

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
RON JACKSON,**

COMPLAINANT,

CASE NO. 15-1517-EL-CSS

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on November 14, 2018

I. SUMMARY

{¶ 1} This Entry grants Duke Energy Ohio, Inc.'s motion to dismiss this complaint for lack of jurisdiction, pursuant to *Corrigan v. The Illum. Co.*, 122 Ohio St.3d 265, 2009-Ohio-2524, 910 N.E.2d 1009, as the Commission's expertise is not required to resolve this complaint.

II. DISCUSSION

{¶ 2} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 3} Respondent, Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 4} On August 27, 2015, Ron Jackson (Complainant) filed a complaint against Duke, alleging that Respondent's transmission line is being constructed and maintained

in a way that extends beyond the bounds of an existing utility easement and, as such, encroaches illegally onto Complainant's property.

{¶ 5} On September 14, 2015, Duke filed its answer, denying all of the allegations of the complaint and raising several affirmative defenses, including (a) that the complaint fails to set forth reasonable grounds for complaint; (b) that the complaint fails to allege that Duke has violated a rule or statute applicable to it; and (c) that at all times Duke has complied with all Title 49 of the Revised Code, and with all applicable rules, regulations and orders of the Commission.

{¶ 6} On September 14, 2015, Duke also filed a motion to dismiss this case both because it fails to set forth reasonable grounds for complaint and because the Commission lacks jurisdiction over the subject matter of the complaint. Complainant did not file a response to Duke's motion to dismiss.

{¶ 7} Duke avers that the complaint involves only questions relating to property rights granted by an easement. Duke argues that the complaint should be dismissed because the Commission's jurisdiction, under R.C. 4905.26, extends only to complaints that challenge the legal validity of utility rates and/or utility service, but not to claims involving the proper interpretation and enforce of an easement. *Corrigan* at ¶ 8, 9, 17. Duke maintains that Complainant is improperly seeking to have the Commission determine rights related to the maintenance and operation of transmission lines within an easement, something beyond its jurisdiction. For that reason, argues Duke, this case should be dismissed.

{¶ 8} For the reasons set forth in this Entry, the Commission finds that the Commission lacks jurisdiction over the complaint and, therefore, it should be dismissed. The Commission has exclusive jurisdiction under R.C. 4905.26 to hear complaints filed against public utilities alleging that "any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule,

classification, or service 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 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 Public Utilities Commission over public utilities of the state * * * is so complete, comprehensive and adequate as to warrant the conclusion that it is exclusive.” *Corrigan* at ¶ 8, citing *State ex rel. N. Ohio Tel. Co. v. Winter*, 23 Ohio St.2d 6, 9, 260 N.E.2d. 827 (1970), quoting *State ex rel. Ohio Bell Tel.Co. v. Cuyahoga Cty. Court of Common Pleas*, 128 Ohio St. 553,557, 192 N.E. 787 (1934); see also *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, at 152, 573 N.E.2d 655 (1991). The broad jurisdiction of the Commission over utility service-related matters, however 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” *State ex rel. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas*, 97 Ohio St.3d 69, 2002-Ohio-5312, 776 N.E.2d 92, ¶ 21, quoting *Higgins v. Columbia Gas of Ohio, Inc.*, 136 Ohio App.3d 198, 202, 736 N.E.2d 92 (2000).

{¶ 9} In this case, the jurisdictional question is whether the claims made by Mr. Jackson in his complaint are within the Commission’s exclusive jurisdiction or, instead, are pure contract claims, relating to property rights granted under an easement that, as such, should be adjudicated in a court of law. In making this determination, we must review the substance of the claims to determine if utility service-related issues are involved. *Corrigan* at ¶ 10.

{¶ 10} The Supreme Court of Ohio has adopted a two-part test to determine whether the issues raised in a complaint are within the exclusive jurisdiction of the Commission or whether the issues are pure tort or contract claims better suited for the

Ohio courts. *Corrigan* at ¶ 11. The first part of the test asks whether the Commission's administrative expertise is required to resolve the issue in dispute. The second part of the test asks whether the act complained of constitutes a practice normally authorized by the utility. If the answer to either question is in the negative, then the claim is not within the Commission's jurisdiction. *Corrigan* at ¶ 12, citing *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, 893 N.E.2d. 824, ¶ 12-13.

{¶ 11} In this case, the Commission answers the first question presented under the *Corrigan's* two-part test in the negative, as our administrative expertise is not required to resolve the issue in dispute. Based on our review of the complaint, it is clear that the complaint has been brought for a single purpose: to present a claim through which the parties' respective legal rights under the existing easement may be adjudicated. We agree with Duke that the Commission has no special expertise with respect to interpreting easements and that court of competent jurisdiction would be better suited to apply equitable and legal principles to resolve competing property rights. *In re the Complaint of Thomas and Derrell Wilkes v. Ohio Edison Co.*, Case No. 09-682-EL-CSS, Entry (Feb. 23, 2011) at 11. Consequently, the Commission finds that the Commission's administrative expertise is not needed to resolve the claims presented in the complaint relating to easements.

{¶ 12} In order for the Commission to have jurisdiction, both parts of the *Corrigan* test must be affirmatively satisfied. Here, the Commission's administrative expertise is not required to resolve the dispute, as no utility service-related or utility rate-related issues have been raised. Thus, the first prong of the *Corrigan* two-part test has not been met and it is unnecessary for the Commission to analyze the second prong. Consequently, we find the issue raised in this complaint falls beyond the Commission's jurisdiction and, as such, should be dismissed.

III. ORDER

{¶ 13} It is, therefore,

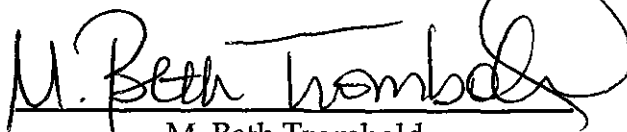
{¶ 14} ORDERED, That, in accordance with the above findings, the complaint in this case should be dismissed for lack of jurisdiction. It is, further,

{¶ 15} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



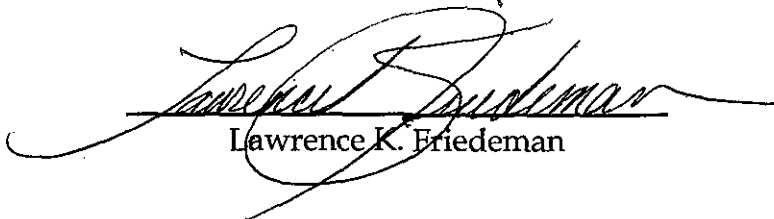
Asim Z. Haque, Chairman



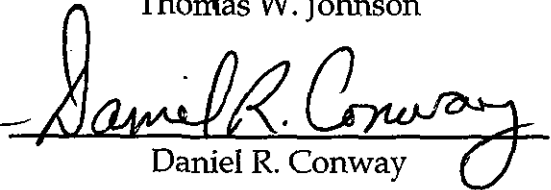
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

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Barcy F. McNeal
Secretary