

CASE NO. 2007-0452
IN THE SUPREME COURT OF OHIO

ALLSTATE INSURANCE COMPANY,
Plaintiff-Appellant,

v.

CLEVELAND ELECTRIC ILLUMINATING COMPANY,
Defendant-Appellee.

ON APPEAL FROM THE CUYAHOGA COUNTY COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CASE NO. CA-06-087781

MERIT BRIEF OF APPELLEE
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

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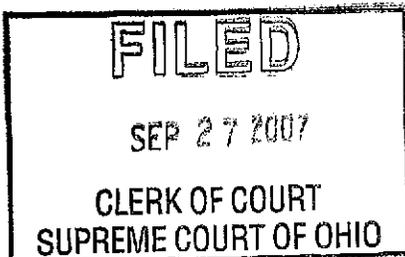


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I. INTRODUCTION

This is a subrogation action filed by Allstate against CEI. On July 20, 2003, Allstate's insureds, Margaret Harris and Anna Kaplan, sustained property damage due to a fire. No one was injured. Pursuant to its contractual obligations, Allstate paid Ms. Harris \$149,356 and Ms. Kaplan \$12,034 for the property damage they sustained as a result of the fire. Allstate filed this action to seek reimbursement from CEI for these payments.

Allstate claims that CEI should have taken affirmative action to prevent the fire by responding to customer service calls made by Ms. Harris and her daughter concerning a "tree limb on a wire" made *within six hours of the fire*. Allstate does not allege, and there is no evidence, that CEI's equipment failed or malfunctioned, or that CEI failed to construct, maintain, or inspect its equipment. To the contrary, CEI's equipment was located and performed as is required and designed. Moreover, notwithstanding the misstatements contained in Allstate's Merit Brief, it is undisputed that CEI did nothing to cause the fire. The fire was caused by a tree limb located in *the insured's* backyard that fell on cable and electrical wires causing *the insured's* electrical equipment to pull away from *the insured's* dwelling causing *the insured's* wires to spark and the fire resulted.

On November 14, 2005, CEI moved for summary judgment. CEI's Motion was denied. On January 17, 2006, the case proceeded to trial. At trial, CEI's Motion for Directed Verdict was denied. At the close of trial, the jury awarded a verdict in favor of Allstate in the full amount of its claim (i.e., \$161,729.47). In its appeal to the Eighth District Court of Appeals, CEI complained of eight separate errors by the trial court. Only one, the jurisdictional issue before this Court, was decided by the Eighth District. The other seven errors were not addressed. With respect to the jurisdictional issue, the Eighth District found that the trial court did not have

subject matter jurisdiction because the dispute was within the exclusive jurisdiction of the Public Utilities Commission of Ohio (“PUCO”) and reversed the verdict. This Court subsequently accepted Allstate’s appeal.

II. STATEMENT OF FACTS

In May of 2002, Allstate insured, Margaret Harris, purchased one side of a side-by-side, duplex dwelling (one structure), located in Euclid, Ohio. See Appellee’s Supp. at 2, 8. Allstate insured, Anna Kaplan, owned the other side of the dwelling. Id. at 1. After purchasing the home, Ms. Harris purchased an Allstate homeowner’s policy. Id.

Prior to issuing a homeowner’s policy, it is the practice and procedure of Allstate to inspect the property in order to identify risks associated with the underwriting process. Id. at 30-31. In certain circumstances (such as overhanging trees), Allstate will not issue the policy. Id. at 32. At the time that Ms. Harris purchased the home, there was a large tree located in her backyard behind her detached garage. Id. at 3. Branches from the tree had grown over the garage. Id. at 10-12. Notwithstanding this fact, Allstate issued a homeowner’s policy to Ms. Harris. Id. at 1.

On July 20, 2003, between the time of 10:30 a.m. and 11:00 a.m., Ms. Harris and her twenty-nine year old daughter, Lisa Little, walked through Ms. Harris’ backyard to look at the garden. Id. at 15-16. They observed that a fairly large limb had fallen from Ms. Harris’ tree onto “some wires.” Id. at 16-18, 25. They did not know whether the wires were cable or electrical wires. Id. at 25. It was ultimately determined by Allstate’s expert that the large limb had fallen onto both the electrical and cable wires. Id. at 26-27. The limb was still attached to the tree. Id. at 25. The weight of the limb on the wires caused Ms. Harris’ electrical service

mast, which was attached to the back of the dwelling, to pull away from the dwelling. Id. at 19. The wires were not sparking or on fire. Id. at 24-25.

Ms. Harris and Ms. Little then went into the home and Ms. Little telephoned CEI. Id. at 20. Ms. Little spoke to a CEI customer service representative named Pamela Warford. Id. at 22. Ms. Little reported that a tree limb had fallen on some wires and that the service mast was separated from the home. Id. at 23. Ms. Warford asked a series of questions to determine whether CEI's wires or equipment were compromised or malfunctioning. Id. 39-40. She then entered the call as a tree limb on a wire with the power on. Id. at 42. In accordance with CEI's call center procedures and guidelines, this call was categorized as a lower priority call because it did not involve a life-threatening, emergency situation (such as a wire down call) and it was not an outage (Ms. Harris still had power on in her home). Id. at 35-37. After speaking with Ms. Warford, Ms. Little then had her mom call back to see how the telephone prompts work. Id. Ms. Harris went through the prompts but did not speak to a live person. Id. at 13.

After contacting CEI, Ms. Little went home and Ms. Harris cooked dinner and took a nap. Id. at 14. Ms. Harris awoke from her nap at 5:00 p.m. and still had power on in her home. Id. at 13. She made another call to CEI concerning the tree limb on the wire. Id. at 13-14. Approximately ten minutes later, she heard a noise in her backyard and saw wires on the ground sparking. Id. at 6. The wires that were sparking were Ms. Harris' home wires and not CEI's wires. Id. at 44-46. CEI's wires never snapped or failed. Id. They remained intact. Id. Ms. Harris then saw fire in her home and dialed 911. Id. at 6. The fire department arrived shortly thereafter. Id. at 7.

As a result of the fire, Allstate paid \$149,356 and \$12,034 of insurance proceeds to Ms. Harris and Ms. Kaplan, respectively, pursuant to its contractual obligations under the applicable homeowner policies. Id. at 1.

III. ARGUMENT

A. **Allstate's Merit Brief Distorts The Record, Is Grossly Misleading, And Confuses The Jurisdictional Issue Decided By The Eighth District Court Of Appeals.**

Because this Court is entitled to rule based on an accurate record, CEI has little choice but to correct the misstatements and half-truths contained throughout Allstate's Merit Brief. First, Allstate incorrectly states that "Ms. Harris was told that CEI was still attempting to locate someone to come out to fix the problem." See Merit Brief of Appellant at 2. The record does not support this assertion. See Appellant's Supplement to Merit Brief at 11. CEI was not attempting to locate someone to fix the problem. Rather, in accordance with its practices and procedures, CEI was processing the subject customer service calls as "tree limb on a wire with power on." The call was routed to forestry. See Appellee's Supp. at 43. This was a lower priority call because it did *not* involve a life-threatening, emergency situation (such as a down wire) nor was it an outage (the insured still had power on in her home). Id. at 35-37.

Second, Allstate states:

Experts opined at trial within a reasonable degree of scientific certainty that the fire was caused by the weight of the tree limb pulling the service mast away from the home. Specifically, the electrical wire's insulation was abraded by friction until the hot conductor was allowed to contact the meter box, causing a fire around the electrical panels mounted on the north wall of the basement of Ms. Harris's house.

See Merit Brief of Appellant at 2. This statement incorrectly implies that CEI's equipment caused the fire. However, as set forth way back in Allstate's Complaint, it is undisputed that no

action or inaction of CEI caused the fire. The insured owned and was responsible for the tree, the service mast, the service entrance wires, and the main electrical panel in the basement of the dwelling. See Appellee's Supp. at 33-34. It was this equipment, along with the insured's tree limb, that caused the fire and not CEI's service wire. Id. at 28-29. Allstate's statement more accurately should read:

Experts [retained by Allstate and CEI] opined at trial within a reasonable degree of scientific certainty that the fire was caused by the weight of the [CUSTOMER'S] tree limb pulling the [CUSTOMER'S] service mast away from the home. Specifically, the [CUSTOMER'S] electrical wire's insulation was abraded by friction until the [CUSTOMER'S] hot conductor was allowed to contact the meter box, causing a fire around the [CUSTOMER'S] electrical panels mounted on the north wall of the basement of Ms. Harris's house.

Third, Allstate makes repeated references to "the known dangerous condition of [CEI's] property." See Merit Brief of Appellant at 7, 11, 13, 19. These references are misleading. This case involved the insured's tree limb on some wires. Margaret Harris testified that the weight of the tree limb was pulling her service mast away from the home and that "one wire was holding everything up." See Appellee's Supp. at 4-5. Lisa Little testified that the tree limb had fallen on the overhead wires running to her mom's service mast, which was attached to the back of the home, and that the weight of the limb was pulling the service mast away from the home. Id. at 17-19. She further testified that the wires were not sparking or on fire. Id. at 24-25. There was no wire down or other situation posing a danger to anyone. In fact, the CEI equipment continued to perform properly during the hours before the fire. Ms. Harris still had power on in her home.

Fourth, Allstate states that "an electric utility is required to exercise 'the highest degree of care.'" See Merit Brief of Appellant at 7. This is a half-truth. Under Ohio law, a public utility is required to exercise the highest degree of care *consistent with the practical operation of its*

business in the construction, maintenance and inspection of its equipment. See Otte v. Dayton Power & Light Co., 37 Ohio St. 3d 33, 38 (1988) (emphasis added). There is no allegation, let alone evidence, that CEI breached this standard.

Fifth, Allstate disingenuously represents that it never claimed that CEI's practices and procedures relating to customer calls were unreasonable or insufficient. See Merit Brief of Appellant at 13. This is not true. Allstate's entire case always has been based on the allegation that CEI failed to timely respond to customer calls and to prevent the fire that ensued. For purposes of this appeal, it is clear that Allstate is now attempting to separate itself from this allegation in order to avoid PUCO jurisdiction.

Finally, Allstate incorrectly states that "[t]here is no evidence either that CEI's failure to respond to the emergency calls placed by or on the behalf of Mrs. Harris was consistent with a practice of the utility or that CEI directed its servicemen not to respond to the call." The undisputed facts are to the contrary. There is no dispute that CEI's conduct in this matter was consistent with its practices and procedures for intaking, categorizing, and responding to customer service calls.

B. Allstate's Proposition Of Law Is Inherently Flawed, Contrary To The Record, And Provides No Guidance For Resolving Future Disputes.

Allstate espouses the following proposition of law:

A negligence claim arising from a utility company's failure to respond to a customer's emergency call, resulting in fire at that customer's home, is a pure common law tort claim subject to jurisdiction in the Court of Common Pleas, rather than a "service related" claim subject to the exclusive jurisdiction of the Public Utilities Commission of Ohio under R.C. 4905.26.

This proposition of law incorrectly implies that CEI somehow was the cause of the fire. As stated above, it is undisputed that no action or inaction of CEI caused the fire. Allstate's position (accurately stated) is that, had CEI responded more quickly to the customer service

calls, it could have prevented the fire that was caused by Allstate's insured's tree and equipment. Based on Allstate's proposition of law, the Eighth District's decision should be affirmed because CEI's alleged failure to respond did not cause or result in the fire. The proposition of law also mischaracterizes Allstate's claim as a "negligence" claim. Allstate's claim is not a negligence claim. There is no allegation that CEI's equipment malfunctioned or failed in any way, or that CEI failed to construct, maintain, or inspect its equipment, or that any CEI employee did anything to cause the fire.

Rather, Allstate's claim centers around CEI's practices and procedures for handling customer service calls. Allstate believes that the subject calls should not have been given a lower priority. Allstate specifically alleges that CEI failed to respond fast enough to customer service calls concerning a tree limb on a wire and failed to prevent the fire that was caused by circumstances beyond CEI's control (i.e., Allstate's insured's tree and equipment). Allstate's claim is a direct attack on the way in which CEI conducts business, specifically as it relates to the manner by which CEI intakes, categorizes, and responds to the thousands of customer service calls it receives each year. Allstate, with no experience as a utility and without any expert opinion, claims that CEI should have handled the subject calls differently. Under Ohio law, CEI's practices and procedures for classifying customer calls, and how quickly it responds to them, is a matter within the exclusive jurisdiction of PUCO.

Finally, Allstate's proposition of law provides no guidance for public utilities endeavoring to abide by the law announced by this Court nor does it provide guidance to the judiciary in the adjudication of future disputes concerning the jurisdictional issue. By characterizing the claim as a "negligence" claim, the proposition of law decides the issue in a conclusory fashion. The proposition of law also is confined to "a utility company's failure to

respond to a customer's emergency call, *resulting in fire at the customer's home.*" Based on this language, there needs to be a fire at a customer's home for the proposition of law to apply. It appears that the proposition of law is narrowly tailored to resolve only this one dispute. It practically cannot have any precedential value that would assist in resolving future disputes.

C. Because Allstate's Claim Against CEI Is Service Related, Jurisdiction Of This Action Is In The Exclusive Province Of PUCO.

Ohio Revised Code Section 4905.26 defines the scope of PUCO's jurisdiction. That statute provides, in pertinent part:

Upon complaint in writing against any public utility by any person, firm, or corporation . . . that any rate, fare, charge, toll, rental, schedule, classification, or *service*, or any joint rate, fare, charge, toll, rental, schedule, classification, or *service rendered*, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, *or practice affecting or relating to any service furnished by the public utility, or in connection with such service*, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, *or that any service is, or will be, inadequate, or cannot be obtained*, and upon complaint of a public utility *as to any matter affecting its own product or service*, if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. The commission may adjourn such hearing from time to time. The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

(Emphasis added).

It is well-settled by this Court that where the Ohio General Assembly enacts a complete and comprehensive statutory scheme governing review of claims arising under a certain area of law by an administrative agency, exclusive jurisdiction is vested within that agency. See, e.g., Kazmaier Supermarket, Inc. v. Toledo Edison, 61 Ohio St. 3d 147, 153 (1991). As this Court stated in Kazmaier, "there is perhaps no field of business subject to greater statutory and

governmental control than that of a public utility.” Id. at 151. Indeed, the General Assembly has enacted an entire chapter of the Ohio Revised Code dealing with public utilities that, among other things, regulates adequacy of electrical service and provides for review procedures when electrical service is called into question. See Ohio Rev. Code § 4901.01, et seq.

Allstate’s myopic interpretation of the scope of Section 4905.26 is inconsistent with the plain language of that Section and this Court’s announcement in Kazmaier concerning Ohio’s statutory and governmental control over public utilities. See Kazmaier Supermarket, Inc., 61 Ohio St. 3d at 151. Indeed, only an attorney can fashion an argument, as Allstate is doing here, that a utility’s response to a customer service call is somehow unrelated to service.

According to Allstate, the term “service,” which is referenced throughout Section 4905.26, refers “strictly to the provisioning of electrical service to a customer.” See Appellant Merit Brief at 9. Allstate argues that Title 49 only confers exclusive jurisdiction to PUCO over “issues with the quality of the electrical service provided by CEI.” Id. at 9. This interpretation of Section 4905.26 is oblivious to the fact that a large aspect of a public utility’s business involves servicing its customers by intaking, categorizing, and responding to calls concerning a variety of matters --- some that pertain to the public utility’s equipment and others, as in this case, that do not.

Because a public utility receives thousands of customer calls relating to a plethora of issues, the public utility must establish a policy and procedure for intaking, categorizing, and responding to the calls. Obviously, public safety dictates that calls receive different levels of priority based on their underlying circumstances. In this case, the subject calls related to a tree limb on a wire with the power on. In accordance with CEI’s call center practices and procedures, the subject service call was properly coded as such and routed to forestry. See

Appellee's Supp. at 42-43. This was a lower priority call because it did **not** involve a life-threatening, emergency situation (such as a down wire) nor was it an outage (the insured still had power on in her home). Id. at 35-37.

There was no evidence that the call was handled inconsistent with CEI's practices and procedures. To the contrary, John Falvy testified that the call was handled appropriately. Id. at 38.¹ The manner by which CEI intakes, categorizes, and responds to customer service calls on a daily basis is a "practice affecting or relating to *any service* furnished by [CEI]" under Section 4905.26.

In addition, customer service is an area expressly reserved for PUCO in Chapter 4901:1-10 of the Ohio Administrative Code, entitled "Electric Service and Safety Standards." See O.A.C. § 4901:1-10.² Within that chapter is a section entitled "minimum customer service levels" that specifically addresses the subject of customer service calls. Id. at § 4901:1-10-09(B). Although that section relates only to the manner in which the utility intakes a call, it evidences PUCO's authority over this aspect of a utility's business.

For these reasons, Allstate's claim is within the exclusive jurisdiction of PUCO irrespective of Allstate's attempts to fashion it as a pure common law tort claim.

D. Allstate's Claim Does Not Involve An Isolated Act Of Negligence.

Ohio law addressing the jurisdictional issue before the Court is well-established. Under that body of law, the determination of whether a trial court has jurisdiction over a case involving an electric utility depends on whether the claims asserted in the complaint are pure common law tort claims that are *distinct* from service related claims. See State Farm Fire & Casualty Co. v.

¹ At the time of the fire, Mr. Falvy was the Director of FirstEnergy Contact Centers.

² Section 4901 of the Ohio Administrative Code relates to PUCO.

Cleveland Electric Illuminating Co., 2004 Ohio App. LEXIS 3159 (Lake Cty., June 30, 2004) (noting that the issue of exclusive jurisdiction depends on whether the claim is a “pure common-law tort” or whether it “primarily relates to service”); Suleiman v. Ohio Edison, 146 Ohio App. 3d 41, 45 (Mahoning Cty. 2001) (noting that the issue of exclusive jurisdiction turns on whether the claims raised in the complaint are allegations of common law negligence or service complaints).

In making this determination, a trial court should not defer to how the plaintiff articulates the claims in its complaint. See State ex rel. Columbia Gas of Ohio, Inc. v. Henson, 102 Ohio St.3d 349, 352 (2004) (stating that “the mere fact that [plaintiff] cast its allegations in the underlying case to sound in tort is insufficient to confer jurisdiction upon the common pleas court”); Higgins v. Columbia Gas of Ohio, Inc., 136 Ohio App. 3d 198, 202 (Belmont Cty. 2000) (stating that “[c]asting the allegations in the complaint to sound in tort or contract is not sufficient to confer jurisdiction upon a trial court when the basic claim is one relating to service”); State ex rel. The Illuminating Co. v. Cuyahoga County Court of Common Pleas, 97 Ohio St. 3d 69, 73 (2002) (noting that, to determine whether PUCO has exclusive jurisdiction over the matter, the court must review the substance of the claims rather than mere allegations that the claims sound in tort or contract). Thus, regardless of how Allstate characterized its claim in its complaint or in its briefing to this Court, if it claims less than adequate service, PUCO has *exclusive* jurisdiction. See, e.g., Lawko v. Ameritech Corp., 2000 Ohio App. LEXIS 5687 (Cuyahoga Cty., Dec. 7, 2000) (finding that a customer’s allegation of negligence based on a utility’s failure to respond to repeated phone calls concerning problems with her phone service was a service matter within the exclusive province of PUCO).

1. The Manner In Which CEI Handles Customer Service Calls Relates To Service.

To avoid PUCO jurisdiction, Allstate attempts to contort the definition of “service” to include that it had to be done for a separate fee. This argument ignores the fact that, absent a customer relationship, CEI would not have processed the subject service calls. Allstate argues that its claim, which is based on CEI’s failure to respond timely to a customer service call, is unrelated to service and is “based purely on an isolated act of negligence by CEI.” See Appellant’s Merit Brief at 4. However, what Allstate classifies as an isolated act of negligence is really CEI following the same practices and procedures that it follows every time it receives a customer service call similar to the calls at issue in this action.

2. Allstate Cannot Identify Any Isolated Act Of Negligence By CEI.

Allstate generally alleges that CEI did not respond fast enough to the subject customer service calls. However, Allstate does not tell us what negligent act was committed, who committed it, or when it was committed. Was it the manner in which CEI’s call center representative, Pamela Warford, intook the call? Was it the manner in which CEI’s call center categorized the call? Was it CEI’s failure to instruct its servicemen to immediately respond to the call? Every act committed by CEI in this case was consistent with its service related business practices. If Allstate were to prevail, CEI would have no idea as to what specific practice was deficient and, consequently, would not know how to change that practice to correct the deficiency. Allstate does not tell us these things because it simply wants to recover the money it paid in this *one* instance. CEI, as well as all public utilities and their customers, will feel the impact in thousands of other incidents as utilities incur the cost of modifying their practices and procedures, and customers incur the increased rates passed on to them as a result.

The foregoing highlights why PUCO jurisdiction over this dispute is critical. Because Allstate's claim involves CEI's business practices, PUCO, with its expertise and expansive regulatory authority, needs to be the body charged with determining which, if any, practice was deficient, why it was deficient, and how it should be changed.

3. Allstate Cannot Identify A Duty And Breach Of That Duty.

Moreover, as this Court is well aware, a claim of negligence requires a duty and a breach of that duty. Allstate cannot identify any duty that CEI breached. Allstate simply states that "an electric utility is required to exercise 'the highest degree of care'" and relies solely on the jury's verdict to establish a breach of that purported duty. *Id.* at 7. However, this is not the duty that Ohio imposes on public utilities. Rather, under Ohio law, a public utility is required to exercise the highest degree of care *consistent with the practical operation of its business in the construction, maintenance and inspection of its equipment*. See *Otte v. Dayton Power & Light Co.*, 37 Ohio St. 3d 33, 38 (1988) (emphasis added). There is no allegation, let alone evidence, that CEI breached this duty. CEI's equipment is not at issue. Again, this case involves CEI's practices and procedures for intaking, categorizing, and responding to customer service calls.

Allstate's comment that it never claimed that CEI's practices and procedures relating to customer calls are unreasonable or insufficient is disingenuous. See Appellant Merit Brief at 13. From the commencement of this action through trial, Allstate's entire case has been based on the allegation that CEI failed to timely respond to its customer's calls and failed to prevent the fire that ensued. It is undisputed that CEI followed its practices and procedures in handling the subject calls. Yet, Allstate, with no experience as a utility and without any expert opinion, claims that CEI should have handled the subject calls differently, which inherently requires CEI to change to its practices and procedures. Only PUCO has the requisite expertise to determine

the changes, if any, that should be made to a utility's practice and procedure for processing customer service calls. Only PUCO has the expertise necessary to understand the impact on a utility's business and/or the rates charged to customers caused by a mandated change to the utility's practices and procedures. PUCO understands the impact on rates of requiring a utility to drop everything and immediately respond to all customer service calls. Because Allstate's claim is based on " a practice affecting or relating to any service furnished by [CEI]" and because PUCO's expertise is needed to analyze CEI's practices and policies, PUCO has exclusive jurisdiction.

E. The Case Law Relied On By Allstate Supports PUCO Jurisdiction Because, Unlike This Action, There Was No Evidence In Those Cases That The Utility's Conduct Was Consistent With A Business Practice Of The Utility.

In an effort to circumvent PUCO jurisdiction, Allstate relies heavily on Mid-American Fire & Casualty Co. v. Gray,³ Gayheart v. Dayton Power & Light Co.,⁴ and Harris v. Ohio Edison Co.⁵ These cases actually support PUCO jurisdiction in this action. In the Mid-American and Gayheart cases, the court focused on whether the plaintiffs' claims related to a "practice" of the utility. In Mid-American, the court concluded that "there is no evidence in this case that the servicemen's failure to timely respond to Morgan's request for assistance was *at the direction* of Dayton Power & Light," thereby evidencing a business practice. See Mid-American, 1993 Ohio App. LEXIS 3036 at *7 (emphasis added). In Gayheart, the court similarly concluded that the plaintiff's claim did not concern a "practice" of the utility. See Gayheart, 98 Ohio App. 3d at 229. In Harris, the plaintiff's claim related to the utility's equipment. The plaintiff alleged that the utility was negligent in connecting a neutral tap. See

³ 1993 Ohio App. LEXIS 3036, Case No. 13763 (Montgomery Cty., June 15, 1993).

⁴ 98 Ohio App. 3d 220 (Greene Cty. 1994).

⁵ 1995 Ohio App. LEXIS 3381, Case No. 94 C.A. 84 (Mahoning Cty., Aug. 17, 1995).

Harris, 1995 Ohio App. LEXIS 3381 at *4. Consequently, these three cases involved *isolated individual acts of negligence* outside the jurisdiction of PUCO and not a business practice of the public utility.

Contrary to the claims in Mid-American, Gayheart, and Harris, Allstate's claim in this action relates to a business practice of CEI; specifically, its practice for intaking, categorizing, and responding to customer service calls. In accordance with CEI's business practice, the subject call was properly coded as tree limb on a wire with the power on and routed to forestry. See Appellee's Supp. at 42-43. CEI's then Director of FirstEnergy Contact Centers, John Falvy, testified that the call was handled appropriately. Id. at 38. Indeed, there was no evidence that any action or inaction of CEI personnel was inconsistent with CEI's business practice for handling customer calls. Based on the holdings of Mid-American, Gayheart, and Harris, these undisputed facts place Allstate's claim within the exclusive jurisdiction of PUCO.

F. The Practical Consequences Of A Decision In Favor Of Allstate Would Have A Significant Impact Upon All Public Utilities And Their Customers.

This appeal is *not* an attempt by CEI to obtain "immunity" from all claims relating to the manner by which it responds to customer calls, as Allstate suggests. See Merit Brief of Appellant at 16-17. This appeal has nothing to do with immunity. In fact, CEI recognizes that there are circumstances where a pure common law tort claim, based on an isolated act of negligence, can arise from a public utility's response to a customer call. Indeed, more than 15 years ago the Eighth District Court of Appeals issued a ruling dictating when CEI had to respond immediately. See, e.g., Wilburn v. Cleveland Electric Illuminating Co., 74 Ohio App. 3d 401 (Cuyahoga Cty. 1991). In Wilburn, an electrical wire was ripped to the ground by a violent storm. The plaintiff was injured when she came in contact with the live wire. The plaintiff's

expert opined that the utility violated the National Electrical Safety Code (“NESC”) by failing to respond to the calls concerning a life-threatening emergency prior to the accident. In addition, the plaintiff adduced evidence that the utility did not comply with its own internal procedures by restoring power prior to safeguarding the area surrounding a downed wire. Based on these facts, the Eighth District Court of Appeals determined that the plaintiff stated a pure common law tort claim. These facts are far afield from the facts underlying the instant action.

Here, as discussed *infra.*, there was no evidence that CEI violated any standard of care, NESC or otherwise, or acted inconsistent with its own practices and procedures. In addition, this was not a “wire down” case that required CEI to take immediate affirmative action. This case involved Allstate’s insured’s tree limb on a wire. There was no wire down posing a danger to anyone. In fact, Ms. Harris still had power on in her home and her lights were not flickering. This information was the basis for the lower priority given to the call.

If the wire had been down, based on the Wilburn case and CEI’s practices and procedures, CEI would have and should have responded immediately. Had Ms. Harris’ light been flickering that also would have prompted an immediate response, not because of Wilburn, but because of CEI’s practices and procedures for prioritizing such calls. Under these circumstances, CEI had no affirmative and immediate duty to respond in order to trim Ms. Harris’ tree or to reattach her home’s electrical equipment. A tree trimmer could have been called to trim the trees. An electrician knowledgeable of the NEC, which governs a home’s electrical equipment, could have been called to reattach her electrical equipment. CEI is governed by the NESC, *not* by the NEC.

Rather, this appeal concerns the critical issue of jurisdiction; specifically, the circumstances under which PUCO has exclusive jurisdiction over a dispute involving a public

utility. Because PUCO has the industry expertise, staff, and resources for properly adjudicating such disputes, the Ohio General Assembly has conferred exclusive jurisdiction to PUCO over a broad range of issues concerning public utilities, including all issues relating to service. See Ohio Revised Code § 4905.26. Promoting PUCO's exclusive jurisdiction is important for a few reasons. PUCO is the entity designated to regulate public utilities. As such, PUCO has the expertise and industry knowledge to appreciate the impact of its rulings upon Ohio's *entire* public utility industry, including the rates charged to Ohio consumers. In addition, PUCO, as opposed to judges and jurors, can ensure that decisions impacting the public utility industry are uniform and consistent allowing public utilities to conform their business practices accordingly.

Unlike Wilburn and the cases relied on by Allstate, this action does not involve an isolated act of negligence. Allstate's claim is aimed directly at the service related practices of CEI. Allstate's claim is that CEI did not *respond* quickly enough to prevent the fire --- a fire it did not cause. CEI, as well as other public utilities, receive thousands of customer service calls each year. In Allstate's view, a utility must drop everything and respond immediately whenever a customer calls to report that one of her tree limbs is touching a line. Allstate would have these calls treated the same as if they were wire down calls.

Such a finding would have far-reaching consequences and significantly impact the way in which CEI and other public utilities conduct business. Such a finding would also endanger the general public. If CEI cannot prioritize calls and must treat wire down calls the same as tree limb on wire calls, then it will not be able to immediately respond to the more serious wire down calls before it trims a customer's trees or reattaches a customer's equipment with which it may or may not be familiar and perform work pursuant to the NEC --- a code that does not concern the actions of a public utility.

Under CEI's business practice, the subject customer service calls would receive the same treatment today as they did the day of the fire. Thus, CEI would have little choice but to revise its practices and procedures for processing calls or else face the risk of being held liable for any damages that occur whenever a customer call (whatever its nature) is not responded to immediately.

How CEI or any public utility classifies customer service calls and how fast it needs to respond is within the expertise of PUCO. PUCO, and not a court or jury, should be the entity responsible for determining whether CEI's service related business practices need to be changed. Certainly, an insurance company, such as Allstate, is in no position to dictate to a public utility how it should conduct its business. Here, Allstate could have eliminated its risk by refusing to insure based on the insured's tree hanging over her garage (as Allstate has done many times) or required tree trimming before issuing the contract of insurance. It chose to undertake that risk for a premium. If Allstate has a problem with CEI's business practice for processing customer calls, it should be addressed by PUCO. Consequently, a finding that PUCO has exclusive jurisdiction over this dispute is consistent with Ohio's statutory and governmental framework for regulating public utilities and assures that an appropriate body analyzes the impact on the utility and its customers of requiring changes to its business practice.

G. Ohio Revised Code Section 4905.26 and Ohio Case Law Are Adequate To Resolve The Jurisdictional Issue Before This Court.

Ohio Revised Section 4905.26 and the litany of Ohio case law addressing that statute provide an appropriate framework within which to determine whether PUCO has exclusive jurisdiction over disputes involving public utilities. Adopting the two-part test articulated by the Eighth District Court of Appeals in Pacific Indemnity Insurance Co. v. Illuminating Co. (an unreported case), as suggested by Allstate, is not necessary to clarify the jurisdictional issue for

Ohio courts. Nonetheless, even if the Court were to apply that test to the instant action, for the reasons stated *infra.*, the result would still support the Eighth District's decision that PUCO has exclusive jurisdiction.

First, PUCO's administrative expertise is required to resolve the issue in dispute (i.e., whether any changes should be made to CEI's practices and procedures for processing customer service calls). Any such changes would impact CEI's business and the rates it charges its customers. PUCO has the industry expertise to assess these issues and make the appropriate determinations. Second, the act complained of constitutes a "practice" normally authorized by the utility. It is undisputed that CEI acted in accordance with its practices and procedures for intaking, categorizing, and responding to customer service calls.

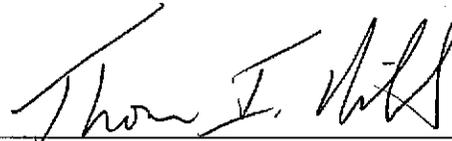
IV. CONCLUSION

CEI has respect for and recognizes the need for insurance companies. However, CEI does not believe that the interests of an insurance company supersedes the interests of public utilities and the rates charged to their customers. Allstate is simply seeking to recover the money it was contractually obligated to pay on a risk it chose to insure. Allstate, without any expert opinion or legal standard, challenges CEI's policies and procedures for intaking, categorizing, and responding to customer service calls. CEI handled the subject calls in accordance with these policies and procedures. Allstate alleges that CEI should have responded more quickly to the calls of its insured. This allegation might satisfy Allstate in this *one* dispute, but it ignores the impact of revised practices or procedures on the public utility and their customers.

Under Section 4905.26 and applicable Ohio case law, Allstate's claim falls within the exclusive jurisdiction of PUCO --- the governmental entity designated by Ohio's General Assembly to regulate Ohio's public utilities regarding "practices affecting or relating to any

service furnished by the public utility.” Only PUCO has the requisite expertise to determine whether CEI’s practices and procedures should be changed and the impact on the utility and rates charged to customers as a result of any change. Because Allstate’s claim relates to a business practice of CEI, this Court should affirm the Eighth District’s decision and find that the trial court did not have subject matter jurisdiction over this dispute.

Respectfully submitted,



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APPENDIX

Cross References

Telephone company applying for rate increase, exemption from provisions unavailable, 4927.04

Library References

Telecommunications ⇌ 76.
WESTLAW Topic No. 372.
C.J.S. Telegraphs, Telephones, Radio, and Television §§ 20, 82.

OJur 3d: 88, Telecommunications § 59
Am Jur 2d: 64, Public Utilities § 43, 44

Notes of Decisions and Opinions**In general 1****1. In general**

Public utilities commission was authorized to consider the operating authority of an

appellant incident to the inquiry conducted pursuant to a tariff complaint. *Duff Truck Line, Inc. v. Public Utilities Commission (Ohio 1976)* 46 Ohio St.2d 186, 348 N.E.2d 127, 75 O.O.2d 229.

REGULATORY PROVISIONS**4905.26 Complaints as to service; hearing**

Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered² charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by said public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof, and shall publish notice thereof in a newspaper of general circulation in each county in which complaint has arisen. Such notice shall be served and publication made not less than fifteen days nor more than thirty days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time.

The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

Upon the filing of a complaint by one hundred subscribers or five per cent of the subscribers to any telephone exchange whichever number be smaller, or by the legislative authority of any municipal corporation served by such

²Prior and current versions differ; although no amendment to this punctuation was indicated in 1982 S 378, "rendered" appeared as "rendered," in 125 v 613 and 1953 H 1.

telephone company that any regulation, measurement, standard of service, or practice affecting or relating to any service furnished by said telephone company, or in connection with such service is, or will be, in any respect unreasonable, unjust, discriminatory or preferential, or that any service is, or will be inadequate or cannot be obtained, the public utilities commission shall fix a time for the hearing of such complaint.

The hearing provided for in the next preceding paragraph shall be held in the county wherein resides the majority of the signers of such complaint, or wherein is located such municipal corporation. Notice of the date, time of day, and location of the hearing shall be served upon the telephone company complained of, upon each municipal corporation served by said telephone company in the county or counties affected, and shall be published for not less than three consecutive weeks in a newspaper of general circulation in the county or counties affected.

Such hearing shall be held not less than fifteen nor more than thirty days after the third publication of such notice.

(1982 S 378, eff. 1-11-83; 125 v 613; 1953 H 1; GC 614-21)

Historical and Statutory Notes

Pre-1953 H 1 Amendments: 102 v 556,
§ 23

Comparative Laws

Idaho—I.C. § 61-612 et seq.
Ind.—West's A.I.C. 8-1-2-54.
Ky.—Baldwin's KRS 278.260.

Mich.—M.C.L.A. § 460.58.
N.Y.—McKinney's Public Service Law § 43.
Ore.—ORS 756.500 et seq.

Cross References

Telephone company applying for rate increase, exemption from provisions unavailable, 4927.04

Utilities required to respond to inquiries of the consumers' counsel concerning rates or service, failure to respond, 4911.19

Ohio Administrative Code References

Complaint proceedings, OAC 4901-9-01
Passenger tariffs and time schedules for motor carriers, complaints, OAC 4901:2-11-23
Practice before the commission, OAC 4901-1-08

Procedure on motor carrier cases, complaints, OAC 4901-5-12

Library References

Public Utilities ⇌ 161.
WESTLAW Topic No. 317A.
C.J.S. Public Utilities §§ 44, 53, 77, 78.

Baldwin's Ohio Legal Forms, Text 2919(4)
Gotherman & Babbit, Ohio Municipal Law, Text 21.06(B)
Whiteside, Ohio Appellate Practice, Text 9.25(F)

OJur 3d: 40, Energy § 76; 78, Public Utilities § 74, 165, 166, 174, 199; 88, Telecommunications § 54, 60; 92, Water § 323
Am Jur 2d: 64, Public Utilities § 266 to 268, 277

Chapter 4901:1-10

Electric Service and Safety Standards

Promulgated pursuant to RC 111.15

4901:1-10-01	Definitions
4901:1-10-02	Purpose and scope
4901:1-10-03	Retention of records
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4901:1-10-05	Metering
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4901:1-10-07	Outage reports
4901:1-10-08	Emergency plan(s); annual emergency contact report and annual review of emergency plan; critical customers; emergency exercise; and coordination
4901:1-10-09	Minimum customer service levels
4901:1-10-10	Distribution system reliability
4901:1-10-11	Distribution circuit performance
4901:1-10-12	Provision of customer rights and obligations
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4901:1-10-15	Reasons for denial or disconnection of nonresidential service
4901:1-10-16	Notice of disconnection of nonresidential service
4901:1-10-17	Payment schedule and disconnection procedures for nonpayment by nonresidential customers
4901:1-10-18	Reconnection of nonresidential service
4901:1-10-19	Delinquent residential bills
4901:1-10-20	Fraudulent practice, tampering, and theft of service
4901:1-10-21	Customer complaints and complaint-handling procedures
4901:1-10-22	EDU customer billing and payments
4901:1-10-23	Billing adjustments
4901:1-10-24	Consumer safeguards and information
4901:1-10-25	Notice of disconnection to tenants and landlords
4901:1-10-26	Annual system improvement plan report
4901:1-10-27	Inspection, maintenance, repair, and replacement of transmission and distribution facilities (circuits and equipment)
4901:1-10-28	Net metering
4901:1-10-29	Coordination with CRES providers
4901:1-10-30	Failures to comply with the rules or commission orders
4901:1-10-31	Environmental disclosure
4901:1-10-32	Cooperation with certified governmental aggregators
4901:1-10-33	Consolidated billing requirements

CODE OF FEDERAL REGULATIONS

- 7 CFR 1710, Rural electrification loan program; general and pre-loan policies and procedures
- 7 CFR 1724, Rural electrification; electric system design policies and procedures
- 7 CFR 1726, Rural electrification loan program; electric system construction policies and procedures
- 7 CFR 1794, Rural utilities; environmental policies and procedures for electric and telephone borrowers
- 10 CFR 2, Nuclear Regulatory Commission; rules of practice for domestic licensing proceedings and issuance of orders

- 10 CFR 50, Domestic licensing of production and utilization facilities
- 10 CFR 171, Nuclear Regulatory Commission; annual fees for licenses
- 10 CFR 504, Appendix I, Existing powerplants; computation of real cost of capital
- 18 CFR 4, Federal Energy Regulatory Commission; licenses, permits, exemptions, and determination of project costs
- 18 CFR 32, Federal Energy Regulatory Commission; interconnection of facilities
- 18 CFR 35, Federal Energy Regulatory Commission; filing of rate schedules for transmission or sale of electric energy
- 18 CFR 46, Filing requirements for public utilities and persons holding interlocking positions
- 18 CFR 101, Uniform system of accounts for public utilities and licensees subject to federal power act
- 18 CFR 141, Federal Energy Regulatory Commission; statements and reports
- 18 CFR 292, Small power production and cogeneration
- 36 CFR 251.54, Application for use of land under jurisdiction of forest service for pipeline or electric transmission line
- 40 CFR 52.724, Environmental Protection Agency; sulfur dioxide control strategy

4901:1-10-01 Definitions

As used in this chapter:

- (A) "Applicant" means a person who requests or makes application for service.
- (B) "Chief of the public interest center" means the chief of the public interest center of the commission's consumer services department.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Consolidated billing" means that a customer receives a single bill for electric services provided during a billing period for both EDU and CRES provider services.
- (E) "Consumer" means any person who receives service from an electric distribution company or electric service company.
- (F) "CRES provider" means a provider of competitive retail electric service.
- (G) "Critical customer" means any customer or consumer on a medical or life-support system who has provided appropriate documentation to the EDU that an interruption of service would be immediately life-threatening.
- (H) "Customer" means any person who has an agreement, by contract and/or tariff with an EDU or by contract with an electric service company, to receive service.

(I) Critical customers. Each EDU shall:

(1) Maintain and annually verify and update its list of critical customers;

(2) Provide critical customers, within ten business days after acceptance of their application, with a written statement of their options and responsibilities during outages, i.e., the need for backup generators, an alternative power source, or evacuation to another location; and

(3) Annually notify customers of its critical customer program by bill insert or other notice.

(J) Emergency exercise. Every three years, each EDU shall conduct a comprehensive emergency exercise to test and evaluate major components of its emergency plan and shall invite a cross-section of the following, or their representatives, to the exercise:

- (1) Mayors and other elected officials;
- (2) County/regional emergency management directors;
- (3) Fire and police departments;
- (4) Community organizations like the Red Cross; and
- (5) Commission's outage coordinator.

When an EDU implements any element of its emergency plan set forth in paragraph (B) of this rule in response to a major storm (or comparable term), natural disaster, or outage, such company may request the commission waive the testing and evaluation of the emergency plan for the applicable period. To request a waiver the EDU must submit a report to the commission's outage coordinator detailing its actions, what part of the emergency exercise the implemented plan replaces, why it is an appropriate replacement for the part of the plan, including the EDU's interactions with the persons listed in this paragraph and whether the implemented plan indicates that the company's response to the emergency was sufficient and may request that the actual use of its emergency plan meets this rule's requirement for an emergency exercise. If the commission's outage coordinator fails to act upon the company's request to find that the use of its emergency plan meets the requirements for an emergency exercise within sixty days after such request is submitted to the outage coordinator, then the company shall be considered to have exercised its emergency plan in accordance with this paragraph.

(K) Coordination. Each EDU shall coordinate the implementation of its emergency plan, to the extent that such EDU would rely on or require information/assistance during an emergency, with the following:

- (1) Any regional/state entities with authority, ownership, or control over electric transmission lines;
- (2) Any generation provider connected to the EDU's system; and
- (3) Any other EDU or transmission owner with facilities connected to the EDU.

HISTORY: 2003-04 OMR 1688 (A), eff. 1-1-04

2000-2001 OMR 298 (A), eff. 9-18-00; 1998-99 OMR 1647 (E), eff. 7-1-99

RC 119.032 rule review date(s): 11-30-07; 7-30-03; 9-30-02

CROSS REFERENCES

RC 4905.04, Power to regulate public utilities and railroads
RC 4905.06, General supervision; safety inspection of gas pipelines

RC 4905.22, Service and facilities required; unreasonable charge prohibited

RC 4905.28, Standards of measurement

RC 4928.06, Effectuation of state policy; rules; monitoring and evaluation of service; reports; determination of effective competition; authority of commission

RC 4928.11, Minimum service quality, safety, and reliability requirements for noncompetitive retail electric services

4901:1-10-09 Minimum customer service levels

(A) Service turn on and upgrades. On a calendar monthly basis, each EDU shall complete the installation of new service or upgrade of service as follows:

(1) Ninety-nine per cent of new service installations requiring no construction of electric facilities shall:

(a) Be completed within three business days after the EDU has been notified the customer's service location is ready for service and all necessary tariff and regulatory requirements have been met;

(b) Be completed by the requested installation date, when an applicant requests an installation date more than three business days after the customer's service location is ready for service and all necessary tariff requirements have been met.

(2) Ninety per cent of new service installations requiring construction of electric facilities, including the setting of the meter and ninety per cent of service upgrades, shall:

(a) Be completed within ten business days after the EDU has been notified the customer's service location is ready for service and all necessary tariff and regulatory requirements have been met;

(b) Be completed by the requested installation date, when an applicant or customer requests an installation date more than ten business days after the customer's service location is ready for service and all necessary tariff requirements have been met. Paragraph (A)(2) of this rule shall not apply to primary line extensions.

(3) If an applicant/customer complies with all pertinent tariff requirements and the EDU cannot complete the requested service installation or service upgrade as set forth in paragraph (A)(1)(a) or (A)(1)(b) or paragraph (A)(2)(a) or (A)(2)(b) of this rule, the EDU shall promptly notify the applicant/customer of the delay, the reasons for the delay, the steps being taken to complete the work, and the probable completion date. If a rescheduled completion date cannot be met, the customer shall be promptly notified. If the rescheduled completion date is delayed more than two business days, written notification shall be given to the customer including the reason(s) for the delay, the steps being taken to complete the work and the new rescheduled completion date. This notification process shall be repeated as necessary. Each subsequent missed completion date shall count as a missed service installation or upgrade pursuant to paragraph (A)(1) or (A)(2) of this rule.

(4) If the EDU fails to complete the requested service installation or upgrade as set forth in paragraph (A)(1) or (A)(2) of this rule, as a result of a military action, war, insurrection, riot or strike or a failure by the customer or customer's agent to gain access to the premises when necessary,

such failure shall not be included in the monthly percentage calculation for this rule. Each EDU must justify and document in its records each instance where it applied any of the exceptions listed in this paragraph.

(B) Telephone response. On a calendar monthly basis, each EDU's average answer time for customer service calls shall not exceed sixty seconds. An EDU shall set its queue to minimize the number of disconnected calls and busy signals.

(1) As used in this paragraph, "answer" means the service representative or automated system is ready to render assistance and/or accept the information necessary to process the call.

(2) Answer time shall be measured from the first ring at the EDU or at the point the customer begins to wait in queue, whichever comes first.

(3) When an EDU utilizes a menu driven, automated, interactive answering system (referred to as the system), the initial recorded message presented by the system to the customer shall only identify the company and the general options available to the customer, including the option of being transferred to a live attendant. At any time during the call, the customer shall be transferred to a live attendant if the customer fails to interact with the system for a period of ten seconds following any prompt.

(4) Customers shall not be delayed from reaching the queue by any promotional or merchandising material not selected by the customer.

(C) Reporting requirements.

(1) When an EDU does not meet any minimum service level set forth in paragraph (A) or (B) of this rule for any two months within any twelve-month period, the EDU shall notify the director of the consumer services department or the director's designee in writing within thirty days after such failure. The notification shall include any factors that contributed to such failure as well as any remedial action taken or planned to be taken or rationale for not taking any remedial action. Any failure to report the lack of compliance with the minimum service levels set forth in paragraphs (A) and/or (B) of this rule constitutes a violation of this rule.

(2) Performance data during a "major storm" or comparable term as such term is used by the EDU in its emergency plan shall be excluded from the calculation of monthly minimum service values pursuant to paragraphs (A) and (B) of this rule. The EDU shall submit to the director of the consumer services department or the director's designee a report that includes any such performance data which is being excluded from the calculations of monthly minimum service values due to a "major storm". If after reviewing this report, the director of the consumer services department or the director's designee disagrees with the exclusion of such "major storm" or comparable information from the performance data calculated pursuant to paragraphs (A) and (B) of this rule, staff and/or the EDU may apply to the commission for a hearing within forty-five days after submission of the company's proposal. Staff and the EDU shall file a written report and/or recommendations and submit evidence on such performance data at the hearing.

(3) Each electric distribution company shall maintain records sufficient to demonstrate compliance with this rule,

for a period of not less than three years and shall provide such records to the commission staff upon request.

HISTORY: 2003-04 OMR 1690 (A), eff. 1-1-04
2000-2001 OMR 299 (A), eff. 9-18-00; 1998-99 OMR 1648 (E), eff. 7-1-99

RC 119.032 rule review date(s): 11-30-07; 7-30-03; 9-30-02

CROSS REFERENCES

RC 4905.04, Power to regulate public utilities and railroads
RC 4905.06, General supervision; safety inspection of gas pipelines
RC 4905.22, Service and facilities required; unreasonable charge prohibited

RC 4905.28, Standards of measurement

RC 4928.06, Effectuation of state policy; rules; monitoring and evaluation of service; reports; determination of effective competition; authority of commission

RC 4928.11, Minimum service, quality, safety, and reliability requirements for noncompetitive retail electric services

4901:1-10-10 Distribution system reliability

(A) General. This rule sets forth a basis for measuring reliability of each EDU's distribution system.

(B) Service reliability indices and performance targets.

(1) The service reliability indices are as follows:

"CAIDI" or the customer average interruption duration index, represents the average interruption duration or average time to restore service per interrupted customer. CAIDI is expressed by the following formula:

$$\text{CAIDI} = \frac{\text{Sum of customer interruption durations}}{\text{Total number of customer interruptions}}$$

"SAIDI" or the system average interruption duration index, represents the average time each customer is interrupted. SAIDI is expressed by the following formula:

$$\text{SAIDI} = \frac{\text{Sum of customer interruption durations}}{\text{Total number of customers served}}$$

"SAIFI" or the system average interruption frequency index, represents the average number of interruptions per customer. SAIFI is expressed by the following formula:

$$\text{SAIFI} = \frac{\text{Total number of customer interruptions}}{\text{Total number of customers served}}$$

"ASAI", or the average system availability index, is the ratio of time the system provided service to each customer. ASAI is expressed by the following formula:

$$\text{ASAI} = \frac{\text{Total customer hours service was available}}{\text{Total customer hours service was demanded}}$$

(2) Each EDU shall submit performance targets and supporting justification for each service reliability index to the director of the consumer services department or the director's designee. An EDU may revise performance targets (starting with the next succeeding calendar year) by submitting such revisions and supporting justification for such revisions to the director of the consumer services department or the director's designee for review and acceptance. Performance targets should reflect historical system performance, system design, service area geography, and other relevant factors. If the company and director of the consumer services department or the director's designee cannot agree on any target, staff and/or the

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Merit Brief of Appellee The Cleveland Electric Illuminating Company was served this 27th day of September, 2007, by First Class U.S.

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