

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 MEMORANDUM CONTRA THE APPLICATION FOR
REHEARING FILED BY EDWARD GALEWOOD**

I. INTRODUCTION

This case originated from a written complaint filed by Edward Galewood (“Mr. Galewood” or “Complainant”) on October 16, 2020.¹ The Complainant alleged, and attempted to prove at the August 10, 2021 hearing, that on September 20, 2020, the distribution lines in front of his property laid slack across his property and caused damage to that property as a result of some failure on the part of Ohio Edison Company (“Ohio Edison” or the “Company”). By contrast, both at the hearing and in its post-hearing briefing, the Company explained that the unforeseen falling of a large maple tree actually caused the line to break and slack in Complainant’s front yard.² On May 18, 2022, the Commission issued an Opinion and Order, stating: “Mr. Galewood has not carried his evidentiary burden of proving that Respondent, Ohio Edison, has provided unreasonable or inadequate service.”³

¹ *In the Matter of the Complaint of Edward Galewood*, Case No. 20-1606-EL-CSS, Complaint (Oct. 16, 2020) (“Complaint”).

² Post-Hearing Brief of the Company at 4.

³ *Id.*, Opinion and Order (May 18, 2022) (“Opinion”) at ¶ 48.

Mr. Galewood filed two documents on June 13, 2022: the first entitled “Application to appeal Commissioners[sic] opinion and order,” and the second, a collection of novel statements and documents he referred to as his “response to the August 10, 2021 transcript.” Despite the fact that there is no right of appeal before the Commission, those filings have been consolidated in the docket and treated to represent Complainant’s “Application for Rehearing” (or “Application”).

Complainant’s “Application for Rehearing” should be denied. First, it is procedurally improper in that it fails to set forth the specific ground or grounds upon which the applicant considers the Commission’s order to be unreasonable or unlawful. Second, substantively, it is simply a collection of non-record evidence Mr. Galewood believes should now be considered by the Commission. Even if it did not suffer from the procedural errors set forth below, its substance does not demonstrate the Commission’s Opinion and Order was in any way unlawful or unreasonable. Therefore, the Opinion and Order should stand, and Ohio Edison respectfully requests Complainant’s Application for Rehearing be denied.

II. ARGUMENT

A. Complainant’s Application For Rehearing is Procedurally Improper

Complainant’s Request must be denied because there is no right of appeal to the Commission. There is no Commission Rule or other legal authority that permits an appeal as Complainant has requested here, and Complainant has cited to none. Even if Complainant’s “appeal” could be considered an Application for Rehearing, his filing does not provide for the specific grounds upon which he considers the Commission’s Opinion and Order to be unlawful.

Ohio Admin. Code 4901:1-35(A) states clearly that:

[a]n application for rehearing must set forth, in numbered or lettered paragraphs, the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful. An application for rehearing must be accompanied by a memorandum in support, which sets forth an explanation of the

basis for each ground for rehearing identified in the application for rehearing and which shall be filed no later than the application for rehearing.⁴

Complainant's Application does not utilize numbered or lettered paragraphs; it does not take the form of a motion, nor is it accompanied by a memorandum in support; it does not articulate any grounds upon which Complainant claims the Opinion and Order is unreasonable or unlawful, and nowhere in the Application does Complainant actually ask for a rehearing.

Since Complainant is actually seeking to introduce "new" evidence into the record, Complainant's Request is more akin to a request to reopen the proceedings. However, under Ohio Adm. Code 4901-1-34(A), the proceedings may only be reopened prior the issuance of a final order. Here, the final order was journalized on May 18, 2022—well before Complainant's Request was filed on June 13, 2022. Also, any request to reopen proceedings to introduce new evidence must include a justification as to why the evidence was not available earlier (e.g., at the time of the hearing).⁵ Complainant has not offered any explanation as to why the evidence he attached to his request could not have been presented at the hearing in August 2021. Complainant's Request must be denied.

B. Complainant's Application Relies on Non-Record Evidence, The Consideration of Which Would Be Unfairly Prejudicial to Ohio Edison

Even if Complainant's filing could be considered an Application for Rehearing, it contains a plethora of evidence not included in the record:

- That "an Ohio Edison representative" handed the Complainant a tree trimming work schedule and stated that the trees down Highland had not been trimmed for 7 years (as of September 2021) (p. 1 ¶ 4);
- That the tree alleged to have fallen was healthy, and that a large branch at the top of the tree split away from the main part of the tree which took the power line down (p. 1 ¶ 5);

⁴ Ohio Admin. Code 4901:1-35(A).

⁵ Ohio Adm. Code 4901-1-34(B).

- That he spoke to a licensed arborist regarding the “tree issue” “again recently” and he stated that “there is no possible way to determine the health of a tree in all cases from only a stump” as witness Bianchi did in this matter (p. 2 ¶ 2);
- That on August 11, 2021, the day after the hearing in this matter, another incident occurred with Mr. Galewood’s line (p. 2 ¶ 3);
- That a lineman working on August 11, 2021, the day after the hearing in this matter, stated “I remember when a large tree down the road came down, they tied it up temporarily and a couple of days later, it came down again and took the power out again” (p. 2 ¶ 3);
- That the Complainant has “seen no evidence of routine tree maintenance” and that there are “many trees towering above transmission lines (p. 2 ¶ 4);
- That Ohio Edison’s trimming was neglected for an estimated 7 years (p. 2 ¶ 4);
- That on August 12, 2021, two days after the hearing in this matter, an engineer from Ohio Edison parked in Complainant’s driveway and said he was there to “make sure everything is safe” (p. 2 ¶ 7).
- Two drawings done by Mr. Galewood of what he believed the large maple tree looked like before and after falling on the line (attachment);
- A photo purportedly showing the foliage surrounding the line in 2020 (attachment);
- Another drawing demonstrating how the amount of growth 4-5 years versus 7-8 years would appear upon a tree (attachment);
- A notice from Ohio Edison regarding tree work scheduled for September 20, 2021 (attachment);
- A document reflecting the fuse link, amps, and type of pole that Mr. Galewood allegedly “found at base of pole” (attachment);
- A hand-drawn map purportedly evidencing three occurrences of damage to the Complainant’s property (attachment).

Notably, **none** of the above evidence was submitted for the Commission’s consideration at the hearing in this matter. In fact, much of this evidence came into existence *after* the hearing, which occurred on August 10, 2021. Every single photo, drawing, or other document attached to the Application is a novel submission (other than the police report which was submitted as Complainant’s Exhibit E) and Ohio Edison has never seen any of those documents, nor did Mr. Galewood attempt to present them at the hearing. Ohio Edison has not had the opportunity to

cross-examine Complainant on these purported exhibits and Complainant has provided no authentication for any of the exhibits he now relies on. Therefore, the Commission should not consider them.

C. The Remaining Record-Evidence Does Not Show That The Commission Acted Unlawfully or Unreasonably

Without considering the evidence above, which has been submitted after the hearing date and is therefore not a portion of the record in this matter, Complainant's Application fails. None of the remaining arguments hold weight because they were either already properly considered and rejected in the Commission's Order or because the Complainant himself let them go uncontested. Any remaining record evidence simply cannot show, on its own, that the Commission acted unreasonably or unlawfully when it determined that Complainant failed to carry his burden to show that Ohio Edison provided inadequate or unreasonable service. The Company takes each remaining allegation in turn.

1. That John Bianchi, witness for Ohio Edison, and John Breig, Attorney for Ohio Edison, "both under oath made less than accurate claims without proof" (p. 1 ¶ 1);

First, and quite obviously, the Company emphasizes that counsel John Breig was not acting under oath, nor did he make affirmative statements on the record that could hold any evidentiary weight. The statements made by witness Bianchi, while under oath, were wholly accurate based on his observations and recollection of the events in question. Complainant does not point to any "proof" that was lacking from Mr. Bianchi's testimony; rather, the evidence is the testimony itself.

2. That Complainant's evidence was ignored (p. 1 ¶ 1);

On the contrary, the Commission properly acknowledged and assessed the admissible evidence Complainant presented at the hearing. On pages 4-7 of the Opinion, the Commission goes through each and every argument made by Complainant during the course of the hearing, including but not limited to "four different explanations as to what he believes occurred and what

ultimately caused the damage to his trees” as well as “five exhibits which, at the hearing, were admitted into evidence.”⁶ The specific pieces of evidence Complainant believes were ignored are addressed below.

3. That three times in the last 10 years, the same fuse “exploded” causing the line to snap and “extensive damage” to the Complainant’s property (p. 1 ¶ 5).

Again, the Commission considered and rejected the evidence of other instances of damage occurring on Complainant’s property. Specifically, the Commission stated:

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.⁷

Because the incident in 2011 and the most recent alleged incident in August of 2021 have no bearing on whether or not Ohio Edison has provided unreasonable or inadequate service with respect to the incident occurring on September 20, 2020, the Commission properly rejected consideration of those events and did not act unreasonably or unlawfully in doing so.

4. That the complainant grew up with trees and that his father was a licensed grower; that he has knowledge about trees, how they grow, wind damage, and disease (p. 2 ¶ 2);

The Complainant mentioned at the hearing that his father was a licensed grower by the State of Ohio and that he designed and installed landscape services to homes and businesses.⁸

⁶ Opinion at ¶ 13.

⁷ Opinion at ¶ 29.

⁸ Tr. at 7.

Whether this statement is true or not bears no weight on whether Ohio Edison provided unreasonable or inadequate service. If, by reason that the Complainant's father was a licensed grower, the Complainant therefore bears more knowledge regarding tree growth, he did not use that knowledge to provide any sort of analysis of the maple tree at issue. He did not testify examining the maple tree before or after it fell. He did not use his knowledge to support his theory that Ohio Edison should have known to trim the maple tree prior to the incident at issue. Therefore, the Commission properly did not give any weight to this statement.

5. That he spoke to a licensed arborist regarding the "tree issue" on September 20, 2020, and he stated that "there is no possible way to determine the health of a tree in all cases from only a stump" as witness Bianchi did in this matter (p. 2 ¶ 2);

Complainant testified at the hearing regarding statements from his arborist, and the Attorney Examiner, while admitting the statements, noted the statement "does appear to be hearsay about from someone that is not here about what they told you."⁹ The Company was not afforded an opportunity to cross-examine this arborist to determine the extent of his expertise or his familiarity with this case. As such, the Commission properly did not consider an out of court statement asserted by the Complainant for the truth of the matter asserted.

6. That the breaker did not operate as it was supposed to (p. 2 ¶ 3);

By contrast, the Commission explored Complainant's breaker theory at length before rejecting it. The Commission noted:

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

⁹ Tr. at 14.

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...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, 2020.¹⁰

Clearly, the Commission understood Complainant’s theory regarding the circuit breaker but was unable to make such a finding without further proof. Complainant could have brought an electrician or engineer to testify to the specific problem, or, as the Commission suggested, at the very least he could have brought photographs, or some other physical or substantive evidence corroborating his theory that the breaker exploded. Because he failed to produce such evidence, it was not unlawful or unreasonable that the Commission rejected this argument.

7. That Mr. Bianchi and Mr. Breig “were inaccurate regarding the trimming schedule and the actual condition of the tree on August 10, 2021...the example was not factual and not questioned” (p. 1 ¶ 3); that Mr. Bianchi’s testimony that trees had been trimmed every 5 years went “uncontested” and “unsubstantiated but accepted without proof while [Mr. Galewood’s] evidence of damage was completely ignored by the [C]ommission” (p. 1 ¶ 3); that the Complainant has “seen no evidence of routine tree maintenance” and that there are “many trees towering above transmission lines” (p. 2 ¶ 4);

Again, the Company emphasizes that, as counsel, Mr. Breig did not testify at the hearing. Further, Complainant’s allegation that Mr. Bianchi’s testimony went “unquestioned” is a product of his own failure to question the veracity of Mr. Bianchi’s statements on cross-examination. The Commission properly addressed and dismissed the Complainant’s statements that he had “seen no

¹⁰ Opinion at ¶ 36 (citations omitted).

evidence of routine tree maintenance”:

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).¹¹

Simply stated, the Attorney Examiner granted Complainant a significant amount of leeway in his presentation of evidence, admitting hearsay, unauthenticated photographs, and other irrelevant statements. Complainant could have presented witnesses, such as his arborist, neighbors, or any other person to substantiate his claims. He could have presented photographs of the circuit breaker or provided some sort of physical evidence to support his many theories of what happened. However, he chose not to. As such, the Commission properly relied on the record evidence Complainant was able to present at the hearing to determine whether he was able to meet his burden of demonstrating that the Company failed to provide adequate service. The Commission did not act unreasonably or unlawfully in finding that that Complainant did not meet that burden.

III. CONCLUSION

For the reasons set forth herein, Ohio Edison respectfully requests that the Commission deny Complainant’s Application for Rehearing.

¹¹ Opinion at ¶ 16.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was served on the following parties of record by electronic service and via regular mail to this 23rd day of June, 2022:

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One of the Attorneys for Ohio Edison Company

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