

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Double K Kirby Farms,)	
)	
Complainant,)	
)	
vs.)	CASE NO. 18-0691-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	
)	

**COMPLAINANT DOUBLE K KIRBY FARMS’ RESPONSE TO OHIO EDISON
COMPANY’S POST HEARING BRIEF**

I. INTRODUCTION

In determining whether Complainant Double K Kirby Farms’ (“Double K”) proved Respondent, Ohio Edison Company (“Ohio Edison”) is liable, Ohio Edison proposes the Public Utilities Commission of Ohio (“PUCO”) use the four-factor test utilized in power surge liability complaint cases. Even using that test, Double K proved Ohio Edison is liable to Double K for its handling of Double K’s service concerns. In its Post-Hearing Brief, Ohio Edison almost exclusively relies on the testimony of its sole witness and expert, 35-year employee of Ohio Edison, Michael Hintz, (“Hintz”). Through its long tenured employee, Ohio Edison argues Double K has not proven Ohio Edison is liable to Double K for Ohio Edison’s unreasonable and inadequate service to Double K.

However, pursuant to the testimony of Linda Kirby and Double K’s expert, Daniel Dismukes (“Dismukes”), Double K satisfies the power surge liability test. As a result, PUCO should find Ohio Edison did not provide Double K with reasonable and adequate services.

II. ARGUMENT

A. Double K satisfies all elements of the power surge liability test.

1. Double K proved Ohio Edison's response to Double K's complaints of NEV were not reasonable and adequate.

As a preliminary matter, Double K does not need to prove Ohio Edison caused the elevated NEV at Double K. Instead, Double K must prove Ohio Edison's response to Double K's complaints of NEV were not reasonable and adequate. Double K proved that through the testimony of Kirby and Dismukes.

On October 30, 2017, Dismukes observed a reading of 1.1 volts at Double K. *See*, transcript pg. 54. Dismukes' highest reading that day was 1.7. *Id.* Dismukes subsequently spoke to Hintz twice within an hour regarding the excessive voltage. *See*, transcript pg. 57.

In the first conversation, Dismukes explained his testing procedures and how he found the voltages. *See*, transcript pg. 57. In response, Hintz indicated he was out to Double K and found no elevated readings. *See*, transcript pg. 57. Dismukes found that odd. Dismukes believed, if Ohio Edison used the same procedure he used the day earlier, Ohio Edison would have discovered similar readings to what he found. *See*, transcript pg. 63. Dismukes believed Ohio Edison easily would have found the same readings because the process is simple, it is "electrical engineering 101." *See*, transcript pg. 63. Dismukes has done the same type of measurement over 100 times. *See*, transcript pg. 63.

Here, through the testimony of Dismukes, it is clear Ohio Edison could and should have discovered the NEV on October 31, 2017. Dismukes found elevated readings just 24 hours earlier. At a minimum, Ohio Edison should have taken Dismukes and/or Kevin Kirby's word regarding the elevated NEV readings consistent with Ohio Edison's response for a subsequent complaint.

See, transcript pgs. 95 – 96. As a result, Double K established Ohio Edison's response to the elevated NEV readings was not adequate and reasonable.

2. Ohio Edison failed to comply with statutory and regulatory requirements regarding the operation of its system.

As discussed above, Ohio Edison could (and should) have installed a neutral isolator on October 31, 2017. Ohio Edison also should have had adequate measures in place regarding Kevin Kirby's November 8, 2017 trouble call. In response, Ohio Edison should have been able to install a neutral isolator before November 13, 2017. Ohio Edison is aware storms will occur. Ohio Edison should have adequate measures in place to maintain its usual customer service while addressing hazard response and damage assessment.

Ohio Edison's failure is two-fold. First, it should have installed a neutral isolator on October 31, 2017. Second, Ohio Edison, once it confirmed elevated readings on November 9, 2017, should have installed a neutral isolator on that date or within 24 hours (as opposed to four days later on November 13, 2017). Ohio Edison did not comply with statutory and regulatory requirements.

3. Ohio Edison did not deliver reasonable service to Double K.

As discussed above, Ohio Edison's service was not reasonable. In support of Ohio Edison's "proof" it delivered reasonable service, Ohio Edison only cites the testimony of its expert, 35-year Ohio Edison employee, Hintz. When reviewing the testimony of Dismukes and Kirby, it is clear Ohio Edison's service was not reasonable.

4. Ohio Edison did not act reasonably in addressing Double K's service issues.

Again, Ohio Edison relies almost exclusively on Hintz arguing it acted reasonably in response to addressing Double K's complaints. Dismukes has extensive experience with excessive

stray voltage causing damage to cattle. *See*, transcript pg. 65. The incident with Double K is the longest delayed Dismukes has ever seen with respect to installation of a transformer. In fact, this matter is the first time Dismukes ever observed installation of a neutral isolator take over 24 hours. *See*, transcript pg. 65.

Hintz agreed installation of a neutral isolator is not an expensive or difficult process. *See*, transcript pg. 78. In fact, in June 2020, Double K contacted Ohio Edison regarding issues with its cows. *See*, transcript pg. 86. In response, and based only upon discussions with Kevin Kirby, Hintz decided to replace the neutral isolator. *See*, transcript pg. 87. Hintz did not go to Double K to verify the elevated readings observed by Kevin Kirby; Hintz simply took the word of Kevin Kirby. *See*, transcript pg. 87.

Here, on October 31, 2017, Ohio Edison should have detected the elevated readings Dismukes observed 24-hours earlier. And, regardless of that fact, Ohio Edison should have taken the word of Dismukes, a qualified expert, and installed a neutral isolator in response to Dismukes' observed elevated readings. Ohio Edison took the word of Kevin Kirby to replace the neutral isolator in June 2020.

In addition, regarding the November 8, 2017 complaint, it was not reasonable to wait five days to install a neutral isolator. A storm is no excuse. Storms happen. Ohio Edison knows storms and outages will occur. Ohio Edison should be able to provide usual customer service during storms (absent extraordinary circumstances).

Ohio Edison did not act reasonably in response to Double K's complaints.

III. CONCLUSION

Ohio Edison should have installed a neutral isolator at Double K on October 31, 2017. In the alternative, Ohio Edison should have installed a neutral isolator on November 9, 2017. PUCO should find Ohio Edison did not provide Double K with reasonable and adequate services.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the forgoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 30th day of September 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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Summary: Response Complainant Double K Kirby Farms' Response to Ohio Edison Company's Post Hearing Brief electronically filed by Ms. Barb Ballard on behalf of Double K Kirby Farms