

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Alan Jones,)	
)	
Complainant,)	
)	CASE NO. 22-0016-EL-CSS
vs.)	
)	
The Cleveland Electric Illuminating)	
Company,)	
)	
Respondent.)	

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

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I. INTRODUCTION

Complainant Alan Jones alleges that his electric bills from The Cleveland Electric Illuminating Company (“CEI”) were incorrectly calculated starting from at least 2014 (possibly as far back as 1989) and continuing on until CEI discovered the two meters at a duplex property he owned were mixed and needed to be corrected. He believes (incorrectly) that his electric bills when the unoccupied side of the duplex was in his name during the above referenced time period were actually those of the occupied unit and believes that he has shown by a preponderance of the evidence that the switched meters date back many years. He is wrong for several reasons.

First, and most importantly, CEI conducted a switched meter investigation when it was brought to its attention in July 2021 after a power outage occurred at the property. CEI conducted a switched meter investigation and determined that a rebill of Mr. Jones’ account should be done to correct the one month of billing that was tied to a switched meter. As explained in the testimony of CEI’s employee and expert witness Robert Perkins, prior to the meters being installed on August 4, 2020, the previous meters were in place since August 19, 2014, and there were no recorded metering issues from any of the accounts associated with the duplex during that time period that would support that there was a switched meter situation prior to August 4, 2020. Nor were there any customer complaints from one side of the duplex prior to August 2014 when the other side side of the duplex had its power disconnected or turned off. If the meters had been switched at that time, the power would have been disconnected or turned off to the wrong customer and Mr. Perkins believes that CEI would have been informed.

Second, although Complainant alleges that a review of the self-calculated historical average of the electric allegedly used on the occupied side proves the amount he was overbilled each month by a factor of 75%, Complainant has not put forth any competent evidence to support

such a claim. Instead, Complainant provides no expert analysis of years of data to support his claim. Nor does Complainant provide anything other than his own thoughts on how low his bills should have been based on the alleged usage of the occupied side.

Accordingly, Complainant failed to satisfy his burden of proving his allegation that CEI's electric bills were somehow inaccurate, unjust, or unreasonable. The Commission should therefore dismiss this Complaint.

II. STATEMENT OF FACTS

Complainant's claims against CEI involve allegations that he was overbilled and overpaid for electricity when he was the customer of record for the unoccupied side of a duplex property that he owned.¹

Complainant filed this proceeding on January 5, 2022, alleging that the electric bills he was receiving when he was the customer of record for the unoccupied side of the duplex he owned was actually those of the tenant of the occupied side of the duplex. Complainant alleges that this was a result of a mixed metering situation that has lasted for many years.² CEI timely answered the Complaint and admitted that new meters were installed at the duplex property in 2014, 2020 and 2021 and that mixed metering had occurred at the duplex property for a period of time and Complainant was issued a correction to his electric bill during the time he was the customer of record.³

During the hearing, Complainant argued that the mixed metering at the duplex has been occurring since at least 2014 and possibly back to 1989.⁴ But as explained at the hearing, prior to

¹ *In the Matter of Alan Jones v. The Cleveland Electric Illuminating Company*, PUCO No. 22-0016-EL-CSS, Complaint (Jan. 5, 2022) ("Complaint"); *see also* Record of Proceeding ("Tr."), 10-11.

² Complaint.

³ *In the Matter of Alan Jones v. The Cleveland Electric Illuminating Company*, PUCO No. 22-0016-EL-CSS, Answer (Jan. 25, 2022) ("Answer").

⁴ Tr. 15:14-18; 25-30.

August 4, 2020, CEI had not received any notifications or complaints from customers at the duplex related to metering issues and during times when both sides of the duplex were occupied and one side was shut off, CEI did not receive any notification from the other side of the duplex's tenant about their power being off.⁵ Additionally, even though at the hearing Complainant alleged that all of the electric usage that he was billed during the time he was the customer of record for the unoccupied side of the duplex dating back to 1989 was that of the occupied side of the duplex, Complainant could not provide a reasonable explanation for the months of low usage he was billed. At the hearing Complainant was presented with his own records to show that he was billed for only 70 KWH of usage in May 2009, but he could not provide a reasonable explanation supported by admissible evidence as to why under his theory this would have been the usage of the occupied side of the duplex (which he testified was an average of 750 KWH a month), and under his theory his actual usage would have been 75% less.⁶

Further, at the hearing Complainant presented his unsupported theory that the average KWH usage per month of an occupied structure was 758 KWH.⁷ However, Complainant's theory of what the average KWH usage of the occupied structure is not supported by any expert testimony nor is it supported by the record evidence. Complainant only relies on one tenant's 7 months of usage data and his unsupported belief that the electric bill he received were those of the occupied structure in order to compile an average usage of the occupied structure.⁸ At the hearing, Complainant provided an average usage calculation for the occupied structure even though he testified that he has a lay understanding that everybody uses electricity differently and people have different usage habits, the number of tenants living in the rental varied over the years from having

⁵ Pre-filed Testimony of Robert Perkins ("Perkins Testimony"), Company Exhibit 2, 7:17-20; Tr. 84:1-25; 85:1-7.

⁶ Tr. 74:22-25; 75:1-25.

⁷ Tr. 42:15-25; 43:1-5.

⁸ Tr. 58:17-25; 60:3-14.

two tenants to sometimes five tenants in the rental at one time.⁹ Simply put, Complainant failed to provide any support that the average KWH usage of a tenant in the occupied structure was 758 KWH because that number is only based off of the electric bills from one tenant over 7 months of billing and electric bills from 2014-2016. Moreover, when questioned on the electric usage data he provided from 2008/2009 and 2017/2018, he was unable to provide a reasonable explanation as to why the 10 months of usage data he alleges he was improperly billed because he believes it was for the occupied unit was no where close to the average of 750 KWH a month as he suggests it should be.¹⁰ Instead, the lowest monthly usage over 10 months of usage data was 70 KWH and the highest monthly usage was only 592 KWH, with an average of only 295 KWH used per month.¹¹

In totality, Complainant failed to produce any competent evidence that his electric bills were unjust or unreasonable, nor did he produce any evidence that his bills were inaccurate. The evidence demonstrates that Complainant's account was rebilled for the time where mixed metering was discovered and impacted Complainant's account. Nothing in the record supports Complainant's theory that the mixed metering dated back 32+ years and that he should be entitled to a rebilling based off of Complainant's flawed and imperfect calculation of electric usage between an occupied structure and an unoccupied structure.¹²

Complainant failed to satisfy his burden of proving that his CEI bills were somehow inaccurate, unjust, or unreasonable.

⁹ Tr. 59:1-9; 60:15-25; 61:1-16.

¹⁰ Tr. 77:11-25; 78-79.

¹¹ Company Exhibit 1.

¹² Perkins Testimony, Company Ex. 2, 7:15-23; 8:1-8..

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.¹³

It is well-established that the burden of proof rests with the Complainant in proceedings before the Commission.¹⁴ To prevail, the Complainant must prove, by the preponderance of the evidence, that the services provided were unreasonable.¹⁵ “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.”¹⁶ Thus, Complainant bears the burden of proving his allegation that CEI’s electric bills were somehow inaccurate, unjust, or unreasonable.¹⁷ This is a burden Complainant cannot meet in this case.

¹³ R.C. 4905.26.

¹⁴ *Grossman v. Pub. Util. Comm’n*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966).

¹⁵ *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).

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

¹⁷ 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).

As set forth below, the evidence in the record demonstrates that Complainant's electric bills 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. Complainant Failed to Meet His Burden of Demonstrating that CEI's Bills were Inaccurate, Unjust, or Unreasonable.

Complainant, as in all Complaint proceedings, bears the burden of proving his case.¹⁸ Here, that means that he must demonstrate that his electric bills from CEI were inaccurate, unjust, or unreasonable. He failed to do so. Although Complainant alleges that the electric bills he has received over the course of 32 years for service in his name of the unoccupied unit of his duplex must be those of the occupied unit's tenant and not his actual usage, he has not provided any credible evidentiary support for his baseless theories and accusations.

First and foremost, Complainant has failed to prove by a preponderance of evidence that the mixed metering situation discovered by CEI in 2021 has been in existence at the property since 1989. Instead, Complainant's own records from 2008/2009 and 2017/2018 show that it is more likely than not that the usage billed to Complainant was in fact his and not that of the occupied unit's tenant. As previously discussed, when questioned on the electric usage data he provided from 2008/2009 and 2017/2018, he was unable to provide a reasonable explanation as to why the 10 months of usage data he alleges was not his but was the occupied unit's tenant was nowhere close to the average of 750 KWH a month as he suggests it should be.¹⁹ Instead, the lowest monthly usage over 10 months of usage data was 70 KWH and the highest monthly usage was only 592 KWH, with an average of only 295 KWH used per month.²⁰

¹⁸ *Grossman*, 5 Ohio St.2d at 190.

¹⁹ Tr. 77:11-25; 78-79.

²⁰ Company Exhibit 1.

Additionally, the undisputed evidence of CEI's witness supports CEI's position that the mixed metering situation did not likely occur before August 2020, and in no event was likely to have dated back to 1989. Mr. Perkins testified that there were times between 2009 and 2010 when one of the units was disconnected or turned off and there were no records of the other tenant in the duplex calling CEI to complain that they were suffering a power outage.²¹ This lack of correlation between the disconnection of one unit and complaints from the other unit do not support the position that the meters were switched back in the 2009/2010 time period.²² Mr. Perkins also testified that the lack of recorded metering issues from any of the accounts that were serviced at the duplex property from 2014-2020 lead him to believe that there was never a switched meter situation prior to August 4, 2020. In fact, Mr. Perkins testified that he is not aware of any situation where meters were mixed over 25 years and CEI was never made aware of it.²³

Although, Complainant relies heavily on the fact that there are photos of meters in a certain location during the relevant time periods as evidence of the length of the switched meters, Mr. Perkins's testimony clearly shows that there can be other events outside of CEI's control and knowledge that can lead to a switched meter situation. For example, Mr. Perkins testified that in his experience he has seen meters switched by contractors or electricians other than CEI and CEI did not become aware of the switched meter until a tenant alerted CEI that their power was off and CEI had to investigate as to why a certain meter was disconnected or off.²⁴

As the testimony and records introduced at the hearing show, Complainant admitted that even during the times when the electric at the unoccupied unit was in his name, various electrical usage was still going on: contractors would be in the vacant unit when it was unoccupied to make

²¹ Tr. 84:1-21.

²² Tr. 84:11-25; 85: 1-7; 112:19-25; 113:1-18; 114:6-25; 115:1-9.

²³ Tr. 121:19-25; 122:1-7.

²⁴ Tr. 85:8-25; 86:1-7.

repairs, paint, and do general cleaning; the lights would be on when contractors were working or people were inside the vacant unit for other reasons; the heat would be maintained in the winter at 60 degrees; the fridge would still be on, although set to its lowest setting; and the A/C would be used sometimes during the summer months to cool down the vacant unit before a showing or when contractors were working in the unit.²⁵

To counter Complainant's continued electric usage and create an estimated overbilling in this case to support his theory of years of mixed metering, Complainant presented his unsupported theory that the average KWH usage per month of an occupied structure was 758 KWH.²⁶ However, Complainant's theory of what the average KWH usage of the occupied structure is not supported by any expert testimony and is based on one tenant's 7 months of usage data and his unsupported belief that the electric bill he received were those of the occupied structure.²⁷ Complainant failed to provide any support that the average KWH usage of a tenant in the occupied structure was 758 KWH, even though he testified that he has a lay understanding that everybody uses electricity differently and people have different usage habits, the number of tenants living in the rental varied over the years from having two tenants to sometimes five tenants in the rental at one time.²⁸ More importantly, when questioned on the electric usage data he provided from 2008/2009 and 2017/2018, he was unable to provide a reasonable explanation as to why the 10 months of usage data he alleges he was improperly billed because he believes it was for the occupied unit was nowhere close to the average of 750 KWH a month as he suggests it should

²⁵ Tr. 54-58.

²⁶ Tr. 42:15-25; 43:1-5.

²⁷ Tr. 58:17-25; 60:3-14.

²⁸ Tr. 59:1-9; 60:15-25; 61:1-16.

be.²⁹ Instead, the lowest monthly usage over 10 months of usage data was 70 KWH and the highest monthly usage was only 592 KWH, with an average of only 295 KWH used per month.³⁰

In sum, Complainant failed to prove by a preponderance of the evidence that the meters at the duplex were switched in 1989 and thus his electric bills from CEI were inaccurate, unjust, or unreasonable. Accordingly, the Commission should dismiss his Complaint.

IV. CONCLUSION

Complainant did not meet his burden of proof in this Complaint proceeding. On the contrary, CEI presented ample evidence in support of the accuracy of Complainant's bills and presented evidence that there were no reported metering issues or outages to the other meter when power was disconnected or turned off between 2009 and 2020. Complainant's Complaint should be dismissed.

The evidence presented in this proceeding demonstrates that Complainant's CEI's electric bills during the relevant time period were just, reasonable, and accurate. 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.

²⁹ Tr. 77:11-25; 78-79.

³⁰ Company Exhibit 1.

Respectfully Submitted,

/s/ John W. Breig, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing was served by Email to
Complainant on this 26th day of October 2023 at the following address:

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/s/ John W. Breig, Jr.
John W. Breig, Jr. Breig (0096767)
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on behalf of The Cleveland Electric Illuminating Company.