

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Dane L. Mazzitti,)	
)	
Complainant,)	
)	
v.)	Case No. 08-1146-EL-CSS
)	
Ohio Edison Company,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the complaint filed by Dane L. Mazzitti and the evidence admitted at the hearing, hereby issues its Opinion and Order.

APPEARANCES:

Dane L. Mazzitti, 2563 West Chocktaw Drive, London, Ohio 43140, complainant.

Kathy J. Kolich, FirstEnergy Corp., 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company.

OPINION:

I. SUMMARY OF THE PROCEEDINGS

On October 3, 2008, Dane L. Mazzitti (complainant) filed a complaint against Ohio Edison Company (OE, company, or respondent), alleging that in August and September, 2008, OE excessively trimmed the trees on his property at 2563 West Chocktaw Drive, London, Ohio 43140 (premises) and threatened to excessively trim the evergreen trees that border on his property and that of his neighbor at 2567 West Chocktaw Drive (Bockey property). Mr. Mazzitti alleged that OE had improperly and excessively pruned two maple trees, and he requested that OE remove and be held responsible for damaging these trees and that OE be enjoined from any further tree trimming on his property. On November 17, 2008, OE filed an answer generally denying all allegations of excessive trimming, and asserting that: (1) the respondent has a prescriptive easement for the distribution lines located in both the front and side yards of the complainant's property; (2) the trees in question are located within such easements; (3) the trees had branches growing into the distribution lines; and (4) all of trees have been trimmed in the past.

A settlement conference was held on December 1, 2008, but the parties were unable to entirely resolve the matter. A hearing was held on May 20, 2009, and OE filed a post hearing brief on June 22, 2009.

II. APPLICABLE LAW

OE is a public utility under Section 4905.02, Revised Code, and an electric light company as defined by Section 4905.03(A)(3), Revised Code, and, therefore, subject to the jurisdiction of the Commission, pursuant to Sections 4905.04 and 4905.05, Revised Code.

Section 4905.22, Revised Code, requires, in part, that a public utility furnish necessary and adequate service and facilities. Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law or that any practice affecting or relating to any service furnished is unjust or unreasonable.

Rule 4901:1-10-27(E)(1), Ohio Administrative Code (O.A.C.), requires each electric utility and transmission owner to establish, maintain, and comply with written programs, policies, procedures, and schedules for the inspection, maintenance, repair, and replacement of its transmission and distribution circuits and equipment. These programs shall establish preventative requirements for the electric utility to maintain safe and reliable service, and include right-of-way vegetation control. Further, the Commission has exclusive jurisdiction over vegetation-removal disputes between a landowner and the utility company. *Corrigan v. Illum. Co.*, 122 Ohio St.3d 265, 2009-Ohio-2524.

In complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189. Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

III. SUMMARY OF THE EVIDENCE AND ARGUMENTS:

On May 14, 2009, OE filed expert testimony of its sole witness, Alan P. Rehbein, Forestry Specialist assigned through the Davey Resource Group, a subsidiary of Davey Tree Expert Company, (Co. Ex. 1). The complainant did not pre-file any expert witness testimony, but was allowed to testify on his own behalf and cross-examine the OE witness as a *pro se* complainant. Mr. Mazzitti was accompanied at the hearing by his neighbor, Linda Bockey, who declined to testify, and Michael Hexamer, a friend of Mr. Mazzitti and manager of Lake Choctaw, who was permitted to testify as an expert witness on rebuttal (Tr. 5, 45-52).

Mr. Mazzitti testified that he had worked for 27 years at American Electric Power Company (AEP) serving in various managerial positions, including as AEP's representative to the Ohio Power Siting Board, and consequently has a thorough understanding of OE's responsibility to provide safe, dependable electric power service. Mr. Mazzitti admitted that OE has a prescriptive easement for distribution lines on his property, and is willing to cooperate with OE on reasonable tree trimming practices, but maintains that OE has exceeded the scope necessary to adequately maintain the distribution lines (*Id.* at 6-8).

Mr. Mazzitti indicated that his complaint is now limited to a row of evergreen trees ranging from 25 to 35 feet in height that runs between his property at 2563 West Chocktaw Drive in London, Ohio and that of his next-door neighbor, Linda Bockey, at 2567 Chocktaw Drive (*Id.* at 4-5, 9-11). The electrical distribution line in question is a short line that runs through the trees from the main distribution corridor on Chocktaw Drive to a transformer adjacent to Ms. Bockey's property and only serves the Bockey home. According to Mr. Mazzitti, OE proposes to remove the upper half of these evergreen trees which would result in a hedge-like appearance. Mr. Mazzitti emphasized that the trimming of the evergreen trees in question is only essential to protect service to the Bockey home (*Id.* at 20-23).

OE's witness, Mr. Rehbein, presented credible testimony, including photographs, that demonstrated that he is personally familiar with the Mazzitti and Bockey properties, and issues relating to the trees in question. Mr. Rehbein stated that OE's customer response log indicated that the neighbors at 2567 Chocktaw Drive had authorized the company to trim the trees as needed and that the witness had personally talked with the neighbors on August 28, 2008, and they did not raise any objections to the trimming (Co. Ex. 1 at 2-6). Mr. Rehbein also discussed the safety issues and fire hazard posed by these evergreen trees if left untrimmed and the pruning standards used, pursuant to the company's vegetation management plan (*Id.* at 6-8).

On cross-examination, Mr. Rehbein clarified that the company is proposing to top-trim the evergreen trees, rather than repeat the side-trimming that was done in prior years, due to the extensive growth of the trees and need for proper clearance from the utility wires. He also noted that, if the trees did cause a fuse to be blown the resulting power outage to the Bockey residence could last for days because the line serves only one home (Tr. 30-34, 38, Co. Ex. 1, at 4-5).

Michael Hexamer, who had previously worked as a supervisor of Mr. Rehbein for the Canton Division of the Ohio Power tree trimming crew, was permitted to offer expert rebuttal testimony on tree-trimming on behalf of Mr. Mazzitti but stated that he did not agree that the trees should not be trimmed (Tr. 52). The complainant was allowed a

second cross-examination of Mr. Rehbein in which the witness indicated the cost of mitigation strategies such as underground service or extending the poles had been considered but would need to be paid by the property owners (*Id.* at 56-57).

IV. DISCUSSION AND CONCLUSION

In its brief, OE notes that the parties have settled all issues in this case except the trimming of the row of evergreen trees. The complainant does not contest the utility's prescriptive easement for distribution lines on his property but essentially argues that the trimming of these trees is not reasonable given that the trees impact a line which only serves the neighboring residence, and that neighbor apparently supports Mr. Mazzitti's position.

As noted above, the burden of proof in this case rests upon with the complainant, as held in *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St.2d 189, but Mr. Mazzitti has failed to surmount the evidence presented by the company, and even his own witness admitted that the trees should be trimmed. Therefore, the Commission finds that OE's determination that the evergreen trees in question could interfere with the transmission line was reasonable, based on the facts in this case. The Commission, therefore, finds that this complaint should be dismissed.

Before dismissing this complaint, however, the Commission notes that our expectation in vegetation management cases is that utilities will attempt to minimize the impact to property owners to the extent possible without sacrificing safety and reliability.¹ In this regard, we note that the property records of Madison County indicate that the Bockey property has recently been transferred to a new owner.² While the record in this proceeding is unclear as to the details of the mitigation strategies previously considered by the parties, we would expect OE to revisit its offer of mitigation strategies, at the property owners' expense, with Mr. Mazzitti and the new Bockey property owner before taking any trimming actions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 3, 2008, Mr. Mazzitti filed this complaint against OE or respondent), alleging that OE excessively trimmed the trees at his property at 2563 West Chocktaw Drive, London, Ohio 43140 in August and September, 2008, and requesting

¹ See, e.g., *Kurt Wimmer v. Ohio Edison Company*, Case No. 09-777-EL-CSS, January 27, 2011 Opinion and Order at 9-10.

² See, Madison County, Ohio Property Record for Parcel 24-01357.000 posted at <http://madisonoh.ddti.net/Data.aspx?ParcelID=24-01357.000>

that, *inter alia*, OE be enjoined from any further tree trimming on his property.

- (2) On November 17, 2008, OE filed an answer generally denying all allegations of excessive trimming and asserting that: (1) the respondent has a prescriptive easement for the distribution lines located in both the front and side yards of the complainant's property; (2) the trees in question are located within such easements; (3) the trees had branches growing into the distribution lines; and (4) all such trees have been trimmed in the past.
- (3) On May 14, 2009, OE filed the testimony of Mr. Rehbein, the company's only witness. The hearing of this matter was held on May 20, 2009, at which the complainant represented himself. OE filed a post hearing brief on June 22, 2009.
- (4) OE is a public utility as defined by Section 4905.02, Revised Code, and an electric light company, as defined in Section 4905.03(A)(3), Revised Code.
- (5) The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm*, 5 Ohio St.2d 189 (1966).
- (6) There is insufficient evidence to support a finding that OE unreasonably determined that the vegetation at issue may interfere with the line on the complainant's property.


ORDER:

It is, therefore,

ORDERED, That the complaint be denied and this case dismissed, and OE take all actions consistent with this opinion. It is, further,

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


THE PUBLIC UTILITIES COMMISSION OF OHIO



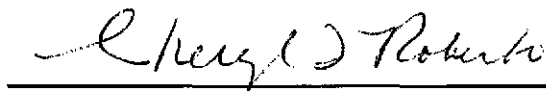
Todd A. Snitchler, Chairman



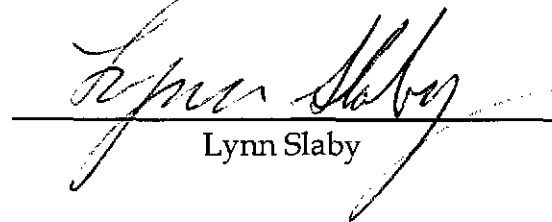
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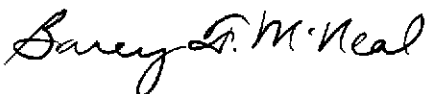


Lynn Slaby

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Barcy F. McNeal
Secretary