

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of David T. Davis,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 08-864-EL-CSS
	)	
The Toledo Edison Company,	)	
	)	
Respondent.	)	

OPINION AND ORDER

The Commission, considering the public hearing held on April 1, 2009, issues its opinion and order in this matter.

APPEARANCES:

David T. Davis, 2841 Langenderfer Road, Swanton, Ohio 43550, on his own behalf.

Ebony L. Miller, 76 South Main Street, Akron, Ohio 44308, on behalf of The Toledo Edison Company.

OPINION:

I. History of the Proceeding

On July 7, 2008, David T. Davis (Mr. Davis or complainant) filed a complaint with the Commission against The Toledo Edison Company (Toledo Edison or company). In the complaint, Mr. Davis stated that on May 19, 2008, a Toledo Edison crew knowingly caused damage to the service line leading into his residence at 2841 Langenderfer Road, Swanton, Ohio, and that this action, in turn, caused an estimated \$1,315.00 loss in property.<sup>1</sup> Complainant requested the Commission's assistance in recovering damages. Thereafter, on July 29, 2008, Toledo Edison filed an answer denying the allegations in the complaint.

A settlement conference was convened in this matter on October 1, 2008. The parties, however, were unable to reach a settlement agreement at the conference. The complaint then was scheduled for hearing on February 4, 2009. Thereafter, at the request

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<sup>1</sup> Although not specifically stated in his filing, Mr. Davis' allegation in the complaint is that his property loss resulted from a power surge into his residence through the service line.

of the complainant, the hearing was rescheduled and convened on April 1, 2009. On June 8, 2009, Toledo Edison filed its brief in the case. The complainant did not file a brief.

## II. Hearing

At the hearing, Mr. Davis testified that a Toledo Edison crew performed some maintenance work on a power pole in front of his house. During that time, a line broke and caused damage inside the house. According to Mr. Davis, the Toledo Edison crew finished their work and departed without doing anything about the broken line. Mr. Davis telephoned Toledo Edison, and a serviceman soon arrived, repaired the line, and restored service (Tr. at 6-7).

Having seen a new power pole laying in front of his house, Mr. Davis assumed that the Toledo Edison crew was installing the pole and that, when the crew transferred the line over to the new pole, the line broke. Mr. Davis did not see the line break, but noticed the broken end of a line hanging down about two and a half feet after the Toledo Edison crew left. A short time later, he noticed that he could not turn on his power saw and that his well pump was not functioning properly. Further, when he entered his house, there was a smell of burning electronics. Mr. Davis stated that Toledo Edison's lineman told him the neutral line had broken (Tr. at 9-18).

Todd Marshall, a Toledo Edison lineman, was verbally dispatched in response to Mr. Davis' call to Toledo Edison, and performed a repair in the line at Mr. Davis' house. Mr. Marshall testified that he received a call for a "bright and dim," so he had some idea that the problem he was being dispatched to fix might involve an open neutral line or an open connection. Mr. Marshall testified that he did not recall seeing anything that caught his attention. Mr. Marshall indicated that he next checked the meter in order to ascertain the voltage reading, and then spoke with Mr. Davis and told him about an out-of-the-ordinary voltage reading that he received (Tr. at 19-26).

Mr. Marshall testified that a high or low voltage reading alerts him to start looking for an open spot in the line or a bad connection. He noted that a tree, which was in bloom between the pole and Mr. Davis' house, obscured his view of the line. So, he pulled his truck next to the tree, climbed up and noticed a bad spot in the line, and made a repair. Afterwards, he checked the voltage again and received a correct voltage reading. He did not recall seeing a line hanging down (Tr. at 26).

Mr. Marshall testified that he handles approximately 1,000 trouble calls for repair service per year. He noted that the problem at Mr. Davis' house might have been caused by many things, including poorly manufactured wire, birds landing on the line, squirrels chewing on the line, and extremes in the weather. Mr. Marshall testified that he did not remember if the line was completely broken, burned all the way through, or not. He

testified that a majority of the line may have been burned through and that it may have been down to one last strand (Tr. at 27-32).

Eric Aschemeier, Sean Quinlivan, and Scott Gonyer were the Toledo Edison crewmen who installed a new power pole in Mr. Davis' yard on May 19, 2008. Mr. Aschemeier and Mr. Quinlivan actually installed the new pole in the ground. Mr. Gonyer transferred the service line for Mr. Davis' house from the old pole to the new one. Mr. Aschemeier testified that the old pole was replaced because it was rotten. All three men testified that the job was a standard pole replacement, with no problems, and that they observed nothing out of the ordinary. They were not aware of any damage to the service line, and did not believe that the work they performed damaged the line. Mr. Gonyer testified that he has never had any lines break when he transferred them. In addition, he testified that the Toledo Edison crew always visually double checks the line after a job is finished (Tr. at 33-48).

Marvin Mantos, manager of forestry services for FirstEnergy Service Company, testified that the distribution line running from Mr. Davis' property was part of a pre-planned vegetation management work plan. Mr. Mantos stated that the line running from Mr. Davis' house to Toledo Edison's pole was included in a circuit last maintained during October and November 2004, and that the circuit was due for inspection and additional trimming, if necessary, in October 2008. Mr. Mantos was unaware of whether vegetation made contact with the line running to Mr. Davis' house; however, he noted that, in most cases, it takes approximately four or more years for vegetation, once cut back, to re-grow near or into the company's lines. Mr. Mantos testified that the company maintains an aggressive cycle of removing vegetation, but it cannot patrol every tree in the event it experiences unusual growth within the company's approved maintenance cycle (Company Exhibit 1 at 2-4).

William T. Beutler, an engineer for FirstEnergy Service Company, testified that Toledo Edison constructs, maintains, and operates its distribution system in accordance with the National Electrical Safety Code and the regulations of the Public Utilities Commission. He stated that the circuit and the branch line that services 2841 Langenderfer Road have been very reliable. Mr. Beutler was not certain what caused the equipment failure, but he noted that, because the company's wires and equipment are not in a controlled environment, and they are constantly exposed to the weather and other forces, there are many factors beyond Toledo Edison's control that can cause a connection or other piece of equipment to fail. According to Mr. Beutler, Toledo Edison's lineman, Todd Marshall, acted reasonably and responsibly in remedying Mr. Davis' complaint; the company's equipment was installed properly; and the company could not have foreseen the equipment failure. In addition, citing the company's tariff, Mr. Beutler noted that Toledo Edison does not guarantee continuous service to all of its customers, nor is the

company responsible for voltage fluctuations and loss of service, or any resulting property damage (Company Exhibit 2 at 1-8).

In its brief, Toledo Edison stated that, on May 19, 2008, a Toledo Edison crew performed routine maintenance by replacing a pole situated at the complainant's property (Tr. at 6, 33). Toledo Edison stated that its crew encountered no problems in replacing the pole and that the crew was not aware of any damages to Mr. Davis' service line (Tr. at 33-36, 39-42, 44-47). Toledo Edison argued that, contrary to complainant's allegation, the Toledo Edison crew did not knowingly caused damage to the service line leading into the complainant's property.

Toledo Edison noted that, later that same day, the company received a call from the complainant reporting a voltage problem, dim light, and dispatched a lineman, Todd Marshall, to resolve the problem (Tr. at 28-30). Toledo Edison stated that Mr. Marshall did not remember seeing a problem when he arrived, but that, after further investigation, he noticed a bad spot in the line. Further, Mr. Marshall repaired the line, tested the voltage, and confirmed that the voltage was correct (Tr. at 26).

In addition, Toledo Edison referenced its tariff, which states, in pertinent part, that:

**Continuity:** The Company will endeavor, but does not guarantee, to furnish a continuous supply of electric energy and to maintain voltage and frequency within reasonable limits. The Company shall not be liable for damages, which the customer may sustain due to variations in service characteristics or phase reversals.

Company Exhibit 5, Toledo Edison Tariff, PUCO No. 8, Original Sheet No. 4, Page 3 of 23, Section IV(B).

**Limitation of Liability:** The Company shall not be liable for any loss, cost, damage or expense that the customer may sustain by reason of damage to or destruction of any property, including the loss of use thereof arising out of, or in any manner connected with interruptions in service, variations in service characteristics, high or low voltage, phase failure, phase reversal, the use of electrical appliances or the presence of the Company's property on the customer's premises whether such damages are caused by or involve any fault, failure or negligence of the Company or otherwise except such damages that are caused by or due to the willful and wanton misconduct of the Company. The Company shall not be liable for damage to any customer or to third persons resulting from the use of

the service on the customer's premises or from the presence of the Company's appliances or equipment on the customer's premises.

Company Exhibit 5, Toledo Edison Tariff, PUCO No. 8, Original Sheet No. 4, Page 11 of 23, Section X(B).

Toledo Edison stated that, although the company endeavors to provide continuous service to all of its customers, it does not, as set forth in its tariff, guarantee such service. Toledo Edison also stated that the company is not an absolute insurer. Toledo Edison maintained that, consequently, the company's tariff bars the complainant's claim. In addition, Toledo Edison stated that, to the extent the complainant is pursuing a negligence claim, such a claim is cognizable by the Commission only if it is based on the violation of a Commission rule or regulation. Toledo Edison argued that the complainant has failed to present any probative evidence to satisfy its burden of proof and any negligence-based claim thus fails.

### III. The Law

Toledo Edison is an electric light company as defined by Section 4905.03(A)(4), Revised Code, and a public utility by virtue of Section 4905.02, Revised Code. Toledo Edison is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code.

Section 4905.22, Revised Code, requires, in part, that a public utility furnish necessary and adequate service and facilities. Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law or that any practice affecting or relating to any service furnished is unjust or unreasonable.

In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189. Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint. Furthermore, once the evidence has been presented in power surge or service outage complaints, the Commission must ascertain: 1) if the cause of the surge or outage was in the company's control, 2) if the company failed to comply with any statutes or regulations regarding the operation of its system that could have caused the problem, 3) if the company's actions amounted to unreasonable service, and 4) if the company corrected the problem responsibly. *In the Matter of Edward J. Santos v. Dayton Power & Light Co.*, Case No. 03-1965-EL-CSS, Opinion and Order (March 2, 2005), citing *In the Matter of Steve Martin v. Dayton Power & Light Co.*, Case No. 91-618-EL-CSS, Opinion and Order (September 10,

1992), and *In the Matter of Miami Wabash Paper, LLC v. The Cincinnati Gas & Electric Co.*, Case Nos. 02-2162-EL-CSS and 01-3135-EL-CSS, Opinion and Order (September 23, 2003).

#### IV. Discussion and Conclusion

The Commission initially notes that, although we generally lack jurisdiction to award damages, Section 4928.16(B)(1), Revised Code, does provide for monetary damages in the event of electric power fluctuations. Further, as set forth in *Santos v. Dayton Power & Light*, Case No. 03-1965-EL-CSS, Opinion and Order (March 2, 2005), the pursuit of damages due to a power surge, under Section 4928.16(B)(1), Revised Code, may entitle a complainant to monetary damages.

Upon review of the record in the case, we note that the sole evidence of the occurrence of a power surge at the complainant's residence is the testimony of the complainant himself. Mr. Davis, however, did not offer any evidence as to what damages he sustained. No repair receipts were offered by the complainant that would substantiate his assertion that a power surge damaged electrical devices in his home. Mr. Davis merely stated that he could not turn on his power saw, his well pump was not functioning properly, and he smelled burning electronics in his house (Tr. at 10, 16-17). The company witnesses, appearing at Mr. Davis' request, were unable to provide much insight into what happened on the date in question. The pole replacement crew remembered the installation of a new power pole in Mr. Davis' yard as a standard job, with nothing out of the ordinary occurring. They did not notice a broken power line hanging down (Tr. at 33-36, 39-42, 44-47). Mr. Marshall, the company's trouble-shooting lineman, responding later to Mr. Davis' call for repair service, could not recall if a line was broken. He did find a bad spot in the service line to Mr. Davis' house, repaired it, and got a correct voltage reading (Tr. at 26). According to Mr. Marshall, the line may have been down to one last strand, and a majority of the line could have burned through at that location (Tr. at 32).

The company agrees that an equipment failure, a burned-out spot in the power line, did occur. The Commission, however, notes that, while this equipment failure may suggest a connection to the power surge that was referred to by Mr. Davis, there is no evidence of record to indicate that the burned-out spot did cause a surge that damaged the complainant's property. Nor is there any evidence to indicate that the burned-out spot was within Toledo Edison's control. Indeed, witness Beutler testified that a connection or other piece of equipment can fail because of many factors beyond Toledo Edison's control. He testified that the company's wires and equipment are not in a controlled environment, that Toledo Edison's equipment was installed properly, and that the company could not foresee the equipment failure (Company Exhibit 2 at 4-5). Witness Marshall testified that many things could have caused the problem, including birds landing on the line, squirrels chewing on the line, or extremes in the weather (Tr. at 31).

The record in this proceeding reveals no evidence that the company failed to comply with any statutory or regulatory requirements pertaining to anything that could have caused a surge. There was nothing to indicate that Toledo Edison violated either any electric safety provisions that might result in a power surge or any Commission rules *establishing standards for maintenance and repair of its distribution system*. There is certainly no evidence that company personnel knowingly caused damage to the complainant's property. Moreover, we find nothing in this record to indicate that Toledo Edison failed to have reasonable measures in place to prevent a surge. There also was no evidence that the company's actions amounted to unreasonable service, or that the company acted irresponsibly in correcting the problem. Quite the contrary, the evidence shows the following: Toledo Edison adheres to the standards of National Electrical Safety Code (Company Exhibit 2 at 2); the branch line that services the complainant's residence had been very reliable and the company's equipment was installed properly (Company Exhibit 2 at 3, 5); a company lineman responded quickly to the complainant's call for repair service and corrected the problem (Tr. at 24-26, 30; Company Exhibit 2 at 5); and Toledo Edison has a pre-planned vegetation management work plan in place in the area (Company Exhibit 1 at 3-4).

In this case, a burned-out spot in the service line leading to the complainant's house is the only irregularity in Toledo Edison's supply of electric power to the complainant that we noted in the record. There is a lack of probative evidence in the case pertaining to the occurrence of a power surge or damages from a surge.

Accordingly, lacking evidence showing that Toledo Edison did not conform its operations to statutory or regulatory requirements, or that it acted unreasonably, the Commission cannot find that the Toledo Edison should be held accountable for any damages to Mr. Davis' property pursuant to Section 4928.16(B)(1), Revised Code. Similarly, we cannot find that Toledo Edison, as set forth in Section 4905.22, Revised Code, provided inadequate service to the complainant. The Commission, therefore, finds that this matter should be dismissed.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) David T. Davis filed a complaint against Toledo Edison on July 7, 2008, alleging that Toledo Edison knowingly caused damage to the service line leading into his residence and that this action, in turn, caused an estimated \$1,315.00 loss in property.
- (2) Toledo Edison is a public utility and an electric company pursuant to Sections 4905.02 and 4905.03, Revised Code. Thus, Toledo Edison is subject to the jurisdiction of this Commission under the authority of Sections 4905.04 through 4905.06, Revised Code.

- (3) In a complaint case, such as this one, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189, 214 N.E.2d 666.
- (4) There is insufficient evidence to support a finding that Toledo Edison should be held accountable for damages to Mr. Davis' property pursuant to Section 4928.16(B)(1), Revised Code.
- (5) There is insufficient evidence to support a finding that Toledo Edison, as set forth in Section 4905.22, Revised Code, provided inadequate service to the complainant.
- (6) Based on the record in this proceeding, the complainant has failed to sustain his burden of proof and the complaint should be dismissed.

ORDER:

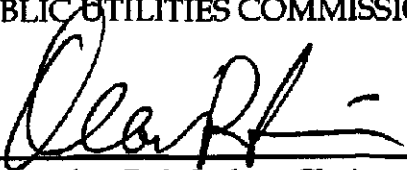
It is, therefore,

ORDERED, That this complaint be dismissed. It is, further,



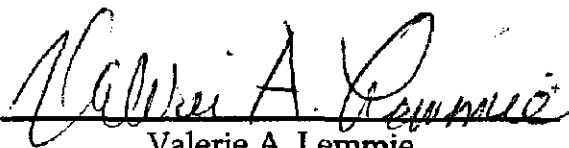
ORDERED, That a copies of this order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Alan R. Schriber, Chairman

  
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Paul A. Centolella

  
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Ronda Hartman Fergus

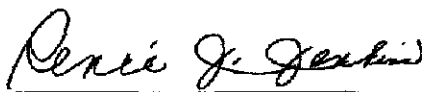
  
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Valerie A. Lemmie

  
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Cheryl L. Roberto

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Renee J. Jenkins  
Secretary