

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint filed by)	
JACQUELINE ANN WEBSTER against)	Case No. U-13740
CONSUMERS ENERGY COMPANY.)	
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At the November 4, 2003 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER DISMISSING COMPLAINT

On February 4, 2003, Jacqueline Ann Webster filed a formal complaint against Consumers Energy Company (Consumers) alleging that Consumers failed to grant a hearing to resolve a \$3,800.00 dispute regarding back-billed electrical service before shutting off her electric service.

On April 29, 2003, Consumers filed an answer to Ms. Webster's complaint.

On June 24, 2003, an evidentiary hearing was held before Administrative Law Judge Mark E. Cummins (ALJ). Ms. Webster, Consumers, and the Commission Staff (Staff) participated in the proceedings. Ms. Webster testified and provided a statement from her stepsister, Leslie Arder. Mary Eimer and Monica Fant testified on behalf of Consumers. The Staff did not offer testimony, but did cross-examine several of the witnesses. At the hearing, an agreed schedule for the remainder of this case was set by the parties.

On July 22, 2003, Ms. Webster and Consumers filed briefs.

On August 5, 2003, Ms. Webster and Consumers filed reply briefs.

On September 4, 2003, the ALJ issued a Proposal for Decision (PFD). Exceptions were due by September 15, 2003. No exceptions were filed.

Ms. Webster

Ms. Webster argued that Consumers could not back-bill beyond one year. In so doing, Ms. Webster stressed that according to Consumers' tariff, "back-billing of residential customers is limited to the one-year period immediately preceding the discovery of the undercharge." Consumers' Tariff B14.2H(b)(i). Ms. Webster also argued that Consumers improperly shut off her electricity before granting her a hearing. Finally, Ms. Webster insisted that she did not commit energy theft because she did nothing to divert electricity from her electric box. Rather, she asserted that a faulty electric meter caused the undercharge. Indeed, she pointed out that at one point she paid \$2,100.00 believing it would be sufficient to satisfy all undisputed amounts owed to Consumers.

Consumers

Consumers maintained that Ms. Webster is responsible for the whole back-billed amount. Consumers asserted that she received the electricity that was back-billed, and that the back-billing arose from a four-and-a-half-year energy theft. Consumers claimed that a "jumper" was installed in Ms. Webster's electrical box, which allowed electricity to by-pass the absent meter to her residence without charge. Consumers indicated that according to its tariff, "In cases where metered or un-metered energy theft [occurs] . . . refunds and back-billings are for the determined duration of the period." Consumers' Tariff B14.2J. Consumers stated that when the theft was

discovered, it calculated an average usage based on actual usage from February 14, 1996 to January 10, 1997.

Finally, Consumers pointed out that it disconnected Ms. Webster's service on April 15, 2002, for failure to pay even the undisputed portion of her account, and that although Ms. Webster paid \$2,100.00, there was still an unpaid \$700.00 for electric service for which she had admitted responsibility.

Discussion

The Commission finds that Ms. Webster did receive unmetered electricity from February 1, 1997 to August 30, 2001. Ms. Webster testified that she had power during that period, but she wasn't billed for it. A photo admitted into evidence also shows "jumpers" were installed in her empty electric box. See, Exhibit R-15.

The Commission finds that the purpose of the tariff relied on by Ms. Webster is to provide customers with protection from billing errors. Consumers' Tariff B14.2(H)(2)(b)(i). The Commission further finds that the section of the tariff Consumers relied on is more applicable to the facts of this case, which involves allegations of energy theft. Consumers' Tariff B14.2(J). The one-year-back rule for billing errors is based on R 460.2125(2). By its terms, it does not apply to "meter tampering or fraud." Consumers' tariff includes "diversion" in its definition of energy theft. Consumers' Tariff B10.3(C). Diversion is defined as, "a turning aside or altering the natural course or route of a thing." Black's Law Dictionary (5th 1979). The "jumpers" installed in Ms. Webster's electric box fit within this definition. Therefore, because the weight of the evidence establishes that Ms. Webster used the electricity without payment, whether or not she diverted the electricity herself, the Commission concludes that she is responsible for the entire back-billed amount.

Finally, Ms. Webster was not entitled to a hearing before Consumers shut-off her electricity. A customer has the right to request a hearing only if the undisputed portion of their bill is paid within three days. 1939 PA 3, as amended, MCL 460.10t(3)(f). Since Ms. Webster failed to pay even the undisputed portion of her bill, she was not entitled to a hearing before her electricity was shut-off.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. The complaint filed by Jacqueline Ann Webster against Consumers should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that the complaint filed by Jacqueline Ann Webster 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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of November 4, 2003.

/s/ Robert W. Kehres
Its Acting Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Suggested Minute:

“Adopt and issue order dated November 4, 2003 dismissing the complaint filed by Jacqueline Ann Webster against Consumers Energy Company, with prejudice, as set forth in the order.”