

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

ROGER LESH,

Complainant,

v.

THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY,

Respondent.

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Case No. 18-1519-EL-CSS

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S**  
**POST-HEARING BRIEF**

## **I. Introduction**

This case stems from Roger Lesh (the “Complainant”)’s August 21, 2018 service interruption. During a storm the evening of August 21, 2018, a sudden and unforeseen equipment failure caused the top of the transformer pole that serviced Complainants’ residence to burn, which resulted in an interruption of his electric service from The Cleveland Electric Illuminating Company (“CEI”). Complainant notified CEI of this loss of service at approximately 6:00am the next morning, August 22, 2018; however, CEI was already aware of the service interruption, and was taking diligent steps to restore power. CEI restored power to Complainant’s residence on August 22, 2018.

In the Complaint, Complainant alleges that this loss of service coincided with a “power surge” that damaged electronics in his residence, and that the true cause of the service interruption and alleged power surge was a failure on CEI’s part to promptly replace the transformer servicing his residence after he had requested that a new transformer be installed the summer prior. However, Complainant has not presented any evidence to support these claims. Indeed, he has not presented any testimony in the record demonstrating that a power surge even occurred, let alone that it was caused by or in CEI’s control. On the contrary, evidence presented by CEI at the hearing demonstrates that CEI promptly and diligently responded to each of the trouble calls Complainant made to CEI between June 28, 2017 and August 22, 2018.

As in all complaint cases, the Complainant has the burden of proving his case; but here, Complainant has failed to satisfy his burden under the four-factor test for power surge liability articulated by the Commission in *In the Matter of Santos v. The Dayton Power and Light Company*, Case No. 03-1965-EL-CSS, 2005 Ohio PUC LEXIS 98 (Mar. 2, 2005). Rather, the evidence in this case shows that: (1) the cause of Complainant’s service interruption on August 21, 2018 was

a storm and sudden and unforeseen equipment failure, and thus any alleged power surge was not in CEI's control; (2) CEI complied with all statutory and regulatory requirements regarding the operation of its system; (3) CEI, through its actions, provided reasonable service; and (4) CEI acted responsibly in responding to Complainant's trouble calls and restoring service to Complainant's residence on August 22, 2018. CEI is therefore not responsible for any alleged damages to Complainant's property.

The Complainant has not sustained his burden in this case. The Complaint should be dismissed with prejudice and/or The Cleveland Electric Illuminating Company should be granted judgment in its favor on the Complaint.

## **II. Statement of Facts**

### **A. June 28, 2017 Request for New Transformer**

On June 28, 2017, Complainant requested a new transformer.<sup>1</sup> While he claims that the transformer servicing his residence at this time was defective, there is no evidence to support this claim. Rather, the transformer had a rusty appearance.<sup>2</sup> Because of Complainant's concerns with the transformer, CEI agreed to replace the transformer with a larger model.<sup>3</sup> Because an inspection did not indicate any defects with the then-existing transformer, the request was not deemed urgent.<sup>4</sup> Notably, CEI did not commit to replacing the transformer by a date certain.<sup>5</sup> These facts indicate

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<sup>1</sup> Hearing Tr. at 16.

<sup>2</sup> See *Id.* at 16-17 (Complainant stated that he initially requested the transformer replacement because it was "old" and had "discoloration").

<sup>3</sup> *Id.* at 51-52; Cottrill Testimony at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

that the replacement was offered as a courtesy to address the customer's concerns, not as a means of addressing an issue impacting safety or reliability.<sup>6</sup>

#### **B. July 13, 2017 Request for Status Update**

On July 13, 2017, Complainant called CEI again, requesting a status update on when the transformer servicing his residence would be installed.<sup>7</sup> To address Complainant's concerns and to see if there was, in fact, an immediate need for replacement, CEI inspected the transformer and again found only cosmetic issues.<sup>8</sup> CEI assured Complainant that there was no need for replacement at this time, but a courtesy non-urgent work order was submitted to replace the transformer.<sup>9</sup>

#### **C. August 6, 2018 Request for Tree Trimming**

On August 6, 2018, Complainant called CEI and reported that trees on his property needed to be trimmed.<sup>10</sup> At that time, CEI submitted a work order for tree trimming on the property, which was scheduled to take place no later than September 7, 2018.<sup>11</sup>

#### **D. August 21, 2018 Storm and Service Interruption**

On the evening of August 21, 2018, a storm occurred in the vicinity of Complainant's residence, causing a sudden and unforeseen equipment failure and power outage at the residence.<sup>12</sup> Specifically, the storm caused the top of the transformer pole servicing Complainant's residence to burn.<sup>13</sup> Complainant called CEI to notify CEI of his power outage the next morning, August

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<sup>6</sup> *Id.*

<sup>7</sup> A typographical error was made in CEI's witness testimony. CEI's records show that Complainant called on July 13, 2017 for this status update call. *See* Cottrill Testimony at 4, line 7; *See* Hearing Tr. at 47-50.

<sup>8</sup> *Id.*

<sup>9</sup> *See* Hearing Tr. at 50-51.

<sup>10</sup> *Id.* at 53; Cottill Testimony at 4.

<sup>11</sup> *Id.*

<sup>12</sup> Complaint at 2; Cottrill Testimony at 4; *See also* Hearing Tr. at 28 (where Complainant admits that a storm occurred, although he would not call it a "heavy storm.").

<sup>13</sup> Cottrill Testimony at 4.

22, 2018, at approximately 6:00am; however, CEI was already aware of the outage and was taking steps to restore power.<sup>14</sup> CEI restored power to the residence on August 22, 2018.<sup>15</sup> While complainant claims that a power surge occurred and damaged equipment in his home, he presented no evidence proving that a power surge occurred, nor did he present evidence showing that if a power surge *had* occurred, that it was caused by or within the control of CEI.<sup>16</sup>

#### **E. CEI Acted Reasonably in Responding to Each of Complainant's Trouble Calls**

CEI's witness testified at hearing that CEI's records indicate that the failure of the transformer at Complainant's residence was caused by a sudden and unforeseen equipment failure as a result of a storm.<sup>17</sup> Moreover, CEI responded to each of Complainant's calls and appropriately inspected the transformer and vegetation and performed all maintenance it deemed necessary in the professional judgment of its employees.<sup>18</sup> When the transformer failed, CEI promptly reported to the Residence to make all necessary repairs and replacements.<sup>19</sup> CEI acted reasonably under the circumstances.<sup>20</sup>

### **III. Law and Argument**

In complaint proceedings, the burden of proof rests with the Complainant. *Grossman v. Pub. Util. Comm.*, 5 OhioSt.2d 189, 214 N.E.2d 666 (1966). Therefore, a complainant must present evidence in support of the allegations made in a complaint. Moreover, in cases like this where a complainant seeks damages as a result of a power surge, the complainant has the burden of proving four factors specific to that cause of action. *See In the Matter of Pro Se Commercial Properties v.*

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See* Complaint; *See* Hearing Tr. at 8-28; *See also* Lesh Exhibit 1.

<sup>17</sup> Hearing Tr. at 53; Cottrill Testimony at 4,6.

<sup>18</sup> Cottrill Testimony at 6.

<sup>19</sup> *Id.* at 6-7.

<sup>20</sup> *Id.*

*The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, \*6 (Op. and Order Sept. 10, 2008) (“*In re Pro Se Commercial Properties*”).

Here, Complainant has failed to meet his burden against CEI. The only “evidence” he has submitted in this proceeding is list of appliances he claims were damaged on August 22, 2018, and a vague black and white photograph of a transformer.<sup>21</sup> The Complaint should be dismissed with prejudice and/or CEI should be granted judgment in its favor on the Complaint.

**A. Complainant has failed to satisfy the Commission’s four-factor test for power surge liability.**

In order to establish that CEI is liable for the power surge that Complainant alleges to have experienced, Complainant must satisfy the four-factor test articulated in *In re Pro Se Commercial Properties*. Specifically, it is his burden to prove:

[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 responsibly in correcting the problem.

*Id.* at 6 (citing cases). “In the absence of evidence showing that CEI failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that CEI is responsible for the damages to the complainant’s property.” *Id.*

In the present case, Complainant has failed to satisfy any of the four factors, has not shown any unreasonable action by CEI, and has not even proven that a power surge occurred. The Complaint should be dismissed with prejudice, with judgment entered in CEI’s favor.

**1. The cause of the August 21, 2018 service interruption was not in CEI’s control.**

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<sup>21</sup> See Hearing Tr. at 40-42 (noting that Complainant’s photograph is hard to discern and may have issues with authentication, as Complainant states that he himself took the picture “probably—had to be before they came and cut it out....whenever the incident happened.”).

CEI did not cause the storm or resulting sudden and unexpected equipment failure and loss of service on August 21, 2018. Indeed, CEI's witness testified that a storm caused this service interruption. To the extent the loss of service on August 21, 2018 caused a power surge at Complainant's residence—a fact which has not been proven in this case—the cause of the power surge was outside of CEI's control.

Complainant insists that the cause of the alleged power surge on August 21, 2018 was CEI's "failure to perform preventative maintenance" to the transformer servicing his residence, which he claims CEI should have replaced "for about one and a half years."<sup>22</sup> However, CEI's records do not demonstrate this to be true, and CEI's witness testified that "the failure of the transformer was a sudden and unforeseen equipment failure as a result of a storm."<sup>23</sup> Complainant has not presented any evidence to the contrary.

## **2. CEI complied with all statutory and regulatory requirements regarding the operation of its system.**

There is no evidence in this case that CEI failed to comply with any statutes or regulations regarding the operation of its system. At the hearing, Complainant presented no evidence to support his claims about CEI's "failure to perform preventative maintenance"<sup>24</sup> on the transformer servicing his residence. And the evidence admitted at the hearing in this matter shows that CEI diligently responded to each of Complainant's four trouble calls between June 2017 and August 2018.<sup>25</sup> CEI's witness testified that CEI "appropriately inspected the transformer and vegetation and performed all maintenance it deemed necessary in the professional judgment of its employees. When the transformer failed, CEI promptly reported to the Residence to make all necessary repairs

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<sup>22</sup> Complaint at 2.

<sup>23</sup> Cottrill Testimony at 6.

<sup>24</sup> See Hearing Tr. at 8-28; See also Lesh Exhibit 1.

<sup>25</sup> See Hearing Tr. at 44, 62; See generally Cottrill Testimony; See also Lesh Exhibit 1.

and replacements. CEI acted reasonably under the circumstances.”<sup>26</sup> Complainant has not met his burden with respect to this factor.

### **3. CEI’s actions constituted reasonable service.**

CEI’s actions constituted reasonable service. Complainant placed four trouble calls to CEI between June 28, 2017 and August 22, 2018.<sup>27</sup> Each time, CEI promptly responded, inspected its equipment, made any necessary repairs, and submitted work orders to be completed in a time frame appropriate for their level of urgency.<sup>28</sup> Even when requests were not deemed urgently necessary, CEI responded by performing inspections and submitting a work order as a courtesy to address the customer’s concerns<sup>29</sup>. CEI’s witness testified that in her opinion, CEI acted reasonably in responding to each of these trouble calls.<sup>30</sup> Complainant failed to present any evidence to the contrary.

### **4. CEI acted responsibly in addressing the August 22, 2018 trouble call.**

CEI promptly restored power and completed necessary repairs to the transformer servicing Complainant’s home after responding to Complainant’s August 22, 2018 trouble call.<sup>31</sup> This fact is beyond dispute.<sup>32</sup> CEI’s actions were reasonable, appropriate, and responsible responses to the situation it encountered in responding to the August 22, 2018 trouble call.

Commission precedent is clear that “[i]n the absence of evidence showing that [the utility] failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that [the utility] is responsible for the

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<sup>26</sup> Cottrill Testimony at 6-7.

<sup>27</sup> *Id.* at 3-5.

<sup>28</sup> *Id.* at 3, 6-7; Hearing Tr. at 51.

<sup>29</sup> Hearing Tr. at 50-52; Cottrill Testimony at 3-4.

<sup>30</sup> Cottrill Testimony at 6-7.

<sup>31</sup> *Id.* at 4-7.

<sup>32</sup> *See* Hearing Tr. at 42 (Complainant states that he took a photo of the transformer on August 22, 2018 right before CEI replaced the pole and restored power on the day of the event at issue).



damages to the complainant's property.” *In re Pro Se Commercial Properties*, Case No. 07-1306-EL-CSS, \*10 (Op. and Order Sept. 10, 2008). Complainant has failed to meet his burden under the *In re Pro Se Commercial Properties* test. CEI cannot be found liable for the alleged damages to Complainant’s property. And even if the Commission were to find CEI liable, Complainant has not produced adequate evidence to prove his alleged damages.<sup>33</sup> The Commission should find in CEI’s favor with respect to Complainant’s power surge claim.

#### **IV. Conclusion**

Complainant has not met his burden of proof in this case. For all of the foregoing reasons, the Complaint should be dismissed with prejudice and/or The Cleveland Electric Illuminating Company should be granted judgment in its favor on the Complaint.

Respectfully submitted,

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<sup>33</sup> See Hearing Tr. at 30-43 (Addressing hearsay concerns with Complainant’s evidence submitted as an Exhibit).

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing The Cleveland Electric Illuminating Company's Post-Hearing Brief was filed with the Commission's Docketing Information System on this 1st day of September, 2021. A service copy has been served by Regular U.S. Mail on the following party:

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Summary: Brief THE CLEVELAND ELECTRIC ILLUMINATING COMPANY'S  
POST-HEARING BRIEF  
electronically filed by Ms. Kristen M. Fling on behalf of The Cleveland Electric Illuminating  
Company