

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Edward L. Galewood

Complainant

v.

Ohio Edison Company

Respondent

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Case No. 20-1606-EL-CSS

OHIO EDISON COMPANY’S POST-HEARING BRIEF

I. INTRODUCTION

This case originates from a written complaint filed by Edward L. Galewood (“Complainant”) on October 16, 2020, with the Public Utilities Commission of Ohio (the “Commission”).¹ The Complainant lives at 745 West Highland Road in Northfield, Ohio.² In his Complaint, Complainant alleges that on September 2, 2020, one of Ohio Edison Company (“Ohio Edison”)’s wires laid slack across two groupings of trees and the ground in his yard, leaving burn marks on both.³ After investigating the incident, Ohio Edison discovered that the line had broken as a result of a tree falling down a number of houses down from Complainant’s property. The tree itself was located on the opposite side from the Complainant’s property, and fell across the street onto the line, causing the line to break, a portion of which fell into the Complainant’s yard.

Complainant alleged that the incident was the result of Ohio Edison’s “lack of maintenance”⁴ and that “the company can claim no fault no matter the damage there[sic] lack of maintenance causes property owners and get away with it.”⁵ His central complaint, as originally stated, was that Ohio Edison did not abide by the established right of way when the line entered his property.⁶

However, Complainant has not presented any evidence to demonstrate that Ohio Edison failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably. He has not presented any testimony in the record demonstrating that Ohio Edison’s failure to perform regular maintenance and inspection caused the tree to fall on the line. In fact,

¹ Formal Complaint filed on October 16, 2020 in 20-1606-EL-CSS (“Complaint”),

² *Id.*, p. 1.

³ *Id.*

⁴ *Id.*, p. 2.

⁵ *Id.*

⁶ *Id.*

in the hearing, Complainant presented no evidence regarding the tree—the sole cause of the incident—at all.⁷

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 articulated by the Commission in *In the Matter of Pro Se Commercial Properties v. The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, Op. and Order, (September 10, 2008). Rather, the evidence presented shows that: (1) the cause of the September 2, 2020 incident was a sudden and unforeseen tree fall originating on the other side of Complainant’s street; (2) Ohio Edison complied with all of the statutory and regulatory requirements regarding the maintenance of its transmission lines; (3) Ohio Edison, through its actions, provided reasonable service; and (4) Ohio Edison acted responsibly in responding to Complainant’s trouble calls and restoring the line to its original position. Ohio Edison is therefore not responsible for any alleged damages to Complainant’s property.

The Complainant has not sustained his burden in this case. Thus, the Complaint should be dismissed with prejudice and/or Ohio Edison should be granted judgment in its favor on the Complaint.

II. STATEMENT OF FACTS

A. On September 2, 2020, Ohio Edison Responds Immediately to a Downed Wire Caused by a Fallen Maple Tree

On the morning of September 2, 2020, police were alerted to a downed wire in Complainant’s front yard.⁸ Police notified Ohio Edison of the downed wire at 7:39 a.m., and Ohio Edison then advised Police that a representative would be on the scene within one hour.⁹ At 8:03

⁷ See generally, Record of Proceeding.

⁸ Exhibit C-1, Police Report.

⁹ *Id.*

a.m., twenty-four minutes later, a representative of Ohio Edison arrived and promptly de-energized the wires by 8:21 a.m.¹⁰ Later, it was discovered that the cause of the downed wire was a large maple tree that had fallen around fifty feet across the street and onto the wire a few houses down from Complainant's residence, causing the wire to break and slack in Complainant's front yard.¹¹ Ohio Edison then paged a tree crew directly to notify them of the situation and to get the crew to remove the tree.¹² The tree crew arrived on the scene at 10:39 a.m., and had finished removing the tree from the road at 12:40 p.m.¹³

B. Ohio Edison Provided Proper Maintenance Trimming and Inspection Prior to the Maple Tree Falling

John Bianchi, the Forestry Specialist in the Kent region who oversees the trimming and maintenance of Ohio Edison's lines and rights-of-way, including the circuit involved in the incident described by Complainant, offered testimony at the hearing on behalf of Ohio Edison.¹⁴ Mr. Bianchi testified that every four years, the forestry department performs scheduled maintenance trimming for the entire circuit, including all trees within Ohio Edison's right-of-way.¹⁵ Additionally, every two years, Ohio Edison's forestry department completes an inspection of trees both in and out of the right-of-way for any obvious danger to Ohio Edison's lines, such as evidence of uprooting, death, or any other visible problems that may cause an outage or present a danger to the lines or customers.¹⁶

In 2017, Ohio Edison performed maintenance trimming for the right-of-way of the entire circuit at issue.¹⁷ The circuit was subsequently inspected in February of 2018 and in June of 2020,

¹⁰ *Id.*

¹¹ Exhibit C-2, Testimony of John Bianchi, 3:15–16; 4:1–3.

¹² *Id.*, 3:16–17.

¹³ Exhibit C-1, Police Report.

¹⁴ See Exhibit C-2, Testimony of John Bianchi, 3:14–19.

¹⁵ *Id.*, 4:10–11.

¹⁶ *Id.*, 4:11–16.

¹⁷ *Id.*, 4:18–19.

three months before the incident at issue took place.¹⁸ When the circuit was inspected in June of 2020, the maple tree was not marked as a concern, as it displayed no indications of being a potential danger to the wires because it appeared to be alive, showed no signs of uprooting, and gave no visible indicator that the forestry department would need to take preventative measures to keep the tree from falling.¹⁹

C. The Complainant Mistakenly Believes an Occurrence on October 7, 2011 Impacted the September 2, 2020 Incident

Included with the Complaint, as well as contained within the Complainant's testimony and proffered exhibits, are references to an occurrence on October 7, 2011 involving transmission wires. Specifically, in his Complaint, Complainant stated: "9 years ago the same breaker location exploded and again the wire spun into my yard causing \$7,500 in damages to my home."²⁰ In the course of the hearing, Complainant explained his belief that "[i]t's the same problem, the same place that exploded. It was ten years later, exactly the same thing happened."²¹

By contrast, the evidence presented by Ohio Edison clearly provides, through the police report and the through the testimony of Mr. Bianchi²², that the sole cause of the September 2, 2020 incident was a maple tree falling on the transmission wire. Based on Ohio Edison's investigation into the matter, there was no "explosion" or problem involving a breaker, as the Complainant claims..²³ Rather, the slack wire in Complainant's front yard was caused by the large maple tree that had fallen across the street and onto the wire.²⁴

¹⁸ *Id.*, 4:19–21.

¹⁹ *Id.*, 4:22–5:5.

²⁰ Complaint, p. 1.

²¹ Record of Proceeding, 28:24–29:1.

²² Exhibits C-1 and C-2.

²³ Record of Proceeding, 8:17–23.

²⁴ Exhibit C-2

III. LAW & ARGUMENT

Pursuant to Section 4905.26, Revised Code, upon written complaint against any public utility, the Commission shall hold a hearing if it appears that there are reasonable grounds that practice affecting or relating to any service furnished by the public utility is unjust or unreasonable.²⁵ In such complaint proceedings, the burden of proof rests with the Complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, a complainant must present evidence in support of the allegations made in the Complaint. Here, Complainant has failed to meet his burden against Ohio Edison.

A. Complainant Has Failed to Satisfy the Commission's Four-Factor Test for Determining Whether Ohio Edison is Responsible for the Damages to Complainant's Property

In order to establish that Ohio Edison is liable for the damage that Complainant alleges to have experienced, Complainant must satisfy the four-factor test articulated in *In the Matter of Pro Se Commercial Properties v. The Cleveland Electric Illuminating Company*, Case No. 07-1306-EL-CSS, Op. and Order, (September 10, 2008) ("*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 (citations omitted). "In the absence of evidence showing that Ohio Edison failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that Ohio Edison is responsible for the damages to the

²⁵ O.R.C. § 4905.26.

complainant's property." *Id.* In the present case, Complainant has failed to satisfy each of the four factors.

1. The Falling Maple Tree Was an Event Not Within Ohio Edison's Control

Complainant has not established that the maple tree falling was within Ohio Edison's control. Mr. Bianchi testified that there was nothing Ohio Edison did or failed to do that caused or contributed to the maple tree falling across the street onto the line.²⁶ Mr. Bianchi also testified that it is common for tension to cause wires to fall down on a property when a tree falls further up the line, and, in his experience, the same scenario has happened before.²⁷

Complainant did not submit expert testimony or refute Mr. Bianchi's testimony. On cross examination, Complainant admitted that he did not know if Ohio Edison was responsible for the tree falling:

Q: Do you know if Ohio Edison was responsible for the tree that fell on the wires?

A: I really don't know. Based on this—Mr. Bianchi's analysis it was a healthy maple tree, it come down anyway. That's what I read here. I didn't get that before, because I wasn't involved. * * *²⁸

The only evidence submitted to the record demonstrated that, other than providing regular inspection and maintenance trimming, which was done in this case, there was nothing Ohio Edison could have done to prevent the tree from falling on the wire at issue. A utility company is not responsible for vegetation management beyond its right-of-way.²⁹ When a tree is outside the right-of-way, the utility has no duty to trim or remove the tree, especially where the utility could not

²⁶ Exhibit C-2, Testimony of John Bianchi, 5:6–9.

²⁷ Record of Proceeding, 73:16–22.

²⁸ *Id.*, 64:8–14.

²⁹ *In the Matter of the Complaint of Daniel R. Birrell*, Case No. 16-2281-EL-CSS, Opinion and Order, (April 3, 2019) ¶ 22.

have determined the tree, which appeared to be healthy, was going to fall.³⁰ Here, the tree was over forty to fifty feet away from the line.³¹ The easement associated with the line in question is approximately 15 feet from each side of the pole.³² Complainant does not dispute that a perfectly healthy maple tree could have fallen on the line and caused it to break on September 2, 2020.³³ Further, he offered no evidence to the contrary. Thus, Complainant has not proven that the fallen tree was within Ohio Edison's control.

If the Complainant does not believe that the tree was the cause of the line falling, he failed to demonstrate that any other such occurrence was within the control of Ohio Edison. At the hearing, the Complainant testified that it was his belief that the circuit breaker exploded, snapping the wire.³⁴ Even if that were the case, he presented no evidence to support this theory or to demonstrate that such an event would be within the control of Ohio Edison.

2. Ohio Edison Complied with All Statutory and Regulatory Requirements Regarding Forestry Maintenance

Complainant has failed to show that Ohio Edison did not comply with all pertinent statutory and regulatory requirements applicable to preventing the incident at issue in this case. Section 4901:1-10-27(E)(1)(f), Ohio Administrative Code, states that electric utilities shall establish, maintain, and comply with written programs, policies, procedures, and schedules for the inspection, maintenance, and repair of its transmission and distribution circuits and equipment, including right-of-way vegetation control.³⁵

³⁰ *Id.*, ¶ 19 (“The Commission, therefore, concludes that the tree was outside of AEP's right-of-way, that AEP had no duty to trim or remove the tree, and that AEP could not have determined that the tree, which appeared to be healthy, was going to fall.”)

³¹ Exhibit C-2, Testimony of John Bianchi, 4:5–6.

³² *Id.*, 4:6–7.

³³ *Id.*, 64:10–12.

³⁴ *Id.*, 8:17–23.

³⁵ O.A.C. § 4601:1-10-27(E)(1)(f).

The record reflects that scheduled inspection took place in June of 2020, three months before the incident at issue took place.³⁶ When the circuit was inspected in June 2020, the maple tree was not noted as a potential danger to the wires because it was alive, not uprooting, and gave no visible indicator that the forestry department would need to take preventative measures to protect transmission wires from a tree fall.³⁷

Complainant did not present evidence that Ohio Edison failed to comply with the above rule. On the contrary, Complainant affirmatively stated that he was *not* alleging that Ohio Edison neglected to perform maintenance and inspection:

Q: I'm asking these questions because we're here today regarding a tree that fell, and there's some allegation that the tree should have been trimmed or removed or dealt with.

A: I didn't make that allegation. I did not make that allegation.³⁸

Even further, not only did Complainant present no evidence that Ohio Edison failed to perform proper right-of-way vegetation control, he also admitted he knew nothing about the tree's condition at all:

Q: Do you know who owned the tree that fell down on Ohio Edison's power line?

A: No, I don't know, and I don't care. What is that to me?

Q: Were you aware of any prior issues with the tree that fell?

A: I don't even know where—I don't know exactly where it was at. I don't know what house you're talking about.³⁹

Based on the testimony Complainant presented at the hearing, it is clear that he does not have any information or belief to dispute that Ohio Edison took proper measures to maintain right-

³⁶ Exhibit C-2, Testimony of John Bianchi, 4:19–21.

³⁷ *Id.*, 4:22–5:5.

³⁸ Record of Proceeding, 60:20–25.

³⁹ *Id.*, 52:12–20

of-way vegetation control pursuant to the applicable provision of the Ohio Administrative Code. The record is wanting for any evidence that Ohio Edison did not maintain its transmission and distribution circuits and equipment, including right-of-way vegetation control. As a result, Complainant has not proven that the Company failed to comply with any statutory or regulatory requirements regarding the operation of its system that could have caused the damage to Complainant's property.

3. Ohio Edison's Actions Constituted Reasonable Service

Ohio Edison's actions constituted reasonable service. In this case, there was a single incident involving a tree that had been recently inspected and fell without warning on an active line.⁴⁰ Ohio Edison arrived within thirty minutes of being dispatched by police.⁴¹ Although such incidents are undesirable, there is no evidence—nor allegation—of multiple or ongoing issues with Ohio Edison's maintenance or inspection of the trees within this right-of-way. Moreover, there is no evidence that Ohio Edison was aware of any problem with the tree that could have prompted the Company to act in some way to prevent the tree from falling. Then, when the tree fell on September 2, 2020, Ohio Edison acted promptly and reasonably in addressing the problem. Complainant has failed to present any evidence to the contrary.

4. Ohio Edison Acted Responsibly in Addressing the Problem on September 2, 2020

Once aware of the problem, Ohio Edison acted quickly and responsibly to address the downed line and tree. The Complainant agreed that despite Ohio Edison's estimated time of arrival at one hour from dispatch, a representative was quickly on the scene in less than half an hour.⁴² The lines were immediately de-energized, and a tree crew immediately began clearing the road,

⁴⁰ *Id.*, 52:5–10.

⁴¹ Exhibit C-1, Police Report.

⁴² *Id.*, 56:17–23.

which was completed by early afternoon that same day.⁴³ These actions were reasonable, appropriate, and responsible responses to the situation the Company encountered in responding to the September 2, 2020 call.

Pursuant to the standard set forth in *Commercial Properties*, in the absence of evidence showing that Ohio Edison failed to comply with statutory or regulatory requirements, or that in some other manner it acted unreasonably, the Commission cannot render a finding that Ohio Edison is responsible for the damages to the Complainant's property. *Commercial Properties*, Case No. 07-1306-EL-CSS, Op. and Order, (September 10, 2008). As demonstrated above, Complainant has offered no evidence that Ohio Edison acted unreasonably with regard to the four factors above. Therefore, the Commission should find in Ohio Edison's favor with respect to the Complainant's property damage claim.

B. Renewed Objections to Complainant's Presented Evidence

Ohio Edison renews its objections to various evidence submitted to the record before the Commission, including Complainant's Exhibits A and B, as well as various attempts by Complainant during the course of the proceedings to admit hearsay, past settlement negotiations, and irrelevant anecdotal evidence.⁴⁴

First, Complainant's Exhibit A is a document prepared by the Complainant outlining the occurrence on September 2, 2020, as well as an occurrence from October 7, 2011. Upon an attempt by the Complainant to admit this exhibit, Ohio Edison objected to the extent that the exhibit included references to the 2011 occurrence, which has no relevance to the issues before the

⁴³ Exhibit C-1, Police Report.

⁴⁴ As a general matter, the Attorney Examiner noted that while the evidence proffered was irrelevant or not likely to influence the Commission's decision, he intended not to "admit it" but "keep it apart of the record" for appeal or for possible consideration. *See, e.g.*, Record of Proceeding, 46:12–15 ("I'm going to leave it as part of the record so that if you give an appeal it's going to be there, but I'm not admitting that page into the record").

Commission in this case.⁴⁵ The exhibit was admitted, noting that “the Commission will make a decision as to relevancy of the things that happened.”⁴⁶ Ohio Edison renews its objection, noting that any incidents occurring in 2011, even if involving the same transmission lines, make no fact before the Commission more or less probable here.

Similarly, Complainant’s Exhibit B is a three-page document that includes two newspaper clippings detailing the October 7, 2011 incident described above and a release between the Complainant and FirstEnergy Corp. regarding the 2011 incident.⁴⁷ The Complainant offered this exhibit to establish “precedence,”⁴⁸ seemingly in effort to demonstrate that because there was a problem with the breaker near his home on October 7, 2011, the September 2, 2020 incident is somehow more likely to be the result of unreasonable conduct on the part of Ohio Edison. Counsel for Ohio Edison objected at the hearing, noting that the settlement agreement and newspaper articles pertain entirely to the 2011 incident, which, again, is irrelevant to whether Ohio Edison acted reasonably in this case.⁴⁹ The exhibit was admitted, noting that “the Commission itself will make a decision in terms of the weight to give” it.⁵⁰ Ohio Edison renews its objection to the newspaper clippings and the settlement agreement because any prior negotiations or agreements between Complainant and FirstEnergy Corp. do not speak to whether Ohio Edison acted reasonably with regard to the September 2, 2020 incident. Further, the news reports of the October 7, 2011 incident make no fact before the Commission more or less likely.

Finally, the record is replete with attempts from the Complainant to admit hearsay and irrelevant or anecdotal evidence.⁵¹ Further, Complainant continuously offered opinions on behalf

⁴⁵ Record of Proceeding, 26:24–27:1.

⁴⁶ *Id.*, 27:4–5.

⁴⁷ Complainant’s Exhibit B.

⁴⁸ Record of Proceeding., 28:5.

⁴⁹ *Id.*, 29:2–9.

⁵⁰ *Id.*, 29:13–23.

⁵¹ *See, e.g., Id.*, 9:5–20; 11:3–21; 14:6–19.

of witnesses who were not present at the hearing and whose expert testimony had not been filed with the Commission prior to the hearing pursuant to Section 4901-1-29(A), Ohio Administrative Code.⁵² Ohio Edison objected on these bases, and the Attorney Examiner allowed Complainant to continue testifying, noting that the testimony “does appear to be hearsay.”⁵³ Thus, Ohio Edison respectfully renews its objection to the admission of such hearsay.

IV. CONCLUSION

For the foregoing reasons, the Complaint should be dismissed with prejudice and/or Ohio Edison Company should be granted judgment in its favor on the Complaint.

Respectfully submitted,

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⁵² *Id.*, 14:6-9.

⁵³ *Id.*, 14:20-24.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Post-Hearing Brief on Behalf of Ohio Edison Company was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio this 23rd day of September, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on all parties. A courtesy copy was also sent via Certified U.S. mail this 23rd day of September, 2021 to:

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/s/ John W. Breig, Jr.
John W. Breig, Jr. (0096767)

*One of the Attorneys for Ohio Edison
Company*

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Summary: Brief Ohio Edison Company's Post-Hearing Brief electronically filed by Mr. John W. Breig on behalf of Ohio Edison Company