

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of)
Jeff McCollin against Moon Lake Electric)

DOCKET NO. 14-030-02

) ORDER DISMISSING COMPLAINT
)

ISSUED: September 26, 2014

SYNOPSIS

The Commission dismisses the complaint filed by Jeff McCollin against Moon Lake Electric.

ORDER OF DISMISSAL

I. BACKGROUND

1. On August 1, 2014, Jeff McCollin (Mr. McCollin) filed a formal complaint against Moon Lake Electric (Moon Lake or Company).¹ Mr. McCollin alleges Moon Lake, without prior notice, cut 75 trees beyond the NESC requirements and cut down 35 other trees from his property.² Mr. McCollin claims the Company's actions amounted to a criminal trespass. Mr. McCollin requests that every tree that was cut down to the ground be replaced with a similar 13' tree.³

2. On August 4, 2014, the Commission issued a notice of filing and comment period in this docket.⁴ The notice states: "The Company may submit a response to the above

¹ See Formal Complaint of Jeff McCollin, filed August 1, 2014.

² See *id.* We take administrative notice that Mr. McCollin appears to be referring to the National Electric Safety Code.

³ See *id.*

⁴ See Notice of Filing and Comment Period, issued August 4, 2014.

complaint no later than . . . September 2, 2014, and Mr. McCollin may file a reply no later than . . . September 17, 2014.”⁵

3. On August 18, 2014, in response to a Commission action request, the Division of Public Utilities (Division) filed a memorandum recommending the Commission dismiss the complaint.⁶ The Division provides the following statement in support of its recommendation: “Mr. McCollin has not shown that the Company has violated any Commission [rule, law, or Company tariff]. Additionally, electric utilities have the legal right and authority to maintain electrical transmission and distribution facilities in a manner that promotes a high standard of safe and reliable service. Therefore, the Division recommends that this complaint be dismissed.”⁷

4. On September 2, 2014, Moon Lake filed a response to Mr. McCollin’s complaint.⁸ Moon Lake states, in part, the following in its response:

[The] . . . power line [at issue] has been in place for many years and[,] sometime in the last 10-12 years[,] Mr. McCollin planted . . . very fast growing willow trees within the power line right of way. The 2014 trimming cycle was the third time in the past six years that [Moon Lake] has had to trim these particular trees. [Moon Lake’s] budget only provides for trimming of the same trees on a five year cycle. . . . [Moon Lake’s] preference would be the complete removal of the trees as they will continue to be a problem and expense to our members. . . . Mr. McCollin has stated he is a tree trimmer by trade. The most reasonable solution would be for Mr. McCollin to trim these trees away from the power line, at his own expense, maintaining 6’ of clearance from the lines. This would allow him to maintain the shape of the trees that he desires

⁵ Id.

⁶ See Division Memorandum, filed August 18, 2014.

⁷ Id. at 2.

⁸ See Moon Lake Electric Response to Jeff McCollin Complaint, filed September 2, 2014.

while still complying with [Moon Lake's] [o]perating [p]rocedure concerning vegetation management.⁹

Moon Lake further states that its "Operating Procedure No. 407" establishes these minimum vegetation clearances the Company "hopes to maintain": a 6 foot clearance for distribution voltage and a 15 foot clearance for transmission voltage.¹⁰

5. On September 15, 2014, the Division filed a supplemental response recommending the Commission dismiss Mr. McCollin's complaint if further evidence of violation is not provided.¹¹ The Division provides the following statement in support of its recommendation:

It is not apparent that the Company has violated any Commission Administrative Rules, Utah Law, court ruling, Commission ruling or . . . Company Tariff. Additionally, electric utilities have the legal right and authority to maintain electrical transmission and distribution facilities in a manner that promotes a high standard of safe and reliable service. Therefore, the Division recommends that this complaint be dismissed unless Mr. McCollin provides evidence demonstrating the Company's failure to comply with relevant rules, tariff, or laws.¹²

6. On September 17, 2014, Mr. McCollin filed a reply.¹³ Regarding the Division's recommendation, McCollin states that "[the Division has] no information regarding this situation, any recommendation from [the Division] must be rendered moot."¹⁴ Concerning the Company's response, Mr. McCollin acknowledges that "the Company may not be required

⁹ Id. at 1-2 (emphasis added).

¹⁰ See id. at 4.

¹¹ See Division Memo, filed September 15, 2014.

¹² Id. at 2.

¹³ See Mr. McCollin's Response to Moon Lake Electric and the Division of Public Utilities, filed September 17, 2014.

¹⁴ Id. at 1.

legally to notify landowners prior to entry,”¹⁵ but he also asserts the Company’s actions amounted to criminal trespass.¹⁶ Mr. McCollin also asserts that if the Company had notified him about the issue, he would have cut down the trees himself.¹⁷ In addition, Mr. McCollin does not refute the Company’s assertion that his trees were growing within the power line easement, and he states “he is unsure how to maintain [a six foot] clearance. . . .”¹⁸

II. DISCUSSION

Mr. McCollin Has Failed to Allege a Violation of Law or Order or Rule of the Commission

Mr. McCollin has have failed to specify “the law or a rule or order of the commission” the Company allegedly violated.¹⁹ In addition, Utah law provides that “if a property owner places improvements to land that interfere with the [public utility] easement rights . . . the property owner shall bear the risk of loss or damage to those improvements resulting from the exercise of the easement rights. . . .” Utah Code Ann. § 54-3-27(3) (2010).²⁰ The Company alleges Mr. McCollin’s trees were in its right of way, and Mr. McCollin does not refute that allegation.²¹ If Mr. McCollin’s trees were not in the Company’s right of way, a

¹⁵ Id.

¹⁶ See id.

¹⁷ Id.

¹⁸ Id. at 2.

¹⁹ See Utah Code Ann. § 54-7-9(2) (2010). Mr. McCollin does not quote any specific provision of the National Electric Safety Code (NESC) he alleges was violated. Nor does he allege how a violation of the NESC would constitute a violation of Commission law, rule, or order, or Company tariff.

²⁰ An improvement to land includes “. . . one that increases its value . . . or that enhances its appearance.” Black’s Law Dictionary at 761 (7th ed. 1999). See also Oregon and California Railroad Co. v. United States, 189 U.S. 103, 109 (referring to “settler[s] [who] continuously resided and made improvements upon his land in the way of a dwelling house, barn, outhouses, fencing, clearing and planting of trees.” (Emphasis added)).

²¹ See supra at 3-4, ¶ 6.

different result might be appropriate. See id. § 54-3-27(2)(b). However, as noted above, Mr. McCollin has not alleged facts supporting a different result.

Further, we note that Mr. McCollin's assertion of criminal trespass is not within the Commission's jurisdiction. Similarly, the Commission does not have authority to award damages. Thus, we dismiss Mr. McCollin's complaint because he has not alleged a violation of law or order or rule of the Commission, he has not refuted the Company's allegation that his trees are in the Company's right of way, and what he has alleged the Commission does not have jurisdictional authority to address. We further note that the Division's recommendations support dismissal of Mr. McCollin's complaint.

III. ORDER

For the foregoing reasons, the Commission dismisses Mr. McCollin's complaint.

DATED at Salt Lake City, Utah, this 26th day of September, 2014.

/s/ Melanie A. Reif
Administrative Law Judge

DOCKET NO. 14-030-02

- 6 -

Approved and confirmed this 26th day of September, 2014, as the Report and Order of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#260915

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

DOCKET NO. 14-030-02

- 7 -

CERTIFICATE OF SERVICE

I CERTIFY that on the 26th day of September, 2014, a true and correct copy of the foregoing was served upon the following as indicated below:

By U.S. Mail & E-Mail:

Jeff McCollin (jmccollin61@gmail.com)
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By E-Mail:

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By Hand-Delivery:

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Administrative Assistant