

**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
POST-HEARING REPLY BRIEF

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LAW AND ARGUMENT	2
A.	Complainant has failed to prove, by the preponderance of the evidence, that the meters were switched prior to August 4, 2020.	2
B.	Complainant has failed to prove, by the preponderance of the evidence, that he is entitled to the overpayment amount he is seeking.	4
III.	CONCLUSION.....	5

I. INTRODUCTION

Complainant Alan Jones filed his Initial Post-Hearing Brief (“Complainant’s Brief”) on October 26, 2023. Complainant’s Brief fails to direct the Commission to any competent evidence to support his theory that the switched meters date back many years. Although, Complainant points to testimony from CEI’s witness that “it is possible” for the meters to have been switched before August 4, 2020, August 17, 2014, or even 1988 or 1989, Complainant fails to acknowledge the witness’s testimony regarding the fact that 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. Further, Complainant fails to acknowledge the witness’s testimony that there were no customer complaints from one side of the duplex prior to August 2014 when the other side of the duplex had its power disconnected or turned off. As the witness explained at the hearing, if the meters had been switched at that time, the power would have been disconnected or turned off to the wrong customer and the witness believes that CEI would have been informed.

Complainant also fails to point to any admissible evidence to support his self-calculated historical average of the electric allegedly used on the occupied side to prove the amount he was allegedly overbilled each month. Instead, Complainant simply directs the Commission to his own thoughts on how low his bills should have been based on the alleged average usage of the occupied side. However, 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 two tenants to sometimes five tenants in the rental at one time. Complainant

failed to provide any expert analysis of years of data to support his claim that his statistical analysis was based on accurate and representative data.

For the reasons set forth below, as well in CEI's Initial Post-Hearing Brief, which is incorporated herein in its entirety, Complainant has failed to prove, by the preponderance of the evidence, that the services provided by CEI were unreasonable. Thus the Complaint against CEI should be dismissed and/or the Commission should grant judgment in CEI's favor.

II. LAW AND ARGUMENT

A. Complainant has failed to prove, by the preponderance of the evidence, that the meters were switched prior to August 4, 2020.

Complainant did not present any competent evidence at the hearing or in Complainant's Brief 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 merely points to the same documents already addressed by CEI's witness and asks the Commission to take CEI's witness's testimony regarding something being "possible", to mean more likely than not. This is simply not the legal standard for the burden of proof that Complainant must meet. To prevail, the Complainant must prove, by the preponderance of the evidence, that the services provided were unreasonable.¹ "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."² Further, Complainant is selectively choosing the testimony from CEI's witness to support his theory while discounting the context and further statements. For example, when CEI's witness was questioned by Complainant, Mr. Perkins agreed that "anything is possible"

¹ *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).

² *Admin Net Tech LLC v. Med. Imaging Diagnostics, LLC*, 7th Dist. Mahoning, No. 18-ma-111, 2019-Ohio-3584, ¶ 28.

when asked whether it was possible that the meters were already switched before August 18, 2014.³ However, Mr. Perkins also testified that there were times between 2009 and 2010 when one of the units was disconnected or turned off because of a person moving out and there were no records of the other tenant in the duplex calling CEI to complain that they were suffering a power outage.⁴

Moreover, Complainant makes no attempt to explain why his 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. At the hearing, 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.⁵ 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.⁶

The testimony from Mr. Perkins related to a lack of complaints when the other side of the duplex's power was shut off because of a move out, his testimony related to a lack of recorded metering issues from any of the accounts that were serviced at the duplex property from 2014-2020, and Complainant's own usage data from 2008/2009 and 2017/2018 directly contradict Complainant's theory and do not make it more likely than not that the meters were switched prior to August 4, 2020.

³ Tr. 112:19-24.

⁴ Tr. 112:24-25; 113:1-6; 114:16-25; 115:1-3

⁵ Tr. 77:11-25; 78-79.

⁶ Company Exhibit 1.

B. Complainant has failed to prove, by the preponderance of the evidence, that he is entitled to the overpayment amount he is seeking.

Complainant has not relied on any credible evidence to support his theory that the average KWH usage per month of an occupied structure was 758 KWH and his usage is only 25% of the occupied structure.⁷ As the testimony at the hearing showed, 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 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.⁸ This alone shows that Complainant's electric usage for the unoccupied side of the house can vary each time the unoccupied side was in his name. Further, when questioned on what types of tenants lived at the property, 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.⁹

Complainant argues that the "CEI unlawfully withheld any additional available historical electric usage or billing date," but Complainant fails to acknowledge that the Attorney Examiner has already ruled on Complainant's late stage and unsupported motion to compel and found that Complainant had not made a good cause showing that he was entitled to the confidential

⁷ Tr. 42:15-25; 43:1-5.

⁸ Tr. 54-58.

⁹ Tr. 59:1-9; 60:15-25; 61:1-16.

information of CEI's customers.¹⁰ 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 bills he received were those of the occupied structure.¹¹ Complainant's own theory is contradicted by his own exhibits and 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 be.¹² 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.¹³ Put simply, Complainant's overpayment calculation is not supported by a preponderance of the evidence; instead, it is simply a guess by Complainant that is based on his unsupported contention that mixed metering occurred dating back to 1988/1989.

In sum, Complainant has failed to prove, by the preponderance of the evidence, that the services provided by CEI were unreasonable. Accordingly, the Commission should dismiss his Complaint.

III. 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

¹⁰ Tr. 6:4-25; 7:1-10.

¹¹ Tr. 58:17-25; 60:3-14.

¹² Tr. 77:11-25; 78-79.

¹³ Company Exhibit 1.

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.

Respectfully Submitted,

/s/ John W. Breig, Jr.

John W. Breig, Jr. (0096767)

**BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP**

127 Public Square, Suite 4900

Cleveland, Ohio 44114

Telephone: 216.363.4500/Facsimile: 216.363.4588

jbreig@beneschlaw.com

*Counsel for The Cleveland Electric Illuminating
Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing was served by Email to
Complainant on this 21st day of November 2023 at the following address:

Alan D. Jones
410 Wakefield Run Blvd.
Hinckley, Ohio 44233
alanmichele@roadrunner.com
Complainant

/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**

11/21/2023 3:04:10 PM

in

Case No(s). 22-0016-EL-CSS

Summary: Brief Post-Hearing Reply Brief electronically filed by Mr. John W. Breig
on behalf of The Cleveland Electric Illuminating Company.