

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.)	

ENTRY ON REHEARING

The Commission finds:

- (1) On October 17, 2005, Lawrence A. Boros (Complainant) of Mentor, Ohio, filed a complaint against the Cleveland Electric Illuminating Company (CEI), requesting, *inter alia*, that CEI be required to provide full cutoff street lighting and optional shielding on outdoor floodlights at fair and reasonable costs under existing or amended tariffs.
- (2) On April 28, 2007, the Commission issued its Opinion and Order (Order) in this proceeding, finding that Mr. Boros had standing to bring this action and that, if CEI 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, luminaries.
- (3) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (4) On May 25, 2007, CEI filed an application for rehearing of the Commission's Order. On June 6, 2007, Mr. Boros filed a response to CEI's application. On June 13, 2007, the Commission granted the application for rehearing in order to consider further those matters raised by CEI.

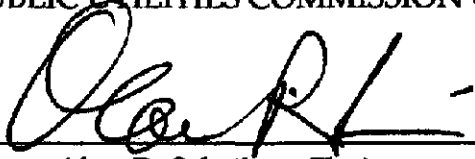
- (5) On August 14, 2007, to comport with the Commission's Order, the FirstEnergy operating companies filed applications, in Case Nos. 07-915-EL-ATA (Ohio Edison Company), 07-916-EL-ATA (CEI), and 07-917-EL-ATA (Toledo Edison Company), proposing to modify their existing outdoor lighting and street lighting schedules to include additional optional shielded luminaries. By Finding and Order issued on April 23, 2008, in these cases, the Commission approved proposed revised tariffs, with certain modifications, finding that the tariffs, as modified, are consistent with the Commission's Order.
- (6) CEI's application for rehearing sets forth two alleged errors. First, CEI submits that the Commission's finding that the Complainant possesses the standing necessary to maintain his cause of action regarding street lighting is contrary to law. Second, CEI asserts that the Commission's finding that the CEI street lighting program is unreasonable and insufficient because it does not include a shielded luminaire option is manifestly against the weight of the evidence. CEI asks that the Commission reconsider its order as it relates to the street lighting program and find either that the program is reasonable and sufficient or reverse the order as moot in light of a current CEI plan to offer shielded post-top lighting to governmental entities.
- (7) The Commission finds that, although there is a valid issue of whether or not Mr. Boros had sufficient standing to raise the issue of the reasonableness of CEI's governmental street lighting tariff, the application for rehearing is moot in light of CEI's current tariffs that offer optional shielded outdoor lighting and street lighting. Accordingly, CEI's application for rehearing should be denied as moot.


It is, therefore,

ORDERED, That CEI's application for rehearing is denied as moot. It is, further,

ORDERED, That copies of this entry on rehearing be served upon parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Paul A. Centolella



Ronda Hartman Fergus *per concurrence*

Valerie A. Lemmie


Cheryl L. Roberto

RRG:ct

Entered in the Journal

JUL 08 2009

Renee J. Jenkins
Secretary

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Case No. 05-1281-EL-CSS

CONCURRING OPINION OF COMMISSIONER PAUL A. CENTOLELLA

I concur in the result of today's ruling. However, I would go further to deny the Company's arguments regarding standing on substantive grounds.

The decision to grant standing rests within the administrative discretion of the Commission. Where, as in this case, a consumer brings a credible complaint addressing broad concerns affecting the public interest, there are no indications of collusion between the complaining and responding parties, and there are no essential third parties whose legal rights may be compromised by the specific relief requested, the Commission should liberally grant standing. This Commission has an affirmative obligation to protect the public interest and ensure that service is not unjust, unreasonable, insufficient or inadequate. Sections 4905.22 and 4905.26, Ohio Revised Code. Our ability to carry out that responsibility is advanced when members of the public bring significant concerns to our attention. Mr. Boros should be commended for raising valid environmental and public safety concerns and effectively participating in this proceeding.



Paul A. Centolella, Commissioner

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ENTRY

CONCURRING OPINION OF COMMISSIONER RONDA HARTMAN FERGUS

I concur in the result of today's ruling, since we are finding that CEI's subsequent offering of shielded luminaries for street lighting makes moot the application for rehearing filed by the company. However, I would go further to reverse our order regarding standing on substantive grounds.

I agree with my colleague that we do have more discretion in administrative proceedings. However, I think our decision to allow complainant to proceed with this complaint went too far. To extend standing to *any* customer to complain about *any* service the utility company offers simply on the basis that he takes *some* service from a utility sets a dangerous precedent, particularly where, as in this case, the customer did not demonstrate any direct impact or injury as a result of the service he is complaining about. The service complained of involves an optional street lighting service which is only available to governmental entities. Mr. Boros was not and could not be a customer of this service. When you couple that fact with Mr. Boros' failure to demonstrate that he had suffered or would suffer any harm as a result of the company not offering the specific type of light fixture he desired, I conclude Mr. Boros lacks standing.


Ronda Hartman Fergus, Commissioner