

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Daniel)	
George,)	
)	
Complainant,)	
)	
v.)	Case No. 14-305-EL-CSS
)	
Ohio Power Company,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission considering the public hearing held on June 27, 2014, issues its Opinion and Order.

APPEARANCES:

Mr. Daniel George, 16867 County Road 20, Forest, Ohio 45843, on his own behalf.

Messrs. Yazen Alami and Steven T. Nourse, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Ohio Power Company.

OPINION:

I. History of the Proceeding

On February 25, 2014, Mr. Daniel George (Complainant) filed a complaint against Ohio Power Company d/b/a AEP-Ohio (AEP-Ohio). In the complaint, the Complainant alleges that a power fluctuation caused damage to several of his household electrical devices and appliances. On March 18, 2014, AEP-Ohio filed an answer and a motion to dismiss.

On April 22, 2014, the attorney examiner issued an Entry to schedule this matter for a settlement conference. The parties met, as scheduled, on May 22, 2014, but did not reach an agreement. The attorney examiner, therefore, issued an Entry on June 5, 2014, scheduling this matter for hearing. The hearing took place, as scheduled, on June 27, 2014.

II. The Law

AEP-Ohio is an electric light company as defined by R.C. 4905.03(A)(4) and a public utility by virtue of R.C. 4905.02. AEP-Ohio is, therefore, subject to the jurisdiction of the Commission pursuant to R.C. 4905.04 and 4905.05. 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. In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

III. Discussion

In his complaint, the Complainant alleged that AEP-Ohio should be liable for damages to his household electrical devices and appliances that resulted from a power surge. At the hearing, the Complainant described the consequences of the power surge. He testified that during the early morning hours on February 9, 2014, he was awakened by the smell of smoke and the sound of electrical devices shutting off. While checking the house, he also heard the sound of circuit breakers. He believed that his house was on fire. Searching the house, the Complainant did not see but could detect the smell of smoke. The Complainant contacted the power company after noticing the loss of power. (Tr. 7-8.) The Complainant testified that the power company replaced a transformer early that same morning. After the return of power, and over the course of a few days, the Complainant assessed the damage from what he concluded was a power surge. (Tr. 9.)

The Complainant described the electrical devices damaged by the power surge. The Complainant referred to two flat screen televisions valued at \$500 and \$900, a Nintendo Wii game system worth \$225, a Blu-ray and DVD player that he values at \$120 and \$45, a queen size heated mattress pad worth \$75, two electric room heaters for \$99 and \$50, a humidifier for \$82, and an electric stove valued at \$800 (Tr. 11-12). The Complainant stated that he was given a quote of \$2,500 to replace his damaged furnace (Tr. 12).

The Complainant testified that he believed that excessive voltage was entering his home for a length of time prior to the electrical surge. He concluded this because, prior to the replacement of the transformer, his surge protector would display an "error" message or flash the number "130." Now that the electrical current has been restored to the proper level, the Complainant testified that the surge protector functions properly. From these facts, the Complainant speculated that the surge protector detected excessive voltage and blocked the flow of electricity. (Tr. 15-17, 21-22.)

AEP-Ohio called Michele L. Jeunelot as its witness. As the Manager of Regulatory Operations, one of her duties is to investigate customer complaints. Ms. Jeunelot sponsored AEP Ohio Ex. 1, which is her prefiled testimony. Through her testimony, Ms.

Jeunelot intended to establish that AEP-Ohio provided safe, reasonable, and adequate service in accordance with Ohio law, applicable regulations, and its tariff. Ms. Jeunelot admitted that the transformer serving the Complainant's residence failed, leading to a power outage. (AEP Ohio Ex. 1 at 3.) She added that AEP-Ohio inspects its transformers every five years. The last inspection of the transformer that provided power to the Complainant's house was completed in 2010. Ms. Jeunelot testified that the inspections are visual inspections conducted from the ground. At the time of the last inspection, there was no sign that the transformer had failed or was about to fail. (AEP-Ohio Ex. 1 at 3; Tr. 22.)

Ms. Jeunelot referred to AEP-Ohio's tariff to emphasize that AEP-Ohio is not responsible for damages resulting from a power outage. Liability for damages may only be established through a showing of negligence. Moreover, she pointed out that the tariff specifies that customers must use protective devices to prevent damages from "single phasing conditions or any other fluctuation or irregularity in the supply of energy." Ms. Jeunelot concluded her prefiled testimony by stating that AEP-Ohio restored power to the Complainant's residence the same day. (AEP-Ohio Ex. 1, 2-6.)

IV. Conclusion

In *In re Complaint of Edward J. Santos v. Dayton Power and Light Company*, Case No. 03-1965-EL-CSS (Santos), Opinion and Order (Mar. 2, 2005), the Commission set forth the criteria to determine whether an electric utility is liable for damages resulting from an electrical surge. *Santos* was an electrical surge case where the complainant sought compensation for damages to his residential electrical equipment. To determine whether a utility is liable, the Commission considered the following criteria: 1) whether the cause of the problem was in the control of the company, 2) whether the company failed to comply with any statutory or regulatory requirements regarding the operation of its system that could have caused the outage or surge, 3) whether the company's actions or inactions constituted unreasonable service, and 4) whether the company acted reasonably in correcting the problem.

After an examination of the facts and considering the criteria from *Santos*, the Commission finds that the Complainant has failed to sustain the burden of proof. There is no dispute that the cause of the problem stemmed from the failure of AEP-Ohio's transformer. Taking into account that AEP-Ohio undertook the removal and replacement of the transformer, there is no dispute that the transformer was in the control of AEP-Ohio.

The second criterion is whether AEP-Ohio failed to comply with any statutory or regulatory requirements regarding the operation of its transformer that could have caused the surge. There is no evidence that AEP-Ohio failed in this regard. The evidence shows that AEP-Ohio inspects its transformers once every five years. The transformer at fault in this case was visually inspected from the ground in 2010 and was slated for re-inspection

in 2015 (Tr. 22). The facts point to no specific violation of a statutory or regulatory requirement. Thus, the Complainant has failed to carry the burden of showing the second criterion of *Santos*.

The Complainant has not presented facts that would lead the Commission to find that AEP-Ohio's actions or inactions constituted unreasonable service. There is no evidence in the record explaining why the transformer failed or why there was a power fluctuation. Ms. Jeunelot noted several causes for power surges, such as lightening strikes, vehicle collisions with poles, small animals on the line, digging into an underground cable, vandalism, and balloons on a line may lead to power fluctuations. (Tr. 26-27.) Because there is no evidence of any actions or inactions on the part of AEP-Ohio that relate to the failure of the transformer, the Commission cannot find that the Complainant met the third criterion of *Santos*.

The final criterion is whether AEP-Ohio acted reasonably in correcting the problem. To determine whether a utility acted reasonably, the Commission will consider the time between the discovery of the problem and an appropriate solution. From the Complainant's account, he noticed a problem in the early morning hours when he detected the smell of smoke. AEP-Ohio responded to the Complainant's call the same day (Tr. 8-9). Moreover, AEP-Ohio replaced the transformer (Tr. 9). By replacing the transformer and restoring electrical current to normal levels within hours of being notified by the Complainant, the Commission finds that AEP-Ohio acted reasonably.

Upon considering the *Santos* criteria, we find that the transformer was the source of the problem and that it was in AEP-Ohio's control. However, the record shows no evidence that AEP-Ohio violated any statutory or regulatory requirements regarding the transformer. We cannot find on these facts that AEP Ohio's actions or inactions constituted unreasonable service. To the contrary, the immediate undertaking to replace the transformer leads us to find that AEP-Ohio acted reasonably. Consequently, we conclude that the Complainant has failed to show that AEP-Ohio is liable under the *Santos* criteria.

The Complainant believes that AEP-Ohio's facilities were supplying excessive voltage prior to the electrical surge. He bases his belief on a surge protector. Reflecting back in time, he believes that his surge protector did not function because it blocked excessive levels of electricity. Now that electricity levels are normal, the Complainant alleges that the surge protector functions properly. The Complainant did not claim that there were damages arising out of any excessive voltage. Nor did the Complainant allude to any other irregularities that would support a claim of inadequate service. Thus, the Complainant has failed to establish any claim of inadequate service relating to excessive electricity prior to the surge.

The Complainant has not presented sufficient evidence to meet the burden of proof under the *Santos* criteria. Nor has the Complainant established any other basis for finding that AEP-Ohio provided inadequate service. The Commission, therefore, concludes that the Complainant has not presented sufficient evidence to support a complaint pursuant to R.C. 4905.26.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On February 25, 2014, Daniel George filed a complaint against AEP-Ohio alleging that an electrical surge caused damage to his household electrical devices and appliances.
- (2) AEP-Ohio is an electric light company, as defined in R.C. 4905.03(A)(4), and is a public utility as defined by R.C. 4905.02.
- (3) The burden of proof in a complaint proceeding is on the Complainant. *Grossman v. Public Utilities Commission*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966).
- (4) There is insufficient evidence to support a finding that AEP-Ohio failed to render adequate service as contemplated by R.C. 4905.22.


ORDER:

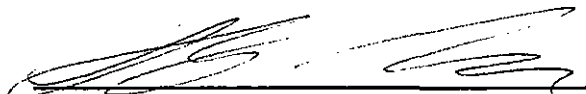
It is, therefore,

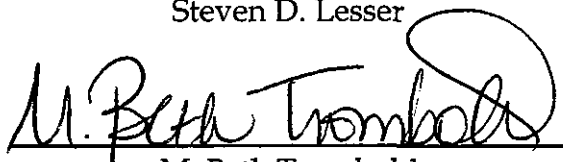
ORDERED, That this matter be decided in favor of the Respondent for failure of the Complainant to sustain the burden of proof. It is, further,


ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

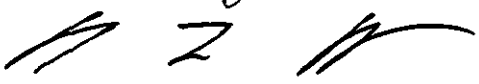
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

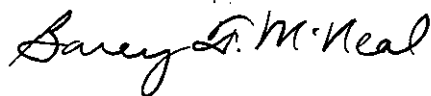

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Entered in the Journal
OCT 22 2014



Barcy F. McNeal
Secretary