

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

LINDA KIRBY,

Complainant,

v.

OHIO EDISON COMPANY,

Respondent.

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Case No. 18-0691-EL-CSS

OHIO EDISON COMPANY'S POST-HEARING BRIEF

I. Introduction

This case stems from Linda Kirby's (the "Complainant") October 30, 2017 trouble call to Ohio Edison Company ("Ohio Edison") reporting a potential stray voltage, often referred to in the electric industry as neutral-to-earth voltage ("NEV"), issue in the cow milking parlor in the barn on her property. Ohio Edison dispatched a troubleman to Complainant's residence that same day. The following day on October 31, 2017, Michael Hintz, an engineer in Ohio Edison's Reliability Group, visited the Complainant's property to perform an on-site investigation and he proceeded to test for NEV using a voltmeter and took readings at the pad-mounted transformer, in the milking parlor, and at water bowls in the barn located on Complainant's property. Mr. Hintz did not witness any elevated levels of NEV in the barn, both with the equipment in the milking parlor turned on and off. Mr. Hintz did not observe any readings of elevated NEV anywhere on the property during his on-site investigation.

Complainant's son, Kevin Kirby, called Mr. Hintz's office line on November 8, 2017, and left a voicemail reporting that a technician from Precision Ag Automation measured 1.1 Voltz from an isolated ground to the Ohio Edison system. The next day, November 9, 2017, Complainant's son also called the main FirstEnergy Call Center and reported he was measuring 1-3.5 Volts of NEV on concrete in the milking parlor at the Complainant's property. After receiving the call, Ohio Edison dispatched a troubleman to the property the same day. The Ohio Edison troubleman detected elevated levels of NEV at the Complainant's property. After returning to the office on November 13, 2017, from performing hazard response and damage assessment patrol duties due to major storms in Northeast Ohio beginning November 5, 2017, Mr. Hintz made arrangements to have an Ohio Edison line crew install a neutral isolator. The neutral isolator was

installed on November 13, 2017, within 4 days of the elevated NEV confirmed by Ohio Edison personnel.

In the Complaint, Complainant alleges that in April 2017 she witnessed abnormal behavior in her cows as they entered the milking parlor and in October 2017 Complainant believed that elevated NEV existed on her property. Complainant alleged that the elevated NEV was causing damage to her cows by electrically shocking the cows when milking, eating, and drinking, and causing the cows to suffer from burring tissue in the cows utters and causing poor health and death. Complainant alleges that Ohio Edison failed to adequality and timely respond to Complainant's service complaints and should have installed the neutral isolator earlier. But Complainant has not presented any evidence to support these claims. Indeed, she has not presented any testimony in the record demonstrating Ohio Edison did not diligently respond to a customer's complaint and install a neutral isolator when elevated levels of NEV was confirmed by Ohio Edison. On the contrary, evidence presented by Ohio Edison at the hearing demonstrates that Ohio Edison promptly and diligently responded to each of the trouble calls Complainant made to Ohio Edison between October 30, 2017, and November 9, 2017.

As in all complaint cases, the Complainant has the burden of proving his or her case; but here, Complainant has failed to satisfy her burden under the four-factor test for power surge liability articulated by the Commission in *In the Matter of Santos v. The Dayton Power and Light Company*, Case No. 03-1965-EL-CSS, 2005 Ohio PUC LEXIS 98 (Mar. 2, 2005).¹ Rather, the evidence in this case shows that: (1) the cause of the elevated NEV on Complainant's property has not been conclusively determined as being caused by something in Ohio Edison's control; (2) Ohio

¹ The Commission does not have administrate case law that establishes a test for elevated NEV cases. Ohio Edison believes that the four-factor test used in power surge liability Complaint cases is the most appropriate and should be used here.

Edison complied with all statutory and regulatory requirements regarding the operation of its system; (3) Ohio Edison, through its actions, provided reasonable service; and (4) Ohio Edison acted responsibly in responding to Complainant's trouble calls and installing a neutral isolator after confirming elevated NEV on Complainant's property. Ohio Edison is therefore not responsible for any alleged damages to Complainant's farm cattle or property.

In addition to her elevated NEV claim, in the Complaint, Complainant seemed to assert that Ohio Edison was responsible for damage "resulting from low voltage delivered to farm during 'brown out' conditions," that allegedly caused damage to "seven failed well pump motors, six failed control PCB boards on parlor auto detaching automation, and damages pulsation control PCB." These claims were not addressed at the hearing and Complainant did not present any testimony concerning such claims. The Complainant has not sustained his burden in this case. The Complaint should be dismissed with prejudice and/or Ohio Edison Company should be granted judgment in its favor on the Complaint.

II. Statement of Facts

A. The October 30, 2017 Trouble Call and October 31, 2017 On-Site Investigation

On October 30, 2017, Complainant contacted the FirstEnergy call center reporting a potential elevated NEV issue in the cow milking parlor in the barn on her property.² Ohio Edison dispatched a troubleman to Complainant's residence that same day.³ The following day on October 31, 2017, Michael Hintz, an engineer in Ohio Edison's Reliability Group, visited the Complainant's property to perform an on-site investigation.⁴ Mr. Hintz proceeded to test for NEV using a voltmeter and took readings at the pad-mounted transformer, in the milking parlor, and at

² Testimony of Michael Hintz on Behalf of Ohio Edison Company ("Hintz Testimony") at p. 8.

³ *Id.* at p. 9.

⁴ *Id.*

water bowls in the barn located on Complainant's property.⁵ Mr. Hintz witnessed 0.25 Volts or less at the pad-mounted transformer and contact voltage measurements less than 0.1 Volts in the barn, both with the equipment in the milking parlor turned on and off. Mr. Hintz did not observe any readings of elevated NEV on the property during his on-site investigation.⁶ Mr. Hintz concluded his on-site investigation and explained to Complainant and her son that the measured low levels below 1 Volt did not justify the installation of a neutral isolator at that time.⁷ Mr. Hintz provided Complainant and her son his business card and instructed them to call him if they had any further evidence of elevated NEV.

B. The November 8, 2017 and November 9, 2017 Trouble Call and November 9, 2017

Inspection

On Wednesday, November 8, 2017, Complainant's son called Mr. Hintz's office telephone line and left a voicemail reporting that a technician from Precision Ag Automation was measuring 1.1 Volts from an isolated ground to the Ohio Edison system.⁸ Complainant's son also called the FirstEnergy call center on Thursday, November 9, 2017, and reported that he was getting 1-3.5 Volts of NEV on concrete in the milking parlor.⁹

In response to the Thursday, November 9, 2017 telephone call to the FirstEnergy call center, Ohio Edison dispatched a troubleman to the Complainant's property the same day and he was able to confirm elevated NEV of 5.5 Volts at the Ohio Edison pad-mounted transformer.¹⁰ The troubleman proceeded to create a follow-up order requesting the installation of a neutral isolator.¹¹

⁵ *Id.*

⁶ *Id.* at p. 10.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at p. 11.

¹¹ *Id.*

C. The November 13, 2017 Installation of a Neutral Isolator

Mr. Hintz returned to his office on Monday, November 13, 2017, after conducting hazard response and damage assessment patrol duties due to major storms in Northeast Ohio, and received the voicemail left by Complainant's son on November 8, 2017, and received a call from Complainant's son regarding the elevated NEV issue.¹² After receiving the call from Complainant's son and reviewing the follow-up order from November 9, 2017, Mr. Hintz made arrangements to have an Ohio Edison line crew meet him at Complainant's property and install a neutral isolator that day.¹³ The installation of the neutral isolator was completed during Mr. Hintz's visit to the property on November 13, 2017.¹⁴

III. Law and Argument

In complaint proceedings, the burden of proof rests with the Complainant. *Grossman v. Pub. Util. Comm.*, 5 OhioSt.2d 189, 214 N.E.2d 666 (1966). Therefore, a complainant must present evidence in support of the allegations made in a complaint. Moreover, as described in footnote 1 above, in cases like this where a complainant seeks damages as a result elevated NEV, the complainant has the burden of proving four factors specific to that cause of action. *See In the Matter of Pro Se Commercial Properties v. The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, *6 (Op. and Order Sept. 10, 2008) (“*In re Pro Se Commercial Properties*”).

Here, Complainant has failed to meet her burden against Ohio Edison. The only “evidence” she has submitted in this proceeding is that she believes Ohio Edison did not respond timely, but as Complainant said at the hearing “I didn’t write these dates down, so I can’t swear to

¹² *Id.* at pp. 11-12.

¹³ *Id.* at p. 12.

¹⁴ *Id.*

it.”¹⁵ The Complaint should be dismissed with prejudice and/or Ohio Edison should be granted judgment in its favor on the Complaint.

A. Complainant has failed to satisfy the Commission’s four-factor test for power surge liability, which should be used in elevated NEV cases.

In order to establish that Ohio Edison is liable for the elevated NEV that Complainant alleges to have experienced, Complainant must satisfy the four-factor test articulated in *In re Pro Se Commercial Properties*. Specifically, it is her burden to prove:

[1] whether the cause of the problem was in the control of the company, [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 responsibly in correcting the problem.

Id. at 6 (citing cases). “In the absence of evidence showing that Ohio Edison failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that Ohio Edison is responsible for the damages to the complainant’s property.” *Id.*

In the present case, Complainant has failed to satisfy any of the four factors, has not shown any unreasonable action by Ohio Edison, and has not even proven that her cows were damaged by elevated levels of NEV caused by Ohio Edison. The Complaint should be dismissed with prejudice, with judgment entered in Ohio Edison’s favor.

1. The cause of the elevated NEV has not been established to be within Ohio Edison’s control.

There is no evidence in the record that Ohio Edison’s facilities caused the elevated NEV at Complainant’s property. Indeed, Ohio Edison’s witness testified that the cause of the elevated NEV reported “was never identified so the possibility that a problem on the customer-owned side

¹⁵ August 5, 2021 Hearing Transcript (“Hearing Transcript”) at p. 30.

of Ms. Kirby's electrical system or some other unrelated issue cannot be ruled out."¹⁶ Ohio Edison's witness further testified that the only elevated NEV that Ohio Edison observed "was just one time at the transformer" and "Ohio Edison never detected elevated NEV in the milking parlor at the Property."¹⁷ Complainant has not presented any evidence to the contrary.

2. Ohio Edison complied with all statutory and regulatory requirements regarding the operation of its system.

There is no evidence in this case that Ohio Edison failed to comply with any statutes or regulations regarding the operation of its system. At the hearing, Complainant's claims about Ohio Edison's failure to timely respond to the elevated NEV issue were unsubstantiated. While Complainant testified that Ohio Edison did not respond right away, the evidence admitted at the hearing in this matter shows that Ohio Edison diligently responded to each of Complainant's trouble calls during that time period, conducted an on-site investigation the day after Complainant's initial trouble call, and after confirming elevated NEV on the transformer pad at Complainant's property, installed a neutral isolator within 4 days.

3. Ohio Edison's actions constituted reasonable service.

Ohio Edison's actions constituted reasonable service. Complainant placed a trouble call on October 30, 2017, and Ohio Edison dispatched a troubleman that same day.¹⁸ To investigate the reports of elevated NEV further, Ohio Edison dispatched Mr. Hintz to conduct an on-site investigation the following day on October 31, 2017.¹⁹ Mr. Hintz did not witness any elevated levels of NEV to justify the installation of a neutral isolator at that time.²⁰ When Complainant called the FirstEnergy call center on November 9, 2017, to report elevated NEV, Ohio Edison

¹⁶ Hintz Testimony at p. 14.

¹⁷ *Id.* at pp. 14-15.

¹⁸ *Id.* at pp. 8-9.

¹⁹ *Id.* at p. 9.

²⁰ *Id.* at p. 10.

promptly responded, sent a troublerman to the property to investigate, and after testing and confirming elevated levels of NEV at the pad-mounted transformer, a follow-up order for installation of neutral isolator was created.²¹ The neutral isolator was installed two business days later on November 13, 2017.²² Ohio Edison's witness testified that in his opinion, Ohio Edison took reasonable steps to investigate and resolve the NEV issue at Complainant's property.²³

4. Ohio Edison acted responsibly in confirming elevated NEV before installing a neutral isolator.

Ohio Edison promptly installed a neutral isolator after confirming elevated levels of NEV at the pad-mounted transform on Complainant's property. Complainant's own expert, Mr. Daniel Dismukes, even admits that he would expect Ohio Edison to test the levels of NEV after receiving a complaint.²⁴ Ohio Edison's witness testified that Ohio Edison does not install an isolator immediately as a precaution because investigation and testing is needed to verify the source of the elevated NEV. Specifically, Ohio Edison's witness testified that "it's a false sense of security just to put [a neutral isolator] in when possibility there might be issues beyond our system that is causing [elevated NEV]."²⁵ Mr. Hintz also testified that you must "identify the problem first before you start trying to prescribe the cure."²⁶

While Complainant's expert testified that in his experience, he has seen a neutral isolator installed less than twenty-four hours after elevated NEV is detected, there is no testimony or evidence in the record supporting the position that installing a neutral isolator within 4 days of a utility confirming elevated levels of NEV is unreasonable. Complainant's witness did not identify

²¹ *Id.* at pp. 10-11.

²² *Id.* at p. 12.

²³ *Id.* at pp. 12-13.

²⁴ Hearing Transcript at p. 67.

²⁵ *Id.* at p. 74.

²⁶ *Id.* at p. 78.

any legal requirements or industry standards that specifies installation within twenty-four hours. In fact, Mr. Hintz testified that in his professional experience, Ohio Edison's investigation and installation of a neutral isolator two business days after confirmed elevated levels of NEV "is reasonable, fast service that reflects the high priority with which Ohio Edison treats NEV complaints."²⁷ Further, Mr. Hintz testified that it is not his experience that a neutral isolator is installed within twenty-four hours after a NEV complaint.²⁸

Ohio Edison promptly responded to each of Complainant's trouble calls in October and November 2018 and each time tested for elevated levels of NEV. Once elevated levels of NEV were confirmed by Ohio Edison, Ohio Edison installed a neutral isolator within 4 days.

Commission precedent is clear that "[i]n the absence of evidence showing that [the 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." *In re Pro Se Commercial Properties*, Case No. 07-1306-EL-CSS, *10 (Op. and Order Sept. 10, 2008). Complainant has failed to meet her burden under the *In re Pro Se Commercial Properties* test. Ohio Edison cannot be found liable for the alleged damages to Complainant's cattle. Even if the Commission were to find Ohio Edison liable, Complainant has not produced adequate evidence to prove her alleged damages. The Commission should find in Ohio Edison's favor with respect to Complainant's claim.

B. Complainant has failed to meet her burden of proving entitlement to any other relief in this case.

Complainant's other claim—that items on her farm were damaged due to low voltage from "brown out" conditions—suffers from the same deficiencies as her elevated NEV claim, because

²⁷ Hintz Testimony at p. 13.

²⁸ Hearing Transcript at p. 73.

she has presented no evidence to support this claim. She did not provide any testimony linking the damage to any actions of Ohio Edison and her expert did not provide any opinions on the claim. There is no evidence in this case that Ohio Edison was responsible for any damage to Complainant's electronic farm items in the barn.

IV. Conclusion

Complainant has not met her burden of proof in this case. For all of the foregoing reasons, the Complaint should be dismissed with prejudice and/or Ohio Edison Company should be granted judgment in its favor on the Complaint.

Respectfully submitted,

/s/ John W. Breig, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing Post-hearing Brief was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 16th day of September 2021. A copy of the foregoing was served by electronic mail to the following person on this 16th day of September 2021:

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Summary: Brief Ohio Edison Company's Post-Hearing Brief electronically filed by Mr. John W. Breig on behalf of Ohio Edison Company