

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
EDWARD L. GALEWOOD,

COMPLAINANT,

CASE NO. 20-1606-EL-CSS

v.

OHIO EDISON COMPANY,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on May 18, 2022

I. SUMMARY

{¶ 1} The Commission finds that Complainant, Edward L. Galewood, has not carried his evidentiary burden of establishing Respondent provided inadequate or unreasonable service related to an electrical surge which occurred on September 2, 2020.

II. PROCEDURAL BACKGROUND

{¶ 2} Respondent, Ohio Edison Company (Ohio Edison or Company) is a public utility and an electric light company as defined in R.C. 4905.02 and 4905.03, and, as such, is subject to the jurisdiction of the Commission.

{¶ 3} 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.

{¶ 4} On October 16, 2020, Edward L. Galewood (Complainant) filed a complaint against Ohio Edison alleging that Ohio Edison's failure to properly maintain its power line and related electric service equipment and/or to appropriately trim the vegetation near it, caused a high voltage wire to lay across his trees, drop to the ground, arc, and start a fire which damaged his property, specifically his trees.

{¶ 5} On November 4, 2020, Ohio Edison filed its answer to the complaint in which it admits some, and denies others of the complaint's allegations, and sets forth several affirmative defenses. Among other things, Ohio Edison specifically admits that, on or about September 2, 2020, a tree, not within the Company's utility right-of-way, fell, taking down one or more of Ohio Edison's overhead power lines; that Ohio Edison was advised of the issue, responded to the scene, repaired the lines, and restored power; that Complainant made a claim to Ohio Edison for alleged damages; and that Ohio Edison investigated Complainant's claim and determined that the cause of the broken electric line was beyond Ohio Edison's control and, as a result, denied the claim.

{¶ 6} On November 23, 2020, the parties participated in a settlement conference but were unable to resolve the matter.

{¶ 7} A hearing was scheduled for and held on August 10, 2021. At the hearing, Complainant testified on his own behalf, while Ohio Edison presented the testimony of one witness, Mr. John Bianchi (Mr. Bianchi), a forestry specialist with the Company, whose duties include handling customer complaints, conducting service outage investigations, and overseeing the work of tree crews whose function is to protect Company lines and prevent service outages.

{¶ 8} A briefing schedule was established at the conclusion of the hearing, allowing each party to file an initial brief and reply brief by September 24, 2021, and October 9, 2021, respectively. The Respondent timely filed its initial brief on September 23, 2021, and its reply brief on October 9, 2021. On September 23, 2021, Mr. Galewood filed a pleading which he designated as his "response to the transcript." The Commission considers this pleading to be, and will refer to it here, as Complainant's post hearing brief. Complainant filed no brief in reply to Respondent's initial brief.

III. DISCUSSION

A. Applicable Law

{¶ 9} As noted above, R.C. 4905.26 requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any practice affecting or relating to any service furnish is unjust or unreasonable.

{¶ 10} In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, in order to prevail in this matter, Mr. Galewood must prove the allegations in his complaint by preponderance of the evidence.

{¶ 11} Furthermore, in cases like this where a complainant seeks damages as the result of either a power surge or a power failure that is alleged to have occurred because of utility company equipment failure, the Complainant has the burden of meeting a four-factor test to establish the utility's liability for damages. In such complaint cases, the Commission must ascertain: (1) whether the cause of the power surge, power outage, or company equipment failure, which allegedly resulted in damages, was legally within the utility company's responsibility to maintain and control; (2) whether the company failed to comply with any statutes or regulations regarding the operation of its system that could have caused the problem; (3) whether the company's actions amounted to unreasonable service; and (4) whether the company corrected the problem responsibly. *In re the Complaint of Gregory B. Forgach v. The Cleveland Elec. Illum. Co.*, Case No. 09-646-EL-CSS (*Forgach*), Opinion and Order (May 13, 2010), citing *In re the Complaint of Edward J. Santos v. The Dayton Power and Light Co.*, Case No. 03-1965-EL-CSS (*Santos*), Opinion and Order (Mar. 2, 2005).

{¶ 12} R.C. 4928.16(B)(1) provides, in pertinent part, that, in addition to any other remedies provided by law, upon a hearing held pursuant to R.C. 4905.26, the Commission may order restitution to consumers including damages due to electric power fluctuations, in any complaint brought pursuant to Division (A)(1) or (2) of R.C. 4928.16.

A. *Complainant's Testimony and Arguments*

{¶ 13} Mr. Galewood's complaint primarily concerns his allegations that Ohio Edison's electric wires laid across two groupings of his trees before dropping to the ground and arcing. At that point, alleges Complainant, the downed wires, while allegedly emitting 1,700 volts of power at two "burning points," burned into his trees, as well as into the ground, and, in the process, killed some of the trees and damaged others (Complaint at 2). Considering his complaint, as well as his hearing testimony, Mr. Galewood provides at least four different explanations as to what he believes occurred and what ultimately caused the damage to his trees. In support of his arguments, Complainant produced a total of five exhibits which, at hearing, were admitted into evidence (Complainant's Ex. A through E).

{¶ 14} First, Mr. Galewood alleges that a circuit breaker located "at the edge of the right-of-way" in front of Complainant's house failed to operate as it was designed to, consequently exploded, and in doing so, caused an Ohio Edison power line to break. According to Mr. Galewood, the line remained energized and snapped to a location just beyond the established utility right-of-way into Mr. Galewood's property, resulting in the burned trees. Complainant alleges that, in this regard, Ohio Edison is at fault for the malfunction of its electrical service equipment. (Tr. at 8-9, 13, 15, 17-20, 24-25, 30, 33, 39, 52, 54, 66, 74, 80.)

{¶ 15} Second, apart from his separate allegation that a circuit breaker explosion occurred, Mr. Galewood testified that, alternatively, it is possible that a particular tree fell onto Ohio Edison's power line during a rainfall, exerting tension which caused that line to break near Complainant's home. Mr. Galewood testified that, as this happened, it is possible the broken line remained energized, landed on his trees, and burned and killed them, together constituting the circumstances which have prompted Complainant to bring his complaint in this case. (Tr. at 8, 13, 15, 18, 19, 51-52, 64-66, 79, 80, 82; Complainant Ex. D at 1.)

{¶ 16} Mr. Galewood's third explanation is that Ohio Edison's negligence, specifically its alleged failure to meet its legal duty to adequately trim and maintain trees, in general, along the established utility right-of-way prompted the incident which caused Complainant to incur the damages for which he seeks restitution (Complaint at 2; Complainant Ex. D at 1). In this regard, Mr. Galewood testified, without any evidentiary foundation, that, for example, "there are miles" of trees near the power line in question that are not trimmed or, at least, in Mr. Galewood's opinion, "haven't been trimmed for 10 or 15 years." Elaborating, Mr. Galewood provided his own opinion that, in attempting to reduce costs associated with its tree trimming program, Ohio Edison has quit the proactive, five-year tree trimming and line maintenance cycle that, according to Complainant, they used to perform years ago. (Tr. at 18, 39, 58-61.) On cross examination, however, Mr. Galewood acknowledged that he does not know about the nature and extent of Ohio Edison's regularly scheduled tree trimming and line maintenance program (Tr. at 59-61).

{¶ 17} In elaborating his fourth explanation, Mr. Galewood contends that, because its fallen power line entered onto Complainant's property at a point outside of the established utility right-of-way, Ohio Edison should be held strictly liable and denied any opportunity to claim that the Company lacks culpability for the failure of its snapped power line to stay within the parameters of the right-of-way after it fell (Tr. at 20, 24). Further in this regard, Mr. Galewood also alleges that certain unjust and unreasonable rules and/or Commission policies already exist, although never specifically identifying any of these rules or policies. According to Complainant, these rules allegedly leave Ohio Edison at a significant advantage in this regard, essentially leaving them blameless for anything that happens to a consumer's property unless its actions are flagrant. (Tr. at 21-23.)

{¶ 18} As evidence of the events that transpired on September 2, 2020, Mr. Galewood produced several exhibits, including Complainant Exhibit C, which consists of Mr. Galewood's own description, complete with both his own written narration and with his handmade drawings, of the incident. It also includes seven photographs, purportedly taken on September 4, 2020, of the area in Complainant's yard where the tree damage

occurred, as well as an eighth photograph, taken on an unspecified later date falling closer to the hearing on August 10, 2021. Mr. Galewood testified that the eighth photo is intended to depict where his property line starts, where the utility right-of-way ends, and that “the trees that were damaged are way inside my property.” Mr. Galewood submits that Complainant Exhibit C, considered as a whole, is illustrative of Complainant’s own version of both the alleged facts of the incident, as well the damage which the incident inflicted onto his property. (Complainant Ex. C; Tr. 30-33.)

{¶ 19} Mr. Galewood also presented some additional photographs of the area where the tree damage occurred in 2020, along with Mr. Galewood’s own written captions for each photo. In one of the captions, Mr. Galewood indicates that four pine trees which were electrocuted were removed by a tree removal company. The exhibit includes a copy of an estimate, dated November 11, 2020, for the tree removal job. (Complainant Ex. D; Tr. at 33.)

{¶ 20} Finally, Mr. Galewood included a copy of the first page of a police report, dated September 2, 2020, of the downed power line incident which occurred on that date. This police report is the source of Complainant’s assertion that 1,700 volts of power were emitting from the downed power line, resulting in the damage sustained to his trees. (Complainant Ex. E; Tr. at 47).

{¶ 21} Beyond all this, Complainant attempted to bring up an additional concern that, at least from his perspective, two different Ohio Edison circuit breaker failures have occurred, in the same location, almost ten years apart: both of which, he claims have resulted in damage to his property. In this regard, Mr. Galewood alleges that on October 7, 2011, an Ohio Edison circuit breaker failure occurred, which resulted in a downed power line and damage to his home. Complainant’s Exhibit A, according to Mr. Galewood’s own hearing testimony, “outlines what happened back on October 7, 2011, and what happened on September 2, 2020” Complainant’s Exhibit B, however, pertains only to events which occurred during 2011 and includes copies of contemporaneous local newspaper reports of

that incident, and, also, the signature page of a signed settlement agreement, pertaining to that event, reached between Ohio Edison and Mr. Galewood on November 22, 2011. Within Complainant's Exhibit B, Mr. Galewood acknowledges that, at the time of the 2011 incident, he brought a damage claim against Ohio Edison which, ultimately, was settled on November 22, 2011. Thus, in this way, Complainant concedes that it is only the latter event which Complainant claims occurred on September 2, 2020, which gives rise to the property damage claim which is the subject of his complaint. (Complainant Ex. A; Complainant Ex. B; Tr. at 26, 28-29.)

B. Respondent's Testimony and Arguments

{¶ 22} At hearing, Ohio Edison produced two exhibits, both of which were admitted into evidence. Ohio Edison Exhibit C-1 consists of a full copy of the same two-page police report that Mr. Galewood had, earlier, introduced only the first page of, as Complainant Exhibit E. A full copy of Mr. Bianchi's written testimony, prefiled on August 2, 2021, was admitted into evidence as Ohio Edison Exhibit C-2.

{¶ 23} Mr. Bianchi testified concerning Ohio Edison's version of the facts of this case. On the morning of September 2, 2020, police were alerted to a downed wire in Complainant's front yard (Ohio Edison Ex. C-1). Both parties agree that: (1) the police notified Ohio Edison of the downed wire at 7:39 a.m.; (2) at 8:03 a.m., just 24 minutes later, a representative of Ohio Edison arrived; and (3) by 8:21 a.m., Ohio Edison had de-energized the wires (Ohio Edison Ex. C-1 at 1-2; Tr. at 56).

{¶ 24} According to Mr. Bianchi's testimony, when there is an outage of any kind, Ohio Edison will either contact its forester who is on call, or, as it did in this case, directly page the tree crew. In this case, Mr. Bianchi was not contacted personally until a few days after the incident occurred. (Ohio Edison Ex. C-2 at 3.)

{¶ 25} Upon being notified within a few days after the tree fell on Mr. Galewood's street, Mr. Bianchi went to the site to complete a service outage investigation. Upon

arriving, he saw that the fallen tree had, by then, already been partially removed. Thus, at that time, he observed “both a large stump and the trunk of a very large maple tree that had been cut up and was still laying in the yard.” (Ohio Edison Ex. C-2 Ex 2 at 3.) Mr. Bianchi testified that “the stump was located a few houses down, and on the other side of the street” from Mr. Galewood’s yard. Mr. Bianchi claimed that he “walked it off with my feet while I was there” and, by that measurement, he would “estimate that the tree was around forty or fifty feet away from the power line that it impacted.” Mr. Bianchi added that “the easement associated with our lines is approximately 15 feet from each side” of Ohio Edison’s utility poles supporting the line (Ohio Edison Ex. C-2 at 4). In this way, Mr. Bianchi testified that the fallen maple tree was not within Ohio Edison’s established right-of-way.

{¶ 26} Regarding the measures which Ohio Edison routinely takes to prevent incidents like the one that happened on September 2, 2020, Mr. Bianchi explained that “every four years” the Company performs “scheduled maintenance trimming for the entire circuit” which “includes trimming of all trees that are within the right-of-way.” Even beyond this, Ohio Edison crews “will inspect the circuit by driving it approximately every two years.” During each such two-year inspection cycle, “in addition to inspecting the trees in the right-of-way,” the Company will also “inspect trees outside of the right-of-way,” looking “for any obvious danger to Ohio Edison’s lines.” In this regard, Ohio Edison’s crews look for “trees that are uprooting, dead, or anything else” that the Company believes “may cause an outage or could present a danger” to the Company’s lines or its customers (Ohio Edison Ex. C-2 at 4).

{¶ 27} In 2017, Ohio Edison performed maintenance “on the entire circuit and right-of-way involved” in this case. After that, the same circuit was inspected in February of 2018, and again, in June of 2020. On the latter occasion, just three months before the occurrence which prompted the complaint, no notation appears in the Company’s records of the inspection suggesting that the involved maple tree might be a potential danger to Ohio Edison’s lines. Mr. Bianchi’s testimony reflects, instead, that, at the time of the June 2020 inspection, “there was nothing about the tree that indicated it would negatively impact our

lines. The maple tree was alive, and it was not actively uprooting. There was nothing visible externally that would have indicated a need to conduct preventative measures.” (Ohio Edison Ex. C-2 at 5.) Mr. Bianchi concluded his prefiled testimony by indicating that, from his perspective as a Forestry Specialist with 40 years of experience, there was nothing “that Ohio Edison did or failed to do, that caused or contributed to the maple tree * * * across the street” from Complainant’s property, falling onto the Company’s wires, causing them to snap and to land within Mr. Galewood’s property, down the line from where the tree actually stood. (Ohio Edison Ex. C-2 at 4-5.)

{¶ 28} During his live hearing testimony, Mr. Bianchi observed that it is common, when a tree falls upon a power line, for tension on the line to be created which causes the line to fall down on property located elsewhere, further up the line (Tr. at 73). Mr. Bianchi testified that, not only was it possible, but that he had witnessed events in which a tree falling on an electrical wire had caused the wire to snap a half a mile away (Tr. at 81-83). During cross-examination, Mr. Bianchi acknowledged that he was not present to experience the occurrence which took place on September 2, 2020, that he did not know exactly what happened on Mr. Galewood’s property during that event, and that his investigation of the event took place a week later (Tr. at 76-77). Nevertheless, during redirect examination, he confirmed that, based upon his investigation of the site and of the maple tree stump, and his review of Ohio Edison’s records, he believes that a tree which fell down the line from Mr. Galewood’s property caused the wire which broke to fall upon Mr. Galewood’s property (Tr. at 79-80).

B. Commission Conclusion

{¶ 29} At the outset, we observe that the scope of this case is, and should be, limited to our consideration of only such matters as directly relate to the power outage which occurred on September 2, 2020, and any alleged property damage consequences which may have flowed from that particular incident. We mention this, here, because, on several occasions, Complainant has attempted to bring into the record for our consideration in this

case, certain claims which, we find bear no direct relationship to the power outage which occurred on September 2, 2020. These include a separate circuit breaker explosion claim dating from 2011, which was settled between the parties back in 2011, and, also, a new claim, mentioned for the first time in Complainant's post hearing brief, which pertains to a circuit breaker explosion which allegedly took place in August of 2021, after the hearing in this case had already been held. We specifically find that neither the 2011 claim, nor the one pertaining to the alleged circuit breaker explosion in 2021, are relevant to the case now before us. Moreover, to the extent Mr. Galewood seeks to introduce information regarding the alleged event in 2021, we find he is attempting to introduce through his brief new evidence not previously presented during the hearing.¹ New evidence should not be introduced after the closure of the record, consistent with longstanding Commission precedent. See, e.g., *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Opinion and Order (Mar. 31, 2016) at 37. Consequently, the 2011 and 2021 events will not be further considered or addressed in this Opinion and Order.

{¶ 30} Additionally, we observe that if Complainant is successful in carrying his evidentiary burden of proof by making a showing that CEI has failed to comply with statutory or regulatory requirements, or in some other manner it acted unreasonably, Complainant may be entitled to restitution pursuant to R.C. 4928.16(B)(1), referenced above in Paragraph 11. *In re Pro Se Commercial Properties v. The Cleveland Elec. Illum. Co.*, Case No. 07-1306-EL-CSS (*Commercial Properties*), Opinion and Order (Sept. 10, 2008) at 6.

{¶ 31} In essence, in this case, Complainant alleges that damage to his property, and specifically to his trees, was caused by either Ohio Edison's failure to properly maintain its equipment, namely a circuit breaker, or the Company's failure to adequately meet its vegetation management duties. Complainant goes even further to assert that, regardless of

¹ We note that it appears Mr. Galewood initiated a second complaint case, Case No. 21-913-EL-CSS, regarding the alleged event that occurred in August of 2021.

the underlying cause of the damage, Ohio Edison should, nonetheless be held responsible because the power line damaged property well outside of the right-of-way.

{¶ 32} In order to establish that Ohio Edison is liable for the property damage alleged, in a case such as this where a complainant seeks damages as the result of either utility company equipment failure, or dereliction of one or more of its legal duties, Mr. Galewood must satisfy the four-factor test articulated in *Santos*. The four-factor test requires Mr. Galewood to demonstrate: (1) whether the cause of the problem was in Ohio Edison's control; (2) whether Ohio Edison failed to comply with any statutory or regulatory requirements regarding the operation of its system that could have caused the problem; (3) whether Ohio Edison's actions or inactions constituted unreasonable service; and (4) whether Ohio Edison acted responsibly in correcting the problem.

{¶ 33} Before addressing the criteria established in *Santos*, we will quickly address Complainant's argument that Ohio Edison should be held strictly liable for resulting damage any time that its power lines break and such damage occurs outside of the established right-of-way. In this regard, he argues that, because the line which fell upon his trees landed outside of the right-of-way, he is entitled to compensation for any damage that occurred. Upon full consideration, we find that Complainant has failed to cite to any established legal precedent supporting his view that Ohio Edison should be held strictly liable in these circumstances. Similarly, Complainant has provided no evidence for his claims made during the hearing that certain Commission rules or policies allow for utility companies like Ohio Edison to essentially remain "blameless" when such damage occurs (Tr. at 15, 21, 23, 43). The test for determining culpability was provided in *Santos* and Complainant provides us no basis for deviating from these well-established criteria in this case. As such, we are guided by our prior precedent and will adjudicate Mr. Galewood's claims by considering the criteria set forth in *Santos*.

{¶ 34} Before finding any Ohio Edison liability, the Commission must first conduct a careful assessment of the source of the problem, so as to ensure that the cause of the

problem was not beyond the company's control. This approach is similar to the analysis used for power surges. See *In re Matt and Allison Kubitza v. Ohio Edison Co.*, Case No. 17-1435-EL-CSS (*Kubitza*) Opinion and Order (May 6, 2020). Moreover, the Commission has previously found that, assuming adequate preventative measures are in place, a utility should not be held accountable for a power surge precipitated by certain types of events beyond the utility's control, including lightning strikes, animal activity, or extraordinary climatic conditions. *Santos*, Opinion and Order (Mar. 2, 2005) at 9-10. As suggested in this case, there are ultimately two competing explanations for the cause of the damage to the trees.

{¶ 35} As one possible explanation offered solely by Mr. Galewood, several of his trees were killed or damaged following the failure of Company equipment, namely, a circuit breaker (Tr. at 24). Described in more detail, Mr. Galewood's first explanation of his case stems from his belief that a circuit breaker, located on a utility pole's cross arm – which, he claims, extends into his yard at the edge of the Company's right-of-way but not in the middle of his trees -- failed, and, upon failing, exploded. Expounding on this explanation, Mr. Galewood posits that the explosion of the circuit breaker happened in a manner that created "pressure" which caused Ohio Edison's power lines, located along Complainant's street, to break "in the middle," then to "snap back" to a location "well within his property," on top of his trees and, from there, while emitting 1,700 volts of power, to essentially electrocute his trees. (Tr. at 10, 15, 18, 25-26, 33.)

{¶ 36} At hearing, Mr. Galewood claimed that he is an accomplished electrician, understands electricity, knows what a circuit breaker is, and understands how a circuit breaker is supposed to operate. (Tr. at 8, 14-15, 18.) In this regard, he testified that "when you get a short on the line, or whatever causes it" a circuit breaker should "open up" and "trip". According to Mr. Galewood, when a circuit breaker "fails to trip, it explodes." (Tr. at 20.) He further indicated that, given the design and function of a circuit breaker, when an explosion occurs, it typically means that the circuit breaker has failed (Tr. at 24). On balance, however, Mr. Galewood produced no photographs or other physical or substantive

evidence to corroborate that an explosion of a circuit breaker actually occurred. Moreover, he also failed to suggest any cause for the occurrence of the circuit breaker explosion which he alleges took place. At no point, did he offer an explanation of how the alleged circuit breaker explosion, even if it did occur, resulted due to anything within the control of Ohio Edison, contrary to Commission precedent requiring otherwise. *Kubitza* at 12. *In re the Complaint of Ed Luu v. Ohio Power Company d/b/a AEP Ohio*, Case No. 20-1407-EL-CSS (*Luu*), Opinion and Order (February 9, 2022) at 12. Instead, at best, he offered only that “something didn’t work, regardless of whose fault it is” (Tr. at 24). Upon review of the record as a whole, we find that Mr. Galewood has ultimately failed to show that any damage that may have occurred when a live power line fell upon his trees was specifically caused by a circuit breaker explosion, or failure, on September 2, 2020.

{¶ 37} Moving to the second possible explanation, Mr. Galewood acknowledges that the Company’s version of events may be accurate. Both parties acknowledge, and the record reflects, that a power outage did occur on September 2, 2020. According to Company witness Mr. Bianchi, who personally conducted a full investigation of the incident a week after it occurred, the cause of that service outage was the fall during a rainstorm of a large, healthy maple tree that was located outside of Ohio Edison’s right-of-way and a good distance from Complainant’s property. According to the Company’s investigation report, the fallen maple tree landed on Ohio Edison’s electrical lines right at the tree’s location, outside the utility right-of-way and, also, well away from Complainant’s property line. According to the Company’s version of facts, the large maple tree’s fall created tension on those lines which caused the particular line involved in this case to break, at a point much further down the circuit from where the tree fell, and to land, in an energized condition onto Complainant’s trees, at a point also outside of the utility right-of-way.

{¶ 38} In addressing the first question posed in *Santos*, namely, whether the cause of the problem was in Ohio Edison’s control, upon review of the record as a whole, we find that Mr. Galewood has failed to show that any damage that may have occurred when a live power line fell upon his trees was specifically caused by the fall of any tree which Ohio

Edison had a duty to trim pursuant to its Commission-approved vegetation management plan. While Mr. Galewood testified that the power surge would not have occurred if Ohio Edison had properly trimmed the vegetation, he admitted that he was not familiar with Ohio Edison's vegetation management policy (Tr. at 50, 52, 58-61). In addition, the Complainant did not rebut the testimony of Mr. Bianchi, an Ohio Edison forestry specialist, who testified that the circuit, which the power line in question is part of, has been trimmed in accordance with Ohio Edison's vegetation management policy, as discussed further below. Mr. Bianchi's testimony provides sufficient basis for our finding that Ohio Edison had appropriate preventative measures in place, by routinely detecting and trimming vegetation that poses a threat to the electrical lines in the circuit near Complainant's property. Complainant also revealed during his testimony that it was raining during the outage event on September 2, 2020. Under certain conditions, even healthy trees may fall during a storm and cause power outages to occur for reasons beyond a utility company's ability to anticipate and to control. We find that the testimony of both parties most strongly suggests that the source of the outage was the snapping of electrical lines that normally run alongside the Complainant's property line caused by pressure exerted from the falling of a healthy maple tree, some distance away, during a rainfall (Tr. at 13, 15, 18, 30, 64, 73). We accept, then, based on the record before us, that the event which precipitated Complainant's alleged damages was the fall of a maple tree that was not within Ohio Edison's right-of-way, and which was never identified – including during multiple inspections which occurred periodically right up until three months before the incident -- as a threat to Ohio Edison's electrical lines. On such basis, we conclude that the event was one beyond Ohio Edison's control. See *Forgach*, Opinion and Order (May 13, 2010). Accordingly, we must find the first *Santos* criteria in the negative.

{¶ 39} Applying the second prong on the *Santos* test, we find no evidence in this case that Ohio Edison failed to comply with any statutes or regulations regarding the operations of its systems. Mr. Galewood did not provide evidence that Ohio Edison failed to comply with any safety provisions, including any that may be addressed to the

prevention of any power surges or power outages of any kind, and most especially, of any that could potentially be linked to a failure of any equipment within the Company's responsibility to control. As already noted, Mr. Galewood provided no substantive evidence that any Ohio Edison's equipment, including the particular circuit breaker referred to in his complaint, at any time, either exploded or otherwise failed. Mr. Galewood did not submit any evidence of a violation by Ohio Edison of Commission rules regarding maintenance, inspection, and repair of Company equipment or vegetation management practices. There is no substantive indication of record that the Company, in any way, failed to adhere to industry standards and regulations as they pertain to the provision of electric service to Mr. Galewood. Mr. Bianchi's testimony, in contrast, specifically identifies Ohio Edison's systematic and ongoing adherence to vegetative management policies and practices which appear, based on the record before us, adequate in all respects and well targeted towards Company compliance with its legal obligation to maintain its right-of-way, including but not limited to, detecting and dealing with any foliage that poses a threat to the electrical lines which make up its power circuit running near Complainant's property. Specifically, in this regard, Mr. Bianchi's testimony reflects that Ohio Edison diligently conducts regular, appropriately scheduled, inspections of that circuit, including one which occurred during June 2020, just three months before the power outage incident involved in this case. Mr. Bianchi's testimony, based on both his review of Company records and his personal examination of the tree stump just days after the incident, reflects that, at both the time of the June 2020 inspection, as well as at the time of his personal inspection of the outage site, "there was nothing about the tree that indicated it would negatively impact our lines. The maple tree was alive, and it was not actively uprooting. There was nothing visible that would have indicated a need to conduct preventative measures." (Ohio Edison Ex. C-2 at 4-5.) On balance, we find that Complainant has failed to satisfy the second prong of the four-factor test.

{¶ 40} As already mentioned, the third prong of the *Santos* test asks whether Ohio Edison's actions or inactions constituted unreasonable service. We find that the record

before us supports a finding that, throughout the entire period of the complaint, Ohio Edison's actions did not constitute unreasonable service (Ohio Edison Ex. C-2 at 5). Again, Mr. Galewood failed to provide credible evidence demonstrating that Ohio Edison acted in an irresponsible fashion either by not undertaking reasonable measures to prevent a power outage or by not quickly doing whatever might be required of it in mitigating the situation which did arise in this case. Overall, upon review of the whole record, we find that Complainant has failed to satisfy the third prong of the four-factor test.

{¶ 41} Regarding the fourth prong of the four-factor test – concerned with whether the Company acted responsively in correcting the problem – we find no basis exists for finding that Ohio Edison failed to act responsibly in addressing the service outage which occurred on September 2, 2020. Ohio Edison presented ample evidence that the tree, which apparently precipitated the outage, was properly maintained and inspected prior to the incident, and that the Company took reasonable measures to restore safe and reliable service after the incident took place. Both parties agree that Ohio Edison had de-energized the downed wires by 8:21 a.m. on September 2, 2020, i.e., within 42 minutes of being notified by police of the downed wires (Ohio Edison Ex. C-1 at 1-2; Tr. at 56). While the precise duration of the power outage itself is not revealed of record, Mr. Galewood testified that the downed power line burned on top of his trees for 42 minutes in the rain (Tr. 30, 42). After the night of the incident on September 2, 2020, Ohio Edison contacted Townsend Tree Service to address the fallen tree. Beyond that, just a few days after the incident, the Company's forester specialist, Mr. Bianchi, completed an onsite outage investigation (Ohio Edison Ex. C-2 at 3). For these reasons, we find that Complainant has also failed to satisfy the fourth prong of the *Santos* test.

{¶ 42} 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 damages to Complainant's property. *Commercial Properties*, Opinion and Order (Sept. 10, 2008) at 6. We find, here, just as we found similarly in *Commercial Properties*, that there is insufficient

evidence of record to support a finding that Complainant is entitled to an award of damages or restitution pursuant to R.C. 4928.16(B)(1).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 43} On October 16, 2020, Edward L. Galewood filed a complaint against Ohio Edison alleging that Ohio Edison's failure to properly maintain its power line and related electric service equipment and/or to appropriately trim the vegetation near it, caused a high voltage wire to lay across his trees, drop to the ground, arc, and start a fire which damaged his property, specifically his trees.

{¶ 44} On November 4, 2020, Ohio Edison filed its answer to the complaint in which it admits some, and denies others of the complaint's allegations, and sets forth several affirmative defenses.

{¶ 45} A settlement conference occurred on November 23, 2020, but the parties were unable to resolve the matter. A hearing was held on August 10, 2021.

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

{¶ 47} Mr. Galewood has failed to satisfy any prong of the four-factor test, articulated in *Santos*, that a complainant, in seeking power outage damages from a utility, must meet in order to establish the utility's liability for the same.

{¶ 48} Mr. Galewood has not carried his evidentiary burden of proving that Respondent, Ohio Edison, has provided unreasonable or inadequate service.

{¶ 49} There is insufficient evidence to support a finding that Complainant is entitled to an award of damages or restitution pursuant to R.C. 4928.16(B)(1).

V. ORDER

{¶ 50} It is, therefore,

{¶ 51} ORDERED, That this matter be decided in favor of Respondent, as Complainant has failed to sustain his evidentiary burden of proof. It is further,

{¶ 52} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

DEF/IMM/kck

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Case No(s). 20-1606-EL-CSS

Summary: Opinion & Order finding that Complainant, Edward L. Galewood, has not carried his evidentiary burden of establishing Respondent provided inadequate or unreasonable service related to an electrical surge which occurred on September 2, 2020 electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio