

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY,**

CASE NO. 19-1267-EL-PWC

COMPLAINANT,

v.

THE VILLAGE OF PERRY,

RESPONDENT.

ENTRY

Entered in the Journal on November 6, 2019

I. SUMMARY

{¶ 1} The Commission grants the request of The Cleveland Electric Illuminating Company and dismisses this case, with prejudice.

II. DISCUSSION

{¶ 2} R.C. 4939.05(C) provides a municipality may levy public way fees against those occupying the public way, but requires such fees to be based on only the costs that the municipal corporation both has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of a public way.

{¶ 3} Pursuant to R.C. 4939.06(A), the Commission has authority to consider written complaints filed by a public utility against a municipal corporation alleging the amount of a public way fee, any related classification of public way occupants or users, or the assignment or allocation of costs to the public way fee is unreasonable, unjustly discriminatory, or unlawful.

{¶ 4} The Village of Perry (Respondent or the Village) is an Ohio municipal corporation, making any public way fees that the Village levies against a public utility for

use or occupancy of a public way are subject to the requirements of R.C. 4929.04 and R.C. 4929.05.

{¶ 5} The Cleveland Electric Illuminating Company (CEI or Complainant) is an electric light company and a public utility, as defined by R.C. 4905.03(C) and R.C. 4905.02, respectively.

{¶ 6} On September 19, 2016, the Village passed Ordinance 2016-20, which enacted Chapter 997 of the Village's Code of Codified Ordinances, titled "Comprehensive Rights of Way." Chapter 997 provides the requirements for obtaining an annual Certificate of Registration and for the charging of an annual right-of-way fee based upon the costs associated with rights-of-way management, administration, and control for the previous calendar year.

{¶ 7} On May 1, 2019, the Village issued an invoice to CEI for a 2019 Certificate of Registration fee in the amount of \$6,201.98.

{¶ 8} On May 30, 2019, CEI filed a complaint against the Village alleging that the amount of the fee is unreasonable, unjustly discriminatory, and unlawful and does not comply with the legal standards established by the Ohio Revised Code and the Commission for public way fees. Specifically, CEI contends that the fee is not based upon a reasonable classification of public way occupants or users, and the assignment or allocation of costs is unreasonable, unjustly discriminatory, and unlawful.

{¶ 9} On June 20, 2019, the Village filed its answer to the complaint in which it denied the material aspects of the complaint. Additionally, the Village raised several affirmative defenses.

{¶ 10} R.C. 4939.06(B) provides that, upon a finding by the Commission that reasonable grounds are stated for a complaint, the Commission shall suspend the public way fee provisions of the municipal ordinance for the duration of the Commission's consideration of the complaint.

{¶ 11} By Entry issued July 17, 2019, the Commission found that reasonable grounds had been stated for a complaint under R.C. 4939.06(A) and suspended the public way fee provisions established by the ordinance, as they apply to Complainant, for the duration of the Commission's consideration of the complaint. The Commission also scheduled a hearing to take place on August 15, 2019. The hearing and testimony deadline were later postponed to September 26, 2019, and September 19, 2019, respectively.

{¶ 12} On September 17, 2019, the parties filed a joint motion to stay the proceedings pending approval of a settlement agreement at the next regularly scheduled meeting of the Perry Village Council.

{¶ 13} By Entry issued September 18, 2019, the attorney examiner granted the joint motion to stay the proceedings.

{¶ 14} On October 24, 2019, CEI filed a notice of dismissal indicating that the parties had reached a settlement with respect to the public way fee and requesting that the Commission dismiss this matter with prejudice.

{¶ 15} As the issues underlying this complaint have been settled, the Commission finds that CEI's request to dismiss this case, with prejudice, is reasonable and should be granted. Accordingly, this case should be dismissed, with prejudice, and closed of record.

III. ORDER

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That CEI's request to dismiss this case, with prejudice, be granted and this case closed of record. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon each party and interested person of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

MJA/kck

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Summary: Entry that the Commission grants the request of The Cleveland Electric Illuminating Company and dismisses this case, with prejudice. electronically filed by Docketing Staff on behalf of Docketing.