

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Lawrence A. Boros,)	
)	
Complainant,)	
)	
v.)	Case No. 05-1281-EL-CSS
)	
The Cleveland Electric)	
Illuminating Company,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the complaint, the evidence of record, the arguments of the parties, and the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Lawrence A. Boros, 5883 Doorwood Drive, Mentor, Ohio 44060, on his own behalf.

Kathy J. Kolich, Senior Attorney, and Mark A. Hayden, Attorney, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44309, on behalf of the Cleveland Electric Illuminating Company.

OPINION:

I. HISTORY OF THE PROCEEDINGS

On October 17, 2005, Lawrence A. Boros (Boros) filed a complaint against the Cleveland Electric Illuminating Company (CEI), requesting, *inter alia*, that CEI be required to make available full-cutoff street lighting and optional shielding on high intensity discharge (HID) floodlights, at fair and reasonable costs, under existing or amended tariffs.

On November 7, 2005, CEI filed both an answer and a motion to dismiss. In answer to the complaint, CEI denies any violation of its tariff, the laws of the state of Ohio, or accepted standards and practices in the electric utility industry. CEI, in its motion to dismiss the complaint, argues that Mr. Boros lacked the necessary standing to bring this complaint and that, as to the installation of shields on floodlights, the Commission lacks the jurisdiction to hear the complaint. Mr. Boros responded to the motion to dismiss, on November 25, 2005, asserting that the matters raised are issues of public concern, that he is

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personally impacted by the existing counterproductive lighting, and that CEI is not providing adequate service to the public.

By entry dated January 11, 2006, the attorney examiner denied the motion to dismiss, finding that the Commission has jurisdiction to hear a matter brought by a complainant who is directly affected by the alleged unreasonable activity and that the extent to which the complainant may be directly affected by CEI's activities cannot be determined from the pleadings. Further, with regard to the Commission's jurisdiction over private outdoor lighting, the examiner found that she could not conclude that the Commission had no such jurisdiction, as CEI has a tariff applicable to such lighting. Therefore, the examiner denied the motion to dismiss.

Following lengthy, though unsuccessful, efforts to resolve this complaint through settlement, a hearing was held on November 28, 2006. Mr. Boros offered his own testimony and testimony of an expert in the area of lighting. CEI provided testimony of two experts, relating to CEI's lighting schedules and to safety and engineering issues. Briefs were filed by both parties on January 17, 2007.

II. SUMMARY OF APPLICABLE LAW

CEI is an electric light company, as defined in Section 4905.03(A)(4), Revised Code, and a public utility, by virtue of Section 4905.02, Revised Code. CEI is subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code.

Section 4905.26, Revised Code, requires, among other things, that the Commission set for hearing a complaint against a public utility whenever there are reasonable grounds to find that:

[A]ny rate, fare, charge, . . . or service rendered, charged, [or] demanded . . . is in any respect unjust, unreasonable, . . . or in violation of law, . . . or that any . . . practice . . . relating to any service . . . is, or will be, . . . insufficient, . . . or that any service is, or will be, inadequate . . .

In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189 (1966).

The statutory obligation of a public utility relative to the service and facilities it must provide is set forth in Section 4905.22, Revised Code, which states that:

Every utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are

adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

III. DISCUSSION

A. Standing to Bring the Complaint

Before considering the merits of the claim, we must address the question of whether or not the complainant had standing to bring this action. As noted above, one of the grounds for CEI's motion to dismiss the complaint was that Mr. Boros, as a person who was not attempting to obtain the lighting in question, did not have standing to complain that it was not offered by CEI. Refusing to dismiss the complaint prior to hearing, the attorney examiner pointed out that the Commission has previously held that a complainant has standing to bring a complaint where he is an Ohio customer or consumer of services provided by an Ohio utility and where he is directly affected by the alleged unreasonable activity. *In the Matter of the Complaints of S.G. Foods, Inc., et al. v. The Cleveland Electric Illuminating Company, et al.*, Case No. 04-28-EL-CSS, et al., Entry (March 7, 2006), 22-25; *In the Matter of the Complaint of National Electrical Contractors Association, Ohio Conference, et al. v. Ohio Edison Company, et al.*, Case No. 98-1400-EL-CSS, Entry (January 29, 1999). Upon a review of the pleadings, the examiner concluded that she could not determine the extent to which Mr. Boros might be directly affected by the activities of CEI that he alleged were unreasonable. She therefore refused, at that time, to dismiss the complaint on the basis of a lack of standing.

In the hearing phase of this proceeding, Mr. Boros presented evidence that CEI's lighting has a direct effect on him. He recounted a personal experience in which he almost hit a boy on a skateboard, as a result of the glare from unshielded street lighting (Boros Ex. 1, at 3). With regard to private floodlights, Mr. Boros pointed out that he has endured the glare from these lights for many years, causing him to have difficulty seeing the curb while driving (Boros Ex. 1, at 7). CEI did not dispute Mr. Boros's position as an Ohio customer or consumer.

We find that Mr. Boros is an Ohio customer of CEI and is directly affected by CEI's lighting tariffs. We would also note that, as to the private lighting, Mr. Boros is part of a customer class to which the tariffed service is available. Thus, we find that Mr. Boros has legal standing to bring this action.

B. Merits of the Complaint

1. Mr. Boros's Position

In his post-hearing brief, Mr. Boros states that his complaint "asks for two very simple and modest remedies" by CEL.¹ Specifically, he first requests that "the GE Salem Model SEMT residential HID street light fixtures (or other similar cutoff versions of residential post top street lighting fixtures) be made available at a fair and reasonable cost under existing or amended tariffs." His second request is that "optional shielding on utility-supplied un-metered HID floodlights be made available at a fair and reasonable cost under existing or amended tariffs." (Boros Br. at 2.)

Mr. Boros indicated that he is a registered professional engineer in Ohio, with educational background in the areas of electrical engineering and arc physics, and that his work experience includes various positions in fields related to lighting (Boros Ex. 1, at 2.) Mr. Boros supports his complaint on four general bases. First, he showed the negative effects of glare. He submitted evidence showing that unshielded exterior lighting, whether street lights or floodlights, is extremely bright and can create substantial glare. Mr. Boros asserts that the glare is caused by the diffraction and diffusion of light in the lenses and ocular media of viewers' eyes (Boros Br. at 3-4; Tr. at 15, 17, 20-23; Boros Ex. 1, at 4-6). Based on his personal driving experiences, Mr. Boros indicates that glare of this nature causes the risk of accidents (Boros Ex. 1 at 3, 7). Mr. Boros also presented the testimony of Mr. Terry McGowan, an expert in the lighting technology and design who holds a degree in electrical engineering and has substantial work experience in the areas of outdoor and roadway lighting. (Boros Ex. 8, at 2.) Mr. McGowan pointed out that the "principal purpose of roadway lighting is to produce quick, accurate, and comfortable visibility." Contrary to this goal, Mr. McGowan testified that glare can be disabling (that is, reducing visual performance and making it harder to see) and discomforting (that is, disturbing and uncomfortable). He also noted that people become more sensitive to glare as they age. According to him, intense light sources should be shielded so that light is directed only toward the place where it is needed, thereby avoiding glare and increasing efficiency. (Boros Ex. 8, at 5.)

Mr. Boros's second argument is that unshielded exterior lighting also results in light trespass (that is, the unwanted radiation of light onto adjacent property) and sky glow, which affects astronomers' view of the night sky (Boros Ex. 1, at 4-7; Tr. at 24-25). He points out that a large portion of the light from unshielded luminaires is radiated into the sky (Boros Ex. 1, at 7; Boros Ex. 8, at 5).

¹ Mr. Boros actually brought his complaint against "First Energy Corporation aka The Illuminating Company" and refers to both "First Energy" and CEL in his brief. The Commission notes that First Energy Corporation is not a utility and is not the provider of the services that are the subject of this complaint. Therefore, the Commission will treat this complaint as if it had been brought solely against the utility, the Cleveland Electric Illuminating Company.

The third area of concern for Mr. Boros is that certain local laws require the use of shielded lighting, which is unavailable through CEI. Specifically, he points out that the city of Mentor, Ohio, has recently passed a lighting ordinance, designed to reduce glare and light trespass caused by private lighting (Boros Ex. 1, at 3-4, 11-12). He explained that the unavailability of shielded lighting from CEI for properties in Mentor has made it impossible for Mentor residents to comply with the local ordinance while obtaining private lighting under CEI's tariff (Boros Ex. 1 at 8-11; Boros Exs. 3 through 7).

Mr. Boros and Mr. McGowan, testifying on Mr. Boros's behalf, make his fourth argument. They point out that shielded lighting is used in many locations, such as around interchanges on the Ohio turnpike (Tr. at 117-118) and in and around airports (Tr. at 45-46). Full-cutoff (that is, fully shielded) cobra head lights are already available from CEI, according to Mr. Boros (Tr. at 46).² Mr. McGowan indicated that some areas of the country use more cutoff lighting than does Ohio, noting that virtually all of the street lighting in California is shielded (Tr. 118, 119). He also stated that various other utilities are moving toward offering cutoff lighting options, such as Progress Energy, in North Carolina and Florida, and the Long Island Power Authority (Boros Ex. 8, at 3-4).

Mr. Boros provided a concise summary of his position. With regard to both street lighting and private outdoor lighting, he stated that the "luminaire options that are so far provided . . . do not include low glare cut-off post-top mounted luminaires. Therefore, by not providing an optional selection of low glare lighting covered by tariff, it can be said that [CEI] is not taking into account the needs of some of its customers and thereby affecting the safety and character of my nighttime environment." (Boros Ex. 1, at 12-14.)

2. CEI's Position

In response to these arguments, CEI points out that Mr. Boros does not allege any wrongdoing by CEI or any violation CEI's tariff. CEI argues that Mr. Boros failed to demonstrate that CEI's street lighting and private outdoor lighting services are unjust, unreasonable, or unlawful.³

With regard to the issue of glare and the risk of accidents, CEI submits that evidence of one close call does not prove that unshielded streetlights are unsafe. It also points out that other factors aggravated the situation, such as age, fatigue, inattention, and driver

² Note that, with regard to street lighting, it is the post top models that are at issue in this proceeding.

³ The Commission recognizes that, in addition to arguing that its services are not unreasonable, CEI also suggests that Mr. Boros did not argue that CEI's tariffs are unlawful, unjust, or unreasonable. CEI points out that Mr. Boros made such statements at various times, stating that lighting quality is at issue, and not tariffs. The Commission would note that, in making such statements, Mr. Boros also referred to the tariffs as if they merely set forth rates for service (Boros Ex. 1, at 12-14). The Commission believes that Mr. Boros, as a *pro se* complainant, should not be penalized in our analysis for an uninformed understanding of the nature and extent of material addressed in tariffs. Thus, we will not interpret his arguments in this literal sense. It is clear to us that the gist of his arguments is that the lighting options provided by CEI, as set forth in and governed by the applicable tariffs, are unreasonable.

error. CEI points out that the available lighting did allow Mr. Boros to see the skate boarder in time to avoid hitting him. (CEI Br. at 5-6; Boros Ex. 1, at 3; Tr. at 21, 42, 49-50, 53.) CEI's witnesses testified that they could not recall any situation in which glare from a CEI street light caused an accident of any kind. (Co. Ex. 1, at 6; Co. Ex. 2, at 3.)

CEI also posits that, because both the private outdoor lighting and the street lighting services are optional programs, it should not be required to offer shielded luminaires. As CEI states, nothing prevents a customer from purchasing and installing lighting options obtained from other sources and taking metered electric service from CEI. (CEI Br. at 7, 10.)

As to the street lighting, CEI notes that Mr. Boros presented no evidence to show that unshielded street lights are in violation of safety codes (CEI Br. at 5). As to private outdoor lighting, CEI asserts that Mr. Boros did not show that any other utility offers optional shielding for private outdoor floodlights or that any customer actually wishes to purchase such a product (CEI Br. at 9).

IV. SUMMARY AND CONCLUSION

The Commission recognizes that both the street lighting, under Rate 43 of its tariff, P.U.C.O. No. 13, and private outdoor lighting, under Rate 42 of its tariff, are optional programs. Customers are not required to purchase those services. However, Section 4905.22, Revised Code, provides that a public utility shall furnish necessary and adequate service. Section 4905.26, Revised Code, allows for the filing of a complaint alleging that any practice relating to a service furnished by a public utility is unreasonable or insufficient. Once CEI offers optional street lighting and private outdoor lighting services, its practices relating to those services must therefore be reasonable and sufficient. As discussed above, Mr. Boros presented substantial evidence showing that unshielded street lights and private outdoor lights cause glare, as well as other problems. Although the Commission is not opining as to the safety of unshielded luminaires, we do, therefore, find that, if a company chooses to offer street lighting and private outdoor lighting services, then it is an unreasonable and insufficient practice not also to offer its customers the option of shielded luminaires as well as unshielded ones.

We find that, as long as CEI offers these services, it should also make available full-cutoff (that is, shielded) luminaires under Rate 42 and Rate 43 of its tariff. CEI is directed to make appropriate proposed modifications to its tariff and to file that proposal in this docket within 120 days. The revised tariff should be designed such that customers choosing the option of shielded luminaires under these rates will compensate CEI for the cost of providing that option.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) CEI is a public utility and an electric light company as defined in Sections 4905.02 and 4905.03(A)(4), Revised Code, and is, therefore, subject to the jurisdiction of the Commission.
- (2) On October 17, 2005, Lawrence Boros filed a complaint against the Cleveland Electric Illuminating Company, alleging that CEI should be required to provide full-cutoff street lighting and optional shielding on HID floodlights, at fair and reasonable cost, under existing or amended tariffs.
- (3) On November 7, 2005, CEI filed an answer to the complaint, denying many of the claims.
- (4) On November 28, 2006, a hearing on this matter was held at the offices of the Commission.
- (5) On January 17, 2007, the parties filed post-hearing briefs.
- (6) Mr. Boros has standing to bring this action.
- (7) In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189 (1966).
- (8) Based on the evidence presented, the Commission finds that, if a company chooses to offer street lighting and private outdoor lighting services, then it is an unreasonable and insufficient practice for it not to offer shielded, as well as unshielded, luminaires.

ORDER:

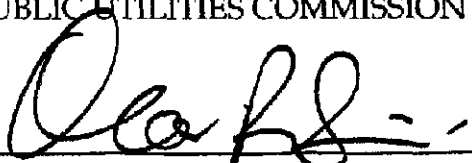
It is, therefore,

ORDERED, That the complaint be granted. It is, further,

ORDERED, That CEI file proposed tariff modifications, as set forth in this opinion and order. It is, further,

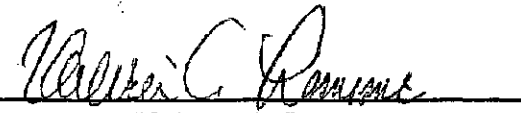
ORDERED, That a copy of this opinion and order be served upon all parties of record.

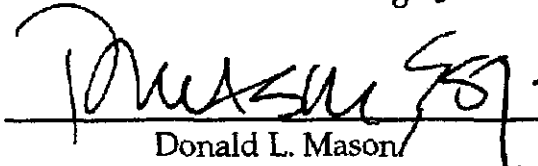
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Renee J. Jenkins
Secretary