

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,**

COMPLAINANT,

CASE No. 19-1267-EL-PWC

v.

THE VILLAGE OF PERRY,

RESPONDENT.

ENTRY

Entered in the Journal on August 8, 2019

{¶ 1} R.C. 4939.05(C) provides a municipality may levy public way fees against those occupying the public way, but requires such fees to be based on only the costs that the municipal corporation both has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of a public way.

{¶ 2} Pursuant to R.C. 4939.06(A), the Commission has authority to consider written complaints filed by a public utility against a municipal corporation alleging the amount of a public way fee, any related classification of public way occupants or users, or the assignment or allocation of costs to the public way fee is unreasonable, unjustly discriminatory, or unlawful.

{¶ 3} The Village of Perry (the Village) is an Ohio municipal corporation, making any public way fees that the Village levies against a public utility for use or occupancy of a public way subject to the requirements of R.C. 4939.04 and R.C. 4939.05.

{¶ 4} The Cleveland Electric Illuminating Company (CEI or Complainant) is an electric light company and a public utility, as defined by R.C. 4905.03(C) and R.C. 4905.02, respectively.

{¶ 5} On September 19, 2016, the Village passed Ordinance 2016-20, which enacted Chapter 997 of the Village's Code of Codified Ordinances, titled "Comprehensive Rights of Way." Chapter 997 provides the requirements for obtaining an annual Certificate of Registration and for the charging of an annual right-of-way fee based upon the costs associated with rights-of-way management, administration, and control for the previous calendar year.

{¶ 6} On May 1, 2019, the Village issued an invoice to CEI for a 2019 Certificate of Registration fee in the amount of \$6,201.98.

{¶ 7} On May 30, 2019, CEI filed a complaint against the Village alleging that the amount of the fee is unreasonable, unjustly discriminatory, and unlawful and does not comply with the legal standards established by the Ohio Revised Code and the Commission for public way fees. Specifically, CEI contends that the fee is not based upon a reasonable classification of public way occupants or users, and the assignment or allocation of costs is unreasonable, unjustly discriminatory, and unlawful.

{¶ 8} On June 20, 2019, the Village filed its answer to the complaint in which denied the material aspects of the complaint. Additionally, the Village raised several affirmative defenses.

{¶ 9} R.C. 4939.06(B) provides that, upon a finding by the Commission that reasonable grounds are stated for a complaint, the Commission shall suspend the public way fee provisions of the municipal ordinance for the duration of the Commission's consideration of the complaint.

{¶ 10} By Entry issued July 17, 2019, the Commission found that reasonable grounds had been stated for a complaint under R.C. 4939.06(A) and suspended the public way fee provisions established by the ordinance, as they apply to Complainant, for the duration of the Commission's consideration of the complaint. The Commission also scheduled a

hearing to take place on August 15, 2019, with all direct testimony being due by August 8, 2019.

{¶ 11} On August 6, 2019, the Village filed a motion requesting an extension of the procedural schedule. In support of its request, the Village notes that its counsel has a previously scheduled hearing on August 15, 2019, that would prohibit him from attending the Commission's scheduled hearing in this matter. Furthermore, the Village states that, after speaking with counsel for CEI, Complainant does not object to rescheduling the hearing provided the Village complies with CEI's previously served subpoenas for the new hearing date. The Village suggests September 26, 2019, as a mutually agreeable date for both parties, with testimony being filed by September 19, 2019.

{¶ 12} The attorney examiner finds the request to reschedule the hearing is reasonable and should be granted. Accordingly, the evidentiary hearing in this case should be rescheduled for September 26, 2019, at 10:00 a.m., in Hearing Room 11-C, on the 11th Floor, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215. Parties should register at the lobby desk and then proceed to the 11th Floor to participate in the hearing. Furthermore, all direct testimony of witnesses that will appear at the hearing should be filed by September 19, 2019.

{¶ 13} The parties are reminded that R.C. 4939.06(A) directs that the Commission "shall act to resolve the complaint * * * within one hundred twenty days after the date of the complaint's filing." This provision would require the Commission to issue an order by no later than September 27, 2019. By moving for the extension of the procedural schedule discussed in this Entry, the parties are deemed to have waived the benefit of this provision. The attorney examiner is mindful, however, that the legislature, in enacting this limitation, expressed its intent that complaints, such as this one, be resolved in an expeditious manner. Therefore, the parties should be aware that the attorney examiner does not intend to grant any further continuances of the procedural schedule.

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the evidentiary hearing be rescheduled for September 26, 2019, as set forth in Paragraph 12. It is, further,

{¶ 16} ORDERED, That all direct testimony of witnesses that will appear at the September 26, 2019 hearing be filed by September 19, 2019. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be served upon each party and interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/mef

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/8/2019 8:30:23 AM

in

Case No(s). 19-1267-EL-PWC

Summary: Attorney Examiner Entry Attorney Examiner Entry rescheduling the evidentiary hearing for 9/26/19 at 10:00 am and setting the filing deadline for witness testimony to 9/19/19 electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio