

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY BRIEF OF OHIO POWER COMPANY

I. INTRODUCTION

In their initial brief, Complainants do nothing more than paint a new gloss on their conclusory and unsubstantiated allegations of negligence. They fail to prove a violation by AEP Ohio of any statute, public policy, regulatory rule, or precedent regarding the Company's actions before and after the Derecho. They fail to address the Complaint's dispositive causation deficiencies: a catastrophic and unprecedented major storm caused the interruption of electric service to Complainants' residence – not any negligent action or omission by the Company. Moreover, Complainants fail to recognize the express language contained in AEP Ohio's Commission-approved Tariff that specifically excludes the Company from liability for damages resulting from service interruptions caused by Acts of God like the Derecho. Pursuant to Ohio law, the burden of proof is borne entirely by Complainants. Complainants have failed to carry their burden of proof in this case. Therefore, the Complaint should be denied.

II. ARGUMENT

A. AEP Ohio's actions regarding Circuit 3101 before the Derecho were reasonable and prudent.

1. The Company's three-step vegetation management program was still underway on Circuit 3101 when the Derecho hit.

AEP Ohio satisfies its duty to control vegetation in the vicinity of its distribution lines through its three-step vegetation management program. Complainants argue that the tree that fell should have been identified during the planning phase of Circuit 3101. (Complainants' brief at 2-3.) However, Complainants continue to confuse one step of a larger process as creating an absolute final and all-encompassing duty to identify every tree for removal. Mr. Lajeunesse testified that the planning of a circuit is just the initial step in a larger process: "the physical marking of trees is a guide that is part of the initial step in preparing a circuit for trimming and not a final blueprint for the tree trimming process." (*Id.* at 4:12-14; *See also* Tr. at 61:11-19.) Once the Company's tree crews reach an area they "often remove or trim trees not specifically identified by the planner and also may not trim or remove trees identified by the planner depending upon their observations once on the scene." (AEP Ohio Ex. 1 at 4:1-4; *See also* Tr. at 61:19-21, 77:12-23.) Complainants' misguided negligence theory ignores the fact that the Company's three-step vegetation management program was still underway when it was interrupted by the unforeseeable and catastrophic storm.

Even assuming *arguendo* that AEP Ohio had a legal duty to identify all trees that could possibly pose a threat to its facilities during the first step of its three-step vegetation management process and to remove all such trees before unknown catastrophic storms (which it does not), there was no proof that the planner in this case did not mark the portion of the tree that fell as a result of the storm, determining that was the only portion of the tree that posed a threat to the

Company's facilities. Mr. Lajeunesse testified that although he found no markings on the remaining portion of the tree, he does not know whether the part that fell was marked because he did not examine that portion of the tree. (Tr. at 76:5-20; *See also* Complainants' Ex. 7 at 67:1-16.) Complainants have offered no evidence establishing that the portion of the tree that fell was not marked.

2. The Company does not have a strict legal duty to identify every tree that may pose a threat to its facilities.

Complainants' suggestion that the planner failed to identify the tree that fell because AEP Ohio acted negligently by failing to provide traffic control assistance for the planner also ignores the fact that the Company's vegetation management program is a three step process, and imposes a standard of strict liability not required by Ohio law or the Commission's rules. As Mr. Lajeunesse testified, "it is likely impossible for [a planner] to mark every tree that could pose a threat to the Company's facilities or that will be trimmed or removed." (AEP Ohio Ex. 1 at 3:19-22.) Moreover, Mr. Lajeunesse testified that he expects "had the tree crews been able to reach the tree before the Derecho hit they would have trimmed or removed the tree regardless of whether it was marked by the planner." (AEP Ohio Ex. 1 at 4:17-19; Complainants Ex. 7 at 66:8-11.) Mr. Lajeunesse also testified that he too would have identified the tree for trimming or removal during his audit of the trimming work on the circuit had the Derecho not interrupted the process. (AEP Ohio Ex. 1 at 4:20-21.) There is simply no legal or regulatory basis to support Complainants' unreasonable claim that AEP Ohio had a strict legal duty to identify the tree that fell during the initial planning phase of Circuit 3101 and to trim or remove it before the Derecho hit.

3. The Company's tree crews would not have bypassed known threats to first address a potential threat near the end of Circuit 3101.

Complainants next argue that had the tree been identified by the planner, it could have been trimmed or removed before the Derecho hit. (Complainants' brief at 4-5.) This argument is unsupported by the record evidence, however, and should be rejected. Initially, there are no facts demonstrating that the tree was leaning over S.R. 315 or that it posed a danger to the motoring public, as alleged by Complainants. (Complainants' brief at 4.) The terms "danger tree" and "hazard tree" are terms of art that connote a potential threat to the Company's facilities, not a danger to the public. Complainants' suggestion that the Company failed to resolve a dangerous situation lacks any record support whatsoever. Further, Company witness Lajeunesse testified that although the tree crews may have made an effort to address the tree that fell, they would not have skipped directly to the tree upon identification by the planner due to other safety considerations. (Tr. at 72:8-73:16.) When trimming a circuit like Circuit 3101, the Company's tree crews work methodically from the substation outward to ensure that any potential threats to facilities are addressed systematically. (*Id.*) Mr. Lajeunesse also testified that it would be inefficient and possibly dangerous for the tree crews to skip ahead to address a future threat that could potentially leave the remaining portions of the circuit exposed. (Tr. at 85:15-24.)

4. It was neither practical nor reasonable for the Company to secure the necessary road permits months in advance.

For their final allegation of negligence related to AEP Ohio's actions before the Derecho, Complainants argue that the Company acted negligently by failing to timely secure the necessary road closure permits from ODOT. (Complainants' brief at 5-6.) But it would have been inefficient and potentially more costly for AEP Ohio to initiate the ODOT permitting process earlier than it did. The whole vegetation management process can take several months,

depending on the length and terrain of the circuit being worked. As Company witness Lajeunesse testified, countless unpredictable obstacles arise during the trimming of a circuit, making it nearly impossible to predict the exact location of the crews on specific dates in the future – especially for a nine-mile-long circuit like Circuit 3101. (Tr. at 89:3-14.) Given this unpredictability, requesting a road closure too far in advance could result in multiple permitting costs and perhaps avoidable road closures. Further, Complainants’ position unreasonably presumes that ODOT, a large organization with vast responsibilities, is at AEP Ohio’s beck and call and responds to the Company’s requests immediately. There was no guarantee that ODOT would have been able to provide traffic control assistance prior to the storm. When the arrival of the tree crews on S.R. 315 became more predictable, and while trimming on Circuit 3101 was still underway, the Company made arrangements for the road closure and was in the process of obtaining the permit when the Derecho hit.

In sum, Complainants’ allegations of negligence related to AEP Ohio’s actions before the Derecho unreasonably presume that the storm was a known deadline on the Company’s calendar for completing the trimming work on Circuit 3101. First, Complainants ignore the obvious fact that the Company’s three-step vegetation management process was still underway when it was interrupted by the storm. The record reflects that both the tree crews and Mr. Lajeunesse, during the second and third phase of the Company’s vegetation program, respectively, would have identified the tree that fell for trimming or removal – they never had the chance to do so, however, because the Derecho hit before the trimming of Circuit 3101 was completed. Second, contrary to Complainants’ assertions, there is no evidence to suggest the tree that fell posed a danger to the public. It would have been unreasonable for the Company’s tree crews to bypass known threats to first address a potential threat near the end of the circuit, absent the Company

having any knowledge of such a condition. Third, it was not practical for AEP Ohio to initiate the ODOT permitting process earlier than when it did. Given the myriad obstacles that may arise when trimming a nine-mile-long circuit like Circuit 3101, requesting a road closure too far in advance could have resulted in multiple permitting costs and unnecessary traffic interruptions – and there is no guarantee that initiating the process several months in advance would have resulted in the Company securing the permits before the storm hit. For these reasons, Complainants’ allegations of negligence related to AEP Ohio’s actions before the Derecho should be rejected.

B. AEP Ohio’s storm restoration efforts were reasonable and prudent.

1. Restoration efforts after the Derecho were in accordance with AEP Ohio’s Service Restoration Plan.

Restoration efforts after the Derecho were performed pursuant to AEP Ohio’s Service Restoration Plan (“SRP”) – a plan that is based on industry best practices and is developed based on collective experiences of previous major storms and in accordance with regulatory rules and principles. The plan is also reviewed by the Commission Staff. Complainants argue that had the outage affecting their residence been repaired promptly, their damage would have been mitigated or avoided. (Complainants’ brief at 6.) Complainants’ self-centered perspective of how AEP Ohio should have conducted its storm restoration procedures is not based in law or rule and cannot be the basis for finding the Company provided inadequate service with respect to the Derecho restoration. The Complainants disposed of their food on July 3, 2012, the fourth day after the Derecho hit. (Complainants Ex. 22 at 9.) At that time, nearly 300,000 customers were still without power. (See AEP Ohio Ex. 2 at TLK Exhibit 1.) Complainants recognize that “relatively few customers were affected by this particular outage.” (Complainants’ brief at 6.)

Accordingly, it would have been unreasonable for the Company to deviate from the SRP and dispatch a restoration crew to restore the relatively small outage affecting Complainants' residence before they disposed of their food, considering the hundreds of thousands of customers still without power at that time. (Tr. at 128:11-25.)

Contrary to Complainants' assertions, a road closure is "one of many factors" (Tr. at 101:20-23) involved in assessing restoration priority under the SRP; it is not necessarily a red flag requiring immediate attention. The closure of S.R. 315 in this case did not elevate the restoration priority of the outage affecting Complainants' residence because it did not pose an emergency situation or public safety concern. Mr. Kirkpatrick testified during the hearing that after the Derecho, the public did not have access to the fallen line on S.R. 315: "The road was blocked . . . traffic was not allowed to pass through . . . [s]o I don't think on the surface I would call that a public safety issue." (Tr. at 116:25-117:4.) Mr. Mottice also testified that the closure of S.R. 315 did not elevate the restoration priority of the outage because the road closure did not involve an emergency situation, stating that he received no information from ODOT advising the Company that an emergency situation existed on S.R. 315 following the Derecho. (Complainants' Ex. 20 at 19-22:8, 24:7-11.)

Without any basis for the claim whatsoever, Complainants state that "it is not credible" that ODOT did not communicate with AEP Ohio regarding the closure of S.R. 315 after the Derecho. (Complainants' brief at 7.) While Mr. Kirkpatrick testified that ODOT and the Company "may" communicate during storm restoration efforts (AEP Ohio Ex. 2 at 9:9-22), Complainants interpret this testimony to mean that "AEP and ODOT were in regular communication" after the Derecho. (Complainants' brief at 7.) However, Mr. Kirkpatrick had no knowledge as to any communications with ODOT following the Derecho regarding the closure

of S.R. 315. (Tr. at 103:14-18.) Indeed, Mr. Mottice testified during his deposition that he received no information from ODOT after the Derecho regarding the closure of S.R. 315. (Complainants' Ex. 20 at 19-22:8, 24:7-11.) Assuming *arguendo* that ODOT and the Company had such communications, it is possible that the two entities determined the situation did not warrant immediate attention, considering the devastating destruction caused by the storm, the fact that the road closure did not pose an emergency situation, and the fact that both entities' resources were being heavily utilized in connection with Derecho restoration efforts. As Mr. Kirkpatrick testified, inconvenience alone would not have been sufficient to elevate the restoration priority of the outage, considering the hundreds of thousands of customers without power at that time. (Tr. at 110:21-111:6.)

2. It was prudent for the Company to do all the work on Circuit 3101 during the restoration effort.

There is no basis to support Complainants' claim that doing all the work simultaneously after the Derecho delayed the restoration of the outage by any significant amount of time. Mr. Kirkpatrick testified at the hearing that any such delay was "very, very small" and a matter of "hours or less." (Tr. at 121:17-122:9.) Similarly, there is no merit to Complainants' argument that the outage restoration was significantly delayed because the Company had to "coordinate and mobilize separate crews." (Complainants brief at 8.) AEP Ohio first learned that the situation on S.R. 315 involved Company facilities when the Governor issued a report on the morning of Thursday July 5. (Complainants Ex. 20 at 5:21-6:20.) Only hours later, some 30 employees (consisting of lineman and tree crew personnel) were on the scene addressing the situation. (*Id.* at 10:18-23.) After first restoring power to Complainants' residence, crews finished the remaining work in just two to three hours. (Complainants Ex. 20 at 10:24-11:4.)

Moreover, performing all the work while S.R. 315 was already closed was a prudent decision that saved costs for customers and inconvenience to the public. Mr. Roahrig testified that to complete the tree trimming on Circuit 3101 and to complete the line project both lanes of S.R. 315 from Jewett to Powell Roads would need to be closed for three to four days, eight to ten hours each day. (Complainants Ex. 21 at 18:4-19:3.) As Mr. Kirkpatrick testified, it was a prudent decision for the Company to do all the work on Circuit 3101 simultaneously after the storm to take advantage of the fact that the road was closed, traffic was controlled and the safety of Company's personnel was ensured. (Tr. at 118:7-25.) Complainants' position that any money saved should be used to "compensate Complainants for damages" (Complainants' brief at 9.) is self-serving and has no basis in law or rule.

In sum, AEP Ohio's actions after the Derecho were reasonable and prudent. Even Complainants recognize that the outage affecting their residence was a relatively small outage, impacting only two dozen customers. In addition, there was no emergency situation to elevate the restoration priority of the outage. Under AEP Ohio's SRP, service is first restored to hospitals, health support facilities, fire departments, law enforcement agencies, and other essential government services; outages are then prioritized based on the number of customers affected. Complainants' relatively small outage was restored in accordance with the Company's SRP. Further, the Company prudently took advantage of the road closure and addressed all the work that needed to be done on Circuit 3101 (after first restoring power to Complainants' residence) after the storm, ensuring safe conditions for its personnel, eliminating multiple road closures, reducing traffic disruptions, and minimizing inconvenience to the public. For these reasons, Complainants' allegations of negligence related to AEP Ohio's actions after the Derecho should be rejected.

III. CONCLUSION

In the aftermath of the storm, with limited information and stretched resources, AEP Ohio quickly, effectively, and safely restored power to nearly 720,000 customers in just twelve days – a herculean feat considering the amount of devastation. (AEP Ohio Ex. 2 at 7:12-13; See also TLK Exhibit 1.) It is unfortunate that power could not be restored to all customers immediately, but this does not imply inadequate service by AEP Ohio. Because it was the storm that caused the tree limb to fall on the Company's line creating the power outage, the required causation between the Company's alleged negligence and the Complainants' damages is lacking. Further, pursuant to its Commission-approved Tariff, AEP Ohio is not liable for damage resulting from service interruptions caused by an Act of God like the Derecho. As discussed above and in the Company's Initial Post-Hearing Brief, the Complainants have failed to carry their burden of proof in this case. The Complainants have not identified any law, rule, public policy or precedent that AEP Ohio has violated. Therefore, the Complaint should be denied.

Respectfully submitted,

/s/ Yazen Alami

Steven T. Nourse

Matthew J. Satterwhite

Yazen Alami

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, Ohio 43215

(614) 716-1608

(614) 716-2950 *fax*

stnourse@aep.com

mjsatterwhite@aep.com

yalami@aep.com

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail upon counsel for Complainants at the address listed below on this 10th day of October, 2013.

/s/ Yazen Alami
Yazen Alami

John Keller
1424 Jewett Road
Powell, Ohio 43065
jkev@columbus.rr.com

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10/10/2013 4:45:42 PM

in

Case No(s). 12-2177-EL-CSS

Summary: Brief Reply Brief of Ohio Power Company electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company