

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
DAN & MARY PATEK,**

**COMPLAINANTS,**

**v.**

**CASE NO. 21-549-EL-CSS**

**THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY,**

**RESPONDENT.**

**ENTRY**

Entered in the Journal on January 10, 2024

**I. SUMMARY**

{¶ 1} The Commission dismisses the complaint, without prejudice, for failure to prosecute.

**II. DISCUSSION**

{¶ 2} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints 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.

{¶ 3} The Cleveland Electric Illuminating Company (CEI or Respondent) is a public utility as defined in R.C. 4905.02. Accordingly, CEI is subject to the Commission's jurisdiction.

{¶ 4} On May 6, 2021, Dan and Mary Patek (Complainants) initiated a complaint regarding charges on their electric bill. Complainants allege that, since the installation of a

smart meter in November 2020, they have received inaccurate readings for usage in their barn.

{¶ 5} Pursuant to Ohio Adm.Code 4901-9-01(B), a copy of the complaint was mailed to CEI on May 6, 2021, directing CEI to file its answer and any other responsive pleading within 20 days after May 6, 2021.

{¶ 6} CEI filed its answer on May 26, 2021. In its answer, CEI admits some allegations in the complaint, denies others, asserts several affirmative defenses, and reserves the right to amend its answer to assert additional affirmative defenses as necessary.

{¶ 7} On May 27, 2021, the attorney examiner scheduled a settlement conference to be held on June 24, 2021. The conference occurred as scheduled. During the conference, the parties were unable to settle the matter.

{¶ 8} By Entry issued on April 20, 2023, the attorney examiner scheduled the matter for hearing at the Commission's offices.

{¶ 9} The hearing occurred as scheduled on June 27, 2023. Complainants did not make an appearance. CEI presented, and the attorney examiner admitted into the record as CEI Exhibit 1, the direct testimony of Respondent's expert witness, Robert Perkins, the Manager of Meter Reading at CEI. (Tr. at 9). CEI also made a motion to dismiss the case (Tr. at 10).

{¶ 10} As is the case in all Commission complaint proceedings, the complainant has 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). Here, however, Complainants did not appear at the scheduled evidentiary hearing, resulting in their failure to carry that burden. On the other hand, CEI witness Perkins provided testimony in support of Respondent's defense (Tr. at 5-9). Furthermore, as noted above, CEI moved to dismiss the case.

{¶ 11} At this time, the Commission grants CEI's motion to dismiss. Complainants neglected to appear at hearing to present evidence in support of their claims and, therefore, failed to prosecute the matter. The Pateks' failure to prosecute their case renders dismissal of the entire action appropriate. Accordingly, the Commission finds that this case should be dismissed, without prejudice, and the case be closed of record.

### III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the complaint be dismissed and this case be closed of record. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

#### COMMISSIONERS:

*Approving:*

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

IMM/dr

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

**1/10/2024 2:33:43 PM**

**in**

**Case No(s). 21-0549-EL-CSS**

Summary: Entry dismissing the complaint, without prejudice, for failure to prosecute. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.