

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
John Campolieti,)	
)	
Complainant,)	
)	
v.)	Case No. 12-1184-EL-CSS
)	
The Cleveland Electric Illuminating)	
Company,)	
)	
Respondent.)	

ENTRY

The Commission finds:

- (1) On April 9, 2012, John Campolieti (complainant) filed a complaint against the respondent, The Cleveland Electric Illuminating Company (CEI). In his complaint, Mr. Campolieti alleges that the respondent had a guy pole on his property that "was laying on the gutter of my building and was crushing the gutter causing water from rain to go into my building." The complainant further alleges that he "called them to take the pole down, which they did." However, the complaint states that "the woman I talked to said they were not going to repair my gutter and said they could do anything they wanted on my property." In his complaint, Mr. Campolieti alleges to "have pictures of them removing the pole, with the pole crushing my gutter." Attached to the complaint are two photographs, both demonstrating a pole that is extremely close to the gutter of a building. In one of the pictures, a man is standing in a cherry picker with his hands around the pole on the portion of it that extends above the height of the building. One cannot determine whether anyone is standing in the bucket of the cherry picker.
- (2) The complaint includes an undated letter from Mr. Campolieti addressed simply by the words "Dear Sirs".

The letter is accompanied by two documents. The first accompanying document purports to be a copy of the complainant's electric service bill from the respondent, dated March 1, 2012. The second accompanying document purports to be a letter (the Leslie letter) from the respondent's employee, Todd Leslie, dated March 2, 2012, sent to Mr. Campolieti in response to the claim he placed with the company "for property damage that occurred on or about 11/4/2011."

- (3) The Leslie letter states, in part:

In regards to your claim; although we are sorry for any loss and/or any inconvenience you may have suffered due to the incident, we have determined your loss was not the result of a willful or wanton hands on act of negligence of an Illuminating Company employee. Pole exc-629835 was inspected and found to be in good sound condition prior to your reported loss date. *As the Illuminating Company can only consider claims that arise out of a willful or wanton act of a company employee*, I must respectfully decline your request for compensation (Italics in the original). Relief may be provided through your insurance carrier depending upon the terms of the coverage that you provided.

- (4) The undated "Dear Sirs" letter of Mr. Campolieti included with the complaint states, in part:

[As you can see from the Illuminating Company's response about the damage] they tell me to call my insurance company which as you well know my insurance company tells me that the damage was due to the Illuminating Company's equipment.

...If my equipment did damage to someone's property it would be my responsibility to repair the damage or pay for the damage repair. There

is no way I would be able to tell the property owner to call their insurance company.

The Illuminating Company seems to think they have the right to do whatever they want. ...All I want is for them to repair the gutter and the insulation that was water-damaged.

- (5) CEI filed an answer to the complaint on April 30, 2012. In its answer, CEI admits: (a) that it owns a guy pole located on 22001 Tungsten Rd., Euclid, Ohio 44117 (the Tungsten address); (b) that a crew performed work at the Tungsten address on January 20, 2012; (c) that the complainant submitted a claim for property damage at the Tungsten address, which CEI denied; (d) that the respondent was informed about the claim; and (e) that the Leslie letter, as submitted, is a true and accurate copy of the respondent's response to John Campolieti's claims. In its answer, CEI specifically denies that the pole was laying on the gutter of the property located at the Tungsten address, crushing the gutter and causing water from rain to go into the building at the Tungsten address. CEI also specifically denies, for want of knowledge: (a) that the pictures submitted with the complaint fairly and accurately depict the crews removing the pole that allegedly crushed the gutter; and (b) the allegations of the complaint consisting of notations concerning contacts made by John Campolieti to the respondent. In all other respects, the respondent, in its answer, denies generally all the other allegations of the complaint. The respondent also sets forth seven affirmative defenses, including that this matter is not within the subject matter jurisdiction of the Commission.
- (6) On April 30, 2012, CEI filed a motion to dismiss, accompanied by a supporting memorandum. As the basis for its motion to dismiss, CEI asserts that: (a) the Commission lacks jurisdiction over the property damage claim asserted in this case; and (b) the complaint fails to state reasonable grounds for relief in that it both fails to allege any facts supporting a claim of inadequate service and does not allege that CEI has violated any statute, tariff provision, rule, regulation, or order of the Commission.

- (7) In its memorandum in support of its motion to dismiss, CEI argues that this case falls outside the jurisdiction of the Commission. Citing to several Ohio Supreme Court cases as precedent,¹ CEI contends that the Commission jurisdiction extends only to "claims involving customer rates and services, and all claims relating to conduct covered by a tariff filed with the Commission" (CEI Memo in Support, at 5). Moreover, CEI cites to another Ohio Supreme Court case² in support of the proposition that, in determining whether a matter falls within the exclusive, initial jurisdiction of the Commission, it is the substance of the claim that controls rather than the nature of the nature of the allegations. Pointing out that the complainant seeks to recover for alleged property damage to the building at the Tungsten address, which the complainant claims was caused when a guy wire somehow came into contact with that building's gutter, CEI submits that the complaint in this case "sounds at best in negligence" and is limited only to allegations that, even if accepted as true do not relate to customer rates and services (*Id.*).
- (8) In its memorandum in support of its motion to dismiss, CEI further contends that, to the extent that the complainant is requesting the Commission award him damages for CEI's alleged damage to his gutter and insulation, he seeks a form of relief beyond the jurisdiction of the Commission.³
- (9) Finally, in support of its motion to dismiss, CEI argues that this case fails to state reasonable grounds for complaint and, as such, should be dismissed both for failing to allege any fact that would support a finding of inadequate service,⁴ and for

¹ CEI cites to *State ex rel. Columbus Southern Power Co. v. Fais*, 117 Ohio St. 3d 340, 2008-Ohio-849 ¶ 28; *Kazmaier Supermarket, Inc. v. Toledo Edison Co.* (1991), 61 Ohio St.3d 147, 151, N.E.2d. 665.

² *Allstate Ins. Co.*, 2008-Ohio-3197 at ¶ 19.

³ In a footnote, CEI states its recognition that Section 4928.16(B)(1), Revised Code, authorizes the Commission to award "damages due to electric power fluctuations, in any complaint brought pursuant to division (A)(1) or (2) of the statute. CEI argues that this statute does not apply here, given that the complaint in this case does not reference or allege any fluctuations or surges in power.

⁴ CEI cites to two Commission cases for the proposition that a complaint that does not allege specific incidents of inadequate service must be dismissed. *In the Matter of the Petition of J. Earl McCormick, et al.*

failing to allege that the respondent has violated any statute, tariff provision, or any rule, regulation, or order of the Commission.⁵ In this regard, CEI points out that the complainant merely alleges that a guy pole somehow came into contact with the gutter on the building at the Tungsten address and that it was removed by the company upon his request. What the complainant does not allege, notes CEI, is that contact between the gutter and the pole resulted from the company's failure to provide adequate service or that any statute, rule, or order was violated because contact between the gutter and pole occurred.

- (10) For the reasons set forth in this entry, we find that the Commission lacks jurisdiction over this case and, therefore, it should be dismissed. The analysis which forms the basis for our conclusion that we lack jurisdiction is fully explained in Findings (11) through (13) below.
- (11) The General Assembly enacted Chapter 49 of the Revised Code to regulate the business activities of public utilities and created this Commission (the PUCO) to administer and enforce these provisions. *Corrigan v. Illum. Co.*, 122 Ohio St. 3d 265, 266, 2009 Ohio 2524, 910 N.E. 2d 1009. Rule 4905.26, Revised Code provides that the Commission shall hear complaints filed against public utilities alleging:

...that any rate, fare, charge, toll, rental schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any

v. The Ohio Bell Tel. Co et al., Case No. 90-1256-TP-PEX, Entry issued September 27, 1990, at ¶ 3. *In the Matter of the Complaint of Ohio CARES v. FirstEnergy Corp.* Case No. 98-1616-EL-CSS, Entry issued May 19, 1999, at ¶ 7.

⁵ *In the Matter of the Complaint of Ohio CARES v. FirstEnergy Corp.* Case No. 98-1616-EL-CSS, Entry issued May 19, 1999, at ¶ ¶6-7.

regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential.

This jurisdiction specifically conferred by statute upon the PUCO over public utilities of the state is so complete, comprehensive and adequate as to warrant the conclusion that it is likewise exclusive (*Id.* at 267.)

The broad jurisdiction of the PUCO over service-related matters does not affect “the basic jurisdiction of the court of common pleas in other areas of possible claims against utilities, including pure tort and contract claims” (*Id.*). Thus, in this case, the jurisdictional question presented is whether the claims made by Mr. Campolieti in his complaint are within the PUCO’s exclusive jurisdiction or, instead, are pure tort claims, sounding in negligence, that do not require a consideration of statutes and regulations administered and enforced by the PUCO. In making this determination, we must review the substance of the claims to determine if service-related issues are involved. In other words, casting the allegations to sound in tort or contract is not sufficient to confer jurisdiction upon a trial court when the basic claim is one that the PUCO has exclusive jurisdiction to resolve (*Id.*).

- (12) The Ohio Supreme Court has adopted a two-part test to determine whether the PUCO has jurisdiction over an action (*Id.*). The first question is whether the PUCO’s administrative expertise is required to resolve the issue in dispute. The second question is whether the act complained of constitutes a practice normally authorized by the utility. If the answer to either question is in the negative, the claim is not within the PUCO’s jurisdiction (*Id.*).
- (13) Here, the complainant seeks to recover for alleged property damage to a building at the Tungsten address, which he claims was caused when a guy pole somehow came into contact with that building’s gutter. Assuming, for purposes of argument only, that the guy pole actually did touch the

building in question and, as a result of such touching, did cause the damages complained of, it appears that "the act complained of" is the respondent's alleged negligence in failing to reasonably act in such a manner as to prevent the guy pole from touching the gutter in a way that would, regardless of having no reported affect on the respondent's provision of adequate utility service, nevertheless, result in damage to the building at the Tungsten address. We find that, because the complaint fails to allege inadequacy of the service provided by the respondent, and whether the rates charged by the respondent for its utility service are unjust, unreasonable, or unlawful, the Commission's administrative expertise is not required to resolve the issue presented in this case. The complaint fails to allege that any contact that occurred between the pole and the gutter either caused or resulted from the company's failure to provide adequate service. Nor is there any allegation the occurrence of contact between the pole and the gutter resulted in violation of any statute, rule, regulation, or Commission order. Because no service-related issues are presented, the first prong of the Supreme Court's two-part test has not been met, and the claim presented in this case is not within this Commission's jurisdiction. Rather, the claim presented sounds of pure tort. Consequently, this case should be dismissed for lack of subject matter jurisdiction. The first question having been answered in the negative, there is no need to address the second question of whether the act complained of constitutes a practice normally authorized by the utility.

It is, therefore,

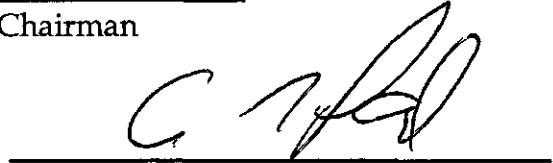
ORDERED, That, in accordance with the above findings, the complaint in this case should be dismissed for lack of subject matter jurisdiction. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

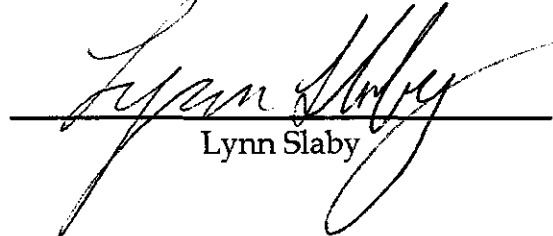
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

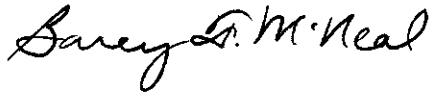

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AUG 15 2012


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Secretary