

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission, considering the complaint filed by Charles Paquelet, MD and the evidence admitted at the hearing, hereby issues its Opinion and Order.

APPEARANCES:

Charles Paquelet, MD, 11849 Northcrest Street NW, Massillon, Ohio 44647, on his own behalf.

Denise M. Hasbrook, Roetzel & Andress, LPA, One Sea Gate - Suite 1700, Toledo, Ohio 43604-1504, and Carrie M. Dunn, FirstEnergy Service Company, 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company.

OPINION:

I. SUMMARY OF THE PROCEEDINGS

On July 5, 2011, Charles Paquelet, MD (Dr. Paquelet or complainant) filed a complaint against Ohio Edison Company (OE or Company), alleging that in February 2010, OE excessively trimmed a tree on his property at 11849 Northcrest Street NW, Massillon, Ohio (property). Dr. Paquelet alleged that OE failed to follow proper vegetation management practices and caused irreparable damage to an unusual and rare beech tree (the Tree) in his garden. Dr. Paquelet requested that OE replace the damaged tree. On July 26, 2011, OE filed an answer generally denying all allegations of excessive trimming, and asserting that: (1) the company and its contractor, Nelson Tree Service, followed proper vegetation management guidelines, and (2) the trimming of the Tree was mandated by vegetation management guidelines because the top branches of the Tree were in contact with an OE distribution line located on complainant's property.

A settlement conference was held on September 9, 2011, but the parties were unable to resolve the matter. A hearing was held on June 14, 2012. On August 3, 2012, OE filed a post hearing brief and Dr. Paquelet filed a statement of the case.

## 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

On April 9, 2012, Dr. Paquelet filed the expert testimony of his witness, Douglass Yates (Complainant Ex. 2). In addition, Dr. Paquelet testified on his own behalf and cross-examined the OE's witnesses as a *pro se* complainant. On June 7, 2012, OE filed the expert testimony of its witnesses, Tara Weckerly, Distribution Specialist and certified arborist employed by OE and Joe Liss, Forestry Specialist for Nelson Tree Service, OE's contractor in this case for vegetation management (Co. Exs. 9 and 10).

Paquelet Testimony

Dr. Paquelet testified that OE severely damaged the Tree, which was approximately 24-feet in height, by cutting eight feet off the top. This is contrary to the FirstEnergy Vegetation Management Specification Manual (OE's Manual) and the American National Safety Institute A300 Standards (ANSI 300 Standards)<sup>1</sup> for utility pruning, which specify that pruning shall be done in such a manner as to achieve four years of growth clearance from primary conductors. Further, in cases where four years of clearance is unattainable, 12 feet of clearance around primary conductors shall be achieved. Dr. Paquelet testified that the Tree, a species of beech tree, is slow-growing and all lateral branches turn immediately upward. Because of the Tree's habit of growth, and because it was not growing into the electric line, but rather alongside the line, it most likely would never have been a threat if left undisturbed. (Tr. 10-16; Complainant Ex. 1 – Items 1-13.)

According to OE's Manual and the ANSI 300 Standards, all pruning should be done using the drop crotch or directional pruning method, and the rounding over or "topping" of a tree should never be performed. Dr. Paquelet noted that, in his case, those guidelines were not followed. The Tree was rounded over and more foliage than necessary was removed, which led to irreparable damage and the probable eventual death of the Tree. Twelve feet of clearance for the Tree was unnecessary and in direct violation of the aforementioned distribution clearing zone guidelines, which specify that four years worth of growth clearance would have been sufficient. (Tr. at 17-20.)

Dr. Paquelet estimated the height of the Tree before it was pruned. He actually measured the Tree's height after pruning, the section of the Tree left on the ground by the pruning crew, and the distance from the Tree's trunk to the power lines. In addition, Dr. Paquelet testified that his witness, Douglass Yates, an employee of Klyn Nursery, did not visit the Paquelet property before he submitted his direct testimony, and did not take any measurements of his own.

Dr. Paquelet testified that (1) the information in Complainant Exhibit 1 - Item 12, a schematic drawing by Dr. Paquelet of the Tree and OE's power pole, and Company Exhibit 5, a letter from Dr. Paquelet to Klyn Nursery's owner, were both given to Mr. Yates before he prepared his direct testimony, and (2) the actual and estimated measurements of the Tree and the distances between the Tree and OE's power pole, which Dr. Paquelet included in Company Exhibit 5, were adopted by Mr. Yates in his direct testimony. In addition, OE's Manual also states that "the distribution clearing zone is defined as a corridor measured at a distance of 15 feet on either side of the pole line or to the

---

<sup>1</sup> Pursuant to Rule 4901:1-10-27(E)(1), O.A.C., OE filed its vegetation management plan (OE's Manual) in 2001 and revised it in 2003 and 2007. In OE's Manual, guidelines specify that pruning is to be accomplished according to ANSI 300 Standards. The Commission issued no objections to OE's Manual. (Co. Ex. 9 at 2, 5, and 6; Co. Ex. TW-1.)

established large tree edge, whichever is greater in width." (Tr. at 23-31, 39-42; Compl. Ex. 1 - Items 7 and 12; Co. Exs. 1 and 5.)

### Yates Testimony

Douglass K. Yates, a consulting arborist, is a certified master arborist and a qualified municipal arborist. Mr. Yates testified that the Company did not meet the standard for removal of vegetation set forth in the FirstEnergy Vegetation Manual. According to Mr. Yates, the amount of foliage to be removed is dependent upon the type of tree and its growth and branching habit, so that four years of clearance can be attained. Mr. Yates stated that, in this case, there is at least twelve feet clearance between the tree and the "ground" line, and nineteen feet clearance between the tree and the "hot" line. He also noted the following: (1) The side branches of the Tree are densely packed next to the main trunk, (2) the trunk of the tree is 11 feet from the pole, and the transformer with the disconnects is on the opposite side of the pole from the tree, (3) it may be safely concluded that the crew pruning the tree used the lower "ground" line as a reference for their pruning, and removed enough foliage to attain a 12-foot zone of clearance, (4) the Tree is now 16 feet in height and the cutting of the main trunk is totally unexplainable, (5) there is no question the amount of foliage removed was excessive, and (6) it is clear that the Company did not follow its guidelines in this action. (Compl. Ex. 2 at 2-5.)

Mr. Yates testified that the drop crotch method of pruning was not used, that the tree was severely topped, and that this pruning can be expected to lead to the death of the Tree. Further, the Tree, in all probability, could have been left to maturity with little or no pruning, and posing no threat to the power lines. (Compl. Ex. 2 at 2-5.)

Mr. Yates testified that he is not a qualified line-clearance arborist, and he would not be qualified to do the tree trimming work performed by OE at Dr. Paquelet's property. He testified that he has no idea of the proper clearance zones for the power line that was involved in this case, and did not know if the Tree was within 15 feet of the power line before it was trimmed. Further, Mr. Yates never went to Dr. Paquelet's property before he drafted his pre-filed testimony. The measurements and opinions in his pre-filed testimony were taken from a letter written by Dr. Paquelet to the owner of Klyn Nursery and adopted by him. (Tr. at 51, 63-64, 67.)

Mr. Yates testified that his opinion is based entirely on photographs taken by Dr. Paquelet. Also Mr. Yates confirmed that, in his deposition, he replied that he did not know if the Company could have obtained the required clearances by doing the trimming any other way. He testified, however, that the pruning of the Tree was not done properly because stubs were left on each of the branches and that the stubs should have been cut off and the Tree left intact. (Tr. at 51, 63-64, 67, 73, 75; Co. Ex. 8.)

Mr. Yates testified that, if the power line was at 35 feet, and the Tree 25 to 30 feet in height, there would be no reason for pruning; the line clearance would be satisfied. Further, in view of the Tree averaging four inches growth per year over the last 10 years, and the expected growth of the Tree being less than three to four feet in four years, removing more foliage than that is a violation of First Energy vegetation management guidelines. Finally, Mr. Yates testified that the pruning was done in a manner that severely damaged the Tree, which was cut back to a stub sticking up 16 feet above ground with nothing above it. (Tr. at 79-84.)

### Weckerly Testimony

OE's utility vegetation management (UVM) specifications prescribe a four-year maintenance cycle during which the Company inspects and maintains all vegetation within its "distribution clearing zone" - the areas beneath and around the lines. The distribution clearing zone is the corridor measured at a distance of 15 feet on either side of the pole line or to the established large tree edge, whichever is greater in width. Pruning is to be done in accordance with current ANSI 300 Standards. While certain pruning methods, such as drop crotch (otherwise known as directional pruning) are preferred, exceptions can be made to these preferred pruning methods to achieve the overriding goal of obtaining adequate clearance for the entire four year cycle. Ms. Weckerly testified that the goal is to remove incompatible vegetation by pruning or tree removal in such a manner to achieve a minimum of four years of clearance from distribution conductors within the established clearing zone, based on tree species and growing conditions. If four years of clearance is not attainable, there must be 12 feet of clearance around the distribution conductors. (Co. Ex. 9 at 6-7.)

Ms. Weckerly testified that the Complainant planted the Tree, between 1985 - 1990, directly underneath OE's distribution line and in close proximity to the transformer. She noted that the distribution line was approximately 35 feet in height, and prior to trimming, the top of the tree had touched the distribution wires, with branches near the top of the tree having been *burned or singed back*. Under OE's UVM specifications, the Tree was within the clearing zone and had to be pruned. Consequently, on February 23, 2010, Nelson Tree Service (NTS) trimmed the Tree.

Due to the upright growth pattern of the species, the shape of the Tree, and to preserve its health, approximately 10 to 15 feet of the top were removed using the crown reduction pruning method, a standard pruning method regularly utilized in the utility industry. Moreover, drop crotch or directional pruning cuts were utilized to trim unwanted branches back to the lateral branches that were growing away from the line. Ms. Weckerly noted that the main difference between crown reduction and rounding over or "topping," which Complainant alleged was the method used to prune the Tree, is that pruning cuts are made close to the trunk with the topping method. In crown reduction

pruning, cuts are made at a slight downward angle so that the remaining stem is not damaged. (Co. Ex. 9 at 9-12.)

NTS removed only the portion of the Tree that was necessary to achieve the required clearance of 12 feet. Ms. Weckerly testified that, in making determinations as to how much to trim and what method to utilize, several factors were considered, including the species of the tree, its average mature height and growth rate, and the possibility of contact if the vegetation was to grow, fall, or be blown into the lines. (Co. Ex. 9 at 13.)

In order to determine proper line clearance, OE utilizes the average growth rate for a tree species. In this case, the average growth rate for the generic beech tree was used. However, without being able to refer to a growth rate chart, Ms. Weckerly could not tell the growth rate of a particular species. She noted that tree trimming is done to achieve proper line clearance and that the factors to be considered in achieving that proper clearance are: the need to keep the tree clear of the wires for a minimum of four years, wire sag, and safety issues. In addition, Ms. Weckerly stated that one cannot just measure a certain distance for the proper lateral cut on a tree branch and then cut; the cut must be taken a little further back along the branch. (Tr. at 95, 113-115.)

#### Liss Testimony

Joseph Liss, forestry specialist and general foreman for NTS, is certified as a qualified line clearance arborist. Mr. Liss testified that the Tree was planted directly under the distribution line and had grown to a point in which it violated the clearance requirements. Further, the Tree had made actual contact with the distribution conductor, causing a singeing or burnout effect at the Tree's highest point from the tree/line contact. As a result, the top of the Tree was somewhat U-shaped with some of the branches at what used to be its highest point being singed back. Mr. Liss testified that the Tree was well within the 15-foot distribution clearing zone and that it either had to be removed or extensively trimmed to achieve the acceptable minimum clearance of 12 feet under the UVM specifications. (Co. Ex. 10 at 3.)

The best method to achieve the required 12 feet of clearance over the four year cycle, and still preserve the health and aesthetic beauty of the Tree, given its height, was to perform crown reduction using drop crotch pruning cuts. Mr. Liss testified that crown reduction, a regularly accepted tree pruning method, was the only option to obtain the required clearance and save the Tree from complete removal. Contrary to the testimony of Complainant's witness, NTS did not use a rounding over or topping method of pruning. NTS removed approximately 10 - 15 feet from the top of the Tree and reshaped it to a shorter version of its original contour to achieve the required, 12 feet of clearance from the tallest point. Also NTS removed approximately ¼ of the tree that consisted of dead branches to improve its overall health and look. (Co. Ex. 10 at 4-5, 8.)

NTS' pruning cuts were made in accordance with ANSI 300 Standards and all of NTS' work met OE's UVM specifications. Mr. Liss testified that NTS' pruning cuts were necessary to achieve minimum acceptable clearances with the distribution line, and no amount of excess foliage was removed to accomplish this objective. (Co. Ex. 10 at 6-8.)

#### IV. DISCUSSION AND CONCLUSION

The record in this case reveals that OE's witnesses presented credible evidence with respect to the pruning of the Tree. OE's witnesses testified that the Tree was directly underneath and, at one time, touching OE's distribution line. Part of the Tree was singed back from contact with the high voltage in the line. Further, the Tree needed to be trimmed to preserve the integrity of the line from the damaging effects that contact with the Tree might cause. According to prevailing industry standards and practices, rather than remove the Tree - an option that OE had under the ANSI 300 Standards - the Company chose to use the crown reduction method of pruning and make directional pruning cuts to reduce the Tree's size. (Co. Ex. 9 at 9-10, 11-14; Co. Ex. 10 at 3, 7, 8.)

Dr. Paquelet presented his own case at hearing. He testified that the Tree was growing beside, rather than beneath, OE's high voltage line and was not interfering with that line. Dr. Paquelet maintained that the Tree did not need to be trimmed. (Tr. at 16-17, 19-20, 23-24, 25.) However, the testimony of Mr. Yates, Dr. Paquelet's witness, does not confirm the complaint about the Tree in a credible manner. The Commission initially notes that Mr. Yates is not a certified line clearance arborist (Tr. at 49-52). With respect to his expert opinion, we observe that Mr. Yates did not visit the Paquelet property before his pre-filed testimony was submitted, that he first visited the Paquelet property on the day of the hearing, that the opinions and measurements in his pre-filed testimony were adopted by him from a letter Dr. Paquelet had written, and that his opinions about the Tree were based solely on photographs Dr. Paquelet had taken (Tr. at 63-64, 66-69, 73-75). In fact, although Mr. Yates testified that the Tree is dying, he admitted that the Tree was continuing to leaf, with new buds sprouting and that the Tree looked healthier on the day of the hearing than it did before the February 2010 pruning (Tr. at 71-72).

The Commission notes that Dr. Paquelet's complaint is based on two contentions: (1) his interpretation of a section labeled Distribution Clearing Zone in OE's Manual, a company manual for vegetation management, which he reads as requiring 12 feet of pruning clearance only if four years worth of growth clearance cannot be obtained (Tr. at 13; Compl. Ex. 1 - Item 7; Co. Ex. TW-1 at 11), and (2) his belief that NTS pruned the Tree according to its distance from a lower, 28-foot "ground" line rather than the Company's 35-foot, high voltage line (Tr. at 16-17).

With respect to Dr. Paquelet's first contention, OE's Manual states that vegetation shall be pruned following directional pruning methods and as further defined in the current ANSI 300 Standards. Pruning shall be done in such a manner to achieve four years worth of growth clearance, and if that is unattainable, then 12 feet of clearance shall be achieved. That section of OE's Manual also states that the distribution clearing zone is defined as a corridor measured at a distance of 15 feet on either side of the power line. Added to the guidelines in OE's Manual are the ANSI 300 Standards, Sections 9.3.1.3 and 9.3.1.4, which state that pruning is to be done using the directional pruning method, so that the tree is trimmed away from the power line and will not grow into the utility space around the line. According to Section 9.3.1.3, if a tree is under a power line and growing into the utility space, the pruning crew has the option of removing the tree. Unlike Dr. Paquelet, the Commission does not read OE's Manual as requiring 12 feet of pruning clearance only if four years worth of growth clearance cannot be obtained. The words "only if" were supplied by Dr. Paquelet at hearing (Tr. at 101, 108), and are not set forth in OE's Manual. Our reading of OE's Manual, together with the ANSI 300 Standards, Sections 9.3.1.3 and 9.3.1.4, is that a pruning clearance corridor extends for 15 feet around a company's power line. Within that space, the requirement is to prune for four years of growth clearance, and if that clearance cannot be achieved, for whatever reason, then a power company or its contractor is to prune for at least 12 feet of clearance around a power line. (Compl. Ex. 1 - Item 7; Co. Ex. TW-1 at 11; Co. Ex. 6 at 6; Co. Ex. TW-3 at 15.)

Company witness Weckerly testified that she did not know the growth rate for the Tree without referring to a chart listing the average growth rates for tree species. Ms. Weckerly, however, did not have a growth-rate chart at her disposal in the hearing room. (Tr. at 95, 99-100, 116.) Dr. Paquelet, for his part, might have obtained such information from the Company via discovery or subpoena, or from other sources, and introduced that information at hearing, but he did not do so. Thus, there is no evidence of record as to what four years of growth for the Tree might be. Lacking such evidence, the Commission observes that the only indication in this record as to the clearance that was needed between the Tree and OE's power line is the testimony of OE's witnesses. Both OE witnesses stated that the Tree was trimmed according to the 12-foot clearance requirement in the ANSI 300 Standards (Co. Exs. 9 and 10 at 12 and 6, respectively).

Similarly, there is a lack of evidence of record to support Dr. Paquelet's second contention, that the pruning crew measured the height of the Tree from a lower, 28-foot "ground" line, not the 35-foot, high voltage line. According to Dr. Paquelet, the Tree was not in proximity to the high voltage line, posed no danger to that line, and was trimmed needlessly. Mr. Yates, who adopted Dr. Paquelet's opinions and height and distance measurements almost word for word, did present pre-filed testimony in support of Dr. Paquelet's second contention (Compl. Ex. 2 at 2-8). However, Company witness Weckerly did not agree on cross examination to Dr. Paquelet's contention that the NTS trimming crew used a lower, 28-foot line as their pruning bench mark. According to Ms. Weckerly,



the appropriate amount of foliage was trimmed in order to achieve the necessary clearance. (Tr. at 103.) The Commission also notes that Joseph Liss, NTS' trimming crew foreman, testified that the Tree was pruned to attain clearance around OE's high voltage line (Co. Ex a 10 at 4). Yet Mr. Liss was not questioned by Dr. Paquelet on cross examination about how the NTS crew went about trimming the Tree (Tr. at 119-120). On this point, we would observe that, with due diligence, Dr. Paquelet might have elicited more information in support of his argument, either through cross examination of Mr. Liss, or through discovery prior to the hearing. However, based upon the facts of this record, the Commission cannot find that NTS mistook a lower, 28-foot line for the Company's high voltage line and unnecessarily trimmed the Tree.

In sum, the Commission believes that the Complainant has presented insufficient evidence for us to conclude that OE removed more of the Tree than was necessary to meet its line clearance requirements.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On July 5, 2011, Charles Paquelet, MD filed this complaint against OE alleging that OE failed to comply with the guidelines in the Company's vegetation management program and caused irreparable damage to an unusual and rare tree in his garden.
- (2) On July 26, 2011, OE filed an answer denying the allegations in the complaint.
- (3) On April 9, 2012, Dr. Paquelet filed the testimony of his witness, Douglas Yates. OE filed the testimony of its witnesses, Tara Weckerly and Joseph Liss, on June 7, 2012. Dr. Paquelet represented himself at the June 14, 2012, hearing in this matter. Subsequently, on August 3, 2012, OE filed a post hearing brief and Dr. Paquelet filed a statement of the case.
- (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 conclude that OE removed more of the Tree on Dr. Paquelet's property than was necessary to meet its line clearance requirements.

ORDER:

It is, therefore,


ORDERED, That the complaint be denied and that this case be dismissed. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

---

Todd A. Snitchler, Chairman




---

Steven D. Lesser

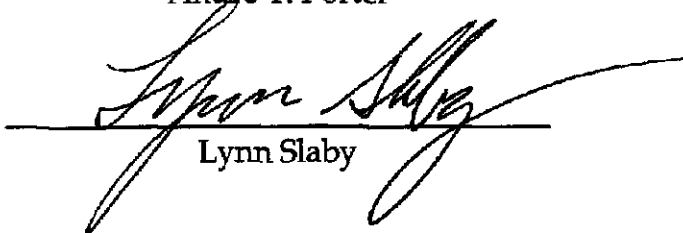
---

Andre T. Porter



---

Cheryl L. Roberto



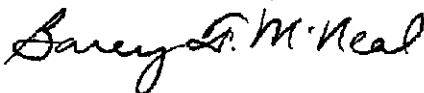
---

Lynn Slaby

KKS/vrm

Entered in the Journal

**SEP 12 2012**



---

Barcy F. McNeal  
Secretary