

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE COMPLAINT OF  
KARL FRIEDERICH JENTGEN, ET AL.,**

**COMPLAINANTS,**

**V.**

**CASE NO. 15-245-EL-CSS**

**OHIO EDISON COMPANY AND  
AMERICAN TRANSMISSION SYSTEMS,  
INC.**

**RESPONDENTS.**

**ENTRY ON REHEARING**

Entered in the Journal on December 7, 2016

**I. SUMMARY**

{¶ 1} The Commission denies the application for rehearing filed by the Jentgens because each assignment of error raised in their application for rehearing lacks merit.

**II. PROCEDURAL HISTORY**

{¶ 2} Ohio Edison Company is an electric distribution utility as defined in R.C. 4928.01(A)(6), and Ohio Edison Company and American Transmission Systems, Inc. (collectively, FirstEnergy or the Companies) are public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} On January 30, 2015, Karl Friederich Jentgen, Jeffrey Joseph Jentgen, Lisa Ann Coker, Kristin Ann Jentgen, Michael Mohr Jentgen, Philip John Jentgen, and James J. Jentgen (collectively, the Jentgens), filed a complaint against FirstEnergy concerning the planned removal of trees outside the right-of-way corridor of the Cardington-Tangy 69 Kilovolt (kV) transmission line. The disputed trees are on the Jentgens' property, outside the right-of-way corridor, but fall within the scope of FirstEnergy's easement.

{¶ 4} Thereafter, on February 19, 2016, FirstEnergy filed its answer to the complaint denying the material allegations contained in the complaint.

{¶ 5} On April 14, 2016, the Commission issued an Opinion and Order finding that the Jentgens did not meet their burden of proof that FirstEnergy violated its transmission vegetation management (TVM) program and provided unjust or unreasonable service by removing trees outside the right-of-way corridor that were not dead, diseased, or dying, or significantly encroaching upon FirstEnergy's transmission line.

{¶ 6} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 7} On May 13, 2016, the Jentgens filed an application for rehearing in this case. Thereafter, on May 23, 2016, FirstEnergy filed a memorandum contra the application for rehearing. On June 8, 2016, the Commission granted the Jentgens' application for rehearing for the limited purpose of further consideration of the matters raised in the application for rehearing.

### III. DISCUSSION

{¶ 8} It is well established that an application for rehearing is properly denied if it is based upon previously raised arguments. *In re Buckeye Energy Brokers*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at 12; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 09-872-EL-FAC, Fourth Entry on Rehearing (July 2, 2012) at 5-6; *In re Westside Cellular*, 93-1758-RC-CSS, Entry on Rehearing (Apr. 25, 2001) at 10. In this case, many of the assignments of error raised by the Jentgens have already been denied by the Commission. We found in our Opinion and Order that the Jentgens did not meet their burden to demonstrate, by a preponderance of the evidence, that FirstEnergy provided unjust or unreasonable service by violating its Commission-approved TVM program.

{¶ 9} We determined that the Jentgens did not demonstrate the trees at issue in this case were not dead, dying, diseased, or significantly encroaching on the right-of-way corridor (Order at 10). Pursuant to the Specifications to FirstEnergy's TVM program, priority trees are "[t]ree(s) located adjacent to the transmission corridor that are either dead, diseased, declining, severely leaning or significantly encroaching the corridor" (Resp. Ex. 3, Att. KB-2 at 118). Additionally, "[t]rees that are expected to be removed or controlled are: incompatible trees located within the transmission corridor; dead or defective which pose a threat to the conductor; immature trees, generally classified as brush; all priority trees located adjacent to the transmission corridor that are dead, dying, diseased, leaning or significantly encroaching the transmission corridor" (Resp. Ex. 3, Att. KB-3 at 42). Moreover, regarding transmission facilities below 200 kV, "[t]he Contractor shall identify and remove priority trees located adjacent to transmission corridors that are dead, dying, diseased, structurally defective, leaning or significantly encroaching where the transmission conductor is a target and when a tree(s) fails it will fall or be within close proximity of the transmission conductor to potentially flash-over, strike or grow into it" (Resp. Ex. 3, Att. KB-3 at 35-36). The record does not demonstrate that the trees in this case were not dead, dying, diseased, or leaning or significantly encroaching the right of way corridor. The Jentgens' expert witness, Chris Ahlum, testified that he was not able to determine if trees were significantly encroaching the right-of-way corridor or if they were leaning; thereby providing no opinion on two of the five criteria that would permit removal or control (Tr. at 30, 32). Additionally, Mr. Ahlum did not know how many of the 112 trees he observed were dying or diseased (Tr. at 37). Therefore, we found that the Jentgens did not meet their burden to demonstrate that FirstEnergy violated its Commission-approved TVM program.

**A. Assignment of Error 1**

{¶ 10} As their first assignment of error, the Jentgens argue the Commission's Opinion and Order was unjust or unreasonable because it failed to find that FirstEnergy did not make reasonable efforts to notify the Jentgens regarding the vegetation

management work to be conducted on their property. The Jentgens assert that FirstEnergy failed to comply with the landowner notification requirements contained in FirstEnergy's Commission-approved TVM program. The Jentgens argue that according to the TVM program, the public utility or its contractors are required to make reasonable efforts to notify all landowners prior to doing work except in outage situations or emergency restorations. According to the Jentgens, this means that each of the titled property owners to the Jentgen property were entitled to formal notice of FirstEnergy's intended work. However, the Jentgens recognize that this would be an exacting and difficult requirement. Regardless, they claim that this is what FirstEnergy should have done to justify its "best in class" utility designation (Compl. App. for Rehearing at 7.) The Jentgens then argue that they demonstrated, and FirstEnergy failed to rebut, that the notice efforts in this case were unjust and unreasonable.

{¶ 11} FirstEnergy asserts the Commission correctly found that the Companies did not violate the notice provisions of their TVM program. FirstEnergy argues that the record demonstrates the reasonable efforts taken by FirstEnergy to provide notice to the Jentgens of the vegetation management work to be conducted. Patrick Failor testified on behalf of FirstEnergy that in February of 2011 he spoke to property owners Karl and James Jentgen (Resp. Ex. 5, 6). FirstEnergy asserts that although Mr. Failor knew the Jentgens would be refusing the off-corridor vegetation work, he attempted to further discuss and resolve the issues with the Jentgens (Resp. Ex. 5 at 4-7). Thereafter, on March 12, 2012, the Asplundh Tree Expert Co. (Asplundh) filled out a Refusal Form 418.1, which indicates the Jentgens were notified of the work and objected to it (Resp. Ex. 5 at 6). Further, after receiving the form, Mr. Failor again notified James Jentgen by telephone message that the work would need to be done despite his objections. Thereafter, Mr. Failor again notified the Jentgens of the work to be conducted in a letter dated November 12, 2012, which included a detailed work plan (Resp. Ex. 5 at 6-7, Att. PF-4). In response to this letter, James Jentgen sent a return letter dated November 20, 2012, seeking to impose certain requirements on FirstEnergy's vegetation management work and refusing to permit the work unless the

requirements were met (Resp. Ex. 5 at 6-7, Att. PF-5). Accordingly, FirstEnergy asserts that Karl and James Jentgen were aware as early as February 2011 of the vegetation management work to be performed. FirstEnergy asserts the Jentgens failed to carry their burden of proof to demonstrate that the Commission's Opinion and Order is unreasonable or unlawful, and, therefore, the application for rehearing should be denied.

{¶ 12} Additionally, FirstEnergy notes the arguments raised by the Jentgens regarding improper notice were already raised in this proceeding and rejected by the Commission. FirstEnergy argues that an application for rehearing is properly denied if it is based upon previously raised arguments. *In re Buckeye Energy Brokers*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at 12; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 09-872-EL-FAC, Fourth Entry on Rehearing (July 2, 2012) at 5-6; *In re Westside Cellular*, 93-1758-RC-CSS, Entry on Rehearing (Apr. 25, 2001) at 10.

#### **B. Conclusion**

{¶ 13} The Commission finds that the assignment of error raised by the Jentgens lacks merit. The Specifications to the TVM program provide, "Contractors shall make reasonable attempts to notify all landowners, municipalities, government agencies or others who have jurisdiction prior to doing work unless FirstEnergy furnishes prior notification to the Contractor in writing, except in outage situations or emergency restorations" (Resp. Ex. 3, Att. KB-2 at 14). The TVM program's requirement is for reasonable notice. However, the Jentgens assert this notice requirement requires all titled property owners receive formal notice of vegetation management work. We disagree. Reasonable notice does not place such a burden upon utilities. The Jentgens recognize that such a requirement would create a burden that would be both exacting and difficult to comply with (Resp. App. for Rehearing at 8). We find the TVM program requires reasonable notice of the vegetation management work to be conducted, and such reasonable notice was provided in this case.

{¶ 14} FirstEnergy notified Karl Jentgen numerous times regarding the proposed vegetation management work. While the Jentgens assert they had insufficient notice of the vegetation management work to be done, they state that "clearly, the parties are well-acquainted with one another" (Resp. App. for Rehearing at 7). Karl Jentgen testified that he spoke with Pat Failor several times prior to 2010 and again several times after 2010 (Tr. at 96). Further, he testified that he was informed about the 5-year TVM plan and received a letter regarding the work to be done (Tr. at 96-101). The Jentgens acknowledge they were well-acquainted with FirstEnergy and conceded that they were informed of the vegetation management work to be done. Therefore, we find that the record demonstrates FirstEnergy provided reasonable notice of the vegetation management work to be done. Accordingly, the assignment of error lacks merit and rehearing on this assignment of error should be denied.

*C. Assignment of Error 2*

{¶ 15} The Jentgens next argue the Commission's Order was unjust or unreasonable because it failed to require FirstEnergy to strictly comply with the requirements of the work refusal process contained in the FirstEnergy's Commission-approved TVM program (Compl. App. for Rehearing at 9, citing TVM Sec. 17 at 22). The Jentgens assert the TVM program requires that the contractor shall not perform any work on a property until a property refusal is resolved. The Jentgens aver that FirstEnergy commenced vegetation management work in violation of the TVM program and was only stopped from continuing pursuant to a temporary restraining order obtained by the Jentgens. The Jentgens argue the Commission should find that FirstEnergy violated the guidelines contained in the TVM program governing work refusals.

{¶ 16} FirstEnergy asserts the Commission correctly found that it did not violate the work refusal provisions of the TVM program. FirstEnergy notes the Jentgens fail to cite to any record evidence in support of their assertion that FirstEnergy violated the work refusal process in the TVM program, and the record does not support the Jentgens' argument. Further, FirstEnergy argues the Jentgens misrepresent the requirements contained in the

TVM program. Section 17.1 of the Specifications to the TVM program provides that "[w]hen work is refused or limited in such a manner as to not allow prescribed clearances in accordance with this Specification, the Contractor shall not perform any work on the property until the refusal is resolved" (Resp. Ex. 3, Att. KB-2, 22). FirstEnergy argues that when work is refused or limited, this Specification requires the Contractor to transfer the matter to the utility's foresters. In this case, the work refusal form was filled out by the Jentgens with Asplundh and the matter was transferred to Patrick Failor. FirstEnergy and Patrick Failor then determined that the easement permitted it to continue conducting the vegetation management work. FirstEnergy asserts that express property owner approval of proposed work is not necessary to resolve a refusal before work commences (Tr. at 202). If express approval cannot be obtained, FirstEnergy is permitted to conduct the vegetation management pursuant to its rights under the easement (Tr. at 202; Resp. App. for Rehearing at 12).

#### ***D. Conclusion***

{¶ 17} The Commission finds the assignment of error raised by the Jentgens lacks merit. The most recent Specifications to FirstEnergy's TVM program were introduced into evidence as an attachment to the testimony of Katherine M. Bloss (Resp. Ex. 3, Att. KB-2). Section 17.1 of the Specifications to the TVM program states that "When work is refused or limited in such a manner as to allow prescribed clearances in accordance with this Specification, the Contractor shall not perform any work on the property until the refusal is resolved." The record indicates that FirstEnergy complied with Section 17.1 of the Specifications to the TVM program because the Contractor stopped performing vegetation management work on the property and referred the matter to Patrick Failor. FirstEnergy and Patrick Failor determined that they had the right pursuant to the easement to conduct vegetation management on the property. Accordingly, the easement in this case resolved the dispute. It provided FirstEnergy the right to continue to conduct vegetation management on the property. We note that resolving a dispute does not mean capitulating to the demands of the property owner. Further, resolving a dispute pursuant to the TVM

program similarly does not require a resolution that is satisfactory to both the utility and the property owner. In this case, the easement resolved the dispute in that it provided FirstEnergy the unequivocal right to conduct the vegetation management work on the property, and the TVM program provides that FirstEnergy must conduct such work in a specific manner. FirstEnergy then continued the vegetation management work until it was prohibited from doing so pursuant to a temporary restraining order. We find that, under Section 17.1 of the Specifications to the TVM program, when work is refused or limited, the Contractor shall temporarily stop work to determine if it is properly authorized to conduct the vegetation management work, just as it did in this case. The Jentgens did not demonstrate an alternative meaning or understanding of the TVM program, even though they carry the burden of proof in this matter. We find that FirstEnergy was authorized to conduct the vegetation management work pursuant to the terms of the easement and their Commission-approved TVM program.

*E. Assignment of Error 3*

{¶ 18} The Jentgens argue the Commission's Opinion and Order was unjust and unreasonable because it failed to determine that FirstEnergy failed to follow required debris removal protocols. The Jentgens argue the TVM program contemplates that the utility is required to remove debris in a timely fashion, which did not happen in this case. The Jentgens assert there is no inclement weather or cost exception that justifies FirstEnergy' tardiness in removing the debris from its vegetation management work. The Jentgens urge the Commission to grant rehearing and reconsider this issue. The request the Commission find that FirstEnergy failed to provide adequate service and unreasonably and unjustly failed to remove debris in a manner consistent with the TVM program. (Compl. App. for Rehearing at 11-12.)

{¶ 19} FirstEnergy initially notes that this argument was previously raised by the Jentgens and rejected by the Commission. FirstEnergy then asserts the Commission correctly found that it did not violate the debris removal provisions of its TVM program. According to FirstEnergy, the Jentgens' argument is completely unsupported by the



record, and, for the most part, entirely absent from the record. The debris removal provisions of the TVM program are contained in Section 31 of the Specifications to the TVM program, which was not discussed at the hearing or introduced into the record in this case.

{¶ 20} FirstEnergy then argues that even if the debris removal provisions of the TVM program had been admitted into the record, there is no factual support for the proposition that the debris removal in this case was inadequate or improper. According to FirstEnergy, the temporary restraining order issued by the Delaware County Common Pleas Court on December 20, 2012, effectively prevented FirstEnergy from entering the Jentgens' property to clean up debris (Resp. Ex. 5, 10; Tr. 107). Thereafter, once the temporary restraining order was lifted, a similar order was sought by the Jentgens and granted by the Commission on February 11, 2015, which prohibited FirstEnergy from conducting further vegetation management work. FirstEnergy asserts that it would be unreasonable to grant rehearing and find that it provided unjust or unreasonable service when the Jentgens obtained orders preventing FirstEnergy from entering the property to remove the debris. FirstEnergy asserts the assignment of error is ridiculous and should be rejected.

#### ***F. Conclusion***

{¶ 21} The Commission finds that the assignment of error raised by the Jentgens lacks merit. The Commission agrees with FirstEnergy that it would be unreasonable to find that it unjustly failed to clean up debris when it was prohibited from doing so pursuant to a restraining order obtained by the Jentgens. The record indicates that Karl Jentgen sent a letter to FirstEnergy requesting that debris left on the property be removed (Tr. at 201-203). Patrick Failor testified that the debris was left on the property because the weather conditions and the wet ground on the property would not support the Company's equipment to remove the debris (Tr. At 202). Thereafter, he was prohibited from removing the debris pursuant to the temporary restraining order and the Attorney Examiner's Entry.

However, he testified that he has every intention of removing the debris on the Jentgens' property.

{¶ 22} The Commission finds that it would be unreasonable to find that FirstEnergy violated its TVM program for leaving debris when it was specifically prohibited from removing the debris; first by weather conditions and then by temporary restraining order. However, while the Commission finds that the Jentgens failed to demonstrate that FirstEnergy unjustly or unreasonably violated the debris removal provisions of the TVM program, we direct FirstEnergy to remove any remaining debris on the Jentgens' property, as weather permits and in accordance with the provisions of the TVM program.

*G. Assignment of Error 4*

{¶ 23} The Jentgens argue the Commission's Order was unjust and unreasonable because it did not find that FirstEnergy provided unjust or unreasonable service by not properly supervising its contractors. The Jentgens assert that insufficient supervision of FirstEnergy's contractors resulted in the misidentification of trees due to the fact that the task was delegated to a tree-trimming crew. Misidentification of trees results in the incorrect treatment of trees. In this case, the Jentgens assert that FirstEnergy's contractors misidentified numerous trees and Mr. Ahlum was able to identify numerous stumps from trees that did not appear to be dead, dying, or diseased. The Jentgens urge the Commission to reconsider its Opinion and Order in light of the tree misidentifications and require FirstEnergy to conduct future tree identification activities by trained arborists.

{¶ 24} FirstEnergy asserts that it acted reasonably in the management and supervision of its contractors. Further, FirstEnergy assert there is no record evidence to support the Jentgens' argument that it failed to supervise its contractors. FirstEnergy asserts there is no record evidence that the Asplundh contractors were not well trained or misidentified any trees. Further, the record demonstrates that Patrick Failor, a trained and experienced utility arborist, personally observed and marked the trees at issue before work commenced on December 19, 2012 (Resp. Ex. 5 at 8-9, 11). Thereafter, Katherine M. Bloss,

an experienced utility arborist, also observed many of the disputed trees in this matter (Resp. Ex. 3 at 12, 14). FirstEnergy argues the record provides that there was no misidentification when the trees were marked for removal or trimming (Tr. at 217).

{¶ 25} Additionally, FirstEnergy notes that only eight of the original 86 trees remain in dispute in this case. As to those eight trees, FirstEnergy determined they needed to be completely removed pursuant to the TVM program, while the Jentgens contend the trees only needed to be trimmed (Resp. Ex. 5 at 12; Tr. at 52). FirstEnergy asserts that many of the misidentification disputes were resolved pursuant to settlement negotiations between the parties that took place before this case was filed at the Commission (Resp. App. for Rehearing at 16). Further, Patrick Failor testified that species misidentification in the course of creating the tree inventory would not alter any of his opinions regarding the need to remove the disputed trees actually at issue in this case (Tr. at 145-146; Resp. Ex. 5 at 12). Finally, FirstEnergy asserts that the arguments raised by the Jentgens were previously rejected by the Commission, and FirstEnergy requests that the Commission deny rehearing on this assignment of error.

#### *H. Conclusion*

{¶ 26} The Commission finds that the assignment of error raised by the Jentgens lacks merit. In this case, the Jentgens carry the burden of proof, and we found that they failed to demonstrate that FirstEnergy or its contractors improperly identified any of the trees that were determined to be dead, dying, diseased, or significantly encroaching on FirstEnergy's easement. While Ms. Bloss testified that trees were misidentified by species, there is no indication that they were misidentified regarding their health (Tr. at 142, "Trees were misidentified"). The Jentgens failed to demonstrate how the species affects whether the trees are dead, dying, diseased, or significantly encroaching on the right-of-way corridor. Further, FirstEnergy demonstrated that the misidentified trees were corrected, but the corrections to the tree inventory did not change the determination that they should be removed or controlled (Tr. at 145-146). Accordingly, the Commission finds that the Jentgens failed to carry their burden of proof and the assignment of error lacks merit.

**I. Assignment of Error 5**

{¶ 27} The Jentgens assert the Commission was unduly influenced by claims and actions outside of the record in this case. They note that the Commission took notice of an ancillary proceeding in Delaware County Court of Common Pleas regarding interpretation of the easement (Order at 3-4; *Jentgen v. Asplundh Tree Expert Co.*, Delaware C.P. No. 12 CVH 1442 (Mar. 25, 2014)). While the Jentgens recognize the Commission did not specifically reference any issues in the ancillary proceeding, there were outstanding counterclaims filed by FirstEnergy that were unresolved when the Commission heard testimony in this case. The Jentgens argue that to the extent the allegations contained in the pending case in Delaware County Court of Common Pleas influenced the Commission, rehearing is proper in light of the intervening legal developments in the case.

{¶ 28} FirstEnergy asserts there is nothing in the record indicating that the Commission relied in any way upon actions taken in proceedings other than the present case. Further, FirstEnergy notes there is nothing in the record indicating the Commission was even aware of the counterclaims, much less that it was influenced by them. FirstEnergy then points out that the Commission indicated that it specifically did not consider any of the claims asserted in the state court action (citing Order at 4).

**J. Conclusion**

{¶ 29} The Commission finds the assignment of error raised by the Jentgens lacks merit. The Commission noted the proceeding in Delaware County Court of Common Pleas for the sole purpose of recognizing that the only issue before the Commission is whether FirstEnergy provided unjust or unreasonable service by violating its Commission-approved TVM program. The Commission did not consider and was not aware of any of the claims asserted by either party in the ancillary case. The Commission reviewed the procedural history of the complaint filed by the Jentgens in this case and noted that the Delaware County Court of Common Pleas determined that service-related issues with regard to the electric utility fall within the exclusive subject matter jurisdiction of the

Commission (Order at 3-4). Accordingly, in this case, the scope of the Commission's review is limited to whether FirstEnergy provided unjust or unreasonable service by violating its Commission-approved TVM program. Therefore, rehearing is denied on this assignment of error.

**K. Assignment of Error 6**

{¶ 30} The Jentgens assert the Commission should reconsider its decision in light of the parties' joint efforts to resolve the dispute in this matter. The Jentgens argue that the parties have engaged in meetings and walk-throughs of the property since the hearing in this matter, and these meetings demonstrate the Jentgens' good faith efforts to support FirstEnergy's vegetation management practices, so long as those practices comport with the TVM guidelines (Compl. App. for Rehearing at 14).

{¶ 31} FirstEnergy argues the parties' efforts to resolve the dispute in this case do not support granting the Jentgens' application for rehearing. FirstEnergy asserts that there is no record evidence of the post-hearing settlement discussions and the Commission should not take these into consideration when making its determination. The Jentgens even confirm that the settlement discussions took place after the evidentiary hearing and the filing of post-hearing briefs in this case. Therefore, since these meetings are not contained in the record in this case, the Commission should disregard them on rehearing. *See In Re Ormet*, Case No. 09-119-EL-AEC, Entry on Rehearing (Sept. 15, 2009) at 12-13. According to FirstEnergy, the parties' efforts to resolve the dispute in this case should not be considered and do not support granting rehearing in this matter. (Resp. App. for Rehearing at 18-19).

**L. Conclusion**

{¶ 32} The Commission finds that this assignment of error lacks merit. While we appreciate the parties' joint efforts to independently resolve the dispute in this case, it has no bearing on our determination in this matter. While the complaint initially involved a dispute over 86 trees, through their good faith efforts to resolve this dispute, the parties

have reduced the number of disputed trees to eight. However, we will not consider evidence of post-hearing settlement discussions. Any settlement discussions or stipulations prior to or after the hearing have no bearing on our decision in this matter. Settlement discussions have no bearing on the whether FirstEnergy violated its TVM program. Further, some of the efforts by the parties to resolve the dispute took place after the hearing and, therefore, are not included in the record. Since these meetings are not included in the record, they cannot support an argument that the Commission's Order was unjust or unreasonable.

{¶ 33} Finally, the Commission has long held that settlement negotiations shall remain confidential. We will not consider the parties' good faith efforts to resolve this dispute as evidence that the dispute in this matter is not valid, that this case should be reconsidered, or to support the proposition that the Jentgens met their burden of proof. Pursuant to Ohio Adm.Code 4901-1-26(E), "[e]vidence of \* \* \* offering \* \* \* a valuable consideration in compromising or attempting to compromise a disputed matter in a commission proceeding is not admissible to prove liability for or invalidity of the dispute. Evidence of conduct or statements made in compromise negotiations is likewise not admissible." In the first place, the Jentgens' assignment of error rests on facts that are wholly absent from the record; and second, they are evidence of attempts to compromise the disputed matter. Accordingly, rehearing on the Jentgens' final assignment of error is denied.

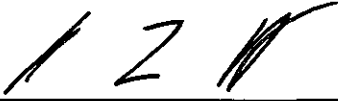
#### IV. ORDER

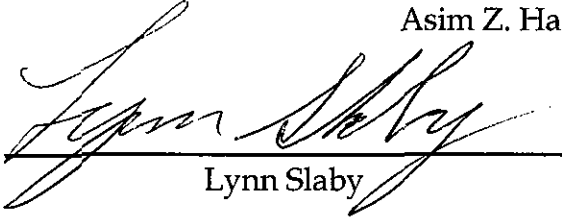
{¶ 34} It is, therefore,

{¶ 35} ORDERED, That the application for rehearing filed by the Jentgens be denied. It is, further,


[¶ 36] ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Asim Z. Haque, Chairman

  
Lynn Slaby

  
M. Beth Trombold

  
Thomas W. Johnson

  
M. Howard Petricoff

JML/sc

Entered in the Journal

**DEC 07 2016**

  
Barcy F. McNeal

Barcy F. McNeal  
Secretary