

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of	)	
Lynne Gwynn,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 13-666-EL-CSS
	)	
The Cleveland Electric Illuminating	)	
Company,	)	
	)	
Respondent.	)	

ENTRY

The attorney examiner finds:

- (1) On March 14, 2013, the complainant, Lynne Gwynn, filed a complaint against the respondent, The Cleveland Electric Illuminating Company (CEI), alleging that, in June 2012, the respondent informed the complainant that three maple trees in the complainant's backyard needed to be removed. The complaint further alleges that in November 2011, an entity named Eco Tree Service came and cut down one of the trees; then came back in January 2013, to cut down the other two trees. The complaint alleges that the cutting down of the two trees in the complainant's backyard in January 2013, resulted in damages to the complainant's driveway, for which the complainant should be compensated. The complaint implicitly indicates that the respondent should be held responsible for compensating the complainant for the damages to her driveway.
- (2) On April 3, 2013, the respondent timely filed its answer and also a motion to dismiss this case. In its answer, CEI admits that: (a) it notified the complainant that trees located on her property needed to be cut; and that Eco Tree Service came to the complainant's address to remove such trees. CEI denies for want of knowledge the other allegations of the complaint and specifically denies any liability for the alleged damages to the complainant's driveway. Further, CEI's answer sets forth

affirmative defenses including: (a) that the complaint fails to set forth reasonable grounds for complaint; (b) that the complainant has failed to mitigate her damages; (c) that the complainant is not the real party of interest; (d) that CEI has, at all times relevant to the complaint, complied with the Revised Code, the rules, regulations, and orders of the Commission, its tariffs on file with the Commission, and accepted standards and practices of the electric utility industry; (e) that the complainant's damages, if any, were proximately caused by the negligent acts of other third parties who are beyond the jurisdiction of the Commission and who are not parties to this case; and (f) that this matter is not within the jurisdiction of the Commission. Further, CEI requests dismissal of the complaint.

- (3) The attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Rule 4901-1-26, Ohio Administrative Code (O.A.C.), any statements made in an attempt to settle this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement discussion. However, nothing prohibits either party from initiating settlement negotiations prior to the scheduled settlement conference.
- (4) Accordingly, a settlement conference shall be scheduled for May 1, 2013, at 10:00 a.m., in Conference Room 1246, in the offices of the Commission, 12th, Floor, 180 East Broad Street, Columbus, Ohio 43215-3793.
- (5) Pursuant to Rule 4901-1-26(F), O.A.C., the representatives of the public utility shall investigate the issues raised in the complaint prior to the settlement conference, and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties attending the settlement conference should bring with them all documents relevant to this matter.

- (6) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

It is, therefore,

ORDERED, That a prehearing settlement conference be held in accordance with Finding (4). 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

s/Daniel Fullin

By: Daniel E. Fullin  
Attorney Examiner

JRJ/sc

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**Case No(s). 13-0666-EL-CSS**

Summary: Attorney Examiner Entry orders a 10:00 a.m. prehearing conference for 05/01/2013 at the offices of the Commission, 180 E. Broad St., 12th Flr., Rm. 1246, Columbus, Ohio. - electronically filed by Sandra Coffey on behalf of Daniel Fullin, Attorney Examiner, Public Utilities Commission of Ohio