter with a new meter on or about October 15, 2020. Ms. Davis testified that due to Mr. Parker's meter being removed and replaced in the middle of the billing cycle, his CEI bill dated November 11, 2020 includes his usage from both the old meter and the new meter, both of which were based on actual meter readings. (CEI Ex. 1 at 5; CEI Br. at 5-6.)

{¶ 22} Ms. Davis asserted that Mr. Parker was not being billed for more than his usage. She testified that Complainant appears to be confused about the kWh billed amount and the kWh readings that are included on the bill, which was the combination of the old meter and the new meter's actual readings. Further, Ms. Davis stated that Mr. Parker also appeared to be confused regarding his usage history and kWh reading on his December 14, 2020 bill. Ms. Davis asserts that Mr. Parker's December bill accurately reflects his usage history for November. Ms. Davis testified that the December 14, 2020 bill reflects a start of

billing period actual reading made on November 11, 2020 and an end of billing period actual reading conducted on December 10, 2020. (CEI Ex. 1 at 6.)

{¶ 23} 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, quantified in kWh. More specifically, the meter measures the kWh 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 99.98 percent accurate. The tolerance allowed by Commission rules is plus or minus 2.0 percent of 100 percent. (CEI Ex. 1 at 7.)

{¶ 24} During hearing, Ms. Davis explained that the CEI meter reader needs to be near the ERT meter because it transmits the reading to the employee’s handheld device. Therefore, if the meter reader is not in the area of the meter, then they would be unable to get a transmission of the reading. (Tr. at 39-40.) Ms. Davis explained that the meter readings are calculated based on basic math, in which the prior meter reading is subtracted from the current reading to ascertain the electric consumption (Tr. at 42-43).

{¶ 25} Upon cross-examination, Ms. Davis testified that she was unable to determine what would be in Mr. Parker’s residence that would lead to the recorded increase in Mr. Parker’s consumption. Witness Davis explained that there are a lot of different factors than can cause a person’s home to use electricity, such as an air conditioning or electric water heating switching on. Ms. Davis entertained Complainant’s proposition that he uses minimal electricity, but countered that an energy audit would need to be conducted to be certain of Complainant’s alleged usage. (Tr. at 46-47, 58.) Further, Ms. David asserted that Mr. Parker’s usage would vary upon what is being utilized in the house and that usage may change day-to-day based on a matter of different variables (Tr. at 58).

{¶ 26} Ms. 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” (CEI Ex. 1 at 8). 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. Parker’s meter was malfunctioning as he claims it was, it would not have tested 99.98% accurate at the Meter Lab” (CEI Ex. 1 at 8). 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. As such, a new meter installed at a site will continue to register zero kWh until it is connected on the customer’s side. “Electricity, is somewhat like pushing on a rope, doesn’t go anywhere until it is pulled.” (CEI Ex. 1 at 8). Fourth, she stated that it appears that Complainant is misreading his bill, such that the electricity used (shown in kWh on the bill) is not the same as the actual meter readings included on the bill. Davis noted that the Company determines each month’s bill amount by subtracting the previous month’s reading from the current meter reading to obtain customer usage amount for the billing month. (CEI Ex. 1 at 8.)

{¶ 27} Given the foregoing, Ms. Davis concluded that there is no evidence that Complainant’s meter was not functioning within the parameters required by the Commission. Witness Davis confirmed that many factors contribute to how much energy a house uses per month, such as exceptionally cold days, leaving the house or turning off appliances, etc. In her opinion, simply comparing kWh usage for a single day does not accurately reflect what a household’s monthly kWh usage would be. Further, she noted that it is not only possible that Complainant used the amount of electricity registered on the meter, but that it is certain. She explains that she recognizes that Complainant did not fully understand the amount of electricity normal household appliances use on a daily basis, but the consistency between his previous meter and his new meter makes it a practical certainty that both meters are registering normally. (CEI Ex. 1 at 9.) In conclusion, witness Davis testified that “[t]o a reasonable degree of professional certainty,” Mr. Parker’s meters were working properly (CEI Ex. 1 at 10). Witness Davis concluded that to her knowledge, CEI

did not violate Commission rules and that the Company complied with its tariff. (CEI Ex. 1 at 10).

{¶ 28} In its brief, the Company fully endorses Ms. Davis’s testimony and contends that Mr. Parker did not meet his burden of proving that his meter did not accurately record his usage (CEI Br. at 6-7). Further, CEI represents that the record identified by Complainant provides ample support for his usage. For example, the records submitted by Mr. Parker indicate that his historic usage from the same period at issue was higher when comparing his November 2019 with November 2020 electric usage. The Company explains that the observed increase could be due to the increased average daily temperature from 2019 to 2020, which was indicated on the November 11, 2020 bill attached to Mr. Parker’s complaint. The Company concludes that not only did Mr. Parker fail to prove that his meter failed to accurately capture his electric usage, but CEI has identified a plausible explanation for Mr. Parker’s increased usage. (CEI Br. at 7.)

### ***C. Commission Conclusion***

{¶ 29} The Commission finds that Mr. Parker did not meet his burden of proving that his December 2020 bill was incorrect. 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. 19, 1983). As in the instant case, the company's evidence in *Davis* showed that the meter had been tested as accurate to Commission standards. However, although the Commission noted that the evidence provided by the utility’s test as to the accuracy of the meter is strong, the weight accorded to such testimony is not a constant but rather is determined on a case-by-case basis. The reliability of meter tests in a “high billing” proceeding is always subject to attack and will not be summarily accepted on its face. Instead, in *Davis*, the Commission stated that it would continue to look to extraneous circumstances presented on a case-by-case basis in order to determine the



weight accorded to meter test evidence. *Davis*, Opinion and Order (Nov. 1, 1983) at 4. As a result, a complainant may attempt to overcome the evidence presented by the meter test by showing conservation measures or other usage inconsistent with the amount which is billed. The company may attempt to confirm the meter test evidence by presenting a plausible explanation as to how the contested usage may have occurred. *See also In re the Complaint of NewGen 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).

{¶ 30} We note that Mr. Parker testified that his December 2020 bill was higher than his typical usage and charges. Complainant conceded that during May, June, and August 2020, CEI could not read his meter and in November 2020, his meter was replaced. The Company witness verified that the meter was in fact replaced during October 2020 (CEI Ex. 1 at 5). Mr. Parker recognized that his December 2020 bill, comprised of his November 2020 monthly usage, included a combination of his usage from the old meter and new meter. The Commission recognizes that Complainant represents that he uses minimal electricity, in which he owns an energy efficient refrigerator and a computer, and he does not use any electric lights. (Tr. at 17-18, 28, 31, 47, 54.)

{¶ 31} Moreover, Mr. Parker's old meter was tested and confirmed to have approximately 99 percent accuracy, and he still asserted that his old meter was inaccurate. He stated that he is an electronic technician, familiar with the critical functions of the meter and related components to accurately reading meters. We note that the Complainant concluded his bills were incorrect by comparing his own meter reads with the Company's recorded readings on his bill. (Tr. at 18, 65.)

{¶ 32} On balance, we consider CEI's arguments more persuasive for the following reasons. First, CEI raises that Mr. Parker's original meter tested at 99.98 percent accuracy

(CEI Ex. 1 at 7; CEI Br. at 5, 7). We recognize that the Company represents that Mr. Parker has no proof outside of the Company's billing statements to demonstrate that his usage was anything other than what the Company calculated and billed him accordingly. CEI explains that Complainant's year-to-year increase in usage may have a plausible explanation in which the average daily temperature increased from 2019 to 2020 (CEI Br. at 7). In addition, Company witness Davis testified that she was unable to determine what would be in Complainant's residence that would result in increased consumption. During hearing, she explained that there are a lot of different factors than can cause a person's home to use electricity, such as an air conditioning or electric water heating switching on. Moreover, Ms. Davis commented that in order to accurately ascertain Mr. Parker's usage, an energy audit would be required. (Tr. at 46-47, 58.) The Commission agrees with the Company's points in which there are multiple plausible causes for the increase in consumption observed by Mr. Parker. Additionally, given that Complainant did not provide any other sources outside of CEI's bills and that his tested meter was operating within the Commission's approved parameters, we cannot agree with Complainant's allegations that his meter was inaccurately recording his energy consumption.

{¶ 33} Further, 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 99.98 percent accuracy; (3) electricity can only be pulled by devices and not pushed through the meter to create false usage levels; and (4) Mr. Parker was mistaken that kWh used and the actual meter readings are the same number, and that CEI subtracts the current reading from the previous month's reading to obtain usage for billing purposes (CEI Ex. 1 at 8).

{¶ 34} 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, we are persuaded by CEI's points that there are multiple plausible

causes for the difference in usage for the same billing period of November 2019 and November 2020. 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 99.98 percent accurate and is within the Commission's two percent deviation requirement, we are confident that Mr. Parker's meter was not the source of usage inconsistency. Lastly, because Mr. Parker could not provide any other evidence besides his sole opinion, CEI's own billing statements, and unverified self-meter readings, we do not find that his electricity usage was inconsistent with CEI's billing.

{¶ 35} In conclusion, while Complainant opined that he ensures that his electricity usage is consistent and minimal, 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 persuaded by CEI's expert testimony that demonstrated that his meter was operating within Commission requirements. 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.

#### *D. Procedural Rulings*

##### **1. DEFERRED RULING**

{¶ 36} During hearing, the attorney examiner deferred ruling on Complainant's introduced Exhibits No. 1-4. At this time, we find that these exhibits shall be admitted into the record for this proceeding, for the following reasons. The Company objects to admitting the abovementioned exhibits, stating that Mr. Parker's meter photos and annotated bill copies are not properly authenticated in terms of timestamps and that the proffered evidence improperly introduces allegations and conclusions not discussed during hearing

(Tr. at 77-78). However, we find the benefits of fostering administrative efficiency and maintaining a comprehensive record for Mr. Parker's allegations outweigh the alleged prejudice to CEI. In addition, the Commission is not strictly bound by the Ohio Rules of Evidence, and for the purposes of considering the abovementioned exhibits, the Commission gave the evidence the appropriate weight it deserved. Regardless of the admission of Complainant Exhibits 1-4 into the record, we would still reach the same conclusion regarding whether Mr. Parker met his evidentiary burden.

*a. CEI's Motion for Protective Order*

{¶ 37} As a final matter, on November 10, 2022 and December 29, 2022, CEI filed motions for protective order, seeking to protect certain confidential information contained in Company witness Davis's 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).

{¶ 38} 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."

{¶ 39} 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).

{¶ 40} Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court in *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 1997-Ohio-75, 687 N.E.2d 661, we find that the limited references to Mr. Parker's electric consumption and billing account statement, filed under seal in this docket, contain trade secret information. Their release, therefore, is prohibited under state law. We also find that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Accordingly, we find that the two unopposed pending motions for protective order are reasonable and should be granted.

{¶ 41} Ohio Adm.Code 4901-1-24(F) provides that, unless otherwise ordered, protective orders issued pursuant to Ohio Adm.Code 4901-1-24(D) automatically expire after 24 months. The attorney examiner finds that confidential treatment shall be afforded to the information filed under seal for 24 months from the date of this Finding and Order. Until that time, the Docketing Division shall maintain, under seal, the information filed confidentially. Further, Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If a party wishes to extend its confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend the confidential treatment is filed, the Commission may release the information without prior notice.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 42} On January 6, 2021, Boyce Parker filed a complaint against CEI alleging that CEI's billing was unjustly and unreasonably excessive.

{¶ 43} On January 25, 2021, CEI filed its answer to the complaint in which it denies all of Complainant's allegations and sets forth several affirmative defenses.

{¶ 44} An Entry was issued March 2, 2021, scheduling a March 23, 2021 settlement conference. The parties participated in the conference but could not resolve the matter. An evidentiary hearing was held on November 17, 2022.

{¶ 45} 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).

{¶ 46} Complainant did not meet his burden of proving that CEI incorrectly billed him for service for the month of December 2020. Therefore, there is insufficient evidence to support a finding that CEI rendered inadequate service pursuant to R.C. 4905.22.

## V. ORDER

{¶ 47} It is, therefore,

{¶ 48} ORDERED, That CEI's motions for protective order be granted. It is further,

{¶ 49} ORDERED, That the Commission's Docketing Division maintain, under seal, the information which is the subject of both motions for protective order, as stated in Paragraph 41. It is, further,

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

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

**COMMISSIONERS:**

*Approving:*

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

IMM/JMD/dr

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Summary: Opinion & Order finding that Boyce Parker failed to carry the burden of proving that The Cleveland Electric Illuminating Company billed him incorrectly for his electric usage during December 2020. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.