

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|-----------------------------------|---|-------------------------|
| In the Matter of the Complaint of |) | |
| Charles Paquetlet, MD, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 11-4177-EL-CSS |
| |) | |
| Ohio Edison Company, |) | |
| |) | |
| Respondent. |) | |

ENTRY ON REHEARING

The Commission finds:

- (1) On July 5, 2011, Charles Paquetlet, MD (Dr. Paquetlet or complainant) filed a complaint against Ohio Edison Company (OE or company), alleging that OE caused damage to a tree (the Tree) on his property by excessive trimming.
- (2) On July 26, 2011, OE filed an answer generally denying all allegations of excessive trimming, and asserting that the company and its contractor followed proper vegetation management guidelines.
- (3) On June 14, 2012, a hearing was convened in this matter.
- (4) By opinion and order issued on September 12, 2012, in this case, the Commission denied Dr. Paquetlet's complaint against OE. In its opinion and order, the Commission stated that there was insufficient evidence to conclude that OE removed more of the Tree on Dr. Paquetlet's property than was necessary to meet its line clearance requirements.
- (5) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matter determined by the Commission within 30 days after the entry of the order upon the Commission's journal.

- (6) On October 16, 2012, Dr. Paquelet filed an application for rehearing of the Commission's September 12, 2012, order.
- (7) On October 18, 2012, OE filed a memorandum contra the application for rehearing.
- (8) Upon review of Dr. Paquelet's application for rehearing, the Commission finds that it was not filed within the 30-day time requirement, and therefore, it is untimely filed. Accordingly, the Commission has no jurisdiction to consider Dr. Paquelet's application for rehearing. See *Greer v. Public Utilities Commission*, 172 Ohio St. 154 (1961), and *City of Dover v. Public Utilities Commission of Ohio*, 126 Ohio St. 438 (1933). Furthermore, had Dr. Paquelet's application for rehearing been timely filed, we find that, upon review, Dr. Paquelet has not raised any issue in his application for rehearing that was not previously considered by the Commission or that would merit the granting of rehearing in this case. Accordingly, Dr. Paquelet's application for rehearing should be denied and this case shall be closed of record. Nevertheless, in an effort to thoroughly review this matter, we will include a brief discussion of the application for rehearing and OE's memorandum contra in the following paragraphs of this entry.
- (9) While not specifically styled as separate assignments of error or grounds for rehearing in the application for rehearing, the Commission will divide Dr. Paquelet's points of disagreement with the September 12, 2012, opinion and order into the following general issues for the purpose of listing them in this entry.
 - a) The Commission did not consider photographs that prove that more of the Tree was removed than was necessary.
 - b) The Commission misinterpreted policies of the company's vegetation management program and the utility industry's tree pruning standards specifying that, in order to achieve proper line clearance, pruning shall be based on the

characteristics and growth rate of individual tree species.

- c) The Commission did not note that, because of storm damage, one conductor across Dr. Paquelet's property had been lowered from 35 feet to 28 feet. As a result, the line clearance parameters between the Tree and the conductor were changed, and the Tree was trimmed with reference to the 28-foot conductor. The Tree was not directly beneath a conductor, but rather alongside. Because of the Tree's habit of growth, it would never come in contact with the conductors, had they been properly placed.
 - d) The necessary line clearance, which should have related to the inches-per-year growth rate of the Tree, was much less than the clearance testified to by OE's witness.
 - e) The information that Dr. Paquelet received from the Commission about the hearing process was misleading. Further, Dr. Paquelet was denied a fair hearing because he did not have legal representation.
- (10) In its memorandum contra, OE argued that the Commission rejected Dr. Paquelet's arguments in its September 12, 2012, opinion and order - the same arguments that he seeks to make in his application for rehearing. OE also argued that Dr. Paquelet merely sets forth his personal opinion that he offered sufficient proof on the elements of his case and alternatively, that the Commission misinterpreted the vegetation management specifications at issue. Lastly, OE stated that because Dr. Paquelet does not demonstrate that the Commission's decision was unreasonable or unlawful, his application for rehearing should be denied.
- (11) With regard to the assignments of error in the application for rehearing, the Commission finds that, with the one exception dealing with Dr. Paquelet's alleged receipt of misleading

information and his lack of legal representation, assignment of error e), Dr. Paquelet has raised no new arguments in his application for rehearing. The Commission observes that the issues raised by Dr. Paquelet in his assignments of error a) through d) were cited, and where appropriate, discussed, on pages three through nine in the opinion and order in this matter. Photographs of the Tree were considered by the Commission. We note that the photographs submitted by Dr. Paquelet were included as part of Complainant's Exhibit 1, which was cited in the summary of Dr. Paquelet's testimony. Moreover, the Commission's discussion of the policies of the company's vegetation management program and the utility industry's tree pruning standards, the height of the power lines across Dr. Paquelet's property, and the line clearance requirements and growth rate of the Tree is contained in the "Discussion and Conclusion" section of the opinion and order.

- (12) The Commission believes that Dr. Paquelet's assignment of error concerning his receipt of misleading information and his lack of legal representation is without merit. There is no evidence in the record to support complainant's arguments that he was given misleading information through the Commission's case process or by Commission employees, nor is there any evidence to suggest that complainant's handling of his own case at hearing was the result anything but his own decision to proceed in that manner.
- (13) The Commission believes that all of the issues in Dr. Paquelet's assignments of error have been fully considered and properly decided in our opinion and order. Accordingly, even if Dr. Paquelet's application for rehearing had been timely filed, the Commission would have denied it for the reasons stated in this entry.

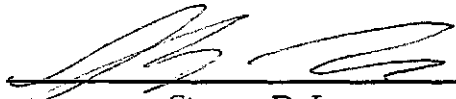
It is, therefore,

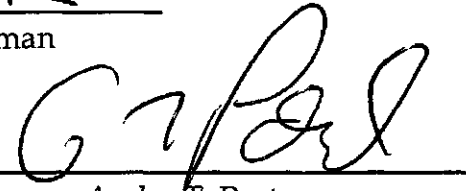
ORDERED, That the application for rehearing filed by Dr. Paquelet is denied in its entirety. It is, further,


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

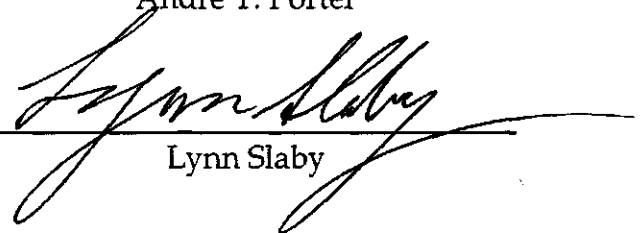
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

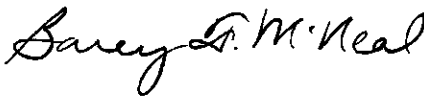

Cheryl L. Roberto


Lynn Slaby

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Entered in the Journal

OCT 31 2012


Barcy F. McNeal

Barcy F. McNeal
Secretary