

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
DOUBLE K KIRBY FARMS,

COMPLAINANT,

CASE NO. 18-691-EL-CSS

v.

OHIO EDISON COMPANY,

RESPONDENT.

## OPINION AND ORDER

Entered in the Journal on August 24, 2022

### I. SUMMARY

{¶ 1} The Commission finds that Double K Kirby Farms failed to carry the burden of proving that Ohio Edison Company did not provide reasonable or adequate service.

### II. PROCEDURAL BACKGROUND

{¶ 2} 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.

{¶ 3} Respondent, Ohio Edison Company (Ohio Edison or the Company), is a public utility as defined in R.C. 4905.02. Accordingly, Ohio Edison is subject to the Commission's jurisdiction.

{¶ 4} On April 16, 2018, Linda Kirby on behalf of Double K Kirby Farms (Complainant) filed a complaint against Ohio Edison, alleging that stray voltage in the form of neutral-to-earth voltage from Ohio Edison's equipment caused damage to Complainant's dairy herd at its farm. Complainant requested financial compensation for the damaged dairy herd as a result of the stray voltage.

{¶ 5} Ohio Edison filed its answer on May 4, 2018. In its answer, Ohio Edison admits some allegations in the complaint. However, Ohio Edison denies all allegations related to the behavior and health of Complainant's cows and those related to any findings or tests not performed by Ohio Edison personnel. Additionally, Ohio Edison raises several affirmative defenses.

{¶ 6} A settlement conference was held by telephone on August 7, 2018. The parties were unable to resolve the matter at that time.

{¶ 7} On September 6, 2018, Ohio Edison filed a motion to dismiss this case in which the Company moved to strike portions of the complaint that sought monetary damages because the Commission does not have authority to grant such relief.

{¶ 8} On October 31, 2018, Ohio Edison filed a motion to continue the hearing and to obtain a ruling on its pending motion to dismiss.

{¶ 9} On November 13, 2018, the attorney examiner issued an Entry granting Ohio Edison's motion for continuance and its motion to dismiss the Complainant's claim for monetary damages, deciding that, in conformance with Commission precedent, the Commission does not have the authority to award monetary damages and that the Commission's inquiry is limited to whether Ohio Edison has complied with its tariff, the Commission rules, regulations, and orders.

{¶ 10} On December 13, 2018, a notice of appearance of counsel was filed on behalf of Ms. Kirby. On the same date, counsel for Ms. Kirby filed a notice of dismissal, advising that Ms. Kirby desired to dismiss the case and pursue the matter at the Trumbull County Common Pleas Court.

{¶ 11} The Commission granted the request to dismiss pursuant to an Entry dated January 16, 2019.

{¶ 12} On March 30, 2020, Complainant filed a motion to reopen the case.

{¶ 13} By Entry issued June 10, 2020, the attorney examiner granted Complainant's motion to reopen the case and set the matter for a settlement conference. A settlement conference was held by telephone on August 6, 2020. The parties were unable to resolve the matter at that time but agreed to continue discussions.

{¶ 14} On August 20, 2020, Complainant filed an amended complaint against Ohio Edison.

{¶ 15} On September 9, 2020, Ohio Edison filed its answer to the complaint in which it denied Complainant's allegations.

{¶ 16} By Entry issued September 21, 2020, the attorney examiner accepted the amended complaint pursuant to Ohio Adm.Code 4901-1-06. The attorney examiner also scheduled the matter for another settlement conference. The settlement conference was held, as scheduled, by telephone on October 6, 2020. The parties were unable to resolve the matter at that time.

{¶ 17} By Entry issued December 23, 2020, the attorney examiner established a procedural schedule in line with his discussions with the parties, scheduling the evidentiary hearing for June 8, 2021.

{¶ 18} On May 18, 2021, Ohio Edison filed a joint motion to modify the procedural schedule due to it retaining new counsel for the case who had a conflict with the established procedural schedule.

{¶ 19} By Entry dated May 24, 2021, the attorney examiner granted the motion, in part, and established a new procedural schedule, whereby parties were to file testimony by July 19, 2021, participate in a prehearing conference on July 30, 2021, and attend the rescheduled hearing on August 5, 2021.

{¶ 20} On August 5, 2021, the hearing was held at the Commission's offices where Complainant testified on her own behalf and presented the testimony of Mr. Daniel

Dismukes, owner and operator of Precision Ag Automation. Ohio Edison presented the testimony of one of its engineers, Mr. Michael Hintz.

{¶ 21} At the close of the evidentiary hearing, the attorney examiner established a briefing schedule. In accordance with that schedule, Ohio Edison and Complainant filed their initial briefs on September 16, 2021, and their respective reply briefs were filed on September 30, 2021.

### III. DISCUSSION

#### A. *Applicable Law*

{¶ 22} R.C. 4905.26 requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate, charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable.

{¶ 23} In complaint proceedings, the complainant has the burden of proving the allegations in the complaint by a preponderance of the evidence. *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E. 2d 666 (1966).

{¶ 24} Further, where a complainant seeks damages as a result of a power surge, the complainant's right of recovery against an electric distribution utility is determined based on a four-factor test involving: (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 problem; (3) whether the company's actions or inactions constituted unreasonable service; and, (4) whether the company acted responsibly in correcting the problem. *In re the Complaint of Gregory B. Forgach v. The Cleveland Elec. Illum. Co.*, Case No. 09-646-EL-CSS, Opinion and Order (May 13, 2010), citing *In re the Complaint of Edward F. Santos v. The Dayton Power and Light Com.*, Case No. 03-1965-EL-CSS (*Santos*), Opinion and Order (Mar. 2, 2005).

**B. Complainant's Testimony**

{¶ 25} Ms. Kirby, owner of Double K Kirby Farms, testified that during April 2017, 150 dairy cows at her farm were having issues, later determined to be mastitis, which involved the herd not eating or drinking. Ms. Kirby affirms that none of these effects occurred before April 2017 and that the veterinarian confirmed that there was nothing in the cows' food, such as moldy feed, that would be causing these issues. (Tr. at 12-13, 17-18.) Because of the condition of the cows, Ms. Kirby stated that the farm was throwing half of its milk away (Tr. at 16).

{¶ 26} Ms. Kirby said the farm started losing cows and, upon another farm's recommendation, began to think the issue could be caused by stray voltage from Ohio Edison's system (Tr. at 34). Ms. Kirby said that she asked Mr. Daniel Dismukes, who currently owns Precision Ag Automation but was employed by Supply Hills at the time, to test for elevated levels of stray voltage. Ms. Kirby states that Mr. Dismukes came on October 30, 2017, and that Mr. Dismukes' testing demonstrated elevated levels of stray voltage. (Tr. at 21-22, 28-29.) Ms. Kirby then called Ohio Edison on October 30, 2017, to investigate the possibility of stray voltage as the cause for the herd's mastitis (Tr. at 9, 16, and 21.) According to Ms. Kirby, Ohio Edison came out to the farm on October 31, 2017<sup>1</sup>, and checked for stray voltage, but the voltage registered was not at a sufficient level, according to Ohio Edison, to raise concerns regarding stray voltage (Tr. at 14-15)

{¶ 27} Ms. Kirby again called Ohio Edison on November 8, 2017 (Tr. at 15, 31). On the following day, November 9, 2017, Ms. Kirby states that Ohio Edison sent out a representative to retest the farm's stray voltage levels (Tr. at 39). Ms. Kirby said that Ohio Edison's second reading showed sufficient high voltage to necessitate an isolator installation. According to Ms. Kirby, on November 13, 2017, the isolator was installed, and they did not have any more issues until June 2020. (Tr. at 15-16, 20.) Ms. Kirby states that

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<sup>1</sup> Ohio Edison's records show that a troubleman was dispatched to the farm on October 30, 2017, who then generated a follow-up order in Ohio Edison's internal system (Co. Ex. 2 at 9).

neither she nor her son had to contact Ohio Edison after the isolator was installed until June of 2020 when Ms. Kirby brought forth similar complaints with respect to her cows. Ms. Kirby affirmed that Ohio Edison came out without delay and replaced the previously installed isolator. (Tr. at 18-19.) Ms. Kirby noted that ultimately the farm lost 25 cows due to the cows' conditions and had to sell another 32 cows for slaughter because the prescribed medicines did not cure the mastitis. (Tr. at 7-10, 17, 21). Ms. Kirby testified that she believes the cows suffered harm between October 31, 2017, and November 13, 2017 (Tr. at 16-17). Further, Ms. Kirby noted other alleged damages, including that the four wells on the farm were burnt out, every pump needed to be replaced, and pulsators needed to be replaced due to burn out (Tr. at 17-18). Also, Ms. Kirby testified that Mr. Dismukes conducted different tests than those performed by Ohio Edison and that she relied upon Mr. Dismukes' expertise in this matter (Tr. at 10, 23-24).

{¶ 28} Mr. Dismukes, Complainant's expert witness who possesses an Associate's Degree in Dairy Science and an Associate's Degree in Electric Engineering, confirmed that on or around October 30, 2017, he went to Double K Kirby Farms to test for stray voltage. During this inspection, Mr. Dismukes stated that he isolated a grounding rod at the farm away from any buildings or bonded equipment, attached a specific type of wire to it and ran the wire into the barn and milk harvest areas to measure differences. He stated that he verified voltage readings over 1.0 volts when increasing the total farm electric load. Mr. Dismukes asserted that, on November 7, 2017, after Ohio Edison's initial refusal to install an isolator, he called Mr. Hintz's cellphone to explain his testing procedure in support of the farm getting an isolator. Mr. Dismukes stated that Mr. Hintz dismissed these findings because he did not experience such high voltages during his inspection at the farm, and Mr. Hintz stated that isolators cost approximately \$1,200, an expense Ohio Edison will avoid incurring if they cannot verify elevated stray voltage. According to Mr. Dismukes, Ms. Kirby's son, Kevin, instructed Mr. Dismukes to offer Mr. Hintz \$1,200 to install an isolator on the farm. During a second cellphone call with Mr. Hintz, Mr. Dismukes asserted that Mr. Hintz said Ohio Edison does not accept offers like that and that Ohio Edison would

install an isolator at their own expense, only if there are verified elevated neutral-to-earth voltages. (Complainant Ex 1. At 2; Tr. at 44, 57-58.) In his opinion, Mr. Dismukes believes that stray voltage levels can and often do fluctuate from day to day, where the voltage on the Double K Kirby Farms could have fluctuated from October 30, 2017, to October 31, 2017 (Tr. at 68).

{¶ 29} Mr. Dismukes stated that Ohio Edison should have installed an isolator on the Kirby's farm out of an abundance of caution, provided that the utility had knowledge of Mr. Dismukes' various readings of 1.1 to 1.7 volts (Tr. at 69). Though, on cross-examination, Mr. Dismukes also stated that if Ohio Edison did not register high levels of stray voltage, then it should not be expected to install an isolator (Tr. at 57-58). Further, Mr. Dismukes confirmed that he would expect Ohio Edison to properly test the levels of stray voltage after receiving a complaint from Double K Kirby Farms; that he does not know Ohio Edison's testing procedures; and that he cannot refute whether Ohio Edison's testing was proper or not. (Tr. at 67-68.)

{¶ 30} Although Mr. Dismukes' pre-filed testimony states that he recommends a neutral isolator be installed if voltage is found to exceed 0.5 volts, during cross examination, Mr. Dismukes clarified that he does not have a bright line voltage threshold in which he recommends installing an isolator. Here, Mr. Dismukes admitted that there can be problems on a farm that may be mitigated without requiring the use of a neutral isolator. (Tr. at 50-51.) Further, he confirmed that he did not have a photo of the alleged 1.1 volt reading he measured during his farm inspection. Mr. Dismukes explained that he captured photos of other readings registering 0.5 and higher and that these voltage levels must have been caused by off-farm problems, meaning the elevated stray voltage levels stemmed from the primary leg of Ohio Edison's transformer, since his readings registered a voltage of 0.0 when referenced between any of the grounding on the farm per his testing procedure. Mr. Dismukes said that, though not photographed, a 1.7 voltage reading was the highest reading he observed on October 30, 2017. (Tr. at 51-55; Complainant Exs. 1 and A.) Here, he noted that there is a difference between off-farm and on-farm voltage readings. He explained that

if an off-farm voltage reading is higher than 0.5, it is problematic, and if the 0.5 voltage or higher reading is on the farm, it is Mr. Dismukes' job to correct it. (Tr. at 60.) During redirect, Mr. Dismukes affirmed that there was no flaw with his testing procedures and that if Ohio Edison used the same technique, they would have gotten the same results. Mr. Dismukes referred to his testing procedure as "electrical engineering 101" and affirmed that he has performed this type of measurement "over 100 times." (Tr. at 63.)

{¶ 31} Mr. Dismukes concluded that the farm's excessive stray voltage was harming its cows, and that if Ohio Edison installed the neutral isolator when first requested by Complainant, the cows would not have been harmed (Complainant Ex 1. at 3). During cross-examination, Mr. Dismukes confirmed that he used Complainant Exhibit B, an article discussing stray voltage's harm to farms, to support his conclusion that stray voltage affects cows. Additionally, he stated that he relied upon this study without confirming the experience of the author, who was a second-year law student and intern for the Center of Agricultural Law and Taxation (Tr. at 61-62.) Mr. Dismukes later stated that the study was actually used for educational purposes for the benefit of the Commission and that its contents did not affect or influence his opinions concerning the Double K Kirby Farms' stray voltage issues (Tr. at 66). Further, Mr. Dismukes noted that, at least a dozen times prior to the Kirby matter, he had experienced cattle being harmed by excessive stray voltage. Mr. Dismukes noted that multiple other dairies in the area experienced similar or sometimes higher stray voltage than the Double K Kirby Farms; however, the most telling indicator of this kind of issue was an animal's behavior and health. Mr. Dismukes stated that, when his testing procedure determines a high voltage level exists, dairies are instructed to contact their co-op and then install a neutral isolator within 24 hours "out of precaution." Further, Mr. Dismukes explained that this is the first time in his experience an isolator was installed more than 24 hours after elevated levels of stray voltage were confirmed. (Tr. at 65.)

### *C. Respondent's Testimony and Arguments*

{¶ 32} Mr. Hintz's prefiled testimony stated that neutral-to-earth voltage is naturally occurring and is something that Ohio Edison cannot entirely prevent. He stated that a



relatively small voltage would not have an adverse impact on people or property. Further, Mr. Hintz asserted that Ohio Edison constructs, maintains, and operates its distribution system in accordance with the National Electric Safety Code and Commission rules and regulations. He stated that Ohio Edison and its employees work to anticipate and eliminate potential problems that may impact the distribution system's reliability for customers and that the Company relies on customer feedback when they encounter or suspect stray voltage. Mr. Hintz asserted that it is the Company's policy to "promptly investigate" stray voltage consumer complaints and to make repairs when there is "confirmed evidence" of elevated levels on Ohio Edison's system. (Company Ex. 2 at 4-5.) Mr. Hintz testified that some elevated stray voltage levels could be caused by faulty customer wiring or equipment. According to Mr. Hintz, there are several factors that impact the amount of voltage experienced, including the amount and type of a utility's load, grounding resistances, soil type, distance from a substation, size of wire, and issues in the customer's own wiring system. (Company Ex. 2 at 5.)

{¶ 33} At hearing, Mr. Hintz testified that isolators should not be installed immediately as a precaution. Mr. Hintz noted that Ohio Edison needs to properly verify the voltage measurements and determine whether the source is on the property or off to determine whether the utility caused the elevation. He stated that installing an isolator without this process could result in a false sense of security for the property owner if the issue is caused by something beyond Ohio Edison's system. (Tr. at 73-74.) Regarding situations pertaining to purported elevated stray voltage levels, Mr. Hintz further testified that sometimes the first person to report elevated stray voltage levels is the customer or a customer's contractor, such as an electrician; however, Ohio Edison verifies the stray voltage levels on their own prior to taking any further actions (Tr. at 74-75).

{¶ 34} Mr. Hintz testified that livestock, especially dairy cows, perceive voltages at lower levels than human do. According to Mr. Hintz, cows may feel stray voltage when they are in contact with an energized surface, such as metal parts of an electric milking parlor, and the ground. (Co. Ex. 2 at 6.) During cross-examination, Mr. Hintz agreed that if

elevated stray voltage levels were left unaddressed for a long period of time, a herd's health would suffer (Tr. at 79). Mr. Hintz further testified that customers can minimize stray voltage at dairy farms, but it cannot be entirely eliminated due to it being a natural result of serving load from a multi-ground electrical system. Mr. Hintz's testimony discusses that one precaution dairy farms can take is to install an equipotential grid in areas where cows are exposed to metallic or conductive structures. Mr. Hintz claims that if the grid is properly installed and maintained, no elevated voltage should exist in a dairy milking parlor. Further, the testimony states that Ohio Edison customers are responsible for repairing and replacing their own defective equipment, as well as deficiencies in their internal electrical facilities, such as an equipotential grid installed below a milking parlor. Mr. Hintz testified that Ohio Edison uses a stray voltage level of 2.0 volts at the point of contact for livestock exposure as the level at which a stray voltage case should be further investigated and appropriate mitigative steps taken. Mr. Hintz further stated that, if Ohio Edison confirms the stray voltage levels are external to the customer's equipment and cannot be reduced to Ohio Edison's 2.0-volt standard within a reasonable time, then the Company will install a neutral isolator at the customer's transformer. According to Ohio Edison, a neutral isolator installed in combination with the physical separation of the transformer service neutral from the distribution system neutral interrupts and isolates the path of the elevated stray voltage between the distribution system and the service side of the transformer. (Company Ex. 2 at 6-8.)

{¶ 35} With respect to the complaint, Mr. Hintz's testimony clarified that Ms. Kirby called Ohio Edison on October 30, 2017, reporting stray voltage in her barn at levels of 1-3.5 volts. According to Mr. Hintz, Ohio Edison dispatched a troubleman to Double K Kirby Farms the same day and a follow-up order was generated in which Mr. Hintz went to the farm the following day, October 31, 2017, to perform an on-site investigation. Mr. Hintz's prefiled testimony stated that Ms. Kirby told him that a milking parlor was installed on the property in the early 2000s, that the parlor has an equipotential grid under it, and that they were experiencing stray voltage issues at the farm for approximately one month. According

to Mr. Hintz, Ms. Kirby did not disclose why they waited to notify Ohio Edison. During the visit, Mr. Hintz stated that he took multiple readings in the milking parlor and at water bowls in the barn and observed contact voltage measurements of less than 0.1 volts, both when the equipment in the milking parlor was turned on and off. According to Mr. Hintz, he also took voltage measurements at the Ohio Edison-owned pad-mounted transformer on Ms. Kirby's property, the highest of which measured 0.25 volts. Mr. Hintz stated that he advised Kevin Kirby that the low voltage levels did not justify the installation of a neutral isolator at that time and explained to him that neutral isolators are not typically considered until stray voltage levels consistently measure above 1.0 volt. Mr. Hintz states that he provided his business card to Kevin Kirby and told Mr. Kirby to call him if they have any further evidence of elevated stray voltage levels. (Co. Ex. 2 at 8-10.)

{¶ 36} Mr. Hintz further testified that Ms. Kirby's son called Mr. Hintz's office on Wednesday, November 8, 2017, and left a voicemail about his concerns regarding elevated stray voltage levels. Mr. Hintz stated that Ms. Kirby's son then called into the FirstEnergy call center on November 9, 2017, and reported that the milking parlor was measuring 1-3.5 volts on the concrete. Mr. Hintz asserted that Ohio Edison dispatched a troubleman on November 9, 2017, and the troubleman verified an elevated stray voltage level of 5.5 at the Ohio Edison pad-mounted transformer. The troubleman then created a follow-up order requesting the installation of a neutral isolator. When asked whether the troubleman detected elevated stray voltage in the milking parlor on his visit, Mr. Hintz said that he does not know and that the only information he has is that the Ohio Edison troubleman detected elevated stray voltage from the transformer case and ground to earth six feet away. Mr. Hintz stated that Ms. Kirby called the FirstEnergy call center again on Monday, November 13, 2017, and reported elevated stray voltage on her property. Her son also called Mr. Hintz the same day. According to Mr. Hintz, he made arrangements to have an Ohio Edison crew meet him at the Double K Kirby Farms, and they installed an isolator on November 13, 2017. (Co. Ex. 2 at 9-12.)

{¶ 37} Mr. Hintz testified that no one from Ohio Edison's engineering department contacted Ms. Kirby between the time the Kirbys first called on November 8, 2017, and the call on November 13, 2017, because the engineering personnel, including Mr. Hintz, were assigned to hazard response and damage assessment duties resulting from major storms impacting most of Northeast Ohio that began on Sunday, November 5, 2017. Therefore, people from his department were not in the office the following week while working these assignments. Mr. Hintz clarified that he was unaware of the November 8 or November 9 calls until he returned to his office on Monday, November 13, 2017. When asked if the isolator could have been installed earlier if he was aware of the November 8 call prior to November 13, Mr. Hintz stated that it is possible; however, there were still people without power, so he could not confirm that they would have been able to get someone out to the Kirby's property sooner than that following Monday. (Tr. at 84-85.)

{¶ 38} According to Mr. Hintz, he contacted Ms. Kirby on February 13, 2018, in response to a Commission inquiry received by Ohio Edison. Ms. Kirby told Mr. Hintz that her milking operation was still experiencing issues and that her cows had mastitis. The testimony reflects that Mr. Hintz told Ms. Kirby about the option to begin the claims process with Ohio Edison. Further, Mr. Hintz testified that the source of the elevated stray voltage reported was never identified, so it cannot be ruled out that Ms. Kirby's own electrical system or other unrelated issues could have caused the elevated levels. (Co. Ex. 2 at 13-15.)

{¶ 39} Mr. Hintz further testified that the Kirbys contacted Ohio Edison and the FirstEnergy call center again on June 15, 2020, reporting that their cows' cell counts were elevated, and the cows were "getting edgy again." Mr. Hintz stated that he returned the call the following day on June 16, 2020, and told the Kirbys that Ohio Edison would replace the neutral isolator on their property later that day. Later the same day, after replacing the isolator, Mr. Hintz states that Ms. Kirby's son called and stated that he was measuring approximately 0.25 volts on both the secondary and primary grounds. After learning of this, Mr. Hintz visited the property to verify that the new isolator was working correctly. When measuring the voltage, he registered a reading of 0.25 volts under no load, and a

reading of 1.0 volts with load. According to Mr. Hintz, he then conducted a similar check with Ms. Kirby's son's voltmeter and discovered that Mr. Kirby was using the meter in error by taking direct current readings instead of alternating current readings; he then proceeded to demonstrate how to take proper readings in the future. (Co. Ex. 2 at 15.) At hearing, Mr. Hintz explained that Ohio Edison installed the Kirby's isolator right away after Ohio Edison was contacted in June 2020 because it was a replacement for an already-installed isolator, which can fail at times, so it was not unreasonable to him to replace it (Tr. at 87-88; 93-94).

{¶ 40} With regard to Mr. Dismukes' testimony, during cross-examination, Mr. Hintz stated that he was familiar with the stray voltage testing procedure described by Mr. Dismukes and noted that Mr. Dismukes' testing procedure "was on the right path, but it's not totally conclusive based on those isolated readings that he took" (Tr. at 76-77). Mr. Hintz also stated that he has no recollection of the two phone calls Mr. Dismukes claims were had between the two. He states that they could have happened, but he does not recall them, and he does not have any notes indicating the calls were received. He also noted that his business card, a photo of which was attached to Mr. Dismukes' prefiled testimony, does not list his cellphone number, that he conducted most of his business through his business phone, and that during this time he did not give out his cell phone number while on the job. (Tr. at 82-84.) Further, Mr. Hintz testified that installing an isolator is not a large expense or difficult process. Mr. Hintz clarified that it was possible to install an isolator while investigating other issues but only when he suspects that the source of the problem is coming from the utility side. Here, Mr. Hintz said that he would need to see the elevated levels of stray voltage in order to justify the installation. (Tr. at 77-79.) Mr. Hintz also agreed that the voltage levels could have fluctuated from October 30, 2017, to October 31, 2017; however, the October 31, 2017 reading was not close to the reported measures from the previous day. (Tr. at 81-82.) Mr. Hintz clarified that although stray voltage levels can fluctuate from day-to-day, they do not fluctuate by 5 volts, as was recorded on the November 9, 2017 reading. Mr. Hintz explained that this kind of change is not usually observed unless it was a piece of equipment causing the influx. Mr. Hintz said that if the

cause of the elevated stray voltage levels was from the utility side, the elevated levels usually remain, with possibly slight changes. (Tr. at 100.) Also, Mr. Hintz testified that it is not his experience that neutral isolators will be installed within 24 hours of a report of stray voltage. He noted that confirming elevated levels of stray voltage is sometimes quick and the cause of it is very evident such that mitigation measures are taken quickly, while other times an investigation is needed to discover the source of the elevated levels of stray voltage. (Tr. at 73-75.)

***D. Post-Hearing Briefs***

{¶ 41} In its brief, Complainant asserts that Ohio Edison's services were unreasonable and inadequate under R.C. 4905.26. Complainant argues that, as a preliminary matter, Mr. Hintz's testimony during hearing was inconsistent because his actions concerning the neutral isolator were different in 2017 and 2020. Mr. Hintz installed a neutral isolator in November 2017 only after elevated stray voltage readings was verified by Ohio Edison while, in 2020, Ohio Edison quickly replaced the isolator without verifying elevated readings in response to the Kirby's June 2020 call. Further, Complainant argues that Mr. Hintz should not be considered a neutral expert witness since he has been employed by Ohio Edison for 35 years. Complainant claims that Mr. Dismukes, on the other hand, is a qualified neutral expert with no affiliation to Double K Kirby Farms, and, consequently, the Commission should assign more weight to his expert testimony. (Complainant Initial Br. at 5-7.)

{¶ 42} Complainant also highlights the inconsistency in elevated stray voltage measurements between the parties, where Mr. Dismukes identified elevated stray voltage on October 30, 2017, yet Ohio Edison did not register such voltage on the very next day, a discrepancy Mr. Dismukes called "curious." Complainant argues that Ohio Edison could and should have observed the same or similar readings and installed a neutral isolator on October 31, 2017. Further, Complainant also points out that Mr. Hintz failed to take Mr. Dismukes' word at face-value regarding Mr. Dismukes' readings and allegedly failed to recall his conversations with Mr. Dismukes. Complainant believes that Ohio Edison should

have taken the word of Mr. Dismukes and that its failure to do so resulted in substantial damage to the Complainant, all of which qualifies as unreasonable and inadequate service. (Complainant Initial Br. at 5-7.)

{¶ 43} Further, Complainant also contends that Ohio Edison should have procedures in place to address customer concerns during storms since outages caused by them are a regular occurrence and that the time it took from Ohio Edison's initial reading of elevated voltage on November 8 to installing the isolator on November 13 was unreasonable. (Complainant Br. at 7-8.)

{¶ 44} Ohio Edison contends that Complainant failed to satisfy the Commission's four-factor test for power surge liability, the *Santos* test, which should be applied to elevated stray voltage cases. First, the Company asserts that the cause of the elevated voltage was not established to be within Ohio Edison's control. Ohio Edison claims that there is no evidence on the record that the Company's facilities were the cause of the elevated voltage levels experienced on Complainant's property, which was supported by Mr. Hintz who testified that nothing ruled out the possibility that the stray voltage was caused by the Kirby's electrical system. According to Ohio Edison, it only detected elevated stray voltage once at the transformer and never detected elevated stray voltage in the milking parlor. Further, Ohio Edison noted that Complainant did not provide evidence to the contrary. (Ohio Edison Initial Br. at 5-6.)

{¶ 45} Next, Ohio Edison contends that it complied with all statutory and regulatory requirements regarding operating its system. The Company says that Complainant's claims about Ohio Edison's failure to timely respond to the elevated stray voltage levels were unsubstantiated. According to the Company, the record reflects that Ohio Edison diligently responded to each of the Kirby's trouble calls during the time period; conducted on-site investigations the day after the initial trouble call; and, after verifying elevated stray voltage levels, installed a neutral isolator within four days. (Ohio Edison Initial Br. at 6.)

{¶ 46} Third, the Company claims that its actions constituted reasonable service. Ohio Edison presents that it dispatched a troubleman the same day the Kirbys called on October 30, 2017. Further, Ohio Edison notes that it sent out Mr. Hintz to conduct an on-site investigation on October 31, 2017, and he did not witness any elevated stray voltage to justify the installation of a neutral isolator at that time. The Company asserted that, when the Kirbys called FirstEnergy on November 9, 2017, Ohio Edison dispatched a troubleman and, when elevated voltage was confirmed, a follow-up order for an isolator was placed, which was installed two business days later on November 13, 2017. Here, Ohio Edison's witness verified the above timeline and stated that the Company took reasonable steps to investigate and resolve the Complainant's issue. (Ohio Edison Initial Br. at 6-7.)

{¶ 47} Lastly, Ohio Edison asserts that it acted responsibly in confirming elevated levels of stray voltage before installing a neutral isolator. Ohio Edison's witness testified that the Company does not install isolators immediately as a precaution because investigating and testing the site is needed to verify the source of the elevated levels. The Company claims that Complainant's own expert, Mr. Dismukes, admitted that he would expect Ohio Edison to test the levels of stray voltage after receiving a complaint. The Company stated that, while Mr. Dismukes testified that he has seen a neutral isolator installed in less than twenty-four hours after elevated levels were detected, there is no testimony or evidence in the record supporting the position that installing a neutral isolator within four days of a utility confirming elevated levels is unreasonable. Further, Ohio Edison asserts that Mr. Dismukes did not identify any legal requirements or industry standards that specify installation within twenty-four hours. Ohio Edison's witness, Mr. Hintz, testified that, in his professional experience, installing a neutral isolator after two business days of confirmed elevated stray voltage levels was reasonable, fast service that reflected the Company's high priority for addressing these kinds of complaints. Additionally, the Company notes that Mr. Hintz confirmed that, in his experience, a neutral isolator is not necessarily installed within twenty-four hours after an elevated stray voltage complaint. The Company also asserts that it promptly responded to each of Double K Kirby



Farms' trouble calls in October and November 2017, and, during each visit to the property, tested for elevated stray voltage levels. And, according to Ohio Edison, a neutral isolator was installed within four days of elevated levels being confirmed. (Ohio Edison Initial Br. at 7-8.)

{¶ 48} Ohio Edison asserts that Complainant failed to meet its burden of proving entitlement to any other relief in this case. Further, the Company notes that, relating to Complainant's other claim in which items on the farm were damaged due to low voltage from "brown out conditions," Double K Kirby Farms failed to present evidence to support this claim. (Ohio Edison Initial Br. at 8-9.)

{¶ 49} In its reply brief, Complainant maintains that it satisfied all elements of the *Santos* test. First, Complainant asserts that it sufficiently proved Ohio Edison's response to the Kirby's complaints was unreasonable and inadequate. Complainant emphasizes that it does not have to prove Ohio Edison caused the elevated stray voltage levels, but rather that Ohio Edison's response to Complainant was unreasonable and inadequate. Complainant relies upon Mr. Dismukes' testimony and validity of his testing procedures, noting that Ohio Edison should have found the same elevated readings because it was "electrical engineering 101." Further, Complainant presents that Mr. Dismukes has done these same types of measurements over 100 times, and, through Mr. Dismukes' testimony, it should be clear that Ohio Edison could and should have discovered the elevated stray voltage levels on October 31, 2017. Complainant also contends that, at the minimum, Ohio Edison should have taken Mr. Dismukes' and/or Kevin Kirby's word regarding the elevated voltage levels. (Complainant Reply Br. at 2-3.)

{¶ 50} Second, Complainant alleges that Ohio Edison failed to comply with statutory and regulatory requirements regarding the operation of its system by failing to install a neutral isolator before November 13, 2017. Here, Complainant contends that Ohio Edison is aware that storms will occur and that the Company should have adequate measures in place to maintain its usual customer service while addressing hazard response and damage

assessment. Complainant claims that the Company's failure is two-fold. First, it should have installed a neutral isolator on October 31, 2017, and second, once Ohio Edison confirmed elevated readings on November 9, 2017, it should have installed a neutral isolator on that date or within 24 hours. (Complainant Reply Br. at 3.)

{¶ 51} Next, Complainant alleges that Ohio Edison did not deliver reasonable service and that the Company only relies upon the testimony of its expert Mr. Hintz, who is a 35-year employee of Ohio Edison, implying that Mr. Hintz is not a neutral expert in the matter since he works for the company for which he is providing testimony. Complainant claims that, when reviewing the testimony of Ms. Kirby and Mr. Dismukes, it is clear that Ohio Edison's service was not reasonable. (Complainant Reply Br. at 3.)

{¶ 52} Lastly, Complainant asserts that Ohio Edison did not act reasonably in addressing Double K Kirby Farms' service issues. Complainant contends that Ohio Edison relies almost exclusively on Mr. Hintz's testimony, which claims the Company acted reasonably. Complainant cites Mr. Dismukes' testimony in which he said that this was the longest delay in installing a neutral isolator he has seen. Further, Complainant maintains that it was unreasonable to wait five days to install a neutral isolator and that a storm is no excuse for this gap. Complainant argues that Ohio Edison knows storms and outages will occur and that it should be able to provide usual customer service during such storms, absent extraordinary circumstances. Complainant also cites that in June 2020, Ohio Edison replaced the neutral isolator based on a conversation with Kevin Kirby and that Mr. Hintz did not go back to the property to verify elevated voltage levels. Complainant thus concludes that Ohio Edison only took Kevin Kirby's word before replacing the neutral isolator in 2020. (Complainant Reply Br. at 3-4.)

{¶ 53} In its reply brief, the Company asserts that the Complainant's brief fails to set forth the correct legal standard by failing to address the four *Santos* factors. Ohio Edison claims that the evidence demonstrates: 1) the cause of the elevated stray voltage levels was not conclusively determined to be caused by something under Ohio Edison's control; 2)

Ohio Edison complied with all statutory and regulatory requirements regarding its system operations; 3) the Company provided reasonable service; and, 4) Ohio Edison acted responsibly in its response to Complainant's trouble calls and installing a neutral isolator after confirming elevated voltage levels. (Ohio Edison Reply Br. at 1-2[sic].)

{¶ 54} Further, the Company states that the entirety of Complainant's argument, in brief, centered on Ohio Edison's service to the farm being unreasonable and inadequate. Here, the Company asserts that the evidence in the record demonstrates that Ohio Edison's actions constituted reasonable service. First, Ohio Edison refutes Complainant's argument that little weight should be given to Company's expert witness. Ohio Edison asserts that this argument is an attempt to impeach the witness after the fact instead of attacking the testimony at the hearing. Additionally, Ohio Edison concludes that Mr. Dismukes' testimony about calling Mr. Hintz is suspect and should diminish Mr. Dismukes' credibility because Mr. Hintz's cell phone number was not on the business card provided to the Kirbys. Ohio Edison asserts that the Commission should lend just as much weight to Mr. Hintz's testimony as Mr. Dismukes. In an attempt to show Mr. Dismukes' testimony was biased, Ohio Edison emphasizes that, although Mr. Hintz is an employee of Ohio Edison, Mr. Dismukes was hired by the Complainant, and the record supports that he performs all of the Complainant's maintenance. (Ohio Edison Reply Br. at 2-3 [sic].)

{¶ 55} Ohio Edison notes that Complainant offers only two arguments related to Ohio Edison's actions: (1) on October 31, 2017, Ohio Edison should have observed the same or similar readings registered by Mr. Dismukes during the previous day and should have installed a neutral isolator immediately; and, (2) Ohio Edison should have taken the word of Mr. Dismukes, a qualified expert, that a neutral isolator was necessary on October 30, 2017. Ohio Edison claims that Complainant attempts to cast doubt on the Company's testing procedures used on October 31, 2017; however, no evidence in the record supports that argument. Further, Ohio Edison asserts that, although Mr. Dismukes believes that Ohio Edison was possibly measuring stray voltage inaccurately, Mr. Dismukes admitted that he did not observe Ohio Edison's testing procedure and that he did not know whether they

tested inaccurately. Ohio Edison states that Mr. Dismukes admitted that he could not critique Ohio Edison's testing procedure at hearing. (Ohio Edison Reply Br. at 3 [sic].)

{¶ 56} According to Ohio Edison, Complainant's argument that the Company should have taken Mr. Dismukes' word about installing a neutral isolator is contradicted by Mr. Dismukes' own testimony. Here, the Company asserts that Mr. Dismukes admitted he expected Ohio Edison to test the voltage levels after receiving a complaint. Further, the Company explains that Mr. Dismukes agreed that Ohio Edison should not have been expected to install an isolator if Ohio Edison did not register elevated stray voltage levels on the property. Lastly, Ohio Edison asserts that the Complainant mistakes the occurrence during June 2020 with the events during the fall of 2017. During the June 2020 visit, Ohio Edison replaced an existing neutral isolator that was originally installed due to the verification of voltage levels by the Company in 2017. Here, the Company argues and Mr. Hintz testified that the verified elevated stray voltage levels in 2017 justified the replacement of the isolator in 2020. Ohio Edison asserts that it promptly installed a neutral isolator in 2017 and that it was justified in investigating whether a neutral isolator was needed prior to installing it because, as its witness testified, installing it without such investigation can create a false sense of security when the stray voltage may stem from the customer's own equipment or other unrelated issues. (Ohio Edison Reply Br. At 4 [sic].)

{¶ 57} Lastly, Ohio Edison notes that Complainant failed to identify any evidence in the record supporting the argument that installing a neutral isolator within four days of a utility confirming elevated levels is unreasonable. Further, Ohio Edison claims that Complainant did not identify any legal requirements or industry standards that specify installation within twenty-four hours. Ohio Edison underscores that Mr. Hintz testified that installing a neutral isolator after two business days from confirming elevated stray voltage levels was reasonable. (Ohio Reply Br. At 5 [sic].)

**E. Commission Conclusion**

{¶ 58} In *Santos*, the complainant sought compensation for damages to his residential electrical equipment due to alleged power surges attributable to an electric distribution utility's equipment failure. The Commission notes that there is not a specific test for alleged damage caused by stray voltage allegedly emanating from an electric utility's equipment; however, given the aim of the four factors and their applicability to the facts of this case, we agree with Ohio Edison that the four-factor test articulated in *Santos* provides a reasonable standard off of which to judge the matter at hand. Consequently, to establish that Ohio Edison is liable for unreasonable and inadequate service, the Complainant must satisfy this four-factor test articulated in *Santos*, among other cases. The four-factor test requires Complainant to show:

- (1) Whether the cause of the problem was in 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 problem.
- (3) Whether the company's actions or inactions constituted unreasonable service.
- (4) Whether the company acted responsibly in correcting the problem.

{¶ 59} In applying the first *Santos* factor, whether the cause of the problem was within Ohio Edison's control, we believe it is reasonable to conclude, given the evidence at our disposal, that the elevated stray voltage was in Ohio Edison's control. In reaching this conclusion, we weighed the evidence most applicable to this factor. Mr. Dismukes testified that, when he was measuring stray voltage levels on October 30, 2017, he was positive that the elevated stray voltage levels he registered were an off-the-farm problem, meaning they stemmed from Ohio Edison's pad-mounted transformer. He stated that his readings registered zero voltage referenced between any of the grounding on the farm per his testing procedure. (Complainant Exs. 1 and A; Tr. At 51-55.) Mr. Hintz, on the other hand, said he did not register elevated levels of stray voltage in the milk parlor or at the pad-mounted

Ohio Edison transformer on October 31, 2017 (Co. Ex. 2 at 8-10). Further, on November 9, 2017, Ohio Edison's troubleman registered elevated stray voltage levels of 5.5 volts at the Ohio Edison pad-mounted transformer. Mr. Hintz testified that he has no notes or other records detailing that a voltage measurement was taken in the milk parlor on November 9, 2017. (Co. Ex. 2 at 9-12.) Mr. Hintz also testified that he does not believe Mr. Dismukes' testing method would create results that are conclusive because of how Mr. Dismukes took isolated readings (Tr. at 76-77). Mr. Dismukes admitted that he did not see Ohio Edison's testing method and stated that he could not comment on it (Tr. at 67-68).

{¶ 60} Notably, Mr. Dismukes was unequivocal that the elevated stray voltage was not a customer equipment or on-the-farm problem, but rather an off-the-farm problem caused by Ohio Edison's equipment. Further, he emphasized that he has conducted his testing procedure over 100 times. (Tr. at 63.) Also, Ohio Edison's own records show that the impetus for installing the neutral isolator was the November 9, 2017 reading of 5.5. volts taken by the Ohio Edison troubleman at the pad-mounted transformer, yet no record of a measurement in the milking parlor or at any other location on that day exists. We also note that Mr. Hintz is a 35-year employee of Ohio Edison who clearly has experience in the area of stray voltage. Consequently, we believe that the testimony of Mr. Hintz regarding him being skeptical of Mr. Dismukes' testing method should carry some weight. However, the only elevated stray voltage reading from Ohio Edison comes from contact with Ohio Edison's pad-mounted transformer. Mr. Hintz testified that they avoid immediately installing a neutral isolator as a precaution because doing so can lead to a false sense of security if the problem actually stems from faulty customer equipment or an unrelated issue. (Tr. at 73-74). But, here, installing the neutral isolator appears to have resolved the problem<sup>2</sup> according to Ms. Kirby, at least until it needed replaced in June 2020, leading us to believe

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<sup>2</sup> At hearing, Ms. Kirby appears to indicate that besides needing the neutral isolator replaced in June 2020, they have not had a stray voltage problem since the neutral isolator was installed in November 2017 (Tr. at 20-21). Mr. Hintz testified that he recalled speaking with Ms. Kirby on February 13, 2018, and that she said that the farm was having some issues with mastitis still, but he recalls her saying that there were no issues as far as she was concerned with Ohio Edison (Tr. at 88).

the issue was not caused by the Kirby's wiring in the milking parlor or at least that the wiring was not necessarily significantly contributing to the elevated stray voltage levels (Tr. at 20-21, 88). Therefore, we believe it is reasonable to conclude, given the evidence at our disposal, that the problem was in Ohio Edison's control. Nevertheless, as demonstrated below, we believe Ohio Edison's actions related to the ensuing three *Santos* test factors weigh in Ohio Edison's favor.

{¶ 61} In applying the second *Santos* factor, whether Ohio Edison failed to comply with any statutory or regulatory requirements as to the operation of its system that could have caused the alleged problem, we find that there is insufficient record evidence to find in Complainant's favor. Notably, it is undisputed that stray voltage is a natural condition common to a grounded power distribution system and that it cannot be entirely eliminated. Also, we find no evidence in this case that Ohio Edison failed to comply with any statutes or regulations regarding the operations of its systems. We also find no substantive evidence of Ohio Edison failing to comply with any safety provisions or failing to adhere to industry standards and regulations as they pertain to the provision of electric service to the Complainant. Mr. Dismukes testified that it is common practice for neutral isolators to be installed within 24 hours of detected elevated voltage levels and that this was the longest delay he has witnessed for installing an isolator (Tr. at 65). However, we find convincing Mr. Hintz's testimony that it is not his experience that neutral isolators will be installed within 24 hours of a report of stray voltage. He noted that confirming elevated levels of stray voltage is sometimes quick and the cause of it is very evident such that mitigation measures are taken quickly, while other times an investigation is needed to discover the source of the elevated levels of stray voltage (Tr. at 73-75). Here, Mr. Hintz found it reasonable to confirm and investigate any elevated levels of stray voltage on October 31, 2017, which was 24 hours after the Kirbys first reported elevated stray voltage on their property to Ohio Edison, and he did not detect elevated levels, reasonably concluding that a neutral isolator was not needed. Further, Ohio Edison responded within

24 hours of the Kirby's November 8<sup>3</sup> and 9, 2017 reports of elevated stray voltage; generated a ticket within Ohio Edison's internal systems on November 9 for a neutral isolator to be installed since elevated stray voltage levels were confirmed; and installed the neutral isolator on November 13, which, as we explain further below, was a reasonable response timeline in this specific instance. Further, we find reasonable Ohio Edison's policy to rely on feedback from customers when customers encounter evidence of or suspect elevated stray voltage, to promptly investigate stray voltage complaints from customers, and to make repairs when Ohio Edison confirms the existence of elevated stray voltage on Ohio Edison's system. On this point, Complainant argues that Ohio Edison should take the word of an expert like Mr. Dismukes regarding elevated stray voltage levels; however, as Mr. Hintz testified, Ohio Edison verifies others' readings just to ensure the information they receive is correct, even information sent from electricians, though Ohio Edison typically does not know the qualifications of the person providing the information (Tr. at 74-75). Further, Mr. Dismukes conceded that he would expect the Company to test the levels of stray voltage after receiving a complaint before installing an isolator (Tr. at 67). Accordingly, we believe it is reasonable for Ohio Edison, the experts on their own distribution system, to confirm elevated levels of stray voltage prior to installing a neutral isolator.

{¶ 62} In applying the third *Santos* factor, we conclude that Ohio Edison's actions or inactions did not constitute unreasonable service. The Commission has previously determined that an electric utility's service is reasonable when the company sufficiently maintains its distribution and transmission lines and complies with all statutes, regulations, and its Commission-approved tariff. See *In re the Complaint of Evelyn and John Keller*, Case No. 12-2177-EL-CSS, Opinion and Order (Dec. 2, 2015) at 10-11. As previously discussed, we find that Ohio Edison did not violate any statutes or regulations and that Ohio Edison's policy concerning its review of elevated stray voltage level complaints is reasonable.

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<sup>3</sup> The November 8 call was made to Mr. Hintz, who was not in the office that day. The November 9 call was made by Kevin Kirby to the FirstEnergy call center, and a troubleman was dispatched that same day, meaning Ohio Edison responded within approximately 24 hours of the November 8 missed call.



Further, as described earlier, we find that the actions, and timing of them, taken by Ohio Edison in its response to Ms. Kirby's October 30, 2017 elevated stray voltage complaint call qualifies as reasonable service.

{¶ 63} Regarding the Kirby's next set of calls, we note that Kevin Kirby left a voicemail for Mr. Hintz on Wednesday, November 8, 2017. When he did not receive a response from Mr. Hintz that same day, he contacted the FirstEnergy call center on Thursday, November 9, 2017. That Thursday, Ohio Edison dispatched a troubleman to Double K Kirby Farms where the person registered a 5.5-volt reading at Ohio Edison's pad-mounted transformer, well over the safety threshold identified by Mr. Hintz and articulated by Mr. Dismukes. The troubleman created a service ticket on November 9 for a neutral isolator to be installed. Ultimately, Mr. Hintz returned to the office on Monday, November 13, 2017. Ms. Kirby called the FirstEnergy call center again on November 13, and her son contacted Mr. Hintz as well. That same day, Mr. Hintz arranged for a crew to meet him at the property where they proceeded to install a neutral isolator. (Co. Ex. 2 at 9-12; Tr. 84-85.) To explain why no one from Ohio Edison's engineering department contacted Ms. Kirby between the time of the Kirby's first called on November 8, 2017, and the call on November 13, 2017, Mr. Hintz stated that engineering personnel, including himself, were assigned to hazard response and damage assessment duties resulting from major storms impacting most of Northeast Ohio that began on Sunday, November 5, 2017. Therefore, people from his department were working on these assignments and not in the office the following week. (Tr. at 84-85.)

{¶ 64} Regardless of the storm, Ohio Edison argues that it still installed the neutral isolator within four days, two business days, from the service ticket being issued, and that it took reasonable steps to resolve the elevated stray voltage at Double K Kirby Farms. Complainant does not dispute the existence of this storm or the breadth of it, instead arguing that Ohio Edison should have internal processes in place during events like storms where outages can be expected such that responses to reports like the Kirbys are not delayed. However, we agree with Ohio Edison that its actions amounted to reasonable service. Ohio

Edison responded within 24 hours of the November 8 and November 9 calls from the Kirbys and, in response to the service ticket and follow up calls from the Kirbys, installed the neutral isolator four days later, all despite a large winter storm that caused enough damage to keep Mr. Hintz and his engineering team busy and out of the office for the week in question. Regarding Complainant's argument that Ohio Edison should have internal processes in place to mitigate against a delay in service reports like the Kirbys, we find this argument unavailing. We note that Ohio Edison did, in fact, respond to the November 9 call by sending a troubleman out to the property even though Mr. Hintz and the engineering department were out of the office. Further, Mr. Hintz and the others who would typically install the neutral isolator were not in the office since they were addressing distribution system issues caused by a large storm, and, immediately after Mr. Hintz returned to the office and was informed about confirmed elevated stray voltage at the farm, he installed the neutral isolator. While the timing of the storm was unfortunate for Complainant, we find insufficient reason to conclude that Ohio Edison's service was unreasonable.

{¶ 65} As to the fourth *Santos* factor, whether Ohio Edison acted responsibly in correcting the problem, we also find in favor of the Company. As already demonstrated above, we believe Ohio Edison responded reasonably and, thus, responsibly to reports of elevated stray voltage at Double K Kirby Farms.

{¶ 66} We note that Complainant and Ohio Edison make different allegations regarding the replacement of Double K Kirby Farms' neutral isolator in June of 2020. The Commission recognizes that the original complaint in this case concerned the stray voltage during 2017, therefore, consideration of the June 2020 replacement is not necessarily warranted since it is outside of the scope of the amended complaint. However, we will note that Ohio Edison's explanation for replacing the isolator in June 2020 without first verifying the reported elevated stray voltage levels—that Mr. Hintz did not feel such an action was necessary since elevated levels had previously been detected on the farm and that replacement of an existing isolator is typical in his experience and in line with Ohio Edison's business practices—is reasonable (Tr. at 95-96).

{¶ 67} After weighing the four *Santos* factors, and although we found in favor of the Complainant regarding the first factor, we believe the other three factors weigh in Ohio Edison's favor and, consequently, we find that Double K Kirby Farms failed to prove, by a preponderance of the evidence, that Ohio Edison provided unreasonable and inadequate service to Complainant.

{¶ 68} In reaching this decision, we emphasize that only the events that occurred in 2017 regarding the issue in question were applicable to our decision in this matter, as explained above. Further, we believe it is important, again, to highlight the overall timeline of events in 2017. Ms. Kirby first noticed issues with her dairy cows in April 2017. On October 30, 2017, the Kirbys first contacted Ohio Edison regarding elevated levels of stray voltage on their farm. Mr. Hintz, an Ohio Edison employee, responded to this elevated stray voltage report the very next day on October 31, 2017, and tested for elevated stray voltage, during which time he measured stray voltage levels at various locations on the property that did not justify the installation of a neutral isolator. The record reflects that the Kirbys next called Mr. Hintz on November 8, 2017, and then the FirstEnergy call center on November 9, 2017. Ohio Edison responded on November 9, 2017, by sending a troubleman to the property who registered levels of stray voltage sufficient to install a neutral isolator. On November 9, 2017, the troubleman generated a follow-up order for a neutral isolator to be installed. As reflected above, Ohio Edison ultimately installed the neutral isolator on the property on November 13, 2017, and the four-day gap between the follow-up order and isolator installation occurred due to Mr. Hintz and his team working on hazard response and damage assessment duties related to damage caused by a large storm that occurred on November 5, 2017. This summary of pertinent events, while not superseding our reasoning and analysis under the *Santos* factors, helps underscore Ohio Edison's overall responsiveness to Complainant, beginning with Complainant's first elevated stray voltage report and ending with Ohio Edison's installation of the neutral isolator.

{¶ 69} We also find Ohio Edison persuasive in its observation that Double K Kirby Farms did not present sufficient evidence or testimony to support its claim that other

equipment at the farm was damaged due to low voltage from brown outs (Complaint at ¶¶ 9-10; Ohio Edison Initial Br. at 8-9). In fact, Complainant did not advance arguments in support of that claim in its briefs either. Consequently, we find that Complainant failed to prove that it was entitled to any other relief in this case.

{¶ 70} Lastly, although we are sympathetic to the Complainant and its business, 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 provided unreasonable and inadequate service to Complainant.

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 71} Ohio Edison is a public utility as defined in R.C. 4905.02 and 4905.03 and, as such, is subject to the jurisdiction of the Commission.

{¶ 72} On April 16, 2018, Linda Kirby filed a complaint on behalf of Double K Kirby Farms against Ohio Edison.

{¶ 73} On May 4, 2018, Ohio Edison filed its answer to the complaint in which it denied Complainant's allegations.

{¶ 74} A settlement conference was held by telephone on August 7, 2018. The parties were unable to resolve the matter at that time.

{¶ 75} On September 6, 2018, Ohio Edison filed a motion to dismiss this case in which Ohio Edison moved to strike portions of the complaint that sought monetary damages since the Commission does not have authority to grant such relief.

{¶ 76} On October 31, 2018, Ohio Edison filed a motion to continue the hearing.

{¶ 77} On November 13, 2018, the attorney examiner issued an Entry granting the motion for continuance and its motion to dismiss Complainant's claim for monetary damages.

{¶ 78} On January 16, 2019, the Commission granted Ms. Kirby's December 13, 2018 dismissal of this case, which had advised that Ms. Kirby would pursue the matter at the Trumbull County Common Pleas Court.

{¶ 79} On March 30, 2020, Complainant filed a motion to reopen the case.

{¶ 80} On June 10, 2020, the attorney examiner issued an Entry granting the motion and setting the matter for a settlement conference.

{¶ 81} A settlement conference was held by telephone on August 6, 2020. The parties were unable to resolve the matter at that time.

{¶ 82} On August 20, 2020, Complainant filed an amended complaint against Ohio Edison.

{¶ 83} On September 9, 2020, Ohio Edison filed its answer to the complaint in which it denied Complainant's allegations.

{¶ 84} A settlement conference was held by telephone on October 6, 2020. The parties were unable to resolve the matter at that time. A hearing was held on August 5, 2021.

{¶ 85} As in all Commission complaint proceedings, the burden of proof is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 86} Complainant has not carried its evidentiary burden of proving the four criteria enumerated in the *Santos* test.

{¶ 87} There is insufficient evidence to support a finding that Ohio Edison provided unreasonable and inadequate electric service to Complainant.

**V. ORDER**

{¶ 88} It is, therefore,

{¶ 89} ORDERED, That this matter be decided in favor of Ohio Edison for failure of Complainant to sustain its burden of proof. It is, further,

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

**COMMISSIONERS:***Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

MJS/ IMM/mef

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**Case No(s). 18-0691-EL-CSS**

Summary: Opinion & Order finding that Double K Kirby Farms failed to carry the burden of proving that Ohio Edison Company did not provide reasonable or adequate service electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio