

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

Evelyn and John Keller,)	
Complainants,)	
)	
v.)	
)	Case No. 12-2177-EL-CSS
Columbus Southern Power Company,)	
)	
Respondent.)	

**ANSWER AND MOTION TO DISMISS OF
COLUMBUS SOUTHERN POWER COMPANY**

Ohio Power Company f/k/a Columbus Southern Power Company (“OPCo” or “Respondent”) responds to the Complaint filed in this proceeding by Evelyn and John Keller (“Complainants”) on July 27, 2012, through this Answer and Motion to Dismiss.

1. OPCo lacks sufficient knowledge or information to admit or deny paragraphs 1 and 2.
2. OPCo admits paragraph 3 to the extent that there is vegetation on SR 315 between Jewett Road on the South and Powell Road on the North. OPCo denies all allegations in paragraph 3 not specifically admitted.
3. OPCo denies paragraph 4 for want of knowledge or information sufficient to form a belief.
4. OPCo admits paragraph 5 to the extent that OPCo had identified the trees and other vegetation in the vicinity of its power line in this section of SR 315 as scheduled for trimming or removal and were in the process of removing them. OPCo denies any implication that it provided inadequate service because the storm hit before the process could be completed and any allegations in paragraph 5 not specifically admitted.

5. OPCo admits paragraph 6.
6. OPCo admits paragraph 7 to the extent that it trims and removes trees and vegetation in accordance with its policies. OPCo denies all allegations in paragraph 7 not specifically admitted.
7. OPCo denies paragraphs 8, 9, 10, 11, 12, 13, 14, and 15.
8. OPCo denies each and every other allegation of the Complaint not specifically admitted.

AFFIRMATIVE DEFENSES

1. OPCo asserts as an affirmative defense that under R.C. 4905.26 and O.A.C. 4901-9-01(C)(3), Complainants have failed to set forth reasonable grounds for a Complaint.
2. OPCO asserts as an affirmative defense that at all times relevant to Complainants' claims, OPCo has provided reasonable and adequate service to the Complainants according to all applicable provisions of Title 49 of the Ohio Revised Code and regulations promulgated there under, and in accordance with all of OPCo's filed tariffs.
3. OPCo asserts as an affirmative defense that it complied with the applicable tariff and Commission rules, and followed its standard business practice. Pursuant to the tariff, OPCo is not liable to the customer for damages in cases when supply should be "interrupted or fail by reason of an act of God."
4. OPCo reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

MOTION TO DISMISS

This Complaint is a request by the Complainants that the Commission award \$1,500 in damages as compensation for “lost food products” resulting from OPCo’s alleged negligence when an unprecedented storm knocked over a tree onto a power line causing a power outage to customers served by that line. Complainants further allege that OPCo was negligent in its delay in repairing the power line. OPCo asks that this matter be dismissed because nothing alleged in the complaint constitutes inadequate service.

OPCo’s tariff states that it will use “reasonable diligence in furnishing a regular and uninterrupted supply of energy but does not guarantee uninterrupted service.” More specifically, the tariff states that “[t]he Company shall not be liable for damages in case such supply should be interrupted or fail by reason of an act of God...” Ohio Power Company Tariff, PUCO No. 20, Terms and Conditions of Service, Paragraph 19, Original Sheet No. 103-16. The storm which occurred on June 29, 2012 was an unprecedented event, with winds reaching up to 85 miles per hour, damaging everything in its path.¹ In fact, the effects of the storm were so massive that it caused the Governor of Ohio to declare a state of emergency² and the President of the United States to declare Ohio a federal disaster area.³ Nothing about this storm was foreseeable and these kinds of storms cannot be categorized in any way other than as an “act of God.” Furthermore, there is no law or rule which states that the marking of a tree as part of the normal tree trimming process requires immediate removal of the tree or that not immediately removing the tree implies negligence on the part of the utility. This standard, asserted by Complainants, is not based in law or rule and should be dismissed. Therefore, because OPCo is not liable for damages caused by this act of God and has not violated its tariff or any

¹ <http://www.dispatch.com/content/stories/local/2012/07/02/derecho-wind-damage.html>

² <http://www.foxnews.com/weather/2012/06/30/mid-atlantic-storms-knock-out-power-to-nearly-2-million/>

³ <http://www2.nbc4i.com/news/2012/jul/01/president-obamas-emergency-declaration-ar-1089100/>

Commission rule, it has not provided inadequate service with respect to the service related issues caused by the storm.

OPCo also did not provide inadequate service in its actions following the storm regarding the repair of the power line at issue. This storm was unprecedented and caused outages to more than one million customers in the entire AEP system and approximately 660,000 customers within AEP Ohio's service territory. Moreover, the process of restoration after a storm outage is prioritized first by need of critical services. The line serving the area on SR 315 between Jewett Road and Powell Road is a tap off of the main line and serves only six customers, a small amount compared to other lines serving thousands of customers. Furthermore, OPCo's line crews, along with crews recruited from other states to assist with restoration, were working as diligently and safely as they could in their efforts to restore power to customers. It is unfortunate that power could not be restored to all customers immediately, but this does not imply inadequate service on the part of OPCo.

WHEREFORE, OPCo asks that the Commission dismiss the Complaint in its entirety because the storm which caused the outage was an act of God and is not sufficient to find inadequate service on behalf of OPCo, the Complainant has not identified any Commission rule or regulation that OPCo has violated, and that the Complainant has failed to state a claim or reasonable grounds upon which relief may be granted.

Respectfully submitted,

/s// Sophia L. Chang
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Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer and Motion to Dismiss of Columbus Southern Power Company was served by regular U.S. mail, postage prepaid, upon Complainants Evelyn and John Keller at the address listed below on this 16th day of August 2012.

Evelyn and John Keller
1424 Jewett Road
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Summary: Answer and Motion to Dismiss electronically filed by Miss Sophia L Chang on behalf of Ohio Power Company