

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
MATT AND ALLISON KUBITZA,

COMPLAINANT,

v.

CASE NO. 17-1435-EL-CSS

OHIO EDISON COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on May 6, 2020

I. SUMMARY

{¶ 1} The Commission finds that Matt and Allison Kubitza have failed to carry the burden of proving that the Ohio Edison Company did not provide adequate service pursuant to R.C. 4905.22 on May 3, 2017, when the Kubitzas experienced an electrical surge.

II. PROCEDURAL BACKGROUND

{¶ 2} On June 12, 2017, Matt and Allison Kubitza filed a complaint against Ohio Edison Company (Ohio Edison or Company). The Kubitzas allege that Ohio Edison's negligent maintenance or installation of an underground secondary electrical wire led to a power surge that damaged the Kubitzas' electrical devices and appliances.

{¶ 3} On July 3, 2017, Ohio Edison filed an answer to the complaint in which it denied any liability to the Kubitzas.

{¶ 4} By Entry issued August 2, 2017, the attorney examiner scheduled a settlement conference for August 28, 2017. After the settlement conference, the parties continued to engage in negotiations.

On August 1, 2018, the Kubitzas filed a motion to compel responses to written questions. On August 16, 2018, Ohio Edison filed a memorandum contra the motion to compel. By Entry dated November 19, 2018, the attorney examiner granted the Kubitzas' motion to

compel with respect to Kubitza interrogatories 5-4 and 5-9. The attorney examiner denied the motion to compel as to all other interrogatories.

{¶ 5} By Entry dated April 23, 2019, the attorney examiner scheduled an evidentiary hearing in this matter on July 12, 2019.

{¶ 6} A hearing was held on July 12, 2019. Mr. Kubitza presented testimony on behalf of himself and his wife. Ohio Edison presented the testimony of Eric Leonard, Manager of Operations Service at Ohio Edison, and Ron Carson, Inspection and Maintenance Supervisor for Energy Delivery (Co. Ex. 5-6).

{¶ 7} The parties filed post-hearing briefs on August 20, 2019.

{¶ 8} On August 22, 2019, Ohio Edison filed a motion to strike portions of the Kubitzas' post-hearing brief. On September 6, 2019, the Kubitzas filed a motion to strike portions of Ohio Edison's brief. Finally, on September 10, 2019, Ohio Edison filed a response to the Kubitzas' motion to strike.

III. DISCUSSION

A. *Applicable Law*

{¶ 9} Ohio Edison is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of the Commission.

{¶ 10} R.C. 4905.22 provides that every public utility shall furnish service and facilities that are adequate, just, and reasonable and that all charges made or demanded for any service be just, reasonable, and not more than allowed by law or by order of the Commission.

{¶ 11} Pursuant to R.C. 4905.26, the Commission has authority to consider a written complaint 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.

{¶ 12} 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, in cases such as these, it is the responsibility of the complainant to present evidence in support of the allegations made in the complaint.

{¶ 13} Finally, once the evidence has been presented in power surge or service outage complaints, the Commission must ascertain: 1) whether the cause of the surge or outage was in the company's control; 2) whether the company failed to comply with any statutes or regulations regarding the operation of its system that could have caused the problem; 3) whether the company's actions amounted to unreasonable service; and 4) whether the company corrected the problem responsibly. *In re Complaint of Edward J. Santos v. The Dayton Power & Light Co.*, Case No. 03-1965-EL-CSS (*Santos*), Opinion and Order (Mar. 2, 2005).

B. Summary of Testimony and Evidence

{¶ 14} During the hearing on July 12, 2019, Mr. Kubitza related that he and his wife moved into their residence located at 12889 Williamsburg Avenue, Uniontown, Ohio around February 2010. On May 3, 2017, an underground secondary neutral wire servicing the Kubitza property and owned by Ohio Edison failed (Tr. at 7; Co. Ex. 5 at 3-4). Mrs. Kubitza contacted her husband because she noticed lights dimming and getting brighter and she detected an odor in their residence. When Mr. Kubitza returned home around 12:30 p.m., he noticed that the garage door opener did not work. After entering his home from the front door, Mr. Kubitza headed downstairs to turn the main breaker off. When he went downstairs and turned on the light, it blew. At the bottom of the steps, Mr. Kubitza noticed sparks flying out of a battery charger. Mr. Kubitza then went to the main circuit, turned it off, and contacted Ohio Edison around 12:53 p.m. (Tr. at 5-7.)

{¶ 15} Ohio Edison sent an employee to the Kubitza residence approximately two hours after receiving Mr. Kubitza's complaint. The employee ran some tests, discovered an underground line failure, and called an Ohio Edison line crew. 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. The crew restored electricity to the Kubitza residence within four hours of Mr. Kubitza reporting the issue. (Co. Ex. 5 at 3-4; Tr. at 7-8.) Approximately two weeks later, on May 16, 2017, Ohio Edison returned to the Kubitza residence to permanently repair the underground secondary wire. The crew located the failed underground secondary neutral wire, excavated the surrounding area, and installed a cable splice in place of the failed wire. They also replaced the hand hole dome lid and port moles. (Co. Ex. 5 at 5-6; Tr. at 7-8.) Since then, the Kubitzas have not experienced any further electricity-related or voltage-related issues (Tr. at 7-9).

{¶ 16} During the hearing, Mr. Kubitza testified that he believed that the power surge was caused because of three reasons: improper installation of the underground secondary neutral wire; improper maintenance of the wire; and age of the wire itself (Tr. at 9). Specifically, the Kubitzas allege that CEI's negligent installation and maintenance of the underground electrical wire led to a power surge, which sent double the amount of voltage into their residence, ruining many appliances and electronics (Tr. at 9; Complaint at 1).

{¶ 17} However, during cross-examination, Mr. Kubitza admitted that he had no knowledge or evidence that the underground wire was damaged during installation. He also admitted that he has lived in his residence since February 2010 and had not experienced any issues with the underground wire prior to May 3, 2017. While the Kubitzas experienced some service outages during this time period, Mr. Kubitza admitted he did not always report these outages to Ohio Edison. Furthermore, service was restored within a few hours each time.

{¶ 18} With regard to his allegations that Ohio Edison did not properly inspect the allegedly aging underground wire, Mr. Kubitza testified that the underground life expectancy for such wires is approximately 25 to 40 years (Tr. at 11). He arrived at this opinion after conducting internet research, including reviewing an article regarding Prysmian cables, a specific brand of underground wires. According to this article,

underground wires have a design life of 25 years or more. (Tr. at 11-14.) Mr. Kubitza's research also led him to believe that preventative maintenance for underground wires should increase as they approach the end of their design life (Tr. at 11). However, Mr. Kubitza acknowledged that he was not an expert in electrical service, wiring, inspection, and maintenance. As such, though he believed that Ohio Edison's current underground wire inspection policy was insufficient, he admitted that his opinions were solely the result of research conducted on the internet and not due to personal knowledge. (Tr. at 12-16.) Furthermore, Mr. Kubitza was not aware of, and did not opine as to, the specific cause which led the underground secondary wire servicing his property to fail (Tr. at 17). Mr. Kubitza admitted that an underground wire could fail even without any negligence on Ohio Edison's part (Tr. at 19).

{¶ 19} Mr. Kubitza also testified that he sustained damages to various household items, including his refrigerator, washing machine, dish washer, chest freezer, garage door opener, surge protectors, Keurig coffee maker, and home phones, as a result of Ohio Edison's allegedly faulty underground wire (Tr. at 29; Co. Ex. at 4). Mr. Kubitza indicated that he has a homeowners' insurance policy that may cover damage to his property. Though he had an appointment with an agent from his insurance company for damage assessment, he ultimately canceled the appointment. At the time of the hearing, Mr. Kubitza had not made any attempts to determine whether these damages are covered by his policy. (Tr. at 22-24.)

{¶ 20} At the conclusion of Mr. Kubitza's testimony, Ohio Edison presented the testimony of Mr. Leonard, Manager of Operation Services. Mr. Leonard indicated that the electrical issues experienced by the Kubitzas on May 3, 2017 were the result of an unforeseen failure of an underground secondary neutral wire. Mr. Leonard disputed Mr. Kubitza's assertion that the underground wire was improperly installed, noting that if that was the case, there would be more incidences of electrical issues at the Kubitza residence. (Co. Ex. 5 at 1, 4.)

{¶ 21} Mr. Leonard testified that there has been one reported outage affecting the Kubitza residence since the May 3, 2017 incident, which occurred on June 18, 2017. Mr. Leonard clarified that the June 18 outage had nothing to do with any underground wires servicing the Kubitza residence; instead, it was caused by severe weather and trees that affected nearby overhead lines. (Co. Ex. 5 at 6.)

{¶ 22} Finally, Mr. Leonard provided some additional detail about the Jackson Circuit, which is the circuit servicing the Kubitza residence. Mr. Leonard stated that this circuit services approximately 1,719 customers, consists of 36 miles of lines, 22 of which are underground. Mr. Leonard testified that in the seven years prior to May 3, 2017, there were only four reported outages on the Jackson Circuit that were due to a failed underground wire. In the same time period, only five reported voltage-related complaints in the Jackson Circuit were due to a failed underground wire. Finally, there was only one outage in the circuit due to a failure of an underground primary line servicing the Kubitza residence. (Co. Ex. 5 at 7-8.) Though the Jackson Circuit was reported as the worst performing circuit in 2017, Mr. Leonard explained this was mainly due to trees outside normal trimming specifications which affected overhead wires. Mr. Leonard clarified that absent any forestry issues, this circuit would not have been included in the 2017 report. (Tr. at 38-40.)

{¶ 23} Ohio Edison next presented the testimony of Mr. Carson, Inspection and Maintenance Supervisor for Energy Delivery. Mr. Carson explained that Ohio Edison's parent company, FirstEnergy Corp. (FirstEnergy), maintains a distribution inspection and maintenance practice manual (maintenance manual), which details the maintenance schedule for underground equipment. The maintenance manual is adopted and used by Ohio Edison. Pursuant to the manual, Ohio Edison visually inspects its underground equipment on a five-year cycle, which includes pad-mounted and subsurface transformers, pad-mounted sectionalizing equipment, below-grade sectionalizing installations, pad-mounted deferral cabinets, pad-mounted switchgear, hand holes and pedestals, and underground rise pole installations that feed the above equipment. According to Mr. Carson, the purpose of such inspections is to identify and repair unsafe conditions or

conditions which may adversely affect service reliability or system performance, and to comply with state regulations and the National Electric Safety Code (NESC). (Co. Ex. 6 at 1, 3-5.)

{¶ 24} In addition to preventative maintenance, Mr. Carson testified that Ohio Edison also practices corrective maintenance. Pursuant to the maintenance manual, Mr. Carson stated that underground equipment with recorded defects reasonably expected to endanger life or property are promptly repaired, disconnected, or isolated. Deficiencies likely to cause an outage are corrected within one year of identification, up to no later than the end of the following year. Corrective maintenance of a deficiency may include repair or replacement. Mr. Carson explained that items not likely to cause an outage are evaluated and prioritized on a case-by-case basis. (Co. Ex. 6 at 5-6.)

{¶ 25} Finally, Mr. Carson disagreed with Mr. Kubitza's contention that the life expectancy of an underground secondary line is only 25-40 years. According to Mr. Carson, there is no industry standard for the life expectancy of such lines. (Co. Ex. 6 at 5-6; Tr. at 44.) Mr. Carson further explained that when an electric wire is buried, it is usually placed three feet underground and remains at a constant 55 degrees Fahrenheit and his professional opinion was that such a lower temperature increases life expectancy of underground cables. Mr. Carson clarified that a secondary wire such as the one at issue here also does not run at 100 percent capacity, which increases its life expectancy. (Tr. at 45-46.)

{¶ 26} Overall, Mr. Carson concluded that Ohio Edison followed its industry-standard inspection and maintenance practices for the Jackson Circuit, including conducting routine inspections every five years and responding to outage and trouble calls with appropriate and reliable measures. Mr. Carson believes Ohio Edison's maintenance practices are sufficient to ensure safe and reliable service to its customers. Mr. Carson stated that maintenance manual is consistent with the NESC standards and are developed from the Company's electric service and safety filing, which is approved by the Commission. Mr. Carson relayed that Ohio Edison last conducted an inspection of the Jackson Circuit in

September 2016, including overhead, underground, and pole inspections, and found the facilities in the area servicing Complainant's residence in good condition. During the previous inspection in late-August 2011, Ohio Edison employees identified and replaced a damaged hand hole cover in the area; otherwise, all facilities were found to be in good condition. (Co. Ex. 6 at 6-7.)

{¶ 27} On cross-examination and re-direct examination, Mr. Carson clarified that the routine five-year underground inspection is completely visual and is limited to inspecting aboveground equipment for damage, rusting, and other issues. He explained this is because the act of digging up and visually inspecting underground wires may cause more problems than simply leaving the wires buried. Visually inspected equipment include hand hole covers, pads, transformers, safety locks, and transformer foundations. Mr. Carson explained that Ohio Edison workers will not go inside the underground transformer cabinet and inspect wires and connections on a typical inspection. However, Mr. Carson stated that failures of underground secondary lines is generally uncommon. Finally, Mr. Carson noted that Ohio Edison has an overcurrent protection device on the primary side of every transformer, consistent with industry standards. (Tr. at 50-51, 57-60.)

{¶ 28} At the conclusion of the hearing, the attorney examiner established a schedule for the submission of post-hearing briefs. The Kubitzas and Ohio Edison filed post-hearing briefs on August 20, 2019.

C. Post-Hearing Briefs

1. COMPLAINANT

{¶ 29} Mr. Kubitza submitted a post-hearing brief on behalf of the Kubitzas. In the brief, Mr. Kubitza reiterates the testimony he provided during the hearing. Further, Mr. Kubitza provides additional evidence not presented at the hearing in the brief.

2. OHIO EDISON

{¶ 30} In its post-hearing brief, Ohio Edison argues that the Kubitzas have failed to meet their burden pursuant to R.C. 4905.26 because they cannot prove the four *Santos* factors. With regard to the first factor, Ohio Edison does not dispute that it owns the underground secondary neutral wire in question that failed on May 3, 2017. However, Ohio Edison maintains that the cause of the problem was an unforeseen equipment failure, which it cannot control.

{¶ 31} Turning to the second factor, Ohio Edison claims that there is no evidence that it failed to comply with R.C. 4905.22. Ohio Edison points to the fact that Mr. Kubitza admitted that his allegations of improper installation of the secondary line was based on speculation (Tr. at 9). Further, Ohio Edison claims that if any of the underground lines servicing the Kubitza property had been improperly installed, the Kubitzas would have experienced more issues. Ohio Edison also contends Mr. Kubitza failed to demonstrate Ohio Edison improperly maintained underground lines servicing his property. Pursuant to Ohio Adm.Code 4901:1-10-27, Ohio Edison states it has filed a plan for inspection and maintenance, which was automatically approved by the Commission. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 09-802-EL-ESS. According to Ohio Edison, the maintenance manual is developed from this Commission-approved plan. Ohio Edison maintains the evidence demonstrates it has properly inspected its equipment in the Jackson Circuit in five-year cycles consistent with regulatory requirements and its maintenance manual. Ohio Edison questions Mr. Kubitza's assertion during the hearing that underground secondary wires only have a life expectancy of 25 to 40 years by emphasizing that there is no industry standard for such wires. Further, Ohio Edison maintains Mr. Kubitza did not present any evidence that Ohio Edison utilizes Prysmian-brand cables for underground secondary lines or that Ohio Edison's inspection and maintenance practices were insufficient.

{¶ 32} Next, Ohio Edison claims Mr. Kubitza did not present any evidence demonstrating that Ohio Edison's service was unreasonable or unreliable. Ohio Edison

argues that its actions were consistent with its Commission-approved tariff, which recognizes that 100 percent service availability and power quality is not possible and states that Ohio Edison is not liable for damages resulting from variations in service characteristic or phase reversals. Ohio Edison notes the Kubitzas did not have any voltage protection devices on the outside of his home. Pointing to Mr. Leonard's testimony, Ohio Edison claims there is no evidence that the Jackson Circuit is not reliable.

{¶ 33} With regard to the fourth factor, Ohio Edison avers it promptly responded to Mr. Kubitza's call and restored electricity to the Kubitza residence in less than four hours. While it initially made temporary repairs, Ohio Edison states it made permanent repairs shortly thereafter. Further, Ohio Edison represents that the Kubitzas have not experienced any voltage issues since either repairs were made. As such, Ohio Edison states that the Kubitzas have failed to prove any of the four factors and not carried their burden.

{¶ 34} Finally, Ohio Edison argues that Mr. Kubitza did not produce any evidence of damage to his property resulting from a failure caused by Ohio Edison. During discovery, Mr. Kubitza produced to Ohio Edison a list of his alleged damages, which Ohio Edison claims is inflated. Further, Ohio Edison also notes Mr. Kubitza did not mitigate his damages and inquire whether his homeowner's insurance policy covered any of the allegedly damaged property. Ohio Edison states that the Kubitzas cannot meet their burden of proof to demonstrate that Ohio Edison provided inadequate service, failed to comply with statutory or regulatory requirements, or otherwise acted unreasonably, and therefore requests the Commission to dismiss their complaint with prejudice.

D. Motions to Strike

{¶ 35} On August 22, 2019, Ohio Edison filed a motion to strike portions of the Kubitzas' brief. Ohio Edison argues that the Kubitzas' introduction of new evidence is improper because it was not introduced during the hearing and most of the new evidence is inadmissible hearsay. As such, Ohio Edison requests that nine different portions of the brief be struck.

{¶ 36} On September 6, 2019, the Kubitzas filed a motion to strike certain portions of Ohio Edison's post-hearing brief.

{¶ 37} On September 10, 2020, Ohio Edison filed a response to the Kubitzas' motion to strike. Ohio Edison argues that this motion should be denied because it does not provide an appropriate legal basis for striking any material contained in Ohio Edison's brief. Further, Ohio Edison claims the Kubitzas' motion is supported with information that was not introduced at the hearing. Consequently, Ohio Edison respectfully requests the motion to strike be denied.

{¶ 38} Upon review of the motions to strike, we initially find that Ohio Edison's August 22, 2019 motion to strike should be granted. We agree with Ohio Edison in that the Kubitzas are attempting to introduce new evidence not previously presented during the hearing held on July 12, 2019, through their brief. New evidence should not be introduced after the closure of the record, consistent with longstanding Commission precedent. See, e.g., *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 37. As such, the nine different portions of the brief identified by Ohio Edison have not been considered by the Commission. Further, we find that the Kubitzas have not provided appropriate legal bases for striking any portion of Ohio Edison's post-hearing brief in their September 6, 2019 motion to strike. Moreover, similar to their post-hearing brief, the motion to strike also attempts to introduce new evidence after the fact. Therefore, the Kubitzas' motion to strike should be denied.

E. Commission Conclusion

{¶ 39} The Commission initially notes that, although we generally lack jurisdiction to award damages, R.C. 4928.16(B)(1) does provide for monetary damages in the event of electric power fluctuations, which includes damages due to power surges, as set forth in *Santos*.

{¶ 40} At issue is whether Ohio Edison is liable for an electrical surge that damaged

various household items in the Kubitzza residence, including a refrigerator, washing machine, dish washer, chest freezer, garage door opener, surge protectors, Keurig coffee maker, and home phones. Upon considering the facts and the law, we find that the Kubitzas have failed to carry the burden of proving Ohio Edison's liability.

{¶ 41} As Ohio Edison correctly notes, we are guided by our prior precedent and will adjudicate the Kubitzas' claims by considering the criteria set forth in *Santos*. In that case, the complainant sought compensation for damages to his residential electrical equipment. To determine whether the utility was liable for an electrical surge, the Commission noted that it may consider the following factors, among others: whether the cause of the problem was in the control of the company, 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, whether the company's actions or inactions constituted unreasonable service, and whether the company acted reasonably in correcting the problem. *Santos*, Opinion and Order (Mar. 2, 2005) at 6-8.

{¶ 42} While Ohio Edison contends that unforeseen equipment failure is out of its control, we find that the cause of the issue that gave rise to this matter, the underground secondary line providing service to the Kubitzza residence, is within the control of the Company. There is no dispute that the underground secondary line is located within the confines of the Jackson Circuit, which is in the exclusive control of Ohio Edison (Co. Ex. 5 at 6; Co. Ex. 6 at 7-11; Tr. at 35). The Kubitzas have no ownership or authority over the line. Further, Ohio Edison is obligated to maintain and repair the secondary line to ensure that necessary and adequate services are provided to the Kubitzas. R.C. 4905.22; see, e.g., *In re Federal Ins. Co. v. Ohio Power Co.*, Case No. 12-1750-EL-CSS, Opinion and Order (Oct. 29, 2014) (finding that a failed electrical control panel was in the control of the utility company); *In re Ann M. Safranek v. The Cleveland Elec. Illum. Co.*, Case No. 15-1818-EL-CSS, Opinion and Order (Dec. 14, 2016) (finding that a neutral wire was within the control of the utility company). While Commission precedent dictates that the underlying facilities must be within the company's control, we may, nonetheless, determine that the power surge was

outside of the company's control by examining the root cause or source of the surge, despite finding that the surge emanated from Ohio Edison's facilities. However, even if we were to accept Ohio Edison's argument that the power surge was due to an unforeseen equipment failure, there is nothing in the record to suggest that the equipment failure was due to the types of events in which the Commission has traditionally found a utility should not be held accountable for a power surge. Assuming adequate preventative measures are in place, these events include lightning strikes, animal activity, or extraordinary climactic conditions. *Santos*, Opinion and Order (Mar. 2, 2005) at 9-10. In fact, general equipment failure, absent any other mitigating factors, and assuming proper preventative measures are in place, has been found to be under a utility company's control in regard to power outages. *In re the Complaint of Miami Wabash Paper LLC v. The Cincinnati Gas and Elec. Co.*, Case Nos. 01-3135-EL-CSS and 02-2162-EL-CSS, Opinion and Order (Sept. 23, 2003) at 10. As such, the first *Santos* criterion is satisfied.

{¶ 43} The next point of inquiry is whether Ohio Edison failed to comply with any statutory or regulatory requirements regarding the operation of its system that could have caused the electrical surge on May 3, 2017. We note that the sole evidence of the occurrence of an electrical surge at the Kubitzka residence is Mr. Kubitzka's testimony on July 12, 2019. The Kubitzkas' claim that the underground surge was caused because of improper installation of the underground secondary neutral wire; improper maintenance of that wire; and age of the wire itself (Tr. at 9). However, during the hearing, Mr. Kubitzka did not present any additional evidence that established Ohio Edison improperly installed the wire or improperly maintained it. In fact, Mr. Kubitzka appears to have mainly relied on unsubstantiated internet research to support his contentions, including the fact that underground wires allegedly have a life expectancy of 25 to 40 years. Further, Mr. Kubitzka admitted that he was not aware if Ohio Edison utilizes Prysmian cables, which may have a life expectancy of 25 to 40 years, as underground secondary wires. (Tr. at 11-16, 29-30.) Overall, Mr. Kubitzka did not provide evidence indicating that Ohio Edison failed to comply with any safety provisions, which could lead to a power surge, or a violation of Commission

rules regarding maintenance, inspection, and repair of its distribution system.

{¶ 44} On the other hand, during the hearing, Ohio Edison presented detailed testimony about its maintenance and inspection protocol, demonstrating its adherence to industry standards and regulations. Even though the Jackson Circuit was identified as a poorly performing circuit in 2017, most of the issues related to that circuit were due to vegetation management (Co. Ex. 5 at 11-12; Tr. at 38-39). In fact, in the seven years prior to May 3, 2017, a failed underground secondary wire was the cause of only four reported outages and five reported voltage-related complaints on the Jackson Circuit (Co. Ex. 5 at 8). The Company also identified its five-year inspection schedule for underground equipment, which is maintained pursuant to industry-standards and Ohio Adm.Code 4901:1-10-27. Per its maintenance manual, Ohio Edison visually inspects aboveground equipment for damage, rusting, and other issues. Further, Ohio Edison provided credible evidence that such visual inspections are reasonable because the act of digging up and visually inspecting underground wires may cause more problems than simply leaving the wires buried. Ohio Edison last inspected the Jackson Circuit, which serves the Kubitz residence, on September 2016, and no issues were identified. Ohio Edison also demonstrated that it makes prompt repairs when defects with underground equipment is recorded and deficiencies are likely to cause an outage. Finally, to minimize the risk of electrical surges like the one at issue here, Ohio Edison also maintains overcurrent protection devices on its transformers. (Co. Ex. 5 at 10; Co. Ex. 6 at 4-6; Tr. at 40, 50-52, 56-57.)

{¶ 45} Further, we also find that Ohio Edison presented credible evidence that the life expectancy of an underground secondary wire is not limited to 25 to 40 years. We find that there is no industry standard for such lines and variable factors such as usage and underground temperature affect the useful life of such wires. As such, we conclude that the electrical issues experienced by the Kubitzas on May 3, 2017 was the result of an unforeseen failure of the underground secondary neutral wire. Consequently, the Commission cannot find that Ohio Edison's failure to adhere to statutory or regulatory requirements led to an electrical surge that damaged the Kubitzas' property.

{¶ 46} Next, the evidence does not show that Ohio Edison's actions or inactions constituted unreasonable service or that the company acted unreasonably in correcting the problem. Again, Mr. Kubitza, during the hearing, failed to provide evidence demonstrating that Ohio Edison acted in an irresponsible fashion by not undertaking reasonable measures to prevent an electrical surge or by not quickly mitigating the situation. In fact, as noted above, Ohio Edison maintains overcurrent protection devices on its transformers to minimize the risk of electrical surges. Moreover, the record demonstrates that Ohio Edison promptly sent a troubleshooter approximately two hours after Mr. Kubitza reported the electrical surge on May 3, 2017. On the same day, Ohio Edison made temporary repairs and service was restored at the Kubitza residence within four hours. (Co. Ex. 5 at 3-4; Tr. at 7-8.) Ohio Edison also promptly made permanent repairs by locating the failed underground secondary neutral wire, excavating the surrounding area, and installing a cable splice in place of the failed wire by May 16, 2017 (Co. Ex. 5 at 5-6). Between May 3, 2017 when Ohio Edison made the temporary repairs, and May 16, 2017, when Ohio Edison made the permanent repairs, the Kubitzas did not experience any service issues (Tr. at 8). We do not find in this timeline a substantial delay in arrival at the site, troubleshooting, repair, restoration of service, or a permanent solution. Consequently, there is no basis for concluding that Ohio Edison's actions or efforts to restore service were inadequate.

{¶ 47} Upon analyzing the evidence of record and applying the standard of review in *Santos*, we conclude that the Kubitzas have failed to carry the burden of proof. Lacking evidence that Ohio Edison did not conform its operations to statutory or regulatory requirements, failed to maintain the Jackson Circuit properly, or that it acted unreasonably, we cannot find that the Company failed to provide adequate service to the Kubitzas when they experienced the electrical surge on May 3, 2017. The Commission, therefore, finds this matter should be decided in favor of Ohio Edison.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 48} On June 12, 2017, Matt and Allison Kubitza filed a complaint against Ohio Edison to recover damages from an electrical surge.

{¶ 49} On July 3, 2017, Ohio Edison filed an answer to the complaint in which it denied any liability to the Kubitzas.

{¶ 50} A settlement conference was held on August 28, 2017, and a hearing was held on July 12, 2019.

{¶ 51} The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 52} There is insufficient evidence to support a finding that Ohio Edison provided inadequate service as contemplated by R.C. 4905.22.

V. ORDER

{¶ 53} It is, therefore,

{¶ 54} ORDERED, That Ohio Edison's motion to strike certain portions of the Kubitzas' post-hearing brief be granted. It is, further,

{¶ 55} ORDERED, That the Kubitzas' motion to strike certain portions of Ohio Edison's post-hearing brief be denied. It is, further,

{¶ 56} ORDERED, That this matter be decided in favor of Ohio Edison for failure of the Kubitzas to sustain their burden of proof. It is, further,

{¶ 57} ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

AS/kck

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Case No(s). 17-1435-EL-CSS

Summary: Opinion & Order finding that Matt and Allison Kubitza have failed to carry the burden of proving that the Ohio Edison Company did not provide adequate service pursuant to R.C. 4905.22 on May 3, 2017, when the Kubitzas experienced an electrical surge electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio