

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Edward L. Galewood	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 20-1606-EL-CSS
	)	
Ohio Edison Company	)	
	)	
Respondent	)	

**OHIO EDISON COMPANY’S REPLY BRIEF**

## **I. INTRODUCTION**

Complainant Edward L. Galewood (“Complainant”) filed his post-hearing brief (“Complainant’s Brief”) on September 23, 2021. Complainant’s Brief consists of two pages of conclusory statements, including irrelevant information, hearsay, and descriptions of events that occurred post-hearing. None of the arguments made within Complainant’s Brief prove the allegations in his Complaint that Ohio Edison Company (“Ohio Edison”) is responsible for any alleged damage to his property. The bare assertions in Complainant’s Brief do nothing to move the evidentiary needle in his favor. For the reasons set forth below, as well as in Ohio Edison’s post-hearing brief, which is incorporated herein in its entirety, Complainant failed to meet his burden in this proceeding and the Complaint against Ohio Edison should be dismissed and/or the Commission should grant judgment in Ohio Edison’s favor.

## **II. LAW AND ARGUMENT**

### **A. Complainant Identified No Evidence Supporting the Conclusion that Ohio Edison Failed to Take Proper Preventative Measures to Stop the Tree From Falling**

In his brief, Complainant offers no evidence to support his conclusion that Ohio Edison acted unreasonably in failing to prevent the tree from falling. Complainant’s Brief first argues that it is impossible for one to determine the health of a tree in all cases from only a stump, noting that “Mr. Bianchi stated that the tree was a healthy maple tree based on a stump.”<sup>1</sup> Complainant appears to be under the mistaken belief that Mr. Bianchi determined that the tree was healthy by observing only the stump.<sup>2</sup> By contrast, Mr. Bianchi’s opinion that the tree appeared to be healthy was not based on his observation of the stump after the events at issue took place. Rather, he explained

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<sup>1</sup> Complainant’s Brief, p. 1.

<sup>2</sup> *See Id.*, p. 2 (“Mr. Bianchi showed up almost a week after the September 2, 2020 incident. The tree was gone, he viewed a stump and from that he made a firm decision as to what happened(?)”).

that based on his review of company records, the tree was inspected three months before the incident in June of 2020, which revealed nothing visible externally that would have indicated a need to take further preventative measures.<sup>3</sup>

Complainant's Brief further argues that Complainant "has seen no evidence of routine tree maintenance."<sup>4</sup> Whether the Complainant has witnessed or noticed routine tree maintenance is inapposite in light of Mr. Bianchi's testimony, which states that scheduled maintenance was performed on the entire circuit in 2017.<sup>5</sup> Complainant presented no evidence to contradict Mr. Bianchi's testimony other than his personal belief. Without any such evidence, Complainant has failed to meet his burden to demonstrate that Ohio Edison acted unreasonably in failing to prevent the tree from falling.

**B. Complainant's Brief Offers No Factual Explanation to Support Complainant's Belief That a Circuit Breaker Exploded, Causing the Transmission Line to Snap**

Throughout the hearing and Complainant's Brief, it is clear that Complainant believes the incident on September 2, 2020 was the result of a circuit breaker at the pole in front of his house "exploding" and causing the transmission line to snap.<sup>6</sup> However, nowhere in the Complainant's Brief does he present any record evidence that a circuit breaker was even involved in the September 2, 2020 outage. Complainant's Brief contains only conclusory statements of Complainant's personal theory of the case, including allegations that "Ohio Edison will not admit that their equipment has failed to function as designed"<sup>7</sup> and that "the circuit breaker at pole number 6401-503 exploded, snapping the transmission line, and failed to operate per engineering standard."<sup>8</sup>

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<sup>3</sup> Exhibit C-2, Testimony of John Bianchi, 4:17-21.

<sup>4</sup> Complainant's Brief, p. 1.

<sup>5</sup> Exhibit C-2, Testimony of John Bianchi, 4:22-5:5.

<sup>6</sup> Complainant's Brief, p. 2.

<sup>7</sup> *Id.*, p. 1.

<sup>8</sup> *Id.*, p. 2.

Complainant has not provided any evidence that the circuit breaker was not in working order or that an explosion took place. He brought no witnesses who could testify that they saw a circuit breaker “explode.” He provided no expert testimony establishing the “engineering standard” he references. He has not provided the Commission with any evidence to support an alternative theory to the maple tree falling on the transmission lines, for which there is record evidence, both in the testimony of John Bianchi and in the Police Report.<sup>9</sup> Absent some showing of Complainant’s circuit breaker explosion theory, he has failed to meet his burden against Ohio Edison.

**C. Portions of Complainant’s Brief Are Irrelevant or Inadmissible and Should Not Be Considered by the Commission**

Finally, a number of statements within Complainant’s Brief refer to events occurring after the hearing in August 2021, and years before the event in question, in October 2011.<sup>10</sup> In addition to Ohio Edison’s renewed objections to the 2011 occurrence contained within its Post-Hearing Brief, it objects to consideration of any incidents before or after the one in question, which took place on September 2, 2020. No event that occurred in October of 2011 or after the hearing itself in August of 2021 have any bearing on whether Ohio Edison acted reasonably with regard to the events set forth in Complainant’s Complaint. These alleged incidents make no fact of issue before the Commission more or less likely to be true. Consideration of these other occurrences, whether they are true or not, would thus be inappropriate.

Additionally, just as he did during the August 10, 2021 hearing, Complainant again offers inadmissible hearsay, expert testimony, and anecdotal references, some of which are presented for

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<sup>9</sup> See Exhibit C-1, Police Report, noting at 0738, “OUT WITH TREE DOWN ACROSS ROAD.”

<sup>10</sup> *Id.* pp. 1, 2.

the first time in Complainant's Brief.<sup>11</sup> As noted in Ohio Edison's Post-Hearing Brief, it is inappropriate for Complainant to offer opinions on behalf 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. Additionally, as the Commission should only consider evidence that was presented at the hearing itself, any additional hearsay or anecdotal evidence offered for the first time in the Complainant's Brief should not be considered.

### **III. CONCLUSION**

In the absence of evidence showing that Ohio Edison failed to comply with statutory or regulatory requirements, or that it in some other manner acted unreasonable, the Commission cannot render a finding that Ohio Edison is responsible for the damages to the Complainant's property. Complainant did not meet his burden of proof under the Commission's four-factor test. Meanwhile, Ohio Edison presented ample evidence that the tree was properly maintained and inspected prior to the incident, and that it took reasonable measures to restore safe and reliable service after the incident took place. Accordingly, Ohio Edison respectfully requests that the Commission dismiss the Complaint in its entirety and/or grant Ohio Edison judgment in its favor on the Complaint.

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<sup>11</sup> See, e.g., *Id.*, p. 1 ("I grew up with trees, my father was a licensed grower...", "I talked to a licensed arborist regarding the tree issue, on September 2, 2020, and again recently. He stated that there is no possible way to determine the health of a tree in all cases from only a stump."), p. 2 ("[o]n August 12, 2021 an engineer from Ohio Edison parked in my driveway and when I asked him why he was there he said to make sure that everything is safe.").

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Post-Hearing Reply Brief on Behalf of Ohio Edison Company was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio this 6th day of October 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 6th day of October 2021 to:

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/s/ Sarah G. Siewe

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Summary: Brief Reply electronically filed by Sarah Siewe on behalf of Ohio Edison Company