

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
Charles Kittinger,)	
)	
Complainant,)	
)	
v.)	Case No. 15-1134-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	

ENTRY

The Commission finds:

- (1) Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.
- (2) The Ohio Edison Company (Ohio Edison) is an electric light company as defined in R.C. 4905.03, and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.
- (3) On June 18, 2015, Charles Kittinger filed a complaint against Ohio Edison. Mr. Kittinger alleges that he sustained personal injuries resulting from an incident where one of Ohio Edison's utility poles broke or otherwise failed. According to the complaint, a utility pole broke and landed on the roof of his pickup truck. Additionally, Mr. Kittinger asserts that when Ohio Edison repaired the utility pole, one of its trucks gouged a hole in his lawn. Thereafter, while he was mowing his lawn, his lawnmower fell into the hole and came to an abrupt stop, which caused severe personal injuries to his groin, left hip, and right knee.

- (4) On July 22, 2015, Ohio Edison filed its answer to the complaint. Ohio Edison denies the material allegations contained in the complaint. Additionally, Ohio Edison asserts as affirmative defenses that the complaint fails to set forth reasonable grounds for complaint and fails to state a claim upon which relief may be granted. Further, Ohio Edison argues that the Commission lacks subject matter jurisdiction over the complaint and that Ohio Edison complied at all times with the Revised Code, the applicable rules and regulations of the Commission, and its Commission-approved tariff.
- (5) Concurrent with its answer in this matter, Ohio Edison filed a motion to dismiss and a memorandum in support. Ohio Edison asserts that the Commission lacks jurisdiction over the property damage and personal injury claims asserted by the complainant in this case. Ohio Edison argues that the complaint fails to allege any facts supporting a claim of inadequate service and does not contain any allegations that Ohio Edison violated any statute, tariff, rule, regulation, or order of the Commission.

Ohio Edison asserts that the arguments presented in the complaint are arguments for claims of negligence. However, negligence is a common-law tort for which jurisdiction lies in common pleas court. *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St.3d 301, 2008-Ohio. Ohio Edison avers that the complainant seeks to recover for property damage and personal injuries allegedly caused from the breaking of a utility pole or a hole in the ground caused by utility equipment. Even if accepted as true, such allegations do not relate to customer rates or services. Ohio Edison notes that the Commission has previously held that it lacks subject matter jurisdiction over complaints seeking recovery for alleged property damage as a result of negligence and cases where the complaint does not allege a failure to provide adequate service or the violation of any statute, rule, regulation, or Commission order. *In the Matter of the Complaint of John Campolieti v. The Cleveland Elec. Illuminating Co.*, Case No. 12-1184-EL-CSS, Entry (Aug. 15, 2012) at 6-7.

- (6) The Commission finds that Ohio Edison's motion to dismiss this case is reasonable and should be granted. As noted above, the Commission has exclusive jurisdiction over most matters concerning public utilities. *State ex. rel. N. Ohio Tel. Co. v. Winter*

(1970), 23 Ohio St.2d 6, 52 O.O.2d 29, 260 N.E.2d 827. However, the Commission's exclusive jurisdiction over service-related matters does not diminish the "basic jurisdiction of the court of common pleas * * * in other areas of possible claims against utilities, including pure tort and contract claims." *State ex. rel. Ohio Edison Co. v. Shaker* (1994), 69 Ohio St.3d 209, 211, 625 N.E.2d 608; *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991), 61 Ohio St.3d 147, 154, 573 N.E.2d 655 ("pure common-law tort claims may be brought against utilities in the common pleas court"). To determine whether a matter falls within the scope of the Commission's exclusive jurisdiction, or whether it falls in the jurisdiction of a court of common pleas, the Commission applies the two-part test adopted by the Commission and affirmed by the Supreme Court of Ohio in *Allstate*. Under the *Allstate* test, the Commission must first determine if the Commission's administrative expertise is required to resolve the issue in dispute. Second, the Commission must determine if the act complained of constitutes a practice normally authorized by the utility. If either determination is in the negative, then the claim does not fall within the Commission's exclusive jurisdiction. *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917.

In this case, the complainant seeks to recover damages for his personal injuries and damage to his property when a utility pole broke in May 2011. Even assuming the allegations presented by the complainant as true, the acts complained of are claims of pure common-law tort. Applying the first part of the two-part test in *Allstate*, the Commission's administrative expertise is not necessary to resolve this matter. The allegations contained in the complaint are not service-related issues involving the provision of public utility service and do not require the interpretation of utility tariffs, Commission Orders, or Title 49 of the Ohio Revised Code. We have consistently granted motions to dismiss complaint cases when the complaint fails to allege a service-related violation or the violation of any statute, rule, regulation, or Commission order. *In the Matter of the Complaint of John Campolieti v. The Cleveland Elec. Illuminating Co.*, Case No. 12-1184-EL-CSS, Entry (Aug. 15, 2012) at 6-7. We find that the complaint in this case contains pure common-law tort claims. Accordingly, the Commission finds that Ohio Edison's motion to dismiss this case for lack of subject matter jurisdiction is reasonable and should be granted.

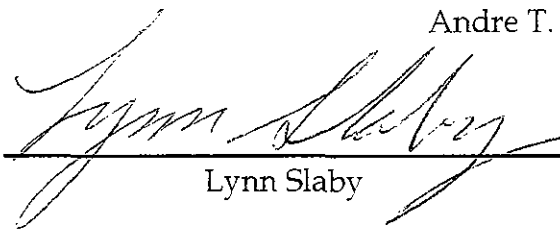
It is, therefore,

ORDERED, that Ohio Edison's motion to dismiss this case be granted. It is, further,

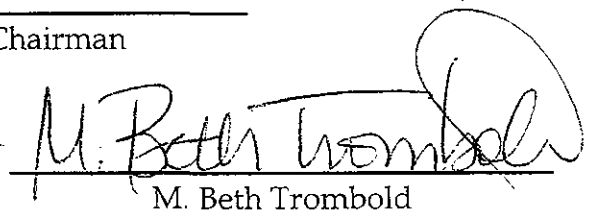
ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

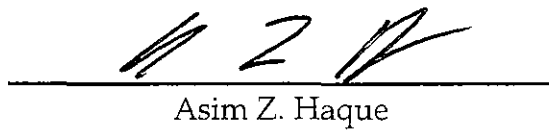
Andre T. Porter, Chairman



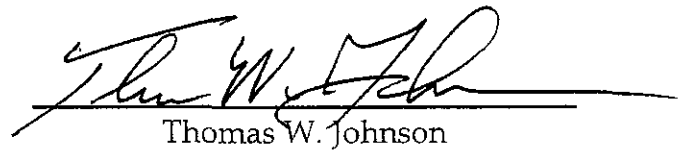
Lynn Slaby



M. Beth Trombold



Asim Z. Haque




Thomas W. Johnson

BAM/sc

Entered in the Journal

MAY 11 2016



Barcy F. McNeal
Secretary