

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Evelyn and John Keller,)	
)	
Complainants,)	
)	Case No. 12-2177-EL-CSS
v.)	
)	
Ohio Power Company,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On July 27, 2012, Evelyn and John Keller (Complainants) filed a complaint against Ohio Power Company (OPCo), alleging that OPCo failed to trim or remove trees and vegetation around the power lines which provided electric services to Complainants. Complainants state that as result of OPCo's negligence in trimming the vegetation, a tree fell across OPCo's power line during the storm on June 29, 2012. Furthermore, Complainants assert that OPCo negligently failed to repair the power line for more than six days after learning of the damage of the line on June 29, 2012. Complainants allege that they lost food products valued in excess of \$1,500 as a result of OPCo's negligence.
- (2) On August 16, 2012, OPCo filed its answer and a motion to dismiss, denying the allegations of the complaint. OPCo states it has complied with the applicable tariff and Commission rules, and that it has followed its standard business practice. Specifically, OPCo asserts that it is not liable to Complainants for damages in cases when supply should be "interrupted or fail by reason of an act of God." OPCo requests that the complaint be dismissed.
- (3) On September 4, 2012, Complainants filed a motion for an extension of time to file a memorandum in opposition to

OPCo's motion to dismiss. Complainants assert that they are unable to reasonably respond to OPCo's motion until they receive discovery responses.

- (4) A prehearing settlement conference was held as scheduled on September 11, 2012. Following the prehearing settlement conference, the parties indicated to the attorney examiners that a mutually agreed upon date of February 1, 2013, was a reasonable deadline for Complainants to file a memorandum in opposition to OPCo's motion to dismiss.
- (5) By entry issued September 13, 2012, the attorney examiner granted Complainants' motion for an extension of time to file a memorandum in opposition to OPCo's motion to dismiss and extended the Complainants' deadline to respond to OPCo's motion to dismiss to February 1, 2013.
- (6) On January 11, 2013, Complainants filed an unopposed motion for an extension of time to file a memorandum in opposition to OPCo's motion to dismiss.
- (7) By entry issued January 28, 2013, the attorney examiner granted Complainants' motion for an extension of time to file a memorandum in opposition to OPCo's motion to dismiss and extended the Complainants' deadline to respond to OPCo's motion to dismiss to May 2, 2013.
- (8) On March 13, 2013, OPCo filed a motion for protective order. In support of its motion for protective order, OPCo requests that the Commission limit the number of depositions that Complainant can conduct until after the Commission rules on OPCo's August 16, 2012, motion to dismiss.
- (9) On March 22, 2013, Complaints filed a memorandum contra OPCo's motion for protective order. Complainants contend that discovery should not be stayed and that Complainants should not be limited to deposing only two individuals.
- (10) On March 28, 2013, OPCo filed a reply in support of its motion for protective order.

- (11) On May 1, 2013, Complainants filed a memorandum in opposition to OPCo's motion to dismiss. In their memorandum contra OPCo's motion to dismiss, the Complainants maintain that, based on information obtained through discovery, OPCo was negligent and Complainants have a viable claim and cause of action.
- (12) On May 10, 2013, OPCo filed a reply memorandum in support of its motion to dismiss.
- (13) When a motion to dismiss is being considered, all material allegations of the complaint must be accepted as true and construed in favor of the complaining party. *In the Matter of the Complaint of XO Ohio, Inc. v. City of Upper Arlington*, Case No. 03-870-AU-PWC, Entry on Rehearing (July 1, 2003). Thus, assuming that all material allegations of the complaint are true and construing such allegations in favor of the Complainants, the attorney examiner finds that OPCo's motion to dismiss should be denied.
- (14) Accordingly, having denied the motion to dismiss, the attorney examiner finds that the Complainants have stated reasonable grounds for the complaint to proceed. Further, as OPCo's motion to dismiss is denied, the attorney examiner finds that OPCo's motion for a protective order is moot.
- (15) Therefore, the attorney examiner finds that a telephone status conference is necessary to discuss the status of discovery and potential hearing dates. The telephone status conference shall be scheduled for June 18, 2013, at 10:00 a.m. The parties shall participate by calling at 614-644-1099 at that time. Further, the parties should be prepared to discuss discovery matters and indicate dates of availability for the month of August.

It is, therefore,

ORDERED, That OPCo's motion to dismiss is denied. It is, further,

ORDERED, That OPCo's motion for a protective order is moot. It is, further,

ORDERED, That the parties comply with the directives as set forth in Finding (15).
It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Jonathan Tauber

By: Jonathan J. Tauber
Attorney Examiner

JRJ/sc

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in

Case No(s). 12-2177-EL-CSS

Summary: Attorney Examiner Entry denied OPCo's motion to dismiss, ordered OPCO's motion for a protective order is moot, and ordered the parties to comply with directives set forth in Finding (15). - electronically filed by Sandra Coffey on behalf of Jonathan Tauber, Attorney Examiner, Public Utilities Commission of Ohio