

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission, considering the complaint filed by Evelyn and John Keller and the evidence admitted at the hearing, hereby issues its Opinion and Order.

APPEARANCES:

John K. Keller, 1424 Jewett Road, Powell, Ohio 43065, on behalf of complainants Evelyn and John Keller.

Steven T. Nourse and Yazen Alami, American Electric Power Service Corporation, One Riverside Plaza, 29th floor, Columbus, OH 43215, on behalf of Ohio Power Company.

OPINION:

I. PROCEDURAL HISTORY

On July 27, 2012, Evelyn and John Keller (the Kellers) filed a complaint against the Ohio Power Company (AEP Ohio) alleging that AEP Ohio failed to trim or remove trees and vegetation around the power lines which provided electric service to the Kellers. On August 16, 2012, AEP Ohio filed its answer denying the allegations of the complaint.

Pursuant to Ohio Adm.Code 4901-9-01(G), the attorney examiner issued an Entry on August 27, 2012, scheduling this matter for a settlement conference to take place on September 11, 2012. Pursuant to Ohio Adm.Code 4901-1-26(F), the

representatives of the public utility were required to investigate the issues raised in the complaint prior to the settlement conference. The prehearing settlement conference was held, as scheduled on September 11, 2012; however, the parties were unable to settle the matter.

Additionally, concurrent with its answer, AEP Ohio filed a motion to dismiss for failure to state a claim or reasonable grounds upon which relief may be granted. On May 1, 2013, the Kellers filed a memorandum in opposition to AEP Ohio's motion to dismiss; and, on May 10, 2013, AEP Ohio filed its reply to the Kellers' memoranda contra the motion to dismiss. By Entry issued on May 23, 2013, the attorney examiner denied AEP Ohio's motion to dismiss, finding that the complainants had stated reasonable grounds for complaint. Accordingly, pursuant to Ohio Adm.Code 4901-1-27, the attorney examiner scheduled this matter for hearing to take place on August 25, 2013.

The evidentiary hearing in this matter was held as scheduled on August 25, 2013. Post hearing briefs were filed by the parties on September 25, 2013, and reply briefs on October 10, 2013.

II. LAW

AEP Ohio is a public utility by virtue of R.C. 4905.02, and an electric light company as defined by R.C. 4905.03(A)(3). AEP Ohio is, therefore, subject to the jurisdiction of the Commission pursuant to R.C. 4905.04 and 4905.05.

Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory. Additionally, the Commission has authority to determine whether a public utility has violated any statute, rule, regulation, or term of its tariffs. AEP Ohio's tariff provides:

"The Company will use reasonable diligence in furnishing a regular and uninterrupted supply of energy but does not guarantee uninterrupted service. The Company shall not be liable for damages in case such supply should be interrupted or fail by reason of an act of God * * *. Except as otherwise provided in this Section, the Company shall be liable to the customer for damage directly resulting from interruptions, irregularities, delays, or failures of electric service, caused by the negligence of the Company or its employees or agents, but any such liability shall

not exceed the cost of repairing or actual cash value, whichever is less, of equipment, appliances, and perishable food stored in a customer's residence damaged as a result of such negligence."

AEP Ohio Tariff No. 20, Terms and Conditions of Service, Section 19, Original Sheet No. 103-16, (January 1, 2012) (Tariff).

In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, it is the responsibility of the Kellers to present evidence in support of the allegations made in the complaint.

III. SUMMARY OF THE EVIDENCE AND ARGUMENTS

The Kellers' home is located on a heavily wooded property in Powell, Ohio, with the rear of the property abutting the Olentangy River. State Route 315 (SR 315) bisects the property between the Olentangy River and the Kellers' residence. AEP Ohio's distribution lines run parallel to SR 315, and an additional secondary line is located on the south end of the Kellers' property, which connects to the main line along SR 315 and provides service to the Kellers. On June 29, 2012, a severe storm swept across the state of Ohio causing widespread outages. This severe storm contained unusually high winds during what became known as the 2012 North American Derecho (Derecho). The Derecho caused widespread outages and significant damage across the Midwest and eastern United States. Additionally, the Derecho knocked down numerous trees and distribution lines, including a tree on the Kellers' property (outage tree). This outage tree fell on one of AEP Ohio's distribution lines, leaving the Kellers without power for six days until July 6, 2012. During this time, the food contained within two refrigerators owned by the Kellers spoiled, which the Kellers assert had a value in excess of \$1,500.

A. The Kellers' Claims of Negligence

The Kellers argue that AEP Ohio's negligence caused the outage, which resulted in spoiling the food in their refrigerators. The Kellers argue that AEP Ohio failed to identify the outage tree for removal, failed to remove the outage tree prior to the storm, and failed to repair the downed line and restore service in a reasonable manner. Accordingly, the Kellers argue that AEP Ohio's negligence caused the outage, so according to AEP Ohio's Tariff, it should be held liable for their damages.

The Kellers argue that AEP Ohio violated its Tariff by negligently failing to identify the outage tree as a hazard tree. Specifically, the Kellers state that the outage tree should have been marked for removal and removed by AEP Ohio prior to the

Derecho. The Kellers argue that AEP Ohio "has and recognizes a duty to control vegetation in the vicinity of its distribution lines, to avoid power outages." (Tr. at 39, 42, 56-60.) The Kellers cite AEP Ohio's manual, AEP Forestry Goals, Procedures and Guidelines for Distribution and Transmission Line Clearance Operations, which identifies two different types of trees which require removal: (1) "hazard trees" which are defined as "tree(s) considered a potential threat to the safety and reliability of AEP's facilities growing within the normally maintained right-of way," and "danger trees" which are defined as "tree(s) considered a potential hazard to AEP's facilities positioned outside of the normally cleared right-of-way." (Tr. at 39-40, 138; Keller Ex. 1.) These trees may pose a threat to power distribution; therefore, AEP Ohio uses contractors to survey its distribution lines to identify these types of trees (Keller Ex. 19 at 21). The Kellers assert that the outage tree in this case was dead and in the immediate vicinity of AEP Ohio's line (Tr. at 38, 73; Keller Ex. 22 at 21; Keller Ex. 4; Keller Ex. 17). However, AEP Ohio's contractor did not identify the outage tree as needing to be removed in the two month span preceding the storm (Tr. at 58, 60). The Kellers argue that the outage tree should have been identified during the planning of Circuit 3101 pursuant to the Forestry Goals, Procedures and Guidelines (Keller Ex. 22 at 6, Tr. at 92-93). Accordingly, the Kellers assert that the contractor's failure to identify the tree for removal constitutes negligence on the part of AEP Ohio and, therefore, AEP Ohio's Tariff should apply.

The Kellers then argue that AEP Ohio negligently failed to remove the outage tree within a reasonable amount of time. The Kellers argue that AEP Ohio negligently delayed trimming the portion of Circuit 3101 along SR 315 before the storm due to attempts to coordinate the trimming work with existing line projects (Tr. at 69; Keller Ex. 22 at 8-9). According to the Kellers, if AEP Ohio's contractor had, in April or May of 2012 identified the dead outage tree which leaned over the distribution line, AEP Ohio would have had adequate time to remove the tree before the storm (Tr. at 21, 67). Given AEP Ohio's guidelines and procedures for such situations, the Kellers argue that if AEP Ohio's contractor had properly identified the outage tree, then AEP Ohio would have promptly responded to remove the tree, which posed a danger to both AEP Ohio's distribution line and the public.

Further, the Kellers assert that their argument is reinforced by the fact that AEP Ohio's own witness, Steven Lejeunesse, testified that surveying along SR 315 was difficult because of the heavy traffic on the road (Tr. at 62). The Kellers state that AEP Ohio had a duty to control vegetation to maintain its distribution lines and AEP Ohio had an obligation to provide hired contractors the tools they need to perform the necessary work. As part of that obligation, if a vegetation surveyor cannot reasonably perform his or her work along a busy road like SR 315, then AEP Ohio has an obligation to obtain appropriate traffic control so as to allow its contractor to adequately perform the required work (Tr. at 79, 84, 124). The Kellers note that

Mr. Lajeunesse testified that cutting down the outage tree without a permit would not have been possible since traffic control was necessary to ensure the safety of its line workers (Tr. at 87). Therefore, the Kellers conclude that by not applying for a permit with the Ohio Department of Transportation (ODOT) in a timely fashion, AEP Ohio did not provide traffic control, which prevented its contractor from removing the outage tree.

The Kellers' final argument is that AEP Ohio negligently failed to repair the downed line and restore their electric service in a reasonable time. The Kellers claim that AEP Ohio negligently delayed repairs to the outage on SR 315 in order to coordinate line repairs with projects unrelated to the storm. The Kellers contend that the decision to do the trimming work and line project at the same time as the restoration work delayed the restoration of the outage affecting the Kellers' residence and the repair of the fallen line across SR 315 (Keller Ex. 22 at 10). The Kellers argue that, after the storm, AEP Ohio negligently delayed repairing the fallen line on SR 315 as a result of the decision to combine the repair of the fallen line with two other unrelated and non-essential projects. The Kellers aver that AEP Ohio's decision required it to coordinate and mobilize at least three separate crews, rather than the one crew necessary to repair the downed line. The Kellers argue the decision to combine these projects caused a delay in repairing the downed line (Tr. at 121, 123). After establishing that a delay occurred, the Kellers contend, at a minimum, that the burden shifted to AEP Ohio to prove that the delay was not the proximate cause of the Kellers' damages (Tr. at 118-119). The Kellers understand that relatively few customers were affected by this particular outage, but contend that the repair should have received higher priority because it was forcing a closure of SR 315. As SR 315 is a busy, heavily traveled public road, the Kellers argue that it should have been targeted for prompt attention by AEP Ohio.

AEP Ohio's Arguments Regarding the Kellers' Claims of Negligence

AEP Ohio argues that failing to identify one tree in a dangerous, heavily-forested area containing thousands of trees does not demonstrate negligence. AEP Ohio argues that the Kellers' arguments would create an absolute and all-encompassing duty to identify every tree for removal. AEP Ohio witness Steven Lajeunesse testified that, under the Forestry Goals, Procedures, and Guidelines, "it is likely impossible" for a surveyor to mark every tree that could potentially pose a threat to AEP Ohio's distribution lines (AEP Ohio Ex. 1 at 3). Mr. Lajeunesse further testified that "the physical marking of trees is a guide that is part of the initial step in preparing a circuit for trimming and not a final blueprint for the tree trimming process" (AEP Ohio Ex. 1 at 4; Tr. at 61, 92-93). Mr. Lajeunesse also noted that once AEP Ohio's tree crews reach an area, they "often remove or trim trees not specifically identified by the planner and also may not trim or remove trees identified by the

planner, depending upon their observations once on the scene" (AEP Ohio Ex. 1 at 4; Tr. at 61, 77). Mr. Lajeunesse testified that in this case, "had the tree crews been able to reach the tree before the storm hit, they would have trimmed or removed the tree regardless of whether it was marked by the planner" (AEP Ohio Ex. 1 at 4; Keller Ex. 7 at 66). Mr. Lajeunesse also testified that he would have identified the outage tree for trimming or removal during his audit of the trimming work on the circuit, had the storm not interrupted the process (AEP Ohio Ex. 1 at 4). Additionally, he testified that, although he found no markings on the remaining portion of the tree, he does not know whether the part that fell was marked because he did not examine that portion of the tree (Tr. at 76; Keller Ex. 7 at 67). AEP Ohio claims the Kellers have presented no evidence establishing that the portion of the tree that fell was not actually marked for trimming or removal. AEP Ohio argues that it had no legal duty to identify all trees that could possibly pose a threat to its distribution lines during the initial planning phase of Circuit 3101, or to trim or remove all of those trees before an unforeseeable storm.

AEP Ohio asserts that there is no law or rule which states that a tree marked as part of the normal tree trimming process must be removed, or that failing to remove a marked tree implies negligence on the part of the utility. AEP Ohio points out that the entire planning and trimming process can take several months, depending on the length of the distribution line and terrain around the circuit (Tr. at 61-62). The planning phase of Circuit 3101 was completed during the third week of May 2012 and the tree crews began trimming the circuit a week later, working from the substation located on the west end of the circuit and moving eastward toward SR 315 (Tr. at 67-69; AEP Ohio Ex. 1 at 3). Mr. Lajeunesse testified that there was no delay to the tree trimming on Circuit 3101 due to the attempts to coordinate the trimming work with the line projects (Tr. at 69-70; AEP Ohio Ex. 1 at 5-6). The tree crews had reached the end of Jewett Road only days before the storm and were awaiting confirmation of the requested road closure and traffic control permit from ODOT in order to safely complete the remaining trimming on the circuit when the storm hit (AEP Ohio Ex. 1 at 5-6). Road closure and traffic control assistance were necessary to safely complete the trimming and the line project (Keller Ex. 21 at 14).

At the hearing, Mr. Lajeunesse testified that without obtaining a permit from ODOT for the road closure, it was impossible to safely complete the trimming work (Tr. at 87-88.) AEP Ohio also argued it was not practical to initiate the ODOT permitting process earlier than when it did because doing so would have been inefficient and potentially more costly. When trimming a circuit like Circuit 3101, AEP Ohio's tree crews work from the substation outward to ensure that any potential threats to facilities are addressed systematically (Tr. at 72-73). AEP Ohio also noted that it would be inefficient and possibly dangerous for the tree crews to skip ahead to address a threat on mile six when a threat on mile one could potentially leave the

remaining portions of the circuit exposed (Tr. at 85). Given this unpredictability, requesting a road closure too far in advance could result in multiple permitting costs and perhaps avoidable road closures (Tr. at 89). AEP Ohio concludes by asserting that because ODOT never confirmed the road closure and traffic control assistance prior to the storm, AEP Ohio was prevented from completing the trimming and line projects before the storm (AEP Ohio Ex. 1 at 6; Tr. at 80). However, even if AEP Ohio had secured a road closure permit when it began trimming Circuit 3101, crews would not have started trimming the portion of the circuit along SR 315 before addressing earlier threats on the line (Tr. at 72-73, 85).

AEP Ohio's terms and conditions of service provide that AEP Ohio shall be liable to a customer for any damage resulting directly from interruptions, irregularities, delays, or failures of electric service, caused by the negligence of AEP Ohio or its employees or agents. The tariff specifies that the cost of any liability shall not exceed the cost of repairing, or actual cash value, whichever is less, of equipment, appliances and perishable food stored in a customer's residence as a direct result of such negligence. In addition, AEP Ohio's Tariff indicates that AEP Ohio shall not be liable for any damages in the event the supply of energy is interrupted or fails by, among other things, an act of God. *Tariff* at ¶19.

Commission Conclusion Regarding the Kellers' Claims of Negligence

The Commission finds that the claims of negligence raised by the Kellers are a matter of pure common-law tort. The Commission has exclusive jurisdiction over most matters concerning public utilities. *State ex rel. N. Ohio Tel. Co. v. Winter* (1970), 23 Ohio St.2d 6, 52 O.O.2d 29, 260 N.E.2d 827. However, the Commission's exclusive jurisdiction over service-related matters does not diminish the "basic jurisdiction of the court of common pleas * * * in other areas of possible claims against utilities, including pure tort and contract claims." *State ex. rel. Ohio Edison Co. v. Shaker* (1994), 69 Ohio St.3d 209, 211, 625 N.E.2d 608; see *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991), 61 Ohio St.3d 147, 154, 573 N.E.2d 655 ("pure common-law tort claims may be brought against utilities in the common pleas court"). To determine whether a matter falls within the scope of Commission's exclusive jurisdiction, or whether it falls in the basic jurisdiction of a court of common pleas, the Commission applies a two-part test adopted by the Commission in *Allstate*:

- 1) Is the Commission's administrative expertise required to resolve the issue in dispute?
- 2) Does the act complained of constitute a practice normally authorized by the utility?

If the answer to either question is in the negative, the claim is not within the exclusive jurisdiction of the Commission. *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St.3d 301, 2008 Ohio 3917, 893 N.E.2d 824, ¶¶12, 13. Accordingly, applying the two-part *Allstate* test, we find that determining whether AEP Ohio acted negligently in restoring service does not require the Commission's administrative expertise, as it is a pure common-law tort claim. Accordingly, we will not determine whether AEP Ohio acted negligently in restoring service to the Kellers because, pursuant to the Commission's *Allstate* test, that determination is outside the scope of the Commission's exclusive jurisdiction.

Further, we note that the negligence provision in the Tariff only applies "[e]xcept as otherwise provided" in the Tariff. The Tariff first requires that AEP Ohio "use reasonable diligence in furnishing a regular and uninterrupted supply of energy." Additionally, the Tariff provides that AEP Ohio "shall not be liable for damages in case such supply should be interrupted or fail by reason of an act of God * * *." *Tariff* at ¶19. Accordingly, pursuant to R.C. 4905.26, and as recognized initially in the Tariff, within the scope of our exclusive jurisdiction is whether any service furnished by AEP Ohio was in any respect unjust, unreasonable, insufficient, or unjustly discriminatory, as well as whether AEP Ohio violated any statute, rule, regulation, or term of its Tariff.

B. The Kellers' Arguments Pursuant to R.C. 4905.26 that AEP Ohio Provided Unjust or Unreasonable Service

While the Kellers' arguments are primarily made in terms of AEP Ohio's negligence, they also imply that AEP Ohio's service was unjust or unreasonable. The Kellers argue that, pursuant to AEP Ohio's tariff, AEP Ohio should be liable for their food spoilage resulting from the outage. As indicated above, the Kellers argue that AEP Ohio failed to identify the outage tree, failed to remove the outage tree, and failed to repair the distribution line to restore service.

AEP Ohio's Arguments Regarding Whether it Provided Unjust or Unreasonable Service

AEP Ohio argues that the Kellers have not demonstrated a violation of any statute, public policy, regulatory rule, or precedent regarding AEP Ohio's actions before or after the Derecho. AEP Ohio argues that the Derecho was a catastrophic and unprecedented major storm, which caused the outage at the Kellers' residence and is responsible for the interruption in their service. AEP Ohio's Tariff provides that AEP Ohio shall not be liable for any damages in the event the supply of energy is interrupted or fails by, among other things, an act of God. *Tariff* at ¶19. AEP Ohio asserts that the outage was caused by a catastrophic major storm and pursuant to its

Commission-approved Tariff, AEP Ohio should not be held liable for damage resulting from service interruptions caused by an act of God.

AEP Ohio contends that this storm was the cause of the most massive restoration effort in its history (Tr. at 112). Before midnight on Friday, June 29, nearly 720,000 customers in AEP Ohio's service territory had experienced a service interruption. Restoration began on June 29 and concluded on July 10, 2012 (AEP Ohio Ex. 2 at 3). Restoration efforts after the storm were prioritized based on the priorities outlined in AEP Ohio's Distribution Service Restoration Plan (SRP) (Tr. at 115-23). Pursuant to the SRP, public safety hazards receive the highest restoration priority, followed by essential governmental services such as hospitals, fire departments and police stations (Tr. at 115-16). AEP Ohio then assesses its transmission and distribution network to prioritize lines that would restore electricity to the greatest number of customers (AEP Ohio Ex. 2 at 8). The efforts then focus on the restoration of outages affecting smaller blocks or individual customers (Tr. at 115-116). AEP Ohio stated that the Kellers' outage received "the lowest priority during storm restoration work," given that only approximately 24 customers were affected on that circuit (AEP Ohio Ex. 2 at 8). Additionally, there were no hospitals, fire departments or police departments affected so as to elevate the restoration priority of the Kellers' outage (Tr. at 50). AEP Ohio Witness Frederick Mottice, the employee in charge of restoration crews in the area surrounding the Kellers' residence after the storm, testified that the closure of SR 315 did not elevate the restoration priority of the outage because the road closure did not involve an emergency situation or public safety concern, adding that he received no information from ODOT advising AEP Ohio that such a situation existed on SR 315 (Keller Ex. 20 at 19-22, 24).

AEP Ohio Witness Thomas Kirkpatrick testified that inconvenience alone would not have been sufficient to elevate the restoration priority of the outage affecting the Kellers' residence, considering the hundreds of thousands of customers without power at that time (Tr. at 110-111). Restoration efforts after the storm went according to the SRP, a plan that is based on industry best practices, represents the collective experiences of previous major storms, is developed in accordance with regulatory rules and principles and reviewed by the Commission Staff. At the time the Kellers disposed of their food, nearly 300,000 customers were still without power (Tr. at 128-29; AEP Ohio Ex. 2). Given the small number of customers impacted by the outage affecting the Kellers' residence, AEP Ohio argues that it would have been imprudent to dispatch a restoration crew to restore the outage before the Kellers disposed of their food, considering the hundreds of thousands of customers still without power at the time (Tr. at 128). AEP Ohio notes that it chose to perform the line work, consisting of changing phases and tree trimming, at a time when AEP Ohio still had hundreds of thousands of consumers without power (Tr. at 133).

Additionally, AEP Ohio maintains it first learned that the situation on SR 315 involved its facilities when the Governor issued a report on the morning of Thursday, July 5. By that afternoon, some 30 employees were on the scene addressing the situation. (Keller Ex. 20 at 5-6.) AEP Ohio maintained that while the downed line was being repaired, the trimming and line work was being performed simultaneously (AEP Ohio Ex. 1 at 6). It took crews just two to three hours to complete all the work (Keller Ex. 20 at 10-11). Indeed, AEP Ohio notes that even the Kellers testified that the restoration went quickly (Keller Ex. 22 at 3). Mr. Kirkpatrick testified at the hearing that any such delay was "very, very small" and a matter of "hours or less" (Tr. at 121-122). AEP Ohio Witness Paul Roahrig testified that to complete the tree trimming on Circuit 3101 and to complete the line project, both lanes of SR 315 from Jewett to Powell roads would need to be closed for three to four days, eight to ten hours each day (Keller Ex. 21 at 18-19). As Mr. Kirkpatrick testified, it was a prudent decision for AEP Ohio to do all the work on Circuit 3101 simultaneously after the storm to take advantage of the fact that the road was closed, traffic was controlled and the safety of AEP Ohio's personnel was ensured. This decision also saved costs for customers and inconvenience to the public. (Tr. at 118.)

Commission Conclusion Regarding Arguments Pursuant to R.C. 4905.26 that AEP Ohio Provided Unjust or Unreasonable Service

Within the scope of the Commission's exclusive jurisdiction is whether AEP Ohio violated any statute, rule, regulation, or term of its Commission-approved tariff. Additionally, pursuant to R.C. 4905.26, it is within the scope of the Commission's exclusive jurisdiction to determine whether any service provided by AEP Ohio was unjust or unreasonable. Accordingly, as we have previously indicated, we will apply the unjust and unreasonable standard to the facts of this case, instead of the elements of a common law tort action such as duty, breach, and causation. In applying the unjust and unreasonable standard, we analyze whether the outage was caused by AEP Ohio's failure to provide just and reasonable service or by the Derecho, which must be proved by the Complainants. As the Complainants, the Kellers have the burden of proving the allegations raised in the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

The Commission finds that the Kellers have not demonstrated that AEP Ohio violated any statute, rule, regulation, or term of their Commission-approved tariff. We find that the Derecho was an unforeseeable major storm event, which was an act of God, and, therefore, AEP Ohio did not violate any statute, rule, regulation, or term of its Commission-approved Tariff. We find that AEP Ohio reasonably maintained its distribution lines and that the outage was, in fact, caused by the Derecho. As AEP Ohio pointed out, before midnight on Friday, June 29, nearly 720,000 customers in AEP Ohio's service territory had experienced a service interruption. Further, AEP

Ohio's Tariff provides that it shall not be liable for any damage in the event the supply of energy is interrupted or fails by an act of God. *Tariff* at ¶19.

Additionally, we find that the Kellers failed to demonstrate that AEP Ohio deviated from its SRP or that it violated any other term of its Tariff. Pursuant to Ohio Adm.Code 4901:1-10-08, each electric utility in the state of Ohio is required to maintain an emergency plan. The emergency plan must include the procedures for prompt identification of outage areas, timely assessment of damage, and the necessary requirements to restore service. However, state emergency plans also require the electric utilities to restore service to facilities that will affect public safety, and facilities such as police departments, fire departments, hospitals, and 911 systems. In accordance with this requirement, under AEP Ohio's SRP, public safety hazards received the highest restoration priority, followed by essential governmental services such as hospitals, fire departments and police stations (Tr. at 115-16). AEP Ohio then assessed its transmission and distribution network to prioritize lines that would restore electricity to the greatest number of customers (AEP Ohio Ex. 2 at 8). The efforts then focused on the restoration of outages affecting smaller blocks or individual customers (Tr. at 115-116). We note that the Kellers' outage received "the lowest priority during storm restoration work," because only approximately 24 customers were affected on that circuit. Additionally, there were no hospitals, fire departments or police departments affected by the outage at the Kellers' residence (AEP Ohio Ex. 2 at 8; Tr. at 50).

The Commission finds that the benefits of restoring electric service to hospitals and those facilities that affect the public safety far exceed the benefit of preventing food spoilage for particular residential customers. At a time when nearly 300,000 customers remained without electric service, AEP Ohio repaired the downed line to restore service, despite the fact that the outage at the Kellers' residence was "the lowest priority during storm restoration work," and there were only approximately 24 customers affected on the circuit (AEP Ohio Ex. 2 at 8). We find that the Kellers have failed to demonstrate that AEP Ohio violated any statute, rule, regulation, requirement, or term of its Commission-approved Tariff. The outage at the Kellers' residence was caused by the Derecho, which was a catastrophic major storm event that caused electric service interruptions to nearly 720,000 customers in AEP Ohio's service territory. Accordingly, the Kellers have not met their burden of proof that AEP Ohio violated its Tariff, the Ohio Administrative Code, the Ohio Revised Code, or any of the rules or regulations of the Commission.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Evelyn and John Keller filed a complaint against AEP Ohio on July 27, 2012, alleging that AEP Ohio failed to trim or remove trees and vegetation around the electric distribution lines that provide electric service to the Kellers.
- (2) AEP Ohio is a public utility as defined by R.C. 4905.02, and an electric light company, as defined in R.C. 4905.03(A)(3) and, as such, is subject to the jurisdiction of this Commission.
- (3) On August 16, 2012, AEP Ohio filed its answer, admitting in part and denying in part the allegations contained in the complaint.
- (4) A settlement conference was held on September 11, 2012, however, the parties failed to resolve this matter.
- (5) After numerous continuances, a hearing was held on August 26, 2013.
- (6) The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Com.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).
- (7) The Kellers have not met their burden of proof that AEP Ohio violated its Tariff, the Ohio Administrative Code, the Ohio Revised Code, or any of the rules or regulations of the Commission.

ORDER:

It is, therefore,

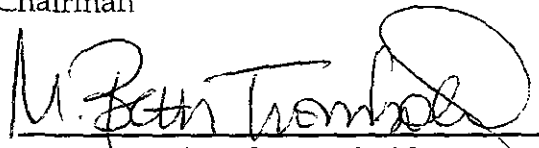
ORDERED, That a copy of this Opinion and Order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman

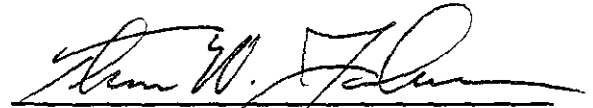
Lynn Slaby



M. Beth Trombold



Asim Z. Haque



Thomas W. Johnson

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Barcy F. McNeal
Secretary