

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
ELLEN AND MARK MILLS against)	Case No. U-14205
THE DETROIT EDISON COMPANY.)	
_____)	

At the February 10, 2005 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

OPINION AND ORDER

On November 9, 2004, the Commission issued an order dismissing the complaint of Ellen and Mark Mills against The Detroit Edison Company (Detroit Edison) with prejudice.

Under the Commission’s Rules of Practice and Procedure, a petition for rehearing of a final order may be submitted when: (1) there is a claim of error in the findings of fact or conclusions of law; (2) new evidence has been discovered since the close of the record; (3) unintended consequences result from compliance with the decision. R 460.17403.

On December 9, 2004, Ellen Mills filed a petition for rehearing, claiming *inter alia*, that the Commission’s order on November 9, 2004 was erroneous because it did not consider properly filed exceptions. Mrs. Mills alleged that the Proposal for Decision (PFD) issued by Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ) on September 16, 2004, directing that exceptions to the PFD be filed by October 1, 2004, was “vague in where to send the [e]xceptions.” Mrs. Mills

further states that because of her uncertainty concerning where to file the exceptions, she faxed her exceptions to the ALJ on October 1, 2004, believing this was the proper procedure for filing.

Rule 109 of the Commission's procedural rules states that, ***pleadings and other documents are filed with the Commission by filing with the Secretary.*** R 460.17109(1). Because Mrs. Mills' exceptions were not received by the Executive Secretary before the required filing date, they were not properly filed. Service on all other parties to the case is also required for any document filed with the Commission. R 460.17109(6). Mrs. Mills' exceptions were not served on the other parties to this case. Service to all parties to the case is a necessary and important Commission filing requirement. If the service requirement is not properly observed, the parties to a Commission case will not have an opportunity to respond to pleadings, arguments, and information provided by opposing parties, and this would undermine each party's due process rights.

The Commission is aware that not all parties appearing before the Commission are familiar with the procedural rules and extends appropriate flexibility to *pro per* parties in particular, so that those with matters before the Commission can be properly heard. Significant efforts have been made to utilize technology and other resources to make information necessary to participate in a case readily available to the public. Relevant rules, orders, procedures, and numerous other documents are available on the Commission's website and the Commission Staff is available by phone to answer questions. The Executive Secretary is also required to "***provide advice about the form of pleadings and other documents to be filed with the Commission***" upon request (emphasis added). R 460.17105(1).

The Commission regrets that Mrs. Mills misunderstood the filing requirements and, as a result, failed to file her exceptions properly in the record. Though procedural violations

are a valid legal basis for rejecting improper filings, the Commission finds that justice would be best served in this instance, if the procedural defects did not stand as a sentry at the gates, barring resolution of Mrs. Mills' petition and complaint on the merits.

Therefore, notwithstanding the technical defects of Mrs. Mills' exceptions, an analysis of the merits of the complaint and exceptions leads the Commission to the same conclusion.

In Mrs. Mills' complaint of June 16, 2004, she sought three types of relief. She prayed that her electric service be restored, that Detroit Edison personnel stop "stalking" her, and that Detroit Edison issue a letter of apology. Of the three claims, the restoration of service issue is the only one within the Commission's authority to address. The Commission has been informed that the Mills' service has been restored, rendering this matter moot. Stalking claims and mandating apologies by regulated entities do not fall under the Commission's jurisdiction. *See*, 1939 PA 3, as amended, MCL 460.1 *et seq.* Therefore, the November 9, 2004 order in this case stands.

Mrs. Mills' exceptions, even if properly filed, also do not change the outcome of this matter. Viewing the exceptions in the light most favorable to Mrs. Mills, it appears that much of their substance surrounds Mrs. Mills' objections to the discretionary judgments of the ALJ or the behavior of Detroit Edison's counsel. They do not address matters that would change whether Detroit Edison was required to restore service without payment of the outstanding amount. There is no evidence the ALJ abused his discretion by granting Detroit Edison an extension to file its answer, that the ALJ showed preferential treatment, or that the ALJ failed to conduct the hearing in a fair, impartial, and professional manner.

Mrs. Mills' tenth exception is an inquiry regarding the ALJ's use of the term "unclean hands." "Unclean hands" is a colloquial term of art meaning that one is not permitted to profit from one's

own wrongdoings. Reference to “unclean hands” during the hearing did not prejudice Mrs. Mills’ case, but was used to highlight the fact that the Mills’ were using electricity for almost two years, without paying for it.

A review of the record in this case indicates that the Mills’ had an amount owing to Detroit Edison for service taken from August 2002 to June 2004. According to Detroit Edison, this was unauthorized service. Whether unauthorized or not, it is clear that this additional amount was due to Detroit Edison and that Detroit Edison was not required to restore service until that amount was paid. Nothing in Mrs. Mills’ exceptions or motion for rehearing change that fact.

The Commission, however, cannot overlook the fact that Detroit Edison was apparently aware that the Mills’ were receiving power after being disconnected in 2002 and had read the meter on multiple occasions prior to the disconnection in 2004, but did not take action to disconnect service or render a bill for the unauthorized usage until June of 2004. In the future, the Commission expects that Detroit Edison, when becoming aware of such matters, will address them more promptly and maintain accurate billing records so the confusion that took place in June 2004 does not happen again. This does not change the outcome of the proceeding, but is intended to emphasize that greater diligence regarding customer service is expected. In addition to highlighting the importance of providing customers with current and accurate billing information.

In any event, failure to provide the full amount due prior to the service disconnection on June 4, 2004, does not relieve the Mills’ from being responsible for paying the bill. As a result, restoration of service at the time of this claim was not appropriate. The Commission finds that the petition for rehearing filed in the matter of Ellen and Mark Mills against Detroit Edison should be denied.

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 petition for rehearing filed by Mrs. Mills should be denied.

THEREFORE, IT IS ORDERED that the petition for rehearing filed by Ellen and Mark Mills is denied.

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 E A L)

/s/ J. Peter Lark
Chair

By its action of February 10, 2005.

/s/ Robert B. Nelson
Commissioner

/s/ Mary Jo Kunkle
Its Executive Secretary

/s/ Laura Chappelle
Commissioner

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MICHIGAN PUBLIC SERVICE COMMISSION

Chair

By its action of February 10, 2005.

Commissioner

Its Executive Secretary

Commissioner