

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

KUBITZA, Matt, et. al.,	)	
	)	
Complainants,	)	
	)	Case No. 17-1435-EL-CSS
v.	)	
	)	
OHIO EDISON COMPANY	)	
	)	
Respondent.	)	

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**OHIO EDISON COMPANY’S POST-HEARING BRIEF**

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## **I. INTRODUCTION**

Complainant Matt Kubitza alleges that Ohio Edison Company (“Ohio Edison,” or “Company”) improperly installed or maintained the underground electrical lines servicing his property that led to a power surge that damaged his personal property. The Complaint should be dismissed for several reasons.

**First**, there is no evidence that Ohio Edison incorrectly installed the underground electrical lines servicing Complainant’s property. In fact, Complainant admitted that his allegations are “just speculation.” Moreover, Ohio Edison’s witnesses explained that, had there been an issue with the installation of the underground electrical lines servicing Complainant’s property, Complainant would have experienced more issues with those lines, and before May of 2017. He did not.

**Second**, there is no evidence to support the conclusion that Ohio Edison’s maintenance practices were inadequate. Ohio Edison’s policies and practices are industry standard, consistent with the National Electric Safety Code, and created from a Commission approved Electrical Safety and Security Filing (“ESS Filing”). Ohio Edison complied with its Company policies (and related regulations) with regards to the distribution lines and equipment servicing Complainant’s property. And Complainant’s personal opinion that Ohio Edison’s policies and practices should be changed is just that—his personal opinion without additional support.

**Third**, there is no evidence to support the conclusion that Ohio Edison’s service to Complainant was unreasonable or unreliable. Quite the opposite. The evidence presented at the hearing showed that the Jackson Circuit—the circuit servicing Complainant’s property—was historically safe and reliable and that Ohio Edison had no reason to foresee any issues with the underground secondary line that failed on May 3, 2017. Ohio Edison also acted promptly and reasonably in responding to and repairing the underground line.

For these reasons, and those explained below, Complainant failed to meet his burden in this proceeding and the Complaint against Ohio Edison should be dismissed, with prejudice.

## **II. BACKGROUND**

Complainant moved into his residence at 12889 Williamsburg Avenue, Uniontown, Ohio in approximately February of 2010.<sup>1</sup> He did not experience any issues with the underground lines servicing his property for over seven years.<sup>2</sup> On May 3, 2017, an underground secondary neutral wire servicing Complainant's property and owned by Ohio Edison failed.<sup>3</sup> Ohio Edison does not dispute that.

Complainant called Ohio Edison to report an issue with his electrical service at or around 12:53 p.m.<sup>4</sup> Ohio Edison promptly sent a troubleshooter to Complainant's property to assess and diagnose the issue.<sup>5</sup> After discovering the underground line failure, the troubleshooter called an Ohio Edison line crew.<sup>6</sup> Upon arrival, the crew made temporary repairs, including putting a string-out above the ground with appropriate barricades for safety, in order to quickly get Complainant's residence back in service.<sup>7</sup> Electricity was restored to Complainant's property no later than 4:27 p.m.—less than four hours after Complainant reported the issue.<sup>8</sup>

Because the failure was underground, Ohio Edison sent a different crew out to Complainant's property on May 16, 2017 to permanently repair the line.<sup>9</sup> The crew located the failed underground secondary neutral wire, excavated the surrounding area, and installed a cable

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<sup>1</sup> Hearing Tr. at 7:1-4 (Complainant Cross).

<sup>2</sup> *Id.* at 11:1-4 (Complainant Cross).

<sup>3</sup> Company Exhibit 5, Direct Testimony of Eric Leonard on Behalf of Ohio Edison Company (June 28, 2019) ("Leonard Testimony") at 3-4.

<sup>4</sup> Hearing Tr. at 7:9-11 (Complainant Cross).

<sup>5</sup> Leonard Testimony at 3-4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; Hearing Tr. at 7:20-23 (Complainant Cross).

<sup>9</sup> Leonard Testimony at 5-6.

splice in place of the failed wire.<sup>10</sup> They also replaced the handhold dome lid and port moles.<sup>11</sup> Complainant did not experience any issues with his electrical service between the time of the temporary repairs and the permanent repairs.<sup>12</sup> Complainant also has not experienced any voltage issues with his electrical service since either repairs were made.<sup>13</sup>

Complainant filed this proceeding against Ohio Edison on June 12, 2017. The Attorney Examiner conducted a one-day evidentiary hearing on July 12, 2019. Ohio Edison presented its case through the testimony of two Company witnesses, Eric Leonard and Ron Carson, and through the introduction of Company Exhibits 1 through 6. Complainant presented his case through his own testimony. The Attorney Examiner closed the record in this case at the close of all testimony. Pursuant to the Attorney Examiner's directive, Ohio Edison now submits this brief in support of its position in this proceeding.

### **III. LAW AND ARGUMENT**

Complainant has failed to satisfy his burden in this proceeding. Section 4905.26 of the Ohio Revised Code requires that the Commission set for hearing a complaint against a public utility when grounds appear that:

[A]ny rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained . . . .<sup>14</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Hearing Tr. at 8:3-7 (Complainant's Cross).

<sup>13</sup> *Id.* at 8:8-12 (Complainant's Cross).

<sup>14</sup> O.R.C. §4905.26.

It is well established that the burden of proof rests with the complainant in proceedings before the Commission.<sup>15</sup> Thus, a complainant must present evidence in support of the allegations made in a complaint. Here, Complainant did not (and cannot) meet his burden.

The Commission uses a four-part test in cases where an electrical surge has been alleged to have occurred:

1. Whether the cause of the problem was in the control of the utility;
2. Whether the Company failed to comply with any statutory or regulatory requirements regarding the operation of its system that could have caused the outage or surge;
3. Whether the Company's actions or inactions constituted unreasonable service; and
4. Whether the Company acted reasonably in correcting the problem.<sup>16</sup>

It is not enough to say that a surge emanated from company facilities.<sup>17</sup> “In the absence of evidence showing that [a utility] failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that [the utility] is responsible for the damages to the complainant's property.”<sup>18</sup> Because Complainant has failed to satisfy each of the four factors, the Commission should dismiss the Complaint in its entirety and find in favor of Ohio Edison.

**A. The Cause Of The Problem Was Not Within Ohio Edison's Control.**

Ohio Edison does not dispute that the underground secondary neutral wire that failed on May 3, 2017 was owned by Ohio Edison.<sup>19</sup> But that is not the question. The question is whether

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<sup>15</sup> *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214, 214 N.E.2d 666 (1966).

<sup>16</sup> *Safranek v. CEI*, Case No. 15-1818-EL-CSS, Opinion and Order, ¶ 21 (Dec. 14, 2016) (citing *Santos v. The Dayton Power and Light Company*, Case No. 03-1965-EL-CSS, Opinion and Order (March 2, 2005)).

<sup>17</sup> *In the Matter of Pro Se Commercial Properties v. The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, Opinion and Order, 6 (Sept. 10, 2008).

<sup>18</sup> *Id.*

<sup>19</sup> Leonard Testimony at 4.

the *cause* of the problem was within Ohio Edison's control.<sup>20</sup> Here, the cause was an unforeseen equipment failure.<sup>21</sup> Ohio Edison cannot be in control of something unforeseen.

That said, Ohio Edison acknowledges that there is split in the Commission, with some decisions holding that ownership of a line that fails is sufficient to meet the first factor.<sup>22</sup> Should the Commission rule similarly here, Complainant still cannot meet his burden of proof as to any of the other three factors from *Santos*.<sup>23</sup>

**B. There Is No Evidence That Ohio Edison Failed To Comply With Any Statutory Or Regulatory Requirement.**

Complainant did not allege that Ohio Edison failed to comply with any specific statutory or regulatory requirement, nor did he prove that Ohio Edison failed to provide adequate service. Ohio Edison is a public utility company as defined Section 4905.02 of the Ohio Revised Code.<sup>24</sup> Section 4905.22 of the Code provides that “[e]very public utility shall furnish necessary adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable.”<sup>25</sup> There is no evidence that Ohio Edison failed to comply with this provision, or that specifically (per Complainant's allegations) Ohio Edison improperly installed or maintained the underground lines servicing Complainant's property.

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<sup>20</sup> *Santos v. The Dayton Power and Light Company*, Case No. 03-1965-EL-CSS, Opinion and Order, 9 (March 2, 2005) (“It is not enough to say that the surge emanated from the company's facilities without an explanation of the root cause or source.”); *In the Matter of Pro Se Commercial Properties v. The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, Opinion and Order, 6 (Sept. 10, 2008) (same).

<sup>21</sup> Leonard Testimony at 4.

<sup>22</sup> See *Safranek v. CEI*, Case No. 15-1818-EL-CSS, Opinion and Order, ¶ 21 (Dec. 14, 2016).

<sup>23</sup> *Santos v. The Dayton Power and Light Company*, Case No. 03-1965-EL-CSS, Opinion and Order (March 2, 2005).

<sup>24</sup> O.R.C. §4905.02.

<sup>25</sup> O.R.C. §4905.22.

**1. There Is No Evidence Of Improper Installation.**

Complainant alleges in his Complaint that Ohio Edison “did not install the conductors correctly.”<sup>26</sup> Yet Complainant did not introduce any evidence of improper installation at the hearing and, in fact, admitted that his allegations are “just speculation”:

Q. You have no knowledge or evidence that the cable servicing your property was nicked or otherwise damaged during installation; correct?

A. Correct.

Q. And you’re just speculating that the cable was incorrectly installed?

A. That’s just speculation.<sup>27</sup>

But further, both of Ohio Edison’s witnesses testified that, if the underground lines servicing Complainant’s property had been incorrectly installed, you would expect to have seen more issues with those lines.<sup>28</sup> Instead, Complainant testified that he had not had any issues with the underground lines servicing his property until May 3, 2017.<sup>29</sup> Therefore, his first theory fails.

**2. There Is No Evidence Of Improper Maintenance.**

Complainant also alleges in his Complaint that Ohio Edison’s maintenance of the underground lines servicing his property was inadequate.<sup>30</sup> Yet, again, Complainant did not introduce any evidence of improper maintenance at the hearing.

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<sup>26</sup> Complaint at 1.

<sup>27</sup> Hearing Tr. at 9:13-20 (Complainant’s Cross).

<sup>28</sup> Leonard Testimony at 4; Hearing Tr. at 54:19-55:12 (Carson Live Rebuttal).

<sup>29</sup> Hearing Tr. at 11:1-4 (Complainant’s Cross).

<sup>30</sup> Complaint at 1.



Rule 4901:1-10-27 of the Ohio Administrative Code requires an electric utility to “inspect its electric [] distribution facilities (circuits and equipment) to maintain quality, safe, and reliable service . . . at least once every five years.”<sup>31</sup> It also requires that each utility “establish, maintain, and comply with written programs, policies, procedures, and schedules” for its inspections.<sup>32</sup> As Ohio Edison witness, Ron Carson, explained, FirstEnergy (Ohio Edison’s parent company) has a Distribution Inspection and Maintenance Practice Manual for Underground Equipment.<sup>33</sup> FirstEnergy submits an ESS Filing to the Commission that includes plans for inspection and maintenance practices.<sup>34</sup> The last filing of such plans was in docket number 09-0802-EL-ESS and was approved by the Commission by operation of law.<sup>35</sup> FirstEnergy’s Distribution Inspection & Maintenance Practice Manual (which is adopted and used by Ohio Edison) is developed from the Commission-approved ESS Filing.<sup>36</sup>

Consistent with the requirements of the Ohio Administrative Code, this Manual provides that Ohio Edison will visually inspect its equipment on a five-year cycle, including its pad-mounted and subsurface transformers, pad-mounted sectionalizing equipment, below-grade sectionalizing installations, pad-mounted deferral cabinets, pad-mounted switchgear, handholes and pedestals, and underground rise pole installations that feed the above equipment.<sup>37</sup> Ohio Edison does not dig up and visually inspect its underground cables because the act of digging can cause more problems than leaving the cable underground.<sup>38</sup> Ohio Edison’s practices are consistent

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<sup>31</sup> O.A.C. §4901:1-10-27.

<sup>32</sup> *Id.*

<sup>33</sup> Company Exhibit 6, Direct Testimony of Ron Carson on Behalf of Ohio Edison Company (June 28, 2019) (“Carson Testimony”) at 4.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Hearing Tr. at 57:10-15 (Carson Live Rebuttal).

with the National Electrical Safety Code, which states: “*Accessible lines and equipment* shall be inspected by the responsible party at such intervals as experience has shown to be necessary.”<sup>39</sup>

The evidence shows that Ohio Edison complied with its policies and the Commission’s regulatory requirements. Ohio Edison last conducted an inspection of the Jackson Circuit in September 2016, including overhead, underground, and pole inspections.<sup>40</sup> In the area servicing Complainant’s residence, all facilities were found to be in good condition.<sup>41</sup> Prior to that, Ohio Edison conducted an inspection of the Jackson Circuit in late-August 2011.<sup>42</sup> In the area servicing Complainant’s residence, Ohio Edison employees identified and replaced a damaged handhole cover.<sup>43</sup> Otherwise, all facilities were found to be in good condition.<sup>44</sup>

Likely because he cannot dispute that Ohio Edison maintains and complied with industry-standard and Commission approved practices, Complainant instead argues that Ohio Edison’s inspection and maintenance practices should be changed. His personal opinion is that “something should be done more often when the service life of the cables are coming to their design life’s end.”<sup>45</sup> He believes that the life expectancy of all underground cables is approximately 25 to 40 years.<sup>46</sup> Granted, Complainant readily admits that he is not an expert in electrical service, wiring, or inspection and maintenance.<sup>47</sup> His opinion is based solely on the research he conducted online—*i.e.*, Google searches.<sup>48</sup> For example, through one Google search, Complainant found and relies on an article regarding Prsymian cables.<sup>49</sup> This article states that Prsymian cables have a

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<sup>39</sup> National Electrical Safety Code, Rule 313A2.

<sup>40</sup> Carson Testimony at 7.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Hearing Tr. at 11:17-19 (Complainant’s Cross).

<sup>46</sup> *Id.* at 11:20-23 (Complainant’s Cross).

<sup>47</sup> *Id.* at 12:2-7 (Complainant’s Cross).

<sup>48</sup> *Id.* at 11:24-25:1, 13:1-5 (Complainant’s Cross).

<sup>49</sup> Company Ex. 1; Hearing Tr. at 13:19-14:4 (Complainant’s Cross).

design life of 25 years *or more*.<sup>50</sup> It then goes on to explain how the temperature and load of a cable affects its life expectancy, noting specifically that “if a cable is loaded for eight hours in a day, its life expectancy could be in excess of 40 years.”<sup>51</sup> Ohio Edison’s witness, Ron Carson, explained this further, agreeing that lower temperatures and loads can increase the life expectancy of a cable.<sup>52</sup> In other words, Complainant’s article does not support his personal opinion.<sup>53</sup> Nor does it change the fact that there is no industry standard for the life expectancy of underground secondary cables.<sup>54</sup>

Notably, Complainant admitted that he does not know if Ohio Edison uses Prysmian cables.<sup>55</sup> He does not know if the article differentiated between primary or secondary underground lines.<sup>56</sup> And he agreed that different types of cables can have their own aging characteristics.<sup>57</sup> In short, Complainant presented no evidence that Ohio Edison’s inspection and maintenance practices—generally or specific to the circuit servicing his property—were insufficient. Therefore, Complainant’s second theory fails as well.

\* \* \*

Because there is no evidence to support the conclusion that Ohio Edison improperly installed or maintained the underground lines servicing Complainant’s property, Complainant did not (and cannot) meet his burden of proof as it pertains to the second factor of the *Santos* test.

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<sup>50</sup> Company Ex. 1 (Article) (emphasis added).

<sup>51</sup> *Id.*; Hearing Tr. at 14:12-22 (Complainant’s Cross).

<sup>52</sup> Hearing Tr. at 45:1-46:23 (Carson’s Live Rebuttal).

<sup>53</sup> To the extent Complainant attempts to rely on any additional articles in his post-hearing brief, such evidence should be excluded, as they were during the hearing, as hearsay. Hearing Tr. at 64:2-21 (Complainant’s Cross). *See also id.* at 15:5-23 (Complainant’s Cross) (referencing articles found on Google about which Complainant has no personal knowledge).

<sup>54</sup> Carson Testimony at 6; Hearing Tr. at 44:7-11 (Carson’s Live Rebuttal).

<sup>55</sup> Hearing Tr. at 29:23-30:2 (Attorney Examiner’s Questions).

<sup>56</sup> *Id.* at 16:2-6 (Complainant’s Cross).

<sup>57</sup> *Id.* at 16:7-11 (Complainant’s Cross).

**C. There Is No Evidence That Ohio Edison's Actions Or Inactions Constituted Unreasonable Service.**

Complainant introduced no evidence to support a conclusion that Ohio Edison's service was unreasonable or unreliable. Ohio Edison's actions were consistent with Ohio Edison's Commission approved tariff regarding electric service regulations. The history of the Jackson Circuit also shows that it was (and still is) a reliable circuit.

**1. Ohio Edison's Actions Were Consistent With Its Commission Approved Tariff.**

The Commission recognizes that 100 percent service availability and power quality is not possible, and has approved the following tariff regarding Ohio Edison's services:

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.<sup>58</sup>

Complainant was provided with this language by Ohio Edison's Claims Department.<sup>59</sup> He also acknowledged skimming other portions of this same tariff. In pertinent part, it later states:

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 or or failure of the Company or otherwise except such damages that are caused by or due to the willful and wanton misconduct of the Company.

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<sup>58</sup> Company Ex. 3 (Ohio Edison Tariff, P.U.C.O. No. 11, Sheet 4, Electric Service Regulations, Section IV.B: Characteristics of Service; Continuity).

<sup>59</sup> See Company Ex. 2 (May 9, 2017 Letter).

Any customer desiring protection against 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, shall furnish, at the customer's expense, any equipment desired by the customer for such purpose.<sup>60</sup>

Complainant did not have any voltage protection devices on the outside of his home.<sup>61</sup> That was his choice, but does not make Ohio Edison liable for any alleged damage. Consistent with its obligations as stated in the tariff, Ohio Edison "endeavor[s], but does not guarantee, to furnish a continuous supply of electric energy and to maintain voltage and frequency within reasonable limits." Complainant agrees this is the correct standard,<sup>62</sup> and there is no evidence that Ohio Edison did not meet it.

2. **Ohio Edison's Jackson Circuit Has Historically Been A Reliable Circuit.**

There is no evidence that Ohio Edison's Jackson Circuit was not (and is not) reliable. Complainant testified that, other than the issue he experienced on May 3, 2017, he has not had any other issues with Ohio Edison's service.<sup>63</sup> Then, without knowing any specifics, Complainant offhandedly remembered having "three or four outages a year" the first couple of years after he moved into his home in 2010.<sup>64</sup> Complainant agreed that the outages were "nothing serious" and that his electricity was always restored within a couple hours.<sup>65</sup> Complainant further agreed that occasional outages are inevitable in the course of electrical service.<sup>66</sup> The Commission has agreed: "[T]he fact that there are outages or a number of outages does not constitute inadequate service.

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<sup>60</sup> Company Ex. 3 (Ohio Edison Tariff, P.U.C.O. No. 11, Sheet 4, Electric Service Regulations, Section X.B: Customer's Wiring, Equipment and Special Services; Limitation of Liability).

<sup>61</sup> Hearing Tr. at 22:12-15 (Complainant's Cross).

<sup>62</sup> See *id.* at 8:13-15 (Complainant's Cross).

<sup>63</sup> *Id.* at 8:20-24 (Complainant's Cross).

<sup>64</sup> *Id.* at 10:3-25 (Complainant's Cross).

<sup>65</sup> *Id.* at 9:25-10:1, 20-21 (Complainant's Cross).

<sup>66</sup> *Id.* at 8:17-19 (Complainant's Cross).

[A Company] does not guarantee the deliverance of electricity continuously and without interruption but only that it will endeavor to do so.”<sup>67</sup>

But, more importantly, any of those alleged outages do not change the reliability of the underground lines servicing Complainant’s property. As Ohio Edison’s witness explained, those outages would have been on the overhead system, “not affecting the underground lines.”<sup>68</sup> Ohio Edison witness, Eric Leonard, reviewed the history of the Jackson Circuit.<sup>69</sup> In the seven years prior to the date of the trouble call, there were only four reported outages on the Jackson Circuit that were determined to be caused by the failure of, or failed connection of, an underground secondary line owned by Ohio Edison.<sup>70</sup> In that same time period, there were only five reported voltage-related complaints on the Jackson Circuit that were determined to be caused by the failure of, or failed connection of, an underground secondary line owned by Ohio Edison Company.<sup>71</sup> Finally, in that same time period, there was only one outage that was determined to be caused by the failure of the underground primary line servicing Complainant’s residence.<sup>72</sup> Ohio Edison’s witness explained each of these events in more detail in his filed testimony.<sup>73</sup>

It is important to remember that the Jackson Circuit services approximately 1,719 customers, and consists of 36 miles of lines—22 of which are underground.<sup>74</sup> To look at a circuit and expect that there will not be the occasional problem is simply not realistic. Complainant

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<sup>67</sup> *In the Matter of Steve Martin v. The Dayton Power & Light Company*, Case No. 91-618-EL-CSS, Opinion and Order, 7 (September 10, 1992).

<sup>68</sup> Hearing Tr. at 33:13-23 (Leonard Live Rebuttal).

<sup>69</sup> Leonard Testimony at 7.

<sup>70</sup> *Id.* at 8.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 8-10.

<sup>74</sup> *Id.* at 7.

agrees. He acknowledged at the hearing that an electrical company can strive for but cannot provide 100 percent reliability.<sup>75</sup>

Based on the outage and trouble call history of the Jackson Circuit, there was no reason for Ohio Edison to suspect that there would be an issue with the underground secondary wire that failed.<sup>76</sup> Nor was there any reason to believe that there was a systemic issue with the underground secondary lines on the Jackson Circuit.<sup>77</sup>

Ohio Edison acknowledges the fact that the Jackson Circuit was recently reported to the Commission, pursuant to Ohio Administrative Code Section 4901:1-10-11, as a “worst performing eight percent of the electric utility’s distribution circuits.”<sup>78</sup> But, just because a circuit is reported does not mean that the circuit is not safe or reliable.<sup>79</sup> In the seven years prior to Complainant’s trouble call, the Jackson Circuit was only included in Ohio Edison’s report to the Commission in 2017.<sup>80</sup> That year it ranked thirty-ninth out of Ohio Edison’s ninety-one circuits.<sup>81</sup>

Further, Ohio Edison concluded in the report that “tree outages account[ed] for 79% of the total customer minutes. All of the customer minutes were the result of two separate trees, located outside of the standard tree trimming corridor, that fell onto the circuit bringing down primary conductor. . . . the damaged equipment was repaired/replaced and put back in service.”<sup>82</sup> But for those forestry issues affecting only the aboveground lines, the Jackson Circuit would not have been reported in 2017.<sup>83</sup>

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<sup>75</sup> Hearing Tr. at 8:13-15 (Complainant’s Cross).

<sup>76</sup> Leonard Testimony at 13.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 11.

<sup>79</sup> *Id.*; Hearing Tr. at 38:12-23 (Leonard Live Rebuttal).

<sup>80</sup> Leonard Testimony at 11.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 12; Hearing Tr. at 38:24-29:3 (Leonard Live Rebuttal).

Finally, and most pertinent here, the 2017 report had nothing to do with the underground lines specifically servicing Complainant's property. Any underground line failures referenced in the report were all primary lines, and none of them affected the lines servicing Complainant's property.<sup>84</sup>

Because there is no evidence to support the conclusion that Ohio Edison's service to Complainant was unreasonable or unreliable, Complainant did not (and cannot) meet his burden of proof as to the third factor of the *Santos* test.

**D. Ohio Edison Acted Reasonably In Correcting The Problem.**

Complainant does not dispute that Ohio Edison acted reasonably in correcting the fault that occurred on May 3, 2017—nor could he. Ohio Edison promptly responded to Complainant's call and restored electricity to Complainant's residence in less than 4 hours.<sup>85</sup> Given that the fault was underground, the repairs made on May 3, 2017 were temporary, but Ohio Edison later sent another crew out to permanently repair the issue.<sup>86</sup> Complainant did not experience any issues with his electrical service between the time of the temporary repairs and the permanent repairs.<sup>87</sup> Complainant also has not experienced any voltage issues with his electrical service since either repairs were made.<sup>88</sup> Therefore, Complainant did not (and cannot) meet his burden of proof as to the fourth factor of the *Santos* test.

**E. There Is No Evidence Of Damage To Complainant's Property.**

The Commission need not consider the issue of damages because, as explained above, Complainant has failed to satisfy the four factors of the *Santos* test. Even so, Complainant did not produce any evidence of damage to his property resulting from a failure caused by Ohio Edison.

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<sup>84</sup> Leonard Testimony at 12, Exhibit EJL-2; Hearing Tr. at 39:4-10 (Leonard Live Rebuttal).

<sup>85</sup> Hearing Tr. at 7:12-23 (Complainant's Cross).

<sup>86</sup> Leonard Testimony at 5-6.

<sup>87</sup> Hearing Tr. at 8:3-7 (Complainant's Cross).

<sup>88</sup> *Id.* at 8:8-12 (Complainant's Cross).



To start, Complainant produced no evidence that excessive voltage entered his home on May 3, 2017. Although Ohio Edison does not dispute that a failed underground secondary wire could—but not necessarily—result in voltage fluctuations,<sup>89</sup> it is Complainant’s burden to prove that a surge actually occurred. He did not.

But even if a power surge did occur, Complainant produced no evidence that any surge caused damage to his property. During his direct testimony, Complainant briefly discussed his garage door opener not working on May 3, 2017 and sparks coming from a battery charger.<sup>90</sup> Nothing else. During discovery, however, Complainant produced to Ohio Edison a list of his alleged damages.<sup>91</sup> Ohio Edison cross-examined Complainant about portions of this list at the hearing for the sole purpose of showing how inflated it is. For example, Complainant is supposedly seeking the full replacement cost of his refrigerator and chest freezer, but admitted that he has been using both appliances since May 3, 2017.<sup>92</sup> Complainant did nothing at hearing to address these inconsistencies, nor did he try to affirmatively present his own alleged damages.

Complainant also did nothing to mitigate his damages. Complainant communicated with Ohio Edison’s Claims Department on multiple occasions and was encouraged to go through his homeowner’s insurance policy to get coverage for his allegedly damaged property.<sup>93</sup> He chose not to. Complainant had homeowner’s insurance on May 3, 2017, and had no reason to believe that his policy did not cover property damage due to electrical service issues.<sup>94</sup> In fact, Complainant had scheduled an agent to come to his residence to complete an assessment of his alleged damages, but then cancelled that appointment because he was “mad at Ohio Edison.”<sup>95</sup>

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<sup>89</sup> Leonard Testimony at 4-5.

<sup>90</sup> Hearing Tr. at 5:19-25 (Complainant’s Direct).

<sup>91</sup> Company Ex. 4 (List).

<sup>92</sup> Hearing Tr. at 26:3-8, 21-27:1 (Complainant’s Cross).

<sup>93</sup> *Id.* at 23:20-24 (Complainant’s Cross).

<sup>94</sup> *Id.* at 22:24-23:1, 8-11 (Complainant’s Cross).

<sup>95</sup> *Id.* at 23:25-24:11 (Complainant’s Cross).

Most importantly, however, the issue is not whether a surge emanating from Ohio Edison's facilities entered Complainant's residence and damaged his property. Ohio Edison cannot be liable for any alleged damages unless there is evidence that it "failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably."<sup>96</sup> Here, there is no such evidence.

#### IV. CONCLUSION

Complainant did not (and cannot) meet his burden of proof to demonstrate that Ohio Edison provided inadequate service, failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably. Accordingly, Ohio Edison respectfully requests that the Commission dismiss the Complaint in its entirety, with prejudice.

Dated: August 19, 2019

/s/ Casteel E. Borsay

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<sup>96</sup>*In the Matter of Pro Se Commercial Properties v. The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, Opinion and Order, 6 (Sept. 10, 2008).

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Ohio Edison Company's Post-Hearing Brief was served via electronic mail (by agreement), upon the following on this 19th day of August, 2019.

Matt Kubitza  
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/s/ Casteel E. Borsay  
An Attorney for Ohio Edison Company

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