

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Jeffrey M. Gardner,)	
)	
Complainant,)	
)	
v.)	Case No: 14-1090-EL-CSS
)	
Ohio Power Company)	
)	
Respondent.)	

ANSWER AND MOTION TO DISMISS OF OHIO POWER COMPANY

Ohio Power Company d/b/a AEP Ohio (“OPCo” or the “Company”) hereby responds to the complaint filed in this proceeding by Jeffrey M. Gardner (“Complainant”) on June 16, 2014 (“Complaint”) through this Answer and Motion to Dismiss.

ANSWER TO ALLEGATIONS

1. OPCo denies any and all allegations of the Complaint.

AFFIRMATIVE DEFENSES

1. OPCo asserts as an affirmative defense that under Ohio Revised Code § 4905.26 and Ohio Administrative Code § 4901-9-01(C)(3), Complainant has failed to set forth reasonable grounds for a complaint.
2. OPCo asserts as an affirmative defense that at all relevant times to Complainant’s claims, OPCo has complied with all applicable regulations set forth in the Ohio Administrative Code, has kept accurate records, and has provided reasonable and adequate service to the Complainant according to all applicable provisions of Title 49 of the Ohio Revised Code and regulations promulgated thereunder and in accordance with all of OPCo’s filed tariffs.

3. The Complaint is barred by the applicable statute of limitations.
4. OPCo reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

MOTION TO DISMISS

It is axiomatic that the burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Here, Complainant has failed to carry that burden. Specifically, the Complainant has failed to produce any evidence supporting the allegation that the Company caused the damage to his Porcelain Wire Holder “when [the Company] replaced the pole that carries electrical wires” to Complainant’s residence. A search of OPCo’s records reveals that the work referenced in the Complaint was done in April 2011. According to the Complaint, Complainant checked the Porcelain Wire Holder prior to June 2012 (i.e., after work was performed at Complainant’s residence in April 2011) and it was “perfectly attached” to Complainant’s home. It logically follows that any damage to Complainant’s Porcelain Wire Holder cannot have been caused by the Company’s work. Between prior to June 2012 (when Complainant states the Porcelain Wire Holder was perfectly attached) and August 2013 (when Complainant noticed the damage to his Porcelain Wire Holder), myriad intervening and superseding circumstances could have led to the Porcelain Wire Holder coming loose, including but not limited to the severe storms that tore through central Ohio in the summer of 2012. Complainant’s failure to establish a causal link between the alleged negligence of the Company and the damage to the Porcelain Wire Holder is fatal to the Complaint.

OPCo breached no legal duty owed to Complainant, and Complainant has failed to state reasonable grounds upon which relief may be granted. Complainant has not identified any Commission rule or regulation that OPCo has violated, nor has he provided any evidence to substantiate his allegations of negligence. Accordingly, dismissal is appropriate on grounds that Complainant fails to state a claim against OPCo.

WHEREFORE, Ohio Power Company respectfully requests that the Complaint be dismissed with prejudice.

CONCLUSION

Having fully answered, OPCo respectfully moves this Commission to dismiss the Complaint with prejudice for failure to set forth reasonable grounds for the Complaint.

Respectfully submitted,

/s/ Yazen Alami

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Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer and Motion to Dismiss of Ohio Power Company was served by regular mail upon Jeffrey M. Gardner at the address listed below, on this 7th day of July, 2014.

/s/ Yazen Alami

Yazen Alami

Jeffrey M. Gardner
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Case No(s). 14-1090-EL-CSS

Summary: Answer and Motion to Dismiss electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company