

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**COMPLAINANT,**

**CASE NO. 18-691-EL-CSS**

**v.**

**OHIO EDISON COMPANY,**

**RESPONDENT.**

**ENTRY**

Entered in the Journal on June 10, 2020

{¶ 1} 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.

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

{¶ 3} The attorney examiner notes that, as described in more detail below, this case was initially brought to the Commission by Linda Kirby (Ms. Kirby or Complainant) on April 16, 2018, and subsequently dismissed by the Commission on January 16, 2019, in response to Ms. Kirby's request for dismissal. On March 30, 2020, counsel for Ms. Kirby filed a motion requesting that the case be reopened.

{¶ 4} On April 16, 2018, Ms. Kirby filed a complaint against Ohio Edison. The Complainant alleges that stray voltage from Ohio Edison's facilities resulted in elevated levels of stress on the Complainant's cows resulting in a decrease in milk production. After the Company initially denied any electrical effects, the Complainant alleges that a utility technician later detected stray voltage and installed a remedial device. The Complainant alleges that her cows returned to normal behavior and increased milk production.

{¶ 5} For relief, the Complainant requested damages and that the Commission conduct an investigation into the validity of the effects of stray voltage and determine liability for damages.

{¶ 6} On May 4, 2018, Ohio Edison filed an answer to the complaint. Ohio Edison denies all allegations related to the health of the Complainant's cows. Ohio Edison admits that it tested and found elevated neutral-to-earth voltage. Ohio Edison alleges that it promptly installed a neutral isolator after finding elevated neutral-to-earth voltage. Ohio Edison asserts that the Complainant has failed to state reasonable grounds for complaint and that the Commission lacks subject matter jurisdiction over some or all of the Complainant's claims.

{¶ 7} By Entry issued on July 5, 2018, the attorney examiner scheduled a settlement conference for August 7, 2018. The parties appeared for the conference but did not resolve the dispute.

{¶ 8} On September 6, 2018, Ohio Edison filed a motion to dismiss the Complainant's claim for monetary damages.

{¶ 9} On October 24, 2018, the attorney examiner scheduled a November 28, 2018 hearing.

{¶ 10} On October 31, 2018, Ohio Edison moved for a continuance of the hearing in order to complete discovery and prepare its case.

{¶ 11} By Entry issued November 13, 2018, the attorney examiner granted 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.

{¶ 12} On December 13, 2018, Complainant, through counsel, moved to dismiss the complaint, explaining that the Complainant intended to pursue the claim in common pleas court.

{¶ 13} On January 16, 2019, the Commission, upon Complainant's request, issued an Entry dismissing the complaint without prejudice.

{¶ 14} On March 30, 2020, the Complainant, through counsel, filed a motion to reopen this case in front of the Commission. In support of the motion, the Complainant discusses the events that have occurred subsequent to the Commission's dismissal and also attached legal filings made in other venues after the Commission case closed. The Complainant notes that, after the complaint with the Commission was dismissed, counsel filed suit on behalf of Double K Kirby Farms (Double K) in the Trumbull County Court of Common Pleas (Common Pleas Court) on March 6, 2019, in Case No. 2019-CV-416, in which Double K alleged that Ohio Edison breached its duties to Double K by failing to provide proper and appropriate electrical voltage to Double K's farm and by failing to install an appropriate device to reduce the neutral-to-earth voltages. Double K demanded a monetary award against Ohio Edison as a result of damage suffered to its cows including, but not limited to, reduced milk production, loss profits, veterinarian costs, sale of livestock, as well as the death of livestock.

{¶ 15} In the above matter, Ohio Edison filed a motion to dismiss, arguing that Double K's claims were service complaints subject to the exclusive jurisdiction of the Commission; however, the Common Pleas Court denied Ohio Edison's motion. *Double K Kirby Farms v. Ohio Edison Co.*, Trumbull C.P. No. 2019 CV 416 (Aug. 8, 2019). In turn, Ohio Edison filed a writ of prohibition to prevent the Common Pleas Court from proceeding with the complaint, arguing that the Commission possesses exclusive jurisdiction over Double K's allegations, pursuant to R.C. 4905.26, and the Common Pleas Court lacked jurisdiction to decide the matter. On December 23, 2019, the Eleventh District Court of Appeals, in *State Ohio Edison Co. v. Trumbull Cty. Court of Common Pleas*, 11th Dist. Trumbull No. 2019-T-0062,

2019-Ohio-5313, granted Ohio Edison's writ of prohibition, deciding that the Commission, not the Common Pleas Court, had jurisdiction over Double K's service complaints, and, once a determination was made by the Commission, redress for monetary damages could be sought at the Common Pleas Court, if applicable. Consequently, the Complainant requests this case be reopened to allow the Commission to consider the initial complaint. The Complainant also notes that Double K Kirby Farms is the proper title for the Complainant.

{¶ 16} The attorney examiner finds that the Complainant's motion is reasonable and that good cause has been shown; therefore, the motion to reopen this case at the Commission is granted, though, it is noted that, in line with the attorney examiner's November 13, 2018 Entry and the Eleventh District Court of Appeals' decision, the proceeding will be limited to an examination of the Complainant's service allegations, as the claim for monetary damages has already been dismissed. Also, as counsel for Complainant requested, the case caption has been updated to reflect Double K Kirby Farms as the Complainant.

{¶ 17} Due to this case's developments since the August 7, 2018 settlement conference as well as considering Ms. Kirby was not represented by counsel at that meeting, the attorney examiner finds that this matter should be scheduled for a telephonic settlement conference. The purpose of the conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Ohio Adm.Code 4901-1-26, any statement made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible in future proceedings in this case or be admissible to prove liability or invalidity of a claim. Nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference. An attorney examiner with the Commission's Legal Department will facilitate the settlement process.

{¶ 18} Accordingly, a settlement conference shall be scheduled for August 6, 2020, at 10:00 a.m., by telephone. At least one week prior to the settlement conference, parties will be provided with instructions on how to attend. If a settlement is not reached at the

conference, the attorney examiner may conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.

{¶ 19} Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the Company shall investigate the issues raised in the complaint prior to the settlement conference, and all parties participating in the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties participating in the settlement conference should have with them all documents relevant to this matter.

{¶ 20} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the Complainant's motion to reopen the case be granted in accordance with Paragraph 16. It is, further,

{¶ 23} ORDERD, That Double K Kirby Farms be named the Complainant in place of Ms. Kirby and that the case caption be updated to reflect this change. It is, further,

{¶ 24} ORDERED, That a telephonic settlement conference be scheduled for August 6, 2020, in accordance with Paragraphs 17 and 18. It is further,

{¶ 25} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Matthew J. Sandor

By: Matthew J. Sandor  
Attorney Examiner

JRJ/kck

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/10/2020 2:41:58 PM**

**in**

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

Summary: Attorney Examiner Entry scheduling a settlement conference for August 6, 2020, at 10:00 a.m., by telephone. At least one week prior to the settlement conference, parties will be provided with instructions on how to attend. electronically filed by Kelli C King on behalf of Matthew Sandor, Attorney Examiner, Public Utilities Commission of Ohio