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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Evelyn and John Keller,

Complainants,

v.

Ohio Power Company¹,

Respondent.

Case No. 12-2177-EL-CSS

PUCO

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**COMPLAINANTS' MEMORANDUM CONTRA RESPONDENT'S
MOTION TO DISMISS**

Respondent filed a motion to dismiss, claiming that the loss of service and damage incurred by Complainants was caused by an Act of God. Complainants are unable to reasonably respond to this motion until they have received discovery responses from Respondent and have filed a motion for an extension of the date for their response, until after discovery responses are received. However, to protect the response date for the motion to dismiss, Complainants file this preliminary memorandum contra the motion to dismiss. Complainants reserve the right to file a more substantive memorandum contra following their receipt of the discovery responses.

In its Motion to Dismiss, Respondent attempts to characterize the Complaint as being focused on the loss of electric power during the June 2012 storm. This is incorrect; the basis of the Complaint is primarily Respondent's negligence in connection with its vegetation control policies. The tariff section attached to the Complaint in this action expressly provides that Respondent is liable for lost food due to negligence (Sec 19, 5th paragraph). For the purposes of a motion to dismiss, the allegations in the Complaint must be accepted as true. Certainly, Respondent could be found to be negligent with respect to its vegetation control

¹ Complainants believe the correct respondent is Columbus Southern Power, not Ohio Power

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policies and actions; for example, if Respondent was aware that a large dead tree in its right of way was leaning over a school, and Respondent ignored and refused to properly respond to that information by removal of the tree, Respondent could reasonably be determined to have acted negligently if that tree falls during a storm. While Respondent is not responsible for the storm, it may be negligent if it failed to reasonably respond to the at-risk vegetation.

This is essentially the fact pattern alleged by Complainants. As such, the Motion to Dismiss must be overruled.

Respectfully submitted,



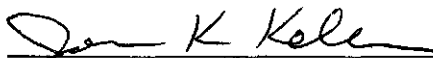
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail and regular U.S. mail on the following persons this 4th day of September 2012:

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