

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
MARK BARTA,**

COMPLAINANT,

v.

CASE NO. 20-1466-EL-CSS

OHIO POWER COMPANY,

RESPONDENT

SECOND ENTRY ON REHEARING

Entered in the Journal on October 5, 2022

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Mark Barta.

II. DISCUSSION

A. *Procedural History*

{¶ 2} On September 2, 2020, Mark Barta (Mr. Barta or Complainant) filed a complaint against Ohio Power Company dba AEP Ohio (AEP or Respondent) alleging that AEP has supplied insufficient and inadequate electric service to the Barta residence for over 20 years.

{¶ 3} On September 21, 2020, AEP filed its answer to the complaint in which AEP admitted some and denied others of the complaint's allegations and set forth several affirmative defenses. AEP admitted that Mr. Barta was an AEP customer but otherwise generally denied the allegations that Mr. Barta has not had adequate electric service for over 20 years.

{¶ 4} On December 4, 2020, the parties participated in a settlement conference but were unable to resolve the matter.

{¶ 5} A hearing was held on October 7, 2021. At the hearing, Complainant testified on his own behalf and presented the testimony of his wife, Mrs. Amy Cochran-Barta. AEP presented the testimony of its manager of regulatory pricing and analysis, Mr. Richard S. Williamson.

{¶ 6} In its May 4, 2022 Opinion and Order (*Order*), the Commission determined that AEP had not violated its statutory obligations to Mr. Barta and that Mr. Barta did not establish that AEP failed to provide adequate service pursuant to R.C. 4905.22. Sensitive to Mr. Barta's concerns, however, the Commission did order AEP to file a report regarding the status of Mr. Barta's service 90 days after the issuance of the *Order*, to include an updated outage report and any additional steps taken by AEP to mitigate the frequency of outages at the residence. In accordance with the *Order*, AEP filed its Report of History of Outages on August 3, 2022 (AEP Report of Outages).

{¶ 7} On May 31, 2022, Complainant filed an application for rehearing, asserting that the Commission erred by ignoring the statutory standard for determining service adequacy and abusing its discretion by analyzing the issue under the four prong *Santos* test.

{¶ 8} On June 10, 2022, AEP filed a memorandum contra Complainant's application (Memorandum Contra) for rehearing asserting that Complainant's allegations raise no new arguments for the Commission's consideration.

{¶ 9} On June 29, 2022, the Commission issued an Entry on Rehearing which granted Mr. Barta's application for rehearing for the limited purpose of further consideration of the matters specified therein.

B. Summary of Application for Rehearing and Memorandum in Contra

{¶ 10} In his first assignment of error, Mr. Barta contends that the Commission applied the incorrect statutory standard under R.C. 4905.22. Complainant asserts that the Commission's application of the *Santos* four-prong test was improper for determining service inadequacy for power outages. *See 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). Instead, Complainant argues that the standard for service must be “adequate” as defined by the Merriam Webster dictionary and is solely determined by the consumer’s perspective. Mr. Barta claims that his case differs from *In the Matter of Miami Wabash Paper, LLC v. The Cincinnati Gas & Elec. Co.*, Case Nos. 02-2162-EL-CSS and 01-3135-EL-CSS, Opinion and Order at 6 (Sept. 23, 2003) (*Miami Wabash Paper*), which determined that power was adequate for a period of three and a half years, where there were 48 power failures. Mr. Barta distinguished his outages as long-term contrasted with the “momentary” outages in *Miami Wabash Paper*. Finally, Mr. Barta acknowledges that the Commission does not require perfect service but contends that his issue is not service perfection but adequacy. (App. for Rehearing at 2-4.)

{¶ 11} In his second assignment of error, Mr. Barta argues that under the *Santos* test, the Commission still erred in its determination that Mr. Barta failed to meet his burden of proof. Mr. Barta generally restates the grounds, facts, and allegations found in the complaint concerning his service adequacy. Complainant emphasizes that since the Commission ordered AEP to file a follow up status report on relevant repairs, Respondent was not acting responsibly to correct the issues. (App. for Rehearing at 4-6.)

{¶ 12} Lastly, in his third assignment of error, Mr. Barta argues that the Commission has abused its discretion by applying the *Santos* test to the situation. Complainant reemphasizes points discussed above to conclude that the Commission abused its discretion with its interpretation of applicable Ohio Revised Code provisions. (App. for Rehearing at 6-7.)

{¶ 13} On reply, AEP contends that Mr. Barta has not identified any portion of the Commission’s *Order* that was unreasonable or unlawful. According to AEP, Mr. Barta’s application for rehearing merely reiterates the same assertions made during the evidentiary hearing and in his post-hearing brief. AEP notes that the Commission has case-by-case discretion to determinate adequate service. Further, AEP states that the Commission

explicitly noted that the *Santos* factors, among others, may be considered as to whether a company provided inadequate service under R.C. 4905.22. *Santos* at 9. AEP also contends that the Commission is obligated to follow its own precedent for the integrity of its decisions, unless it can offer an explanation for deviating from precedent. See *Suburban Natural Gas Co. v. Columbia Gas of Ohio, Inc.*, 162 Ohio St.3d 162, 2020-Ohio-5221, 164 N.E.3d 425, ¶ 29. Lastly, in AEP's opinion, the *Order* fully considered the facts and allegations in the complaint, as well as the evidence offered in support, and that Mr. Barta did not provide a sufficient basis for abrogating or modifying any portion of the *Order*. (Memorandum Contra at 2-7.)

C. *Commission Conclusion*

{¶ 14} Upon review, the Commission finds that Mr. Barta's application for rehearing should be denied and the *Order* affirmed. Initially, we find that Mr. Barta's application for rehearing largely restates arguments made in prior pleadings. In its *Order*, the Commission thoroughly addressed the issue of service adequacy and determined that Mr. Barta's residential service was not inadequate. We came to this conclusion because Mr. Barta did not meet the burden of proof to demonstrate inadequate service.

{¶ 15} Mr. Barta correctly refers to R.C. 4905.22, which states that "[e]very public utility shall furnish necessary and adequate service." Here, the determination of adequate service is "left to the commission and dependent upon the facts of each case." *Ohio Bell Tel. Co. v. Pub. Util. Comm.*, 14 Ohio St.3d 49, 50, 471 N.E.2d 475 (1984). As discussed in AEP's initial post-hearing brief, "adequate service" is not defined by statute nor administrative rule. Due to this, the Commission adopted the *Santos* four-prong test to appropriately weigh evidence presented regarding pertinent considerations and determine what constitutes inadequate service. As to Complainant's argument that his case is distinguished from *Santos* because it involved power surges, not outages, the Commission previously determined that *Santos* applies to its analysis of complaint cases involving power outages. *Santos* at 9-10,

quoting *In the Matter of Steve Martin v. Dayton Power & Light Co.*, Case No. 91-618-EL-CSS, Opinion and Order, 1992 Ohio PUC LEXIS 809, at *11 (Sept. 10, 1992).

{¶ 16} Additionally, the Commission considered the issue of whether Mr. Barta met his burden of proof under the *Santos* test. First, Mr. Barta was unable to provide evidence to support his assertion that AEP did not properly maintain wires on the circuit. On the contrary, AEP provided evidence to demonstrate that some of the longest outages were out of the AEP's control. Moreover, the Commission determined that Mr. Barta did not show that AEP failed to comply with applicable statutes or Commission rules or regulations regarding system operation and maintenance. Mr. Barta claims that the power at his residence was unreasonable and inadequate; however, he did not present evidence sufficient to meet the burden of proving such inadequacy. We noted that Mr. Barta contradicted his contention that the number of outages alone constitutes unreasonable service, as he testified that he had power a "high percentage of the time" (*Order* at ¶ 38).

{¶ 17} Furthermore, regarding Mr. Barta's allegation that the Commission abused its discretion by applying the *Santos* test to this case, the Commission must follow its own precedent, unless there is a compelling reason and it can offer a sufficient explanation for deviation from that precedent. As noted above, the Commission previously established that *Santos* applies to cases under R.C. 4905.22 involving power outages. Here, Mr. Barta has not offered reasoning as to why the Commission should depart from its usage of the *Santos* test to determine service adequacy in outage cases. Additionally, Mr. Barta did not provide a compelling reason for departing from Commission precedent regarding adequacy of his own service.

{¶ 18} Lastly, the Commission acknowledges that AEP submitted its Report of History of Outages in accordance with the *Order*. The Report includes five tangible improvements made by AEP since the beginning of July 2021. These improvements involved strategic installation of measures that guard against animal interference with poles; installation and replacement of new equipment; and reconfiguration of a circuit that

changes the flow of electricity on the circuit and reduces exposure due to line malfunctions. In addition, AEP stated that during its circuit inspections, crews identified and remediated risks of outages or potential outages. (AEP Report of Outages at 2.)

{¶ 19} Based on the foregoing, the Commission finds that each of the assignments of error should be denied, Mr. Barta's application for rehearing should be dismissed, and this case be closed of record.

III. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That Complainant's application for rehearing be denied.

{¶ 22} ORDERED, That a copy of this Entry on Rehearing be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

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

DMH/IMM/dmh

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Summary: Entry denying the application for rehearing filed by Mark Barta
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of Ohio