

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
MICHAEL S. ROOTE,**

**COMPLAINANT,**

**v.**

**CASE NO. 21-11-EL-CSS**

**THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY,**

**RESPONDENT.**

**OPINION AND ORDER**

Entered in the Journal on April 19, 2023

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## I. SUMMARY

{¶ 1} The Commission finds that Michael S. Roote failed to carry the burden of proving that The Cleveland Electric Illuminating Company provided unreasonable service. However, we direct The Cleveland Electric Illuminating Company to file the reports described herein related to issues brought to light by Mr. Roote's complaint.

## II. PROCEDURAL BACKGROUND

{¶ 2} 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.

{¶ 3} The Cleveland Electric Illuminating Company (CEI, Respondent, or the Company) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} 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. Root must prove the allegations in his complaint by preponderance of the evidence.

{¶ 5} On January 5, 2021, Michael S. Roote (Complainant or Mr. Roote) filed a complaint against the Respondent alleging that Respondent has provided unreasonable and inadequate service. Complainant alleges that inclement weather caused a power outage at his residence and also damaged an electrical conduit consisting of wire connections between his residence and Respondent's service line. Complainant further alleges that the statements and actions of CEI and CEI's outage response crews, especially CEI's decision to restore power to Complainant's residence despite Complainant's property damage reports, jeopardized the safety of his family and others who may have attempted to access his property. Complainant requests that Respondent revise its outage response procedures,

that he be reimbursed for all legal expenses, and that he be awarded compensatory damages in the amount of \$5,000.

{¶ 6} On January 25, 2021, CEI filed its answer to the complaint. In its answer, CEI admits some allegations in the complaint. CEI also states that it denies or is without sufficient knowledge to ascertain the veracity of the remaining allegations in the complaint and therefore denies the same. Further, CEI sets forth in the answer several affirmative defenses, such as asserting that the Commission does not have jurisdiction over the sought after relief and that, at all times, it complied with all applicable Ohio statutes, Commission rules, regulations, orders, and CEI's tariff.

{¶ 7} By Entry issued on February 2, 2021, a prehearing settlement teleconference was scheduled for and held on February 25, 2021. However, the parties were unable to resolve the dispute giving rise to this complaint.

{¶ 8} By Entry dated May 13, 2021, the attorney examiner found that reasonable grounds for the complaint had been stated and that a hearing should proceed. Further, a prehearing teleconference was scheduled for June 23, 2021.

{¶ 9} On June 23, 2021, the prehearing teleconference proceeded as scheduled, during which the parties discussed the procedural posture of this case, the date for hearing, and the filing of direct expert testimony.

{¶ 10} By Entry issued June 24, 2021, the attorney examiner dismissed Complainant's claims relating to the request for monetary relief and directed that the scope of the hearing be limited to determining whether CEI has complied with its tariff, the Commission's rules, regulations, and orders. The attorney examiner also directed parties to file any expert testimony by September 21, 2021, and scheduled the evidentiary hearing for October 5, 2021, at the Commission's offices.

{¶ 11} On September 14, 2021, Complainant filed a request for continuance of the October 5, 2021 hearing. In support of this request, Complainant detailed different items of

discovery that were still pending between the parties. On September 16, 2021, CEI filed a notice of non-opposition to Complainant's request for continuance.

{¶ 12} On September 21, 2021, the attorney examiner issued an Entry granting Complainant's motion for continuance. The attorney examiner also scheduled a virtual prehearing conference and technology test session for December 7, 2021; a virtual hearing for December 14, 2021; and, established November 30, 2021, as the filing deadline for any direct expert testimony.

{¶ 13} On September 27, 2021, Complainant filed a motion requesting the recording of depositions by other than stenographic means. CEI filed its memorandum contra on October 12, 2021.

{¶ 14} By Entry issued October 27, 2021, the attorney examiner denied Complainant's motion.

{¶ 15} On November 2, 2021, Complainant filed a notice of intent to file a motion to compel discovery, and, on November 15, 2021, Complainant filed a motion to compel discovery pursuant to Ohio Adm.Code 4901-1-23. CEI filed its memorandum contra on November 22, 2021.

{¶ 16} By Entry issued on November 24, 2021, the attorney examiner denied Complainant's motion to compel.

{¶ 17} A second prehearing teleconference was held, as scheduled, on December 7, 2021.

{¶ 18} The hearing commenced, as scheduled, on December 14, 2021. The remainder of the hearing was held and concluded on December 20, 2021. At the hearing, Complainant testified on his own behalf and presented the testimony of his brother, Jeffrey Roote. CEI presented the testimony of Robert Kozak (Mr. Kozak), CEI's Distribution

Operations Manager, and Bret Ingram (Mr. Ingram), a CEI Manager of Operations Line Services.

{¶ 19} A briefing schedule was established at the conclusion of the hearing on December 20, 2021, allowing each party to file an initial brief and reply brief by February 16, 2022, and March 9, 2022, respectively. Complainant timely filed an initial brief on February 14, 2022, and a reply brief on March 9, 2022. In addition, the Respondent timely filed an initial brief on February 16, 2022, and a reply brief on March 9, 2022.

### III. PROCEDURAL ISSUES

#### *A. Complainant's Claim Regarding the Exclusion of Staff's Investigation*

{¶ 20} Mr. Roote argues that during hearing, the attorney examiner erred in denying the admission of emails and documents related to Staff's informal investigation into Mr. Roote's service issue prior to the complaint being filed. He argues that these exhibits are important for various reasons, including that they demonstrate CEI's procedures for handling reports of a damaged service drop and that CEI's responses were not responsive to the questions asked which required Mr. Roote to file a formal complaint. (Complainant Initial Br. at 19-20.)

{¶ 21} During the hearing, Respondent objected to the admission of these exhibits on the basis of hearsay. CEI contended that Complainant was attempting to use the email exchange between himself and Commission personnel to prove the truth of the matter asserted. In brief, CEI argues that the attorney examiner did not err in refusing to admit the Commission's internal documents and phone calls with Complainant. CEI notes that these records are not relevant to Mr. Roote's claims about CEI's conduct in this proceeding. Also, the Company emphasizes that the Commission's actions in responding to Mr. Roote's informal complaint are not properly considered in a proceeding initiated under R.C. 4905.26. (CEI Reply Br. at 7-8.)

{¶ 22} The attorney examiner agreed with CEI's assessment that Complainant intended to use the documents from Staff's informal investigation in the correspondence as a means of proving facts that were not presented in evidence. See Ohio Evid.R. 801. Additionally, the attorney examiner explained that the proffered report goes beyond the scope of the hearing, as it related to Staff's investigatory work that took place after the alleged incident. (Tr. at 116-118.)

{¶ 23} We affirm the attorney examiner's ruling. Further, Staff did not testify at the hearing. As such, CEI would have been prejudiced by not being able to cross-examine the relevant members of Staff regarding such exhibits.

***B. Complainant's Claim Regarding the Exclusion of the NFPA Study***

{¶ 24} Mr. Roote contends that the National Fire Protection Association (NFPA) study he offered during hearing should have been admitted into the record. Complainant notes that NFPA standards are referenced throughout Commission rules and CEI's internal standards. Mr. Roote argues that the proffered study provides ample evidence to illustrate his incident could have created a home fire and concludes that the exclusion of this study was prejudicial to his case. (Complainant Initial Br. at 20.)

{¶ 25} During hearing, CEI argued that the NFPA study offered was inadmissible, as Complainant was not qualified as an expert witness to speak to the report's credibility and that, otherwise, it is hearsay. In response, Complainant stated that the report spoke for itself regarding the alleged correlative evidence of home wiring and fire. The Company disputed this contention and emphasized that the report was also irrelevant because the case concerns allegations against CEI and not the internal wiring of Mr. Roote's home. (Tr. at 135-36.)

{¶ 26} In its reply brief, CEI asserts that the attorney examiner properly excluded the offered exhibit. CEI highlights that Mr. Roote admitted during hearing that he is not an expert on fire causation or investigation, and, as a result, he could not sponsor the exhibit

or attest to the accuracy or reliability of the document (Tr. at 179). Furthermore, CEI states that the document is hearsay and not subject to any exception. And, the substance of the report concerns home wiring, which the Company contends is irrelevant to the issues of the proceeding. (CEI Reply Br. at 7-8.)

{¶ 27} The attorney examiner determined that the report offered for evidence was not prepared by Complainant. As such, the report was hearsay, in which the information contained statements by others purported to prove the truth of the matter asserted by Complainant. In addition, the attorney examiner noted that the report had issues with authenticity, since Complainant, himself, did not prepare the material and would not be able to answer questions regarding the authenticity of the information offered as fact to the case. (Tr. at 136.)

{¶ 28} The Commission affirms the attorney examiner's ruling during hearing that the document offered by Mr. Roote is inadmissible. Under Ohio Evid.R. 802 statements by others used to prove the truth of the matter asserted is inadmissible. As discussed by CEI, the NFPA report is hearsay because it is a compilation of statements by others not party to the case, in which Mr. Roote intended to use such information to demonstrate his allegations against CEI. Furthermore, we find that little prejudice exists in excluding this study, considering CEI's own expert, Mr. Ingram testified that if the neutral wire contacted the hot wire within the meter box, it might generate arc flash, which has the potential to cause fire (Tr. at 332-33).

### *C. Complainant's Claim that the Order of Cross-Examination was Prejudicial*

{¶ 29} In brief, Complainant argues that changing the originally agreed upon order of witnesses during hearing was prejudicial to his case. Mr. Roote emphasizes that during the hearing, he was engaged in approximately six hours of intense activity. Complainant argues in his brief that having to cross examine CEI witness Kozak at the end of the day on December 14, 2020, was prejudicial because he was fatigued, and he did not have time to



prepare for the cross-examination of Mr. Kozak because he anticipated cross-examining Mr. Ingram first. (Complainant Initial Br. at 24-28.)

{¶ 30} In reply, CEI indicates that Mr. Roote had two weeks to prepare for Mr. Kozak's testimony. The Company argues that Complainant's arguments are without merit because he never informed the attorney examiner or CEI that he intended for the hearing to last more than one day. CEI notes that he could have raised this point during the prehearing conference. Next, CEI emphasizes that Mr. Kozak's testimony was prefiled two weeks prior to the hearing date, and Mr. Roote's lack of preparation is not the Company's fault. Further, CEI observes that the Commission has discretion to determine the order that witnesses be called, and Complainant failed to demonstrate any abuse of discretion on the Commission's end. (CEI Reply Br. at 10.)

{¶ 31} The Commission notes that the majority of the discussion related to the order of this witness occurred off the record. Further, the procedural rules for all parties that appear before the Commission in complaint cases like this one are enumerated under Ohio Adm.Code Chapters 4901-1 and 4901-9. Particularly, Ohio Adm.Code 4901-1-27(B) states that "the presiding hearing officer shall regulate the course of the hearing." Further, the hearing officer may, unless prohibited by law, take such actions necessary to assure that the hearing proceeds in an orderly and expeditious manner. Ohio Adm.Code 4901-27(B)(7)(d). Of note, Mr. Kozak's direct testimony was filed on November 30, 2021, giving Mr. Roote two weeks to prepare for his questioning of the witness. As such, the Commission affirms that the attorney examiner acted with appropriate discretion in conducting the hearing as he did and to allow a change in witness order to ensure an orderly and expeditious hearing that accommodated parties appropriately.

***D. Respondent's Motions to Strike*****1. OUTSIDE OF SCOPE**

{¶ 32} In brief, CEI moved to strike all allegations of rules violations outside of Mr. Roote's complaint. CEI claims that during hearing, Mr. Roote asserted two new theories of alleged rule violations: 1) that CEI's call recordings do not include an option to speak directly with a representative, as required by Ohio Adm. Code 4901:1-10-09(B)(3); and 2) CEI employee Tyler Henry was not trained in the NESC, as required by Ohio Adm.Code 4901:1-10-06 and Section 420(A)(1) of the NESC. CEI disputes that either of these two allegations are in Complainant's original complaint. As such, CEI states that consideration of these claims is improper and prejudicial to the Company's ability to defend against this action. (CEI Initial Br. at 15.)

{¶ 33} In response, Complainant argues that the above violations were implied in the complaint and within the scope of this hearing. Mr. Roote emphasizes that his complaint concerns safety concerns. Further, Mr. Roote indicates that, in his answers to CEI's request for discovery, he refers to Ohio Adm.Code 4901:1-10-09 and 4901:1-10-06. Moreover, Mr. Roote emphasizes that his complaint and this proceeding encompasses the issue of safety and that, in the June 24, 2021 Entry, the attorney examiner set the scope of the proceeding to determine whether CEI violated its tariff or Commission rules, regulations, and orders. (Complainant Reply Br. at 19.)

{¶ 34} Upon consideration of Mr. Roote's original complaint and the evidence provided in the record, we deny CEI's motion to strike. As Complainant already notes, in the June 26, 2021 Entry, the attorney examiner defined the scope of the hearing as examining whether CEI's conduct mentioned in the complaint complies with its tariff or Commission rules, regulations, or orders. Therefore, we find it acceptable that Complainant raises these alleged violations since (1) he made several calls to CEI's automated phone system from December 1, 2020, through December 8, 2020, and (2) Mr. Henry, a CEI employee, performed tasks related to the above code provisions at Mr. Roote's residence in the course of his

employment on December 8, 2020. We note that CEI ultimately is not prejudiced by this ruling since we did not find in favor of Mr. Roote regarding these violations.

## **2. TESTIMONY ON MATTERS NOT DISCLOSED IN DISCOVERY**

{¶ 35} CEI renews its objections to Complainant's testimony on December 20, 2022, regarding his work on the United Streetcar project. CEI contends that the Commission should strike this testimony because it was not disclosed to CEI during discovery, despite an interrogatory requesting such information (Tr. at 381, 384). The Company claims that this non-disclosure prejudiced its ability to investigate Mr. Roote's claims prior to the hearing. As such, CEI requests the Commission to strike this testimony. (CEI Initial Br. at 16.)

{¶ 36} In response, Mr. Roote states that CEI misunderstands the close relationship between his electrical industrial and manufacturing experience and the electric utility industry. Mr. Roote indicates that, in particular, the United Streetcar project testimony should not be stricken because it colors Mr. Roote's professional background and knowledge of the issues at stake. He argues that his answer to CEI's interrogatory on this point lists and summarizes his 44 years of work applying electrical controls and believes a reasonable person looking at the answer provided would understand that thousands of different applications spanning many segments of industrial control and dozens of manufacturing environments. He said CEI could have researched some of the companies he listed to better understand what they do. Also, he noted that when he worked on the United Streetcar project, he was not employed by a utility, so he truthfully answered an interrogatory on this point. Complainant argues that CEI could have deposed Complainant to ascertain more about Mr. Roote's professional history if it was deemed necessary. (Roote Reply Br. at 20-22.)

{¶ 37} The Commission denies CEI's renewed motion to strike Mr. Roote's testimony regarding the United Streetcar project. As the attorney examiner noted during the hearing, the Commission may determine the weight testimony deserves upon review of

the record. We find that Mr. Roote's background as a project manager for the United Streetcar project is admissible. We believe Mr. Roote's testimony regarding the United Streetcar project is relevant to color Complainant's background in electrical work. As he testified, in his capacity as project manager, Mr. Roote oversaw all technical decisions regarding the power supply, ventilation, and air conditioning systems for the streetcars, among other aspects. Furthermore, during the hearing, CEI was afforded the opportunity to cross-examine Mr. Roote concerning the United Streetcar Project. (Tr. at 381-83.) Finally, CEI chose not to depose Mr. Roote, which would have given CEI an opportunity to further probe its understanding of his work history (Tr. at 95).

*E. Complainant's Allegation Concerning CEI's Discovery Responses*

{¶ 38} In brief, Complainant alleged that CEI did not properly respond during discovery and that CEI was untruthful in Complainant's request for Admission Nos. 6-10, 13, and 15. Further, Complainant argues that CEI improperly responded to Admission No. 3. In that request, Complainant requested that CEI admit that Complainant, during his second phone call made to CEI on or about December 1, 2020, reported damage to his service entry conduit. According to Mr. Roote, CEI replied with an objection and then stated that, in the recording of Mr. Roote's second call dated December 1, 2020, at 16:12, Mr. Roote only reported a downed wired and did not report damage to his service entry conduit. Mr. Roote argues that he did, in fact, report damage to his service entry during this "second call." (Roote Initial Br. at 16-17.)

{¶ 39} CEI notes that Mr. Roote claims that his "second call" encompasses Complainant Exs. G, H, and I, which are three separate recordings; however, CEI argues that Mr. Roote provided no such clarity in the request submitted to the Company regarding whether during his second phone call Mr. Roote reported damage to his service entry conduit. CEI notes that Mr. Roote's call log indicates that each recorded call was submitted as a separate exhibit. Further, CEI points out that Mr. Roote's own notes indicate at least four separate calls on December 1, 2020, two outgoing and two incoming calls. As such, CEI

states that absent clarity of what Complainant considered to be the “second call,” CEI properly answered Complainant’s request because the second call recording in Ex. G did not report a damaged service entry conduit. (CEI Initial Br. at 6-7.)

{¶ 40} In response to Complainant’s allegations that CEI did not respond adequately during the discovery period, we disagree. Upon review of the record, we find that Complainant did not clearly indicate to CEI that, when he referred to a “second phone call” in his request for admission, he actually meant all separate recordings on December 1, 2020. We note in Mr. Roote’s own exhibit log, Exhibit G was his first listed call on December 1, 2020, that would qualify as his “second call” to CEI (Mr. Roote first called CEI early in the morning on December 1, 2020, to report his power was out, which we presume is the “first call”). Exhibit H and I are labeled as the next calls made on December 1, 2020. (Complainant Ex. AN.) As such, it is understandable that CEI’s counsel may have presumed Ex. G was Mr. Roote’s “second call.” We determine that CEI properly answered Admission No. 3, given the wording of the request. Moreover, Complainant did not offer any reasoning or explanation as to how CEI provided incorrect responses to Admission Nos. 6-10, 13, and 15.

#### *F. Respondent’s Objection Regarding Complainant’s Expert Testimony*

{¶ 41} In its brief, CEI argues that Complainant should not have been allowed to offer a limited amount of expert testimony. First, CEI points out that Mr. Roote did not pre-file expert testimony pursuant to Ohio Adm.Code 4901-1-29(A). The Company also notes that Mr. Roote’s testimony concerned his limited prior work experience and none of this prior experience was within or related to electric distribution or electric utilities. CEI emphasizes that Complainant is not a licensed electrician or a professional electric engineer with requisite educational experience. Further, CEI states that Complainant has never worked for an electrical distribution company or in any capacity for an electrical utility, including any post-storm restoration efforts. As such, CEI states that because Mr. Roote has no experience related to the subject of his complaint—the electric distribution system, electric utilities, and the functioning thereof—he was not qualified as an expert witness. The

Company requests that any testimony or opinions that Mr. Roote offered should be stricken or disregarded by the Commission. (CEI Initial Br. at 8-9.)

{¶ 42} Mr. Roote replied that his 44 years of experience in engineering, project management, installing control systems, repairing and building control panels, more than qualifies him as an expert regarding anything to do with electricity at issue in this complaint. He argues that he demonstrated this knowledge during his testimony and questioning of CEI's witnesses. (Complainant Initial Br. at 11-13; Reply Br. at 8-9.)

{¶ 43} The Commission denies CEI's renewed motion to strike Mr. Roote's limited expert testimony as allowed by the attorney examiner during the hearing. We find that Complainant has provided a detailed work history that demonstrates Complainant's working knowledge of electrical-adjacent matters. Although CEI pointed out during hearing that Mr. Roote's background was more related to software and multi-electronic matters, rather than power generation requirements, we note that Mr. Roote has demonstrated in the record that he has more than the layperson's understanding of the issues in this case. We recognize that Mr. Roote has not been employed in the electric utility industry, and, therefore, have weighed his expert testimony appropriately. We note that CEI had an opportunity to cross-examine Complainant and to facilitate any follow up testimony from CEI's experts. Further, regardless of whether Mr. Roote was qualified as an expert or not, we believe that the outcome of this case would not have changed. Consequently, CEI is not prejudiced by this decision.

#### *G. Complainant's Motion for New Trial*

{¶ 44} Complainant alleges that he was materially prejudiced by being unable to examine Mr. Allen during the hearing. Complainant argues that, after asking CEI's counsel for Mr. Allen's address on July 6, 2021, in order to serve him with a subpoena, he asked again on December 1, 2021, but was not provided it. Complainant states that he emailed the attorney examiner on December 1, 2021, a motion requesting an expedited subpoena for Mr. Allen, but the attorney examiner advised Mr. Roote that the subpoena was not properly

delivered to him. He then states that his request was not properly addressed at the prehearing. Mr. Roote argues that he requested a motion for mistrial at hearing on December 20, 2021, due to the subpoena issue, but it was denied. Complainant asserts that Mr. Allen's testimony was pivotal because he could have testified to many significant aspects of this case, such as, among other things, whether he reinstalled Mr. Roote's meter, his understanding of CEI's meter installation and removal reporting policy, and whether he inspected the service drop wire. Although the attorney examiner, at times, allowed extended leeway in questioning Mr. Henry since Mr. Allen would not be at the hearing, he believes this remedy was not sufficient. Additionally, Mr. Roote states that he does not contest that the attorney examiner's rejection of his December 1, 2021 motion was improper but that it should not have been necessary since CEI could have easily gotten Mr. Allen's address to him. As such, Complainant contends that a motion for a mistrial should have been granted. (Complainant Initial Br. at 21-24.)

{¶ 45} In response, CEI states that Complainant's request for a new hearing should be denied. First, CEI contends that such a request for a new hearing is premature pursuant to Ohio Adm.Code 4901-1-35. The Company also claims that Complainant did not suffer any prejudice from his failure to subpoena Mr. Allen. CEI emphasizes that pursuant to Ohio Adm.Code 4901-1-25, the attorney examiner has discretion to issue a subpoena if the requesting party files a motion requesting a subpoena not less than 10 days prior to the commencement of the hearing. Additionally, Complainant could have requested an expedited treatment of a motion by subpoena in person to the attorney examiner. CEI notes that Mr. Roote exercised neither of these options and, therefore, was not entitled to a subpoena for Mr. Allen. Regardless, the Company argues that Mr. Allen's testimony would be irrelevant, and, according to CEI, Mr. Allen's testimony would not have had any bearing on whether CEI violated any tariff provision, Commission rule, regulation or order regarding the restoration of power on December 3, 2020. CEI notes that Mr. Allen's only involvement was to reconnect Mr. Roote's power on the evening of December 8, 2020, after Mr. Roote effectuated his repairs. (CEI Initial Br. at 9-10.)

{¶ 46} At hearing, the attorney examiner denied Mr. Roote's "motion for mistrial" due to the Mr. Allen subpoena issue. The attorney examiner stated that Mr. Roote emailed an expedited motion for issuance of a subpoena, but the Commission rules require an expedited motion to be provided in person. The attorney examiner acknowledged that he advised Mr. Roote to try to seek the proper address from CEI's counsel and then file a revised subpoena. Further, the attorney examiner stated that he understood that Mr. Roote was waiting for an address; however, as it became nearer to the hearing, it was incumbent upon Complainant to then file a motion compelling CEI to provide the address, yet such a motion was not filed. The attorney examiner added that he had provided leeway in the questioning of Mr. Henry concerning photographs depicting the reinstalled meter. (Tr. at 267-269.)

{¶ 47} To the extent Mr. Roote's "motion for new trial" could be construed as an application for rehearing, we agree with CEI that such an application is premature. Pursuant to R.C. 4903.10 and Ohio Adm.Code 4901-1-35, any party to a proceeding may file an application for hearing only after the Commission issues an order and only within the period of 30 days after the issuance of the order. As such, to the extent such a request is an application for rehearing, we find that it should be denied.

{¶ 48} Further, we affirm the attorney examiner's ruling at hearing. We believe that no prejudice exists regarding Mr. Allen not testifying because no evidence demonstrates that the tree limb falling on Mr. Roote's service wire was the cause of the neutral wire being pulled within Mr. Roote's meter box; because claims regarding the lack of an inspection of the secondary wire on December 8, 2020, as detailed further below, are outside the scope of the complaint; and because the attorney examiner gave Mr. Roote leeway in his questioning of Mr. Henry about CEI's practices when installing meters since Mr. Allen was not testifying.



#### IV. DISCUSSION

##### *A. Summary of the Briefs*

###### 1. SUMMARY OF COMPLAINANT'S POSITIONS AND CEI'S RESPONSES

###### *a. Unreasonable Service Allegation*

{¶ 49} Complainant states that on December 1, 2020, due to a large winter storm, he lost power at approximately 3:00 am. Mr. Roote reported the power outage, shortly thereafter. Later that morning approximately at 10:00 a.m., Complainant claimed that a tree branch fell on a CEI's secondary wire leading to Mr. Roote's home. Complainant alleges that due to the weight of the falling branch and heavy snow, the conduit that brought power to the house separated from the house's siding, though the wires were still connected. The conduit's wiring hung only a few feet away from Mr. Roote's driveway. Mr. Roote notes that he called CEI again to report the downed wires and the condition of his service conduit. Mr. Roote states that he told a CEI representative four times during a call that the Company should not restore power to Rockhaven Road, the street off of which Mr. Roote resides, until CEI disconnected service from his home. Mr. Roote recalls that on December 3, 2020, the power was restored, and CEI had not yet inspected the damage nor isolated his property from CEI's primary line prior to restoring power to Rockhaven Road. Mr. Roote states that he called the Company on December 4, 2020, to report that power was restored at his home, and he requested that power be disconnected from his property until he made repairs to the conduit and detected any hidden damage to the wiring. Complainant notes that CEI called three days later on December 7, 2020, and that the Company claimed that no service appointment was available until December 23, 2020. On December 8, 2020, Complainant contacted CEI again to insist that the Company send a crew to disconnect power from his home. Complainant asserts that when CEI arrived and pulled his electric meter, he saw that the incoming side of the neutral wire had been pulled out of its terminal inside the meter box. Mr. Roote and his brother reconnected the wire and completed other repairs, and the power was restored on December 8, 2020. Complainant proceeds to argue that CEI provided

unreasonable service under R.C. 4905.26 since it provided unsafe service, highlighting significant parts of the timeline of events between December 1, 2020, to December 8, 2020, and generally citing to specific parts of the record to support his contention. (Complainant Initial Br. at 1-6.)

{¶ 50} CEI claims that during Mr. Roote's calls on December 1, 2020, Mr. Roote only reported the power outage, referred to a damaged stanchion pipe, and requested that the Company disconnect power to his house so he could fix the conduit. After power was restored to the Rockhaven Road primary circuit on December 3, 2020, CEI asserts that Mr. Roote called CEI on December 4, 2020, to report that his power was on and that he had placed a previous call to schedule service. During the same call, CEI notes that Mr. Roote also requested for his meter to be pulled, so he could replace his conduit. Then on December 8, 2020, at 6:23 a.m., Mr. Roote called the Company and, for the first time, reported a dim light in response to questions asked by CEI's automated system. The Company claims that this was also the first instance when Mr. Roote reported that the reliability of the secondary service drop line's connection to the house was questionable. CEI alleges that during the same call was the first time Complainant made the Company aware that low-hanging wires impeded access to Complainant's residence. CEI confirms that a few hours after this call, the Company disconnected and deenergized his service drop. (CEI Initial Br. at 10-11.)

{¶ 51} In response, Complainant highlights the information he believes CEI actually learned from Mr. Roote's phone calls on December 1 and December 4, 2020, in comparison to what CEI claims it knew. Additionally, Complainant disagrees with Respondent's characterization that before December 8, 2020, Mr. Roote only reported a low-hanging service drop. Mr. Roote contends the opposite, in that it was not until December 8, 2020, that the Company learned that Mr. Roote's service drop was low-hanging and not pulled down. Complainant claims that during every communication prior to December 8, 2020, he told the Company that his service drop was pulled down. Moreover, Mr. Roote argues that on December 1, 2020, CEI knew he had a service drop line down and that his conduit was pulled from the side of his home and that his conduit was bent. On that basis,

Complainant argues that CEI should have known that it was unsafe to restore power to the home with wires down from CEI's pole to his house structure and with damage to his service entry. Complainant concludes that CEI personnel were either uninformed of the condition of Roote's residence or oblivious to its danger when restoring the power to his residence on December 3, 2020. (Complainant Reply Br. at 10-15.)

{¶ 52} Mr. Roote compares his incident with the facts in *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St. 3d 301, 893 N.E.2d 824 (2008) (*Allstate*), while also arguing that the Commission has jurisdiction over his case.<sup>1</sup> In that case, a tree limb had broken and leaned on service wires, and the complainant observed that one of the wires had snapped. *Allstate* at ¶ 2. Later that day, the wires broke, and the resulting sparks set fire to the complainant's duplex. *Allstate* at ¶ 2. In brief, Mr. Roote alleges that he has a similar case to *Allstate* because he calls into question CEI's reasonability of service, which is the crux of *Allstate*. Mr. Roote argues that CEI is in error since CEI claims that it does not classify low service drop wires as dangerous. Because the situation in *Allstate* resulted in a devastating fire, Mr. Roote states that having power connected to a damaged service entry is always dangerous. Mr. Roote emphasizes the seriousness of the fire that resulted in *Allstate*, stating that, "If Ms. Harris had not woken up from her nap for another ten minutes, she may well have lost her life." As such, Mr. Roote analogizes his case to *Allstate* by inferring that his damaged house connection was an immediate danger and could have resulted in another serious fire, while distinguishing that his case would be instrumental in preventing any future serious fires flowing from a lack of reasonable service from an electric utility. (Complainant Initial Br. at 8.)

{¶ 53} CEI argues that *Allstate* is inapposite for determining this matter, as it is a negligence claim that was tried against a jury, which is distinct from the legal standard used by the Commission for a complaint proceeding. Further, CEI indicates that in the decision,

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<sup>1</sup> Except for dismissing Complainant's request for monetary relief, Commission jurisdiction has not been at issue in this case. May 13, 2021 Entry at ¶ 6; June 24, 2021 Entry at ¶¶ 10-12.

the Ohio Supreme Court focused on whether the issues in *Allstate* were more appropriate for resolution by jury rather than the Commission. CEI contends that *Allstate's* issue of negligence is a distinct and separate consideration to whether CEI violated its tariff, the Commission's rules, regulations, or orders. Moreover, Respondent argues that the facts in *Allstate* are dissimilar from Mr. Roote's incident and as such, *Allstate* has no bearing on this proceeding. (CEI Reply Br. at 5-6.)

***b. Alleged Code Violations***

{¶ 54} As will be discussed further below, Complainant alleges that CEI violated Ohio Adm. Code 4901:1-10-09(B)(3), 4901:1-10-05(H)(2), and 4901:1-10-06 as well as National Electrical Safety Code (NESC) Sections 490(A)(1) and 214(A)(5). Complainant recalls that, during hearing, CEI's expert witnesses testified to the danger related to Mr. Roote's service entry. Mr. Roote asserts that the evidence shows Complainant's meter box, with a pulled neutral wire, presented a real danger of starting a fire. Further, he argues that such condition existed on December 3, 2020, when CEI restored power to Rockhaven Road, and remained in that condition until December 8, 2020, when CEI disconnected the power to Mr. Roote's residence for him to make repairs. (Complainant Initial Br. at 1-6.)

{¶ 55} In reply, CEI argues that Complainant only makes a conclusory allegation that the Company violated the NESC and, in support of its argument, notes that Complainant only cites numerous exhibits without any context or explanation. The Company asserts that Mr. Roote failed to offer any discussion of what a "recorded condition or defect" means in context for NESC Section 214(A)(5), apart from misrepresenting the section and stating that it only requires a "reported condition or defect." Further, CEI disputes that Complainant demonstrated that his low hanging service drop would reasonably be expected to endanger human life or property. (CEI Reply Br. at 2-3.)

{¶ 56} Additionally, Respondent emphasizes that Mr. Roote did not offer any discussion on whether CEI acted "promptly" as required under NESC Section 214(A)(5). CEI contends that "promptly" under Ohio law only requires CEI to act within a reasonable

amount of time in light of all of the circumstances. CEI contends that “promptly” does not mean immediately, and Mr. Roote failed to offer any explanation or discussion on how CEI’s conduct was not “prompt” in light of the circumstances in which 170,000 customers were also without power. (CEI Reply Br. at 2-3.)

{¶ 57} Mr. Roote responds in his reply brief that he did in fact demonstrate that CEI violated NESC Section 214(A)(5) and detailed how he believes the record shows CEI violated this provision (Complainant Reply Br. at 15-17).

## ***B. Summary of Respondent’s Arguments and Complainant’s Responses***

### **1. CEI’S STORM RECOVERY PLAN**

{¶ 58} In brief, the Company asserts that it followed its storm restoration procedures as approved by the Commission. CEI explains that over 170,000 customers lost power due to the December 1, 2020 storm, which was the 9th largest storm on record since 1988. After the storm, the Company sent a hazard crew out to Rockhaven Road on December 2, 2020, to inspect the multiple reports of downed wires. The Company asserts that Complainant offered no evidence or testimony that CEI deviated from its storm restoration procedures or that the procedure the Company implements is unreasonable. Once hazards were identified, repair crews were sent to restore the damage to distribution lines on December 2 and 3, 2020. Respondent asserts that after CEI reenergized the redistribution line along Rockhaven Road, the crew patrolled the circuit to detect if any other protective devices activated. CEI notes that the fuse between the primary distribution line on Rockhaven Road and the secondary service drop line connecting only to Mr. Roote’s house did not blow, which indicated that the line was operating within proper parameters. Further, CEI recalls that it began addressing individual customers’ storm-related issues the week of December 7, 2020, and the Company responded within hours after Mr. Roote reported dim and flickering lights on December 8, 2020. (CEI Initial Br. at 2, 14-15.)

{¶ 59} In response, Complainant contends that whether CEI actually followed its storm restoration processes is unclear because the Company did not provide him with written policies detailing what such procedures entailed.<sup>2</sup> Mr. Roote believes that such policies should be written down for internal use if they are not already. Complainant acknowledges that Mr. Kozak's prefiled testimony asserts what those processes should be, but Complainant emphasizes that this testimony is not corroborated by Mr. Ingram's testimony. Mr. Roote argues that the key issue should be whether CEI's storm restoration protocol incorporates the NESC. Here, Complainant asserts that, based on witness Kozak's and Ingram's testimonies, CEI ignores whether secondary service lines might be damaged, and it depends on fuses to protect life and property when restoring power to properties after large storms, despite testimony stating that fuses do not guarantee safety. Mr. Roote explains that such disregard amounts to a violation of Section 214(A)(5) of the NESC, and as such, CEI's storm restoration procedures violate the Ohio Administrative Code. (Complainant Initial Br. at 4, 14-15; Reply Br. at 17-18.)

## 2. COMPLAINANT DOES NOT MEET ITS BURDEN OF PROOF

{¶ 60} In brief, the Company claims that Complainant did not meet its burden of proving that CEI did not comply with any statute, rule, regulation, order or tariff provision. CEI states that Mr. Roote was unable to demonstrate that the Company's power restoration procedures following a winter storm were unreasonable. CEI argues that the Commission should consider whether CEI responded reasonably "in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made." Here, CEI contends that the only information Mr. Roote reported to the Company prior to December 8, 2020, was that his service drop was low hanging due to

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<sup>2</sup> We note that Mr. Roote raises a discovery issue, wherein he claims he requested CEI's written storm restoration process policies. We note that this issue was addressed in an Entry issued by the attorney examiner on November 24, 2021, denying Complainant's motion to compel. We further note that Mr. Roote failed to file an interlocutory appeal of the November 24, 2021 decision pursuant to Ohio Adm.Code 4901-1-15; therefore, to the extent, if at all, Mr. Roote is raising an issue with that ruling, we find it untimely and reject it.

a bent mast conduit and detached service drop attachment. Further, CEI urges the Commission to apply a retrospective, factual inquiry without the use of hindsight judgement regarding the Company's management of the issue. (CEI Initial Br. at 9.)

{¶ 61} In response to Mr. Roote's claim that the neutral wire was detached from its terminal within his meter box when it was pulled, CEI highlights that Complainant admits he never reported any issue with his neutral wire to CEI, and CEI's records admitted into evidence demonstrate that it did not remove Complainant's meter. Notably, CEI states that Mr. Roote testified during hearing that his concerns regarding the neutral wire were all hypothetical because his concerns were all premised on what could have occurred if his house was not built properly (Tr. at 159). As such, CEI claims that since Mr. Roote did not raise this issue to CEI during the time period in question and only brought it forth during this case, the Commission cannot consider CEI as having known about the wire during the December 2020 incident. (CEI Initial Br. at 11-12.)

{¶ 62} CEI also alleges that Mr. Roote provided no evidence regarding industry safety standards and, therefore, any testimony regarding these principles should not be given weight for consideration. CEI states that Mr. Roote's only theory regarding industry safety standards hinged upon the argument that CEI failed to comply with NESC Section 214(A)(5), which requires utilities to promptly isolate, disconnect, or correct conditions or defects that would reasonably be expected to endanger human life or property. CEI admits that there is no dispute that the storm in December 2020 caused a tree branch to fall on Mr. Roote's service drop, which pulled his anchor from his house and bent the mast conduit. CEI emphasizes that the anchor, service drop attachment, and the responsibility to maintain the height of the service drop at Mr. Roote's residence are his responsibility to repair. The Company claims that other than being low hanging, there is no evidence that the service drop wire or the connection at CEI's utility pole were damaged. Further, CEI points out that the Commission has previously held that a low hanging service drop, when caused by a storm, does not violate NESC. *Tomlin v. Columbus S. Power Co.*, Case No. 02-46-EL-CSS (*Tomlin*) Opinion and Order (Dec. 12, 2002) at 19. Notwithstanding the applicable NESC

section, CEI claims that Mr. Roote failed to adduce testimony or evidence that CEI did not promptly address the issue in light of its multi-day efforts to restore power to the 170,000 customers who lost power, or that it was a condition subject to Section 214(A)(5). Further, CEI notes that the interpretation and application of the NESC requires expert testimony, and Mr. Roote presented no such expert testimony and that he is not an expert in electrical distribution matters, either. (CEI Initial Br. at 12-13.)

{¶ 63} In reply, Mr. Roote argues that the evidence in the hearing demonstrated that CEI violated four of the Commission's rules. First, Complainant states that the Company violated the NESC twice in which 1) a CEI shift leader testified that he never studied the NESC before providing services for Roote's home and 2) CEI failed to adhere to NESC Section 214(A)(5) by not making his service drop safe after the Company was notified of the state of Mr. Roote's equipment. Mr. Roote clarifies that his damaged equipment was not a danger on December 1, 2020, as the power was off to his house due to the primary line being down on Rockhaven Road. Complainant contends that the situation would have remained safe if CEI had done as promised and disconnected Mr. Roote's property before restoring power to the Rockhaven Road primary line. (Complainant Reply Br. at 15-16.)

{¶ 64} Complainant argues NESC Section 214(A)(5) does not require proof of the alleged damage, only that lines and equipment are in a condition that "would reasonably be expected to endanger human life or property." Mr. Roote emphasizes that a wire subjected to a falling tree branch with enough force to pull it from its "substantial" connection to the house and bend an 1-1/4" rigid steel conduit to a 45-degree angle cannot reasonably be understood to be safe. Further, Mr. Roote states that *Tomlin* does not support the argument made by CEI. Mr. Roote distinguishes that *Tomlin* is about a primary 7,200 Volt line that was low hanging because of a failed cross arm, not a service drop. Mr. Roote states that the utility in question in that case was found to have violated the NESC by not performing proper inspections of their equipment. (Complainant Reply Br. at 16-17.)



### ***C. Commission Conclusion***

#### **1. UNREASONABLE SERVICE ALLEGATION**

{¶ 65} Our review requires us to determine whether CEI acted unreasonably in response to Complainant's service requests " \* \* \* in light of the conditions and circumstances which were known or reasonably should have been known at the time the decision was made" by CEI. *Cincinnati Gas & Elec. Co. v. Pub. Util. Commsn. of Ohio*, 86 Ohio St. 3d at 53. Further, as set in the June 24, 2021 Entry, the scope of the hearing related to the complaint is limited " \* \* \* to determining whether CEI has complied with its tariff, the Commission's rules, regulations, and order[.]" Considering the nature of this case, we will first set forth the pertinent facts reconciled from the record before making our conclusions.

{¶ 66} On the night of November 30, 2020, a heavy snowstorm knocked out the power to a large number of CEI's customers. According to CEI, over 170,000 customers were without power, which registers the event as the 9th largest storm on record since 1988 in the utility's service territory. CEI notes that this storm occurred two weeks after the 13th largest storm on record, affecting 128,933 customers, and one month after the 19th largest storm on record, affecting 100,204 customers. Per CEI's statistics, the average number of customers typically affected by a power outage is approximately 14,000. (CEI Ex. 2 at 2.)

{¶ 67} Regarding CEI's storm restoration process, Mr. Kozak testified that it relies on customer calls concerning outages and damages to determine where there is damage as a result of a storm. CEI inputs this information into a program that assesses where repairs need to be made. At this point, CEI sends out hazard crews to investigate damage and make the situation safe before repair crews are dispatched. After sending out hazard crews, CEI then begins to restore its system in an order of priority: (1) repair damage to power generation facilities; (2) repair damage to transmission lines; (3) repair damage to substations; (4) restore power to critical infrastructure and first responders (e.g., hospitals, emergency responders, and public utilities, such as water and sewage treatment facilities; (5) restore power to customers based on the repairs that will restore power to the greatest

number of customers first; and (6) respond to individual service requests. According to Mr. Kozak, helping with repairs to customer-owned equipment is lower on the priority list and is completed at the end of the storm restoration process. Further, in large storms, where multiple people may report the same downed wire, the individual customer reports are grouped together by repair location. Crews are provided the information for the highest priority call for that region, though with large storms like the one on December 1, 2020, Mr. Kozak testified that it is impossible to provide all the reports of every hazard noted in the region to the repair crew. The crews are given information regarding the highest priority repair on that line, they will repair it, and then they move on to the next highest priority repair. Once identified repairs are made on a circuit, the repair crew will patrol the circuit to see if there are any additional repairs needed. If no further damage is identified, the repair crew will contact CEI's Distribution Control Center (DCC) to ensure that restoration will not affect other crews or the restoration process, and the crew will reenergize the line once DCC confirms it is safe to do so. (CEI Ex. at 3-5.) At that point, the repair crew will patrol the fuses on the circuit. If no fuses blow, then the crew will move on to the next highest priority repair. If any fuses blow, it deenergizes the related line and indicates to the crew that additional faults exist that need repair. (CEI Ex. 3-5; CEI Ex. 1 at 3.)

{¶ 68} Mr. Roote's residence, at 12935 Rockhaven Road, sits on a wooded lot approximately 300 feet from Rockhaven Road and, due to the distance between his residence and the primary line along Rockhaven Road, the secondary line connecting to his service drop only serves his property. A fuse is located between the primary line on Rockhaven Road and the secondary line that connects to his residence. (CEI Ex. 2 at 6; Tr. at 192).

{¶ 69} In the early morning of December 1, 2020, Complainant called CEI to report he had lost power. In the afternoon, after a tree branch had fallen on his secondary line, Mr. Roote called CEI again and reported that a tree limb had fallen and pulled down wires coming to his house, that the stanchion pipe (service conduit) was damaged, and he requested that CEI disconnect its power and pull its meter, so he could repair the service

conduit. (Complainant Exs. H and I, Tr. at 90-92; 107-114.) Although Mr. Roote reported the wire as down, there is no dispute that the wire was not touching the ground but rather hanging low across his driveway (Complainant Exs. E and F). We will note that Mr. Roote articulated during the recorded phone calls from December 1, 2020, through December 4, 2020, that his line was down, and it was not until the recording from December 8, 2020, that he first reported his service drop wire as hanging low instead of down (Complainant Exs. G, H, I, J, K L, and M).

{¶ 70} Before moving on to CEI's response to Mr. Roote's report, we highlight that CEI received 2,500 hazard reports on December 1, 2020 (CEI Ex. 2 at 2). Regarding CEI's response to outages on Rockhaven Road, the outage report sent to the dispatched hazard crew contains the following work description "Wire Down to Structure - No Lights" (CEI Ex. 1.B). Mr. Ingram testified that the hazard crew's notes state that they found a primary wire down in front of 12935 Rockhaven Road, Mr. Roote's residence, and that they also discovered a tree had fallen on a primary wire located in front of 12971 Rockhaven Road (CEI Exs. 1 at 5 and 1.B). The report sent to the repair crew contains a work description of "No Lights--Wire Down Pole to Pole (CEI Ex. 1.C). Mr. Ingram testified that the report indicates that between December 2 and 3, 2020, repair crews patrolled the circuit serving Rockhaven Road, removed numerous tree limbs from the power lines, and restrung downed power lines. The report indicates that the repair crew patrolled the circuit again to see if any secondary fuses, including the one at Mr. Roote's residence held, which they did. The repair crew's notes did not mention Mr. Roote's secondary service wire or the service conduit. (CEI Exs. 1 at 5-6; 1.B; 1.C.)

{¶ 71} In Mr. Ingram's direct testimony, he testified that crews did not address the work order that Mr. Roote submitted regarding his downed wire and request for a meter disconnect likely for several reasons, one reason being that in storms of this magnitude CEI receives numerous outage reports and downed wire reports each of which has its own cause that needs to be addressed (CEI Ex. 1 at 6-7). According to Mr. Kozak, after storms like the one in question where multiple people may report the same downed wire, individual

customer reports are grouped together by repair location. He explained that when crews are dispatched, they are provided with information for the highest priority call for that region. Further, he stated that it is impossible to provide all the reports of every hazard noted in the region to repair crews. Crews are given the information regarding the priority repair on that line, will repair that line, and then move on to the next highest priority. (CEI Ex. 2 at 4-5.) Mr. Ingram testified that individual service requests, such as Mr. Roote's, are lower priority repairs when compared to the priority power restoration order described earlier; consequently, repair crews rely on fuses to indicate whether additional faults need to be addressed and, here, likely first prioritized restoring power to the 420 or so residents on Rockhaven Road who lost power (CEI Ex. 1 at 7; Tr. at 299-300). Mr. Ingram testifies that CEI must prioritize repairs when faced with large-magnitude storms and, with regard to this specific storm, repairs to individual service drops did not commence until approximately the week of December 7, 2020 (CEI Ex. 1 at 6-7; CEI Ex. 2 at 6).

{¶ 72} Before proceeding further, it is important to examine the importance of fuses in this restoration process. Mr. Ingram testified on direct examination that, if damage to Mr. Roote's secondary service line was not discovered before the repair crew reenergized the primary line, a protective device, called a fuse, would open almost instantly once the primary line was reenergized, deenergizing the secondary service line and indicating that additional repairs are needed. However, if the fuse remains closed after reenergizing the primary line, then the circuit is functioning within parameters. (CEI Ex. 1 at 3.) Mr. Ingram testified that, in order to restore power to as many people as possible from highest priority to the next priority, CEI relies on fuses to inform them of additional faults that need to be addressed (CEI Ex. 1 at 6). Mr. Roote attempts to discredit this approach using testimony elicited from Mr. Ingram on cross-examination wherein Mr. Ingram admits that, if a fuse holds, it is not necessarily an absolute assurance no issues exist with an energized wire, agreeing that he cannot guarantee that a fuse will prevent a tree from catching fire, prevent a person from being electrocuted, or that a fuse will blow if a neutral wire inside a utility's meter is disconnected (Tr. at 296-297; 319; 331-332).

{¶ 73} Mr. Roote discovered the power was back on when he returned to his residence on December 3, 2020 (Tr. at 196). Mr. Roote then called CEI in the afternoon on Friday, December 4, 2020, noting that he had called on December 1, 2020, but CEI had not responded. He proceeded to report that he had lines down and that he needed to have CEI disconnect power, so he could get his meter pulled and conduit replaced. He noted during the call that his power was, “surprisingly,” back on, and he did not think anyone from CEI looked at his line before the power was reconnected. (Tr. at 125, 199; Complainant Exs. L and AN). As a result of the call, CEI created a work order wherein CEI would reach out to Mr. Roote to arrange a service date at his address (Tr. at 129, Complainant Ex. L). According to CEI's records, CEI employee David Ayers contacted Mr. Roote the next business day, in the morning on Monday December 7, 2020, to schedule his service visit. Mr. Ingram testified that, since the December 4, 2020 request from Mr. Roote came in several days after the storm, it was coded as non-storm related, so he was given December 23, 2020, as the next available service date. According to Mr. Ayers' phone call notes, in response to Mr. Roote's dissatisfaction with this proposed service date, Mr. Ayers advised Mr. Roote that he could place a trouble call to have CEI come out sooner since the issue was storm related. (Tr. 201-204; CEI Ex. 1 at 10; Complainant Ex. Y.) On the morning of December 8, 2020, Mr. Roote called CEI and reported that his lights were flickering and, for the first time, advised CEI that his wire was hanging low (instead of down) across his driveway and that he believed the wire was a danger to anybody approaching his house. In response, CEI created a work order and sent out CEI employee Tyler Henry later that morning to his property. (Tr. 142-148.) After Mr. Henry deenergized the service drop, Mr. Roote and his brother repaired Complainant's equipment (Tr. at 231). Mr. Roote then called CEI to request that the power be restored, after which CEI employee Robert Allen arrived and reconnected Mr. Roote's secondary service drop line to the primary wire, reenergizing his line (Complainant Ex. AB).

{¶ 74} Mr. Roote argues that no CEI employee inspected the line prior to restoring power on December 3, 2020, or on December 8, 2020. According to Mr. Henry's report, which contained a work description of "On Low Drop," Mr. Roote insisted that the power

needed to be shut off. He stated that he was unable to reach the transformer pole with the truck because of cars and trees being in the way, but he was able to pull the fuses and lift the hotclamps, disconnecting power at Mr. Roote's residence. Then, Mr. Henry noted that Mr. Roote would call CEI back when customer repairs were completed (Complainant Ex. AA).<sup>3</sup> Mr. Roote contends that Mr. Henry never inspected the service drop for damage prior to leaving the property (Tr. at 1176-177). We note that no documentary evidence in the record shows that Mr. Henry inspected the service drop line. At hearing, Mr. Henry testified, "I don't specifically remember inspecting anything" (Tr. at 42). In response to a question asking whether CEI would reuse a service drop in a situation similar to what happened with Mr. Roote's service drop, Mr. Ingram testified that CEI would test the service drop if necessary, inspecting the ends of the wire to see if it was damaged. He stated that CEI would look at where the tree landed, if there were burn marks on that location, and if there were no burn marks, then they would move on. Further, he said that CEI would conduct a visual inspection at the wire connections at the weatherhead. Mr. Ingram acknowledges that he does not know whether a visual inspection was conducted for the above connections before power was applied, though he does say that, if such an inspection had occurred, it would not necessarily appear in the record kept by CEI. (Tr. at 340-344.) At hearing, Mr. Ingram testified that although he does not know for certain, Mr. Henry could have visually inspected the service drop's connection to the transformer pole; however, Mr. Henry reported cars and trees in the way of the pole to which the transformer

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<sup>3</sup> On a related point, Mr. Roote contends that Mr. Henry drove up his driveway and backed out when he left (Tr. at 181). On cross-examination, Mr. Henry noted that he is not allowed to back up his truck by himself and also stated that he has no recollection that his truck ever left Rockhaven Road (Tr. at 19, 23-24). Mr. Roote attempts to discredit Mr. Henry by emphasizing that Mr. Henry did come up the driveway and highlighting that Mr. Henry had motive to lie since he is not allowed to back up his truck and likely would be reprimanded by his employer if he said he did. However, we do not reach the same conclusion. Mr. Henry testified that he has no recollection of leaving Rockhaven Road, and his report does not state that he drove up the driveway (Tr. at 23-24; Complainant Ex. AA). Furthermore, we can reasonably assume that he has just as strong of a motive, or more so, not to lie under oath at a Commission proceeding versus the possible trouble he could encounter from his employer for allegedly backing out of a driveway.

was attached which did not allow him to access the transformer pole (Complainant Ex. AA; Tr. at 343-344).

{¶ 75} Regarding the meter, no documentation exists definitively stating if Mr. Roote's meter was pulled, and if so, by whom. Mr. Roote adamantly testifies that Mr. Henry removed his meter on December 8, 2020 (Tr. at 150-151). Mr. Henry's report does not speak of a meter removal, and Mr. Allen's report does not state that a meter was reinstalled when he arrived to reenergize the line (Complainant Exs. AA and AB). Mr. Ingram testified that there is no record that either troubleman removed the meter or reinstalled it and that such an action would have been indicated in their notes. He also stated that employees are supposed to report any instance of removing or reinstalling a meter. (CEI Ex. 1 at 11-12; Tr. at 355-356.) At hearing, Mr. Henry's testimony reveals some discrepancy between Mr. Ingram's understanding and Mr. Henry's understanding of meter removal reporting in that Mr. Henry testified that, if the meter leaves the premises, it would be included in his report. It is worth noting that Mr. Henry testified that he does not remember if he pulled the meter but then affirmed that there has never been a case where he pulled a meter from a meter box and did not report it. (Tr. at 32.) Mr. Roote highlights that he requested CEI to pull the meter multiple times via his calls (Complainant Exs. H, I, N). Mr. Roote acknowledges that, in respect to his case, whoever pulled the meter is irrelevant, considering it has nothing to do with the possibility of his house burning down or someone getting electrocuted (Tr. 151-152).

{¶ 76} Complainant testifies that, when Mr. Henry allegedly pulled the meter, it was obvious that the neutral return wire had been completely pulled from its connection on the incoming side and was hanging in the air (Tr. at 155). On cross-examination, Mr. Ingram admitted that once the uninsulated portion of the neutral wire is pulled out of the connector, there is nothing to restrain it from moving around inside the meter box. Further, he acknowledged that, if the neutral wire contacted the hot wire, it might generate arc flash, which has the potential to cause fire. (Tr. at 332-333.) Testimony also noted that, besides Mr. Roote's claims about the neutral wire, there was no evidence that an issue existed with

the neutral wire. No CEI records show that Mr. Roote reported an issue with the neutral wire, and Mr. Roote admitted that he never reported it to CEI, though he states that the reason is because he did not know it was an issue until the meter was pulled (CEI Ex. 1 at 12-13; Tr. at 207-208). Also, given Mr. Roote's specific meter, the neutral wire would not be visible unless the box was opened (Complainant Ex. BT; Tr. at 358-359). Besides not being able to see it, Mr. Roote claimed that he could not have known about the neutral wire until the meter was pulled because, in his estimation, no symptoms result when the neutral wire is pulled.<sup>4</sup> He highlights that the fuses did not blow, the meter did not report a problem, and that none of CEI's diagnostics would have indicated there was a problem because, as long as the ground is intact, the power in the house will appear normal, which is why it is dangerous. (Tr. at 207.)

{¶ 77} Mr. Roote's main contention is that, as demonstrated through his calls to CEI, they knew his service drop wire was down, that his service conduit was damaged, that he requested that the power to his residence remain disconnected until his repairs to the damaged service conduit were made, yet CEI restored power to his service drop without any inspection despite these warnings. According to Mr. Roote, restoring power proved dangerous considering his neutral wire had been pulled within his meter box as a result of a tree branch falling on the secondary line. He contends that all of these actions constitute unreasonable service by CEI.

{¶ 78} Our review requires us to determine whether CEI acted unreasonably in response to Mr. Roote's service requests " \* \* \* in light of the conditions and circumstances which were known or reasonably should have been known at the time the decision was made." *Cincinnati Gas & Elec.*, 86 Ohio St. 3d 53, 711 N.E.2d 670, 675 (1999). As demonstrated

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<sup>4</sup> We note that the transcript states that Mr. Roote said "there *are* symptoms when the neutral wire is pulled." (Emphasis Added). Mr. Roote argues that, after listening to a recording of the hearing he made during the hearing, he clearly said "*no* symptoms." (Emphasis Added). He argues that, when reading the remaining portion of his testimony after his statement about symptoms, it supports his contention that the transcript should read "no symptoms." Whether the transcript was accurate or not, we agree with Mr. Roote that the remaining testimony in this portion of the transcript supports the assertion that he meant to say, "no symptoms." (Complainant Reply Br. at 506; Tr. at 207.)



above, in one respect or another, CEI knew that Mr. Roote had reported a wire down on his property and requested that CEI deenergize its line and disconnect the meter, so he could make repairs to the service conduit. What is unclear from the record is what happened with Mr. Roote's specific report made on December 1, 2020, about his wire being down. We note that, although Mr. Kozak and Mr. Ingram both testified on direct that if hazard crews had identified Mr. Roote's service drop to be a hazard the crews would have reported it (CEI Ex. 2 at 3; CEI Ex. 1 at 7), they both acknowledged on cross-examination that hazard crews may not have been aware of Mr. Roote's specific report concerning his service drop (Tr. at 248-249, 295). CEI Exhibit 1.B, however, appears to be the work order created in response to Mr. Roote's December 1, 2020 report about a service line down since its work description alerts crews to a line down to structure. Mr. Ingram testified that the specific phrasing, "wire down to structure," indicates an issue different than a primary wire being down (Tr. at 322). According to Mr. Kozak's testimony on cross-examination, what appears plausible, especially considering Mr. Kozak's 32 years of experience working within the DCC, is that, although a work order was created regarding a wire down to structure at Mr. Roote's residence, the hazard crew was probably sent a wire down call, in general, and the crew subsequently found the primary wire span down in front of Mr. Roote's residence, which would have appeared to the crew as the wire at issue (Tr. at 250-251). Once the repairs were made to the primary lines reported in CEI Ex. 1.B, the repair crew, in line with the restoration process described by the CEI witnesses, reenergized the primary lines and then determined there were no additional faults since the fuses, including the one leading to Mr. Roote's residence, held intact (CEI Ex. 1 at 5-6).

{¶ 79} Regarding Mr. Roote's arguments concerning fuses, the standard upon which we are judging CEI's response to his reports is one of reasonableness. We note that there is no evidence that any of the above hypothetical incidents suggested by Mr. Roote, wherein Mr. Ingram said he cannot guarantee that a fuse will prevent certain incidents from occurring, transpired in this case (Tr. at 296-297; 319; 331-332). Further, a fuse is a common protective device used by utilities in Ohio on their distribution systems, and we have

previously agreed with testimony concluding that fuses provide adequate safety for lines serving even larger load centers than those at issue in this case. *In re Complaint of Cleveland Metropolitan School District v. The Cleveland Elec. Illum. Co.*, Case No. 18-1815-EL-CSS, Opinion and Order (Apr. 20, 2022) at ¶ 91. While we expect CEI to provide quick, effective, and safe storm restoration service, we do not find that there is sufficient evidence demonstrating that using fuses in the manner CEI describes to patrol a circuit after a primary line is reenergized is unreasonable, especially in the context of restoring power to as many customers as possible after a large winter storm like this and, specifically, restoring power to the 420 or so residents on Rockhaven Road without power. Further, we reach the same conclusion regarding CEI applying that process to the repair crew's decision to patrol the line on Rockhaven Road to check for any blown fuses on December 3, 2020.

{¶ 80} Although we cannot know for certain, the Commission acknowledges that a disconnect or some type of mix-up regarding Mr. Roote's specific December 1, 2020 report most likely occurred internally at CEI during the storm restoration process on December 2 and 3, 2020. As will be discussed further below, it is important that all of CEI's storm restoration response team, be it the DCC, response crews, or others, engage in and maintain effective communication regarding hazard reports, such as the report made by Mr. Roote. However, we believe the impacts of the large winter storm, and the resulting effect of CEI needing to restore power to over 170,000 customers as quickly as possible and respond to the 2,500 hazard calls made on December 1, 2020, proves significant in weighing Complainant's claims in this specific case. While we cannot be certain that the hazard crew did not in fact see Mr. Roote's service drop and determine it was not a hazard needing immediate repair, the more likely scenario, as discussed above, concerns the hazard crew receiving a general wire down call and, coincidentally, that wire being a primary wire right in front of Mr. Roote's residence (Tr. at 250-251). The testimony above highlights the complexity involved with coordinating and effectively responding to a mass outage event like that caused by the large winter storm that preceded the issues in this case. Under different circumstances, we may have reached a different conclusion since CEI knew about

Mr. Roote's service drop report, but the aftermath of the large winter storm, the fact that Mr. Roote's residence is isolated from the primary wire since it is approximately 300 feet from the street, as well as the need to restore power to the 420 or so residents on Rockhaven Road who lost power cannot be ignored; therefore, we believe that Mr. Roote has not shown by a preponderance of the evidence that CEI acted unreasonably by restoring power to Rockhaven Road in line with its storm restoration process. Again, Mr. Roote's complaint highlights an issue regarding CEI's communication and coordination involving hazard reports during storm restoration. We conclude CEI needs to improve the processes by which customer-reported hazard calls are transmitted to the internal department responsible for communicating such reports to crews in the field. Accordingly, we direct CEI to file a report in the docket within 90 days of this order, detailing the improvements it has made to the above reporting processes.

{¶ 81} We also find that Mr. Roote has not shown by a preponderance of the evidence that CEI's actions between December 3 and 8, 2020, were unreasonable, as contemplated by R.C. 4905.26. As Mr. Ingram testified, since Mr. Roote's call on Friday, December 4, 2020, came several days after the storm, CEI coded his call as non-storm related. Consequently, CEI contacted Mr. Roote on the next business day, December 7, 2020, and informed him that December 23, 2020, was the next available service date. According to CEI's call note summary regarding the December 7, 2020 call, Mr. Roote was dissatisfied with this service date in response to which Mr. Ayers advised Mr. Roote to call the trouble department to get a crew to come out sooner. (Tr. 201-204; CEI Ex. 1 at 10; Complainant Ex. Y.) Once Mr. Roote called CEI again on December 8, 2020, and reported a dim light as well as his concerns about the low-hanging wire being a danger to those who enter his premises, CEI sent a troubleman to disconnect his power later that morning (Tr. 142-148). While Mr. Roote's call on December 4, 2021, likely should have been coded as storm-related since he referenced his December 1 calls during it, we note that when he expressed dissatisfaction with the offered service date, he was informed that he could call another department to get the repairs done sooner. Further, as Mr. Kozak testified, repairs on purported damage related to customer

service drops caused by the storm did not commence until the week of December 7, 2020 (CEI Ex. 1 at 6-7; CEI Ex. 2 at 6)1. Considering all of the above, we find that Mr. Roote has not shown by a preponderance of the evidence that CEI's actions were unreasonable during this time period.

{¶ 82} Specifically, regarding Mr. Roote's contention that service was unreasonable because CEI did not inspect his service drop before restoring power on December 3, 2020, again, the circumstances brought on by the storm were the mitigating factor in this specific case, especially considering CEI needed to restore power to 420 residents or so on Rockhaven Road; therefore, we do not believe CEI's response amounts to unreasonable service. Regarding Mr. Roote's contentions related to CEI not inspecting his service drop and connections on December 8, 2020, we note that his complaint centers on CEI restoring power "prior" to inspecting the wire, which would have been on December 3, 2020. Although Mr. Roote discusses CEI's actions on December 8, 2020, he never contended that a lack of inspection on December 8, 2020, was an issue (Complaint at 3). Moreover, Commission rules and regulations do not mandate how CEI should specifically respond to a report of a down or low-hanging secondary wire and damaged service conduit. Therefore, Mr. Roote's claim that CEI failed to inspect the wire on December 8, 2020, is outside the scope of the complaint. Nevertheless, we note that there is no definitive record of an inspection of the wire on December 8 before or after power was disconnected at the residence. Mr. Ingram testified that typically there would be a service drop inspection in instances like this, and he could not confirm if one occurred or not, though he did say it would not necessarily be documented. Mr. Henry testified that he does not recall inspecting anything. (Complainant Ex. AA; Tr. at 42, 340-344.) We do note that damage was documented and reported by Mr. Roote regarding his equipment (Complainant Exs. B, C, D, E, F, and H), though besides photos of the service drop wire hanging low, there is no evidence that any portion of the CEI-owned line leading to the weatherhead, including its ends, was in fact damaged such that it could not be reused even without repair (Complainant Exs. E and F). Mr. Roote did not report that he had any problems with his

power after he made repairs to the customer-owned equipment, and power was restored on December 8, 2020, which leads us to believe the secondary line leading to Mr. Roote's service drop may have been safe. Ultimately, we do not believe Mr. Roote has shown by a preponderance of the evidence that CEI's actions were unreasonable. However, we believe CEI should be consistent with inspections regarding potentially damaged service drops; therefore, we direct CEI to file a report in this docket within 90 days of this order, detailing certain improvements made to its training of in-the-field employees that emphasize the types of inspections needed for purported problems with secondary lines leading to residential service drops, along with a consistent reporting policy related to the results of such inspections.

{¶ 83} Mr. Roote argues that CEI's admission about the danger of an unrestrained neutral wire, in the context of his complaint, proves that his unrestrained neutral wire was dangerous and created a risk of fire, thus CEI's restoration of power on December 3, 2020, without further inspection of his line and meter constituted unreasonable service rendered by CEI because it was unsafe. While we understand Mr. Roote's concern, we find his argument unavailing. First, we note that Complainant's allegations regarding CEI violating Ohio Adm.Code 4901:1-10-06 and Section 214(A)(5) of the NESC related to this issue will be discussed further below. As already articulated above, we do not believe Mr. Roote has shown by a preponderance of the evidence that CEI's actions were unreasonable related to it restoring power to his residence on December 3, 2020. We acknowledge that the parties have differing opinions about who pulled the meter, Mr. Roote claiming it was Mr. Henry and CEI arguing it did not; however, as Mr. Roote stated at hearing, "\* \* \* in my opinion who pulled the meter is irrelevant[,]" considering Mr. Roote focuses his argument concerning the neutral wire on the danger it can pose in certain circumstances (Complainant Exs. AA and AB; Tr. at 32, 151-152). Further, there is no evidence that the tree branch falling on Mr. Roote's service wire caused the neutral wire to be pulled inside of his meter. Consequently, considering the above and in line with our finding regarding CEI's response to the wider storm restoration efforts, we find that Mr. Roote has not shown by a

preponderance of the evidence that CEI acted unreasonably concerning issues related to the neutral wire.

{¶ 84} Regarding Mr. Roote's contention that the issues in the *Allstate* case are strikingly similar, we disagree. In that case, a tree limb had broken and leaned on service wires, and the complainant observed that one of the wires had snapped. *Allstate* at ¶ 2. Later that day, the wires broke, and the resulting sparks set fire to the complainant's duplex. *Allstate* at ¶ 2. The Court stated that the Commission did not have jurisdiction over the case, and the issues in that case ultimately centered on a negligence claim, which is a distinct and separate consideration from our review here. *Allstate* at ¶ 14. Accordingly, *Allstate* is inapposite to the case at hand.

## 2. ALLEGED CODE VIOLATIONS

{¶ 85} Mr. Roote also alleges that CEI violated specific Commission rules under the Ohio Administrative Code and specific sections of the NESC. Mr. Roote alleges that CEI violated Ohio Adm.Code 4901:1-10-09(B)(3), which requires the following: "When an electric utility utilizes a menu-driven, automated, interactive answering system (referred to as the system), the initial recorded message presented by the system to the caller shall only identify the general options available to the caller, including the option of being transferred to a live attendant. At any time during the call, the caller shall be transferred to a live attendant if the caller fails to interact with the system for a period of ten seconds following any prompt." Mr. Roote argues that he was never presented with an option to speak to a live attendant and that this failure exacerbated his frustration surrounding the issues with his service drop. (Complainant Br. at 4, 16.)

{¶ 86} Regarding Exhibits G, J, and M, which consist of the majority of the phone recordings in the record where Mr. Roote encountered an automated menu after calling in, CEI's phone system led him through prompts to gather information about his problem and then invariably transferred him to a live attendant (Tr. 103-106; 122-123; 139-141). We acknowledge that, during the phone call he made around 3:00 p.m. on December 8, 2020,

where Mr. Roote intended to tell CEI that he had made the repairs to his equipment and was ready for CEI to restore power, he was not offered the option to speak to a live attendant (Tr. at 160). We note, however, that the system found his account through the phone number he was calling from and created an order to restore his power, stating that it would be restored by 6:30 p.m. that day (Tr. at 162-163). This timing matches the work order issued to Mr. Allen, where it states that the order was created at approximately 3:34 p.m. on December 8, 2020, and Mr. Allen listed the residence arrival time as 5:26 p.m., meaning Mr. Roote's request was accurately logged and completed by CEI (Complainant Ex. AB). Considering all of the above, we find that CEI substantially complied with Ohio Adm.Code 4901:1-10-09(B)(3).

{¶ 87} Mr. Roote next alleges that CEI violated Ohio Adm.Code 4901:1-10-05(H)(2), which requires the following: "Each electric utility shall maintain the following records regarding each meter that it owns, operates, or maintains, for the life of each such meter plus three years: \* \* \* [e]very location where the meter has been installed and removed, together with the dates of such installations and removals." As already detailed above, Mr. Roote alleges that Mr. Henry removed the meter, and Mr. Allen reinstalled it. CEI denies Mr. Roote's allegation and argues that no record exists stating that CEI ever removed or reinstalled it. (Tr. at 150-151; Complainant Exs. AA and AB; CEI Ex. 1 at 11-12.) As noted above, a discrepancy exists between Mr. Ingram stating that any meter removal or reinstallation should be recorded by a CEI employee while Mr. Henry said it should be recorded if the meter leaves the premises (CEI Ex. 1 at 11-12; Tr. at 32, 355-356). It is worth noting that Mr. Henry testified that he does not remember if he pulled the meter but then affirmed that there has never been a case where he pulled a meter from a meter box and did not report it (Tr. at 32). CEI implies that Mr. Roote may have removed the meter himself (CEI Ex. 1 at 12). Mr. Roote vehemently denies he did (Tr. at 150-151).

{¶ 88} We do not believe there is sufficient evidence to prove that CEI violated Ohio Adm.Code 4901:1-10-05(H)(2). While Mr. Roote is adamant that Mr. Henry removed the meter, and Mr. Allen reinstalled it, neither of their reports indicate it was removed. Despite

the reporting discrepancy above, Mr. Henry testified that there has never been a case where he pulled a meter from a meter box and did not report it. (Complainant Exs. AA and AB; Tr. at 32, 150-151.) Mr. Roote claimed that the meter seal was cut and not reattached to the meter; however, outside of this assertion, the only proof he attempted to provide at hearing was a photograph of a cut meter seal, which he had just discovered on top of his meter a few days before the hearing, and the picture was taken just a few days before the hearing (Tr. at 63-64). Consequently, little weight can be given to testimony surrounding the picture of the seal. This issue dovetails with the neutral wire claims by Mr. Roote, considering the pulled neutral wire was, as Mr. Roote testified, found when the meter was pulled (Tr. at 155). We have Mr. Roote's assertions but no contemporaneous photographs or any CEI records detailing such an occurrence. While we understand that CEI's lack of any records regarding the meter is precisely Mr. Roote's point, the lack of records is also evidence that CEI did not remove or reinstall the meter. Further, significantly, this specific allegation regarding CEI violating Ohio Adm.Code 4901:1-10-05(H)(2) was first raised at hearing by Mr. Roote and then in brief, which was prejudicial to CEI's preparation of the case. Weighing the evidence and testimony above, we do not believe Mr. Roote showed by a preponderance of the evidence that CEI removed and reinstalled the meter and, therefore, do not find that CEI violated Ohio Adm.Code 4901:1-10-05(B)(3). However, given the conflicting testimony provided at hearing as to whether the meter had been pulled or the meter seal had been cut, we direct CEI to conduct an inspection of the meter at a mutually agreeable time for both the Company and Mr. Roote to ensure that the meter will continue to safely operate within the parameters of the Commission's rules. CEI should file a report memorializing its findings in this docket within 30 days following the inspection.

{¶ 89} Next, Mr. Roote alleges that CEI violated Ohio Adm.Code 4901:1-10-06 because it violated Section 420(A)(1) of the NESC. Ohio Adm.Code 4901:1-10-06 states that "Each electric utility owner shall comply with the 2017 edition of the 'American National Standard Institute's,' 'National Electrical Safety Code' approved by the ' American National Standards Institute' and adopted by the 'Institute of Electric and Electronics Engineers.'"



Section 420(A)(1) of the NESC states that "[e]mployees shall carefully read and study the safety rules, and may be called upon at any time to show their knowledge of the rules." Mr. Roote argues that Mr. Henry stated that he did not know about the NESC (Tr. at 51). Further, Mr. Ingram stated that it did not seem like Mr. Henry knew about the NESC (Tr. at 275). CEI argues that its employees are trained in the NESC even if Mr. Henry could not remember the source material of his training (Tr. at 79-80; 272).

{¶ 90} Although Mr. Roote argues that his training and work experience qualify him as "expert enough" to understand and testify about the NESC, we note that such experience does not necessarily qualify him as an expert on the NESC itself or its provisions (Complainant Reply Br. at 16). Further, he never testified that he extensively used the NESC during his career. Nevertheless, we agree with CEI regarding this alleged violation. Mr. Ingram testified that CEI follows the NESC, and its employees are trained to follow the NESC, with multiple departments being responsible for that training (Tr. at 274). Although Mr. Ingram stated that he did not believe Mr. Henry seemed familiar with the NESC, we ascribe that statement not to mean that Mr. Henry did not know how to conduct himself in the field in line with NESC policies but more about not knowing that his training came from the NESC (Tr. at 275). Mr. Henry mentioned that he was trained with textbooks and other materials through CEI's Power Systems Institute Program, but he does not know how those materials were created (Tr. at 80). Ultimately, we believe Mr. Roote did not show by a preponderance of the evidence that Mr. Henry was not trained in the NESC, even if he did not realize his training materials may have included it, nor does the record show he did not adequately perform his assigned tasks on December 8, 2020, in a way that was inconsistent with the NESC. However, we direct CEI to file a report in the docket within 90 days of this order, noting that the following changes to its training materials have been made: (1) that the training materials emphasize which portions come from the NESC and (2) emphasize in these materials that its employees must have knowledge of the NESC and its provisions.

{¶ 91} Finally, Mr. Roote asserts that CEI violated Ohio Adm.Code 4901:1-10-06 by failing to adhere to Section 214(A)(5) of the NESC, which states "When in service \* \* \* [l]ines

and equipment with recorded conditions or defects that would reasonably be expected to endanger persons or property shall be promptly corrected, disconnected or isolated." Mr. Roote argues that because he reported that his service drop was down on December 1, 2020, that it was caused by a falling tree branch, and that the tree fell with enough force to bend his service conduit, it could be reasonably expected that his heavily damaged service drop would be a danger to persons or property once power was restored to his property. He argues that CEI violated this provision by restoring power to his property on December 3, 2020, without CEI first correcting, disconnecting, or isolating his service drop. (Complainant Reply Br. at 15-17.) CEI argues that, other than being low-hanging, no evidence exists that the service drop wires or the connection at CEI's utility pole were damaged, and Mr. Roote failed to adduce testimony that CEI did not promptly address the issue in light of its multi-day efforts to restore power to 170,000 customers (CEI Initial Br. at 12-13).

{¶ 92} First, as above, we reiterate that Mr. Roote did not testify that he was an expert in the NESC, nor that he was qualified to testify specifically about the NESC. Nevertheless, we find that CEI did not violate this provision of the NESC. We maintain the same ruling as we did above. On December 1, 2020, Mr. Roote reported that his service conduit was bent, that a line was down, and that a meter disconnect was needed so he could make repairs before the power is restored (Complainant Exs. H and I, Tr. at 90-92; 107-114). On the same date, CEI received 2,500 hazard calls (CEI Ex. 2 at 2). As already detailed above, we believe CEI responded as promptly as possible considering the circumstances surrounding the mass outage event. Again, we appreciate the concern raised by Mr. Roote and, consequently, have directed CEI to file reports described above to indicate improvements in processes related to storm restoration planning coordination and the training of its employees. However, we do not find that CEI violated this provision of the NESC.

{¶ 93} In the absence of evidence showing that CEI failed to comply with statutory requirements as well as its tariff, the Commission's rules, regulations, and order, the Commission cannot render a finding that CEI provided unreasonable service to Mr. Roote.

However, we direct CEI to file the reports indicated above related to issues brought to light by Mr. Roote's complaint.

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 94} On January 5, 2021, Mr. Roote filed a complaint against the Respondent alleging that Respondent has provided unreasonable and inadequate service. Complainant requests that Respondent revise its outage response procedures, that he be reimbursed for all legal expenses, and that he be awarded compensatory damages in the amount of \$5,000.

{¶ 95} CEI is a public utility as defined by R.C. 4905.02, and an electric light company, as defined by R.C. 4905.03(A)(3), and, as such, is subject to the jurisdiction of the Commission.

{¶ 96} On January 25, 2021, CEI filed its answer to the complaint. In its answer, CEI admits some, and denies others of the complaint's allegations, and sets forth several affirmative defenses.

{¶ 97} A prehearing settlement teleconference was scheduled for and held on February 25, 2021.

{¶ 98} Prehearing teleconferences were held on June 23, 2021, and December 7, 2021.

{¶ 99} By Entry issued June 24, 2021, the attorney examiner dismissed a portion of the complaint relating to monetary damages.

{¶ 100} A hearing was held on December 14, 2021, and concluded on December 20, 2021.

{¶ 101} 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).

{¶ 102} Mr. Roote has not carried his evidentiary burden of proving that Respondent, CEI, has provided unreasonable service or violated its tariffs, statutory obligations, or Commission regulations, practices, or orders. Nonetheless, CEI is directed to file the reports indicated above on issues brought to light by this complaint.

## VI. ORDER

{¶ 103} It is, therefore,

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

{¶ 105} ORDERED, That CEI file reports, as directed by the Commission in this Opinion and Order. It is further,

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

### COMMISSIONERS:

#### *Approving:*

Jenifer French, Chair  
Daniel R. Conway  
Lawrence K. Friedeman  
Dennis P. Deters  
John D. Williams

MJS/IMM/dmh

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Summary: Opinion & Order finding that Michael S. Roote failed to carry the burden of proving that The Cleveland Electric Illuminating Company provided unreasonable service. However, the Commission directs The Cleveland Electric Illuminating Company to file the reports described herein related to issues brought to light by Mr. Roote's complaint. electronically filed by Debbie S. Ryan on behalf of Public Utilities Commission of Ohio.