

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
WILLIAM L. BOUCHEÉ against)	
CONSUMERS ENERGY COMPANY.)	Case No. U-11938
_____)	

At the December 6, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

ORDER DISMISSING COMPLAINT

On July 15, 1999, William L. Boucheé filed a complaint against Consumers Energy Company (Consumers) regarding a billing dispute. On August 19, 1999, Consumers filed a provisional answer to the complaint along with a motion for more definite statement and a motion to dismiss the complaint.

A hearing was conducted September 7, 1999 before Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) to address Consumers' motion for a more definite statement. The hearing, which was attended by Mr. Boucheé, Consumers, and the Commission Staff (Staff), resulted in a determination that Mr. Boucheé's complaint was filed due to an alleged wrongful disconnection of his electric service by Consumers and because he believed that Consumers improperly required him to pay more than it should have been able to collect as a condition for restoration of his service. In addition, Mr. Boucheé

expressed concern that Consumers' service personnel may have caused some damage while trespassing on his property.

On September 30, 1999, Mr. Boucheé submitted an amended complaint in which he asked that he be given credit for any incorrect billing by Consumers, that his bills be adjusted to reflect his actual consumption of electricity, and that he be reimbursed for damage to certain electrical appliances.

On October 8, 1999, Consumers submitted an answer to the amended complaint. In so doing, Consumers insisted that Mr. Boucheé had been properly billed for consumption at his residence and that the utility had done nothing wrong in terminating his service for nonpayment. Additionally, Consumers denied that it was responsible for any damage to Mr. Boucheé's electrical appliances.

At an evidentiary hearing conducted on October 19, 1999, Consumers initially renewed its motion to dismiss, which was held in abeyance pending the receipt of testimony from Mr. Boucheé and the submission of ten exhibits. At the conclusion of Mr. Boucheé's evidentiary presentation, Consumers renewed its motion to dismiss, which was granted by the ALJ in the form of an oral Proposal for Decision (PFD).

After issuance of the oral PFD, Mr. Boucheé inquired as to the procedure for submission of exceptions. Thereafter, on October 26, 1999, Consumers received a one-page letter/exception, a copy of which was forwarded to the Commission by Consumers. On October 28, 1999, Consumers filed its reply to exceptions.

After reviewing the record of this proceeding, the Commission finds that the ALJ did not err in proposing dismissal of the complaint. It is undisputed that on February 4, 1999, Consumers mailed and Mr. Boucheé subsequently received a timely shutoff notice indicating a \$90.66 arrearage and explaining

the consequences of nonpayment. Mr. Boucheé's service was disconnected on February 24, 1999 for nonpayment of the arrearage. Subsequent to the disconnection, Mr. Boucheé was required to make two payments in order to have his service restored. On March 3, 1999, he paid \$145.92 for energy usage.¹ On April 2, 1999, he made an additional payment for energy usage, two theft investigations, a service reconnection fee, and a security deposit. Following these payments, service was restored to Mr. Boucheé's residence on April 2, 1999.

Based on the record before it, the Commission is not persuaded that Mr. Boucheé met his burden of establishing a violation of any of the Consumer Standards and Billing Practices for Electric and Gas Residential Service, 1992 AACS, R 460.2101 et seq. In particular, the Commission does not find that Consumers violated R 460.2170 (Rule 70), which concerns settlement agreements, or R 460.2154 (Rule 54), which concerns restoration of service. The Commission recognizes that Mr. Boucheé claimed that he was denied an opportunity pursuant to Rule 70 to enter into a settlement agreement after receiving the shutoff notice. However, his testimony in this regard is sketchy, conflicting, and inconsistent. For example, Mr. Boucheé stated that subsequent to the February 4, 1999 shutoff notice, he made a \$10 payment to the utility after his attempts to obtain a settlement agreement were thwarted. However, Exhibit C-2 indicates that the \$10 payment was made on January 25, 1999, which predates the mailing of the shutoff notice by 10 days.

The Commission also finds that Mr. Boucheé's claim that Consumers improperly required payment in addition to the \$145.92 that he was required to pay on March 3, 1999 is not well taken. Rule 54, which

¹The amount that Mr. Boucheé was required to pay on March 3, 1999 included the original arrearage of \$90.66 from his January 1999 bill and an additional \$55.26 due for consumption on his February 1999 bill.

concerns restoration of service, obligates a utility to restore service promptly “when the cause has been cured or credit arrangement satisfactory to the utility had been made.” The \$145.92 payment made on March 3, 1999 was for energy usage that was reflected on his January and February 1999 bills.

However, the February 4, 1999 shutoff notice very clearly indicated that in order to have his service restored after a disconnection, Mr. Boucheé would have to pay not only the past due amount for energy consumption but also an additional amount consisting of at least a security deposit and a reconnection fee. Accordingly, Mr. Boucheé was informed prior to the February 24, 1999 disconnection of service that he would have to pay more than the amount associated with his past due consumption in order to have service restored. For these reasons, the Commission finds that Mr. Boucheé’s allegations regarding a violation of Rule 54 are not well taken.

Finally, the Commission finds that Mr. Boucheé’s attempt to hold Consumers responsible for alleged damage to his refrigerator simply has no merit. Testimony by Mr. Boucheé that his refrigerator would no longer make ice cubes or keep food cold subsequent to the restoration of his service on April 4, 1999 is not sufficient to support a claim that the utility is responsible for the appliance’s malfunction.

For all of the above reasons, the Commission finds that the ALJ properly dismissed Mr. Boucheé’s complaint against Consumers.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.;

MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The complaint filed by Mr. Boucheé against Consumers should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that the July 15, 1999 complaint filed by William L. Boucheé against Consumers Energy Company is dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of December 6, 1999.

/s/ Dorothy Wideman
Its Executive Secretary

b. The complaint filed by Mr. Boucheé against Consumers should be dismissed with prejudice.

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

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By its action of December 6, 1999.

Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated December 6, 1999 dismissing the complaint filed by William L. Boucheé against Consumers Energy Company, as set forth in the order.”