

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint)
of Bryan Taylor vs. PacifiCorp)
)

DOCKET NO. 03-035-05
REPORT AND ORDER
In Formal Adjudicative Proceeding
On Limited Remand

ISSUED: September 30, 2003

By The Commission:

PROCEDURAL HISTORY

This matter is on a limited remand from the Utah Supreme Court, pursuant to the parties' stipulation. Complainant Bryan Taylor filed a formal complaint against PacifiCorp on April 8, 2003, regarding tree-trimming at his house. On April 23, 2003, PacifiCorp filed a Motion to Dismiss and a request for expedited resolution of this matter to enable the company to perform necessary pruning and avoid safety issues or service interruption. On May 14, 2003, Mr. Taylor filed a written response to PacifiCorp's Motion to Dismiss. A Hearing was held on May 29, 2003, before the Commission's Administrative Law Judge. Mr. Taylor appeared and offered testimony. PacifiCorp was represented by David Elmont, and offered the testimony of Randy Miller, its Assistant Forrester. At the request of the Commission, the parties met and attempted to settle the matter following the hearing. As requested during the hearing, on June 9, 2003, both parties filed written comments regarding the results of the settlement efforts. Mr. Taylor's filing also included additional argument.

The Commission issued its original Report and Order on June 17, 2003. On July 7, Mr. Taylor petitioned for rehearing. PacifiCorp filed in opposition to the requested rehearing on July 21, 2003; Mr. Taylor responded to PacifiCorp's opposition on July 25, 2003. The Commission did not grant rehearing and Mr. Taylor filed a Petition for Review with the Utah Supreme Court on August 28, 2003. On appeal, the parties reached agreement that the Supreme Court proceeding be stayed and a limited remand granted in order for the Commission to clearly designate the proceeding before the Commission as a formal adjudicative proceeding pursuant to the Utah Administrative Procedures Act, Utah Code Sections 63-46b-1 et seq. and to enter a stay deferring the trimming of Mr. Taylor's trees pending final resolution of the appeal. The Supreme Court entered its order granting the stay and limited remand on September 25, 2003. The Commission has previously issued its order designating this proceeding as a formal adjudicative proceeding.

Being fully advised, the Administrative Law Judge enters the following recommended report and order.

DISCUSSION

Party Positions: This dispute began when a contractor working for PacifiCorp was trimming trees near overhead power lines in the neighborhood of Mr. Taylor's residence. The tree-trimmers began work on Mr. Taylor's property and Mr. Taylor objected to the trimming. There followed a series of discussions between Mr. Taylor and PacifiCorp regarding the extent of trimming to be done on Mr. Taylor's property. No resolution was reached.

Mr. Taylor argues that the trimming PacifiCorp intends to do is excessive, in violation of any easement rights PacifiCorp has in the property, more severe than historical trimming practices, and that the clearances sought are arbitrary. Mr. Taylor's complaint sought to eliminate trimming that is not currently interfering with the power lines or causing a safety problem, reduce the clearance requirements and provide for more frequent trimming, or to have PacifiCorp accept liability for the aesthetic damage the trimming will cause.

PacifiCorp argues that its proposed pruning does not violate any law, rule, tariff provision, or Commission order, and that it is applying its vegetation management procedures in a fair manner. PacifiCorp also argues that injunctive relief that would enforce different vegetation requirements of PacifiCorp is improper in a customer complaint proceeding. PacifiCorp further argues that this Commission does not have the authority or jurisdiction to award damages.

Tree Trimming Necessity: Tree trimming and vegetation management efforts by PacifiCorp often gives rise to concern by customers. Even when done properly and conservatively, tree trimming often causes aesthetic damage to the trees. In some situations complete removal of trees is necessary. The trimming or removal of trees changes the environment of individual customers in ways often seen as negative, and it is understandable that customers would resist some trimming. However, overhead power lines are prevalent in much of PacifiCorp's Utah service territory. Those lines must be maintained for both safety reasons and to aid in system reliability, and tree trimming is a necessary part of that maintenance.

Easement: Mr. Taylor argued at length about the easement rights, or lack thereof, of PacifiCorp. Mr. Taylor stated that there was no recorded easement across his property, and that if an easement exists it is a prescriptive easement only. Under the prescriptive easement, Mr. Taylor argued, PacifiCorp's tree trimming rights extent only to the historical level of tree-trimming. According to Mr. Taylor the proposed tree trimming goes beyond historical levels and therefore not allowable.

PacifiCorp did not respond to this argument in its Motion to Dismiss. At hearing, counsel for PacifiCorp argued that the easement question was not the proper issue before the Commission, the issue is whether PacifiCorp's proposed actions were in violation of any rule, statute or tariff provision. PacifiCorp also pointed to the provision contained in its tariff at Utah Electric Service Regulation 6R.1(2)(C), which states:

The Customer shall permit access by the Company's representatives at all hours to maintain electric distribution facilities on the Customer's premises. The Customer shall permit the Company to trim trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety.

This Commission is not the body to render a decision regarding the extent of prescriptive easement rights in this situation. Such a question is beyond the jurisdiction of this Commission. Mr. Taylor does not dispute PacifiCorp's ability to trim trees, but he does seek to limit the extent of the trimming with this argument. The company's tariff specifically requires a customer to allow trimming "to the extent necessary to avoid interference with the Company's lines and to protect public safety." We are satisfied that PacifiCorp has the legal right to do that, and will address whether the proposed trimming falls within that standard.

Trimming Standards: Our rule R746-310-4(D) states in part:

General Requirements - Unless otherwise ordered by the Commission, the requirements contained in the National Electric Safety Code, as defined at R746-310-1(B)(13), constitute the minimum requirements relative to the following:

1. the installation and maintenance of electrical supply stations;
2. the installation and maintenance of overhead and underground electrical supply and communication lines.

At the hearing PacifiCorp offered as an exhibit section 218 of the National Electric Safety Code ("NESC"), entitled "Tree Trimming", which states:

A. General

1. Trees that may interfere with ungrounded supply conductors should be trimmed or removed.

NOTE: Normal tree growth, the combined movement of trees and conductors under adverse weather

conditions, voltage, and sagging of conductors at elevated temperatures are among the factors to be considered in determining the extent of trimming required.

PacifiCorp also offered as an exhibit portion of the Approved American National Standard ("ANSI") A300, containing various standards for vegetation pruning around utility facilities. PacifiCorp's Assistant Forester, Randy Miller, testified that in accordance with the Commission rule, the NESC, the ANSI A300 standards, and its tariff, the company had developed tree trimming and other vegetation management standards to be used by its trimming contractors. Mr. Miller further testified that the trimming proposed for Mr. Taylor's property was consistent with those company standards. Mr. Miller also stated that part of the impetus behind its tree trimming program is to improve service quality and decrease outages in PacifiCorp's Utah service area.

Mr. Taylor argued that the company standards were designed only from the company's standpoint to best advance its interests, and did not adequately consider the impact on customers. He also argued that the trimming standards used by the company today differ from those in the past, and that it is improper to make customers bear the brunt of the new standards when they had, due to past company practices, expected something different. Mr. Taylor also offered into evidence a brief illustrated document showing the tree trimming approach of a Colorado tree coalition that he claimed differed from those of PacifiCorp. Mr. Taylor further argued that the standards adopted by PacifiCorp went beyond what is necessary, and beyond what the quoted NESC and ANSI standards require.

Mr. Miller testified that the company standards were in accordance with the requirements of the NESC, ANSI, and the general standards of arborists. He also admitted that there was room for interpretation in applying those standards. He also testified that the standards of the Colorado tree coalition shown on the offered exhibit were consistent with those used by PacifiCorp.

With that evidence before us we must decide if it is appropriate to order PacifiCorp to vary from its usual trimming standards on this particular property. We are not persuaded that whether this trimming varies from the trimming that has been done in the past is controlling. The nature of vegetation maintenance, dealing with growing trees and plants, is that the present situation on a given property is not the same as it was just a few years ago, and also will not be the same situation in the future. It would not be appropriate or prudent to hold the company strictly to its historical practices for that reason, and also because with further study and learning in the field, better practices may be available today and in the future than were available in the past.

With the record as it is, there is not sufficient evidence to support standards different than PacifiCorp's adopted trimming standards. Accordingly we will not prohibit PacifiCorp from continuing its normal tree trimming on this property. PacifiCorp has already compromised some with respect to the treatment of the large Spruce tree on the property. Its desire to clear twenty feet of branches from that tree still remains a point of dispute. While we have reason to believe less than twenty feet would be sufficient, we do not have sufficient evidence to state what smaller clearance is required. We will allow PacifiCorp to trim to the extent necessary and strongly encourage it to cut less than twenty feet of branches if that can be done without compromising safety and the integrity of the system.

Burying the lines: Mr. Taylor argued that the company should bear the cost of burying the lines to avoid interference with trees. We disagree. There are tariff provisions in place setting forth how such costs are handled. It would not be allowable, or appropriate, to cause the company, and by extension other ratepayers, to pay for burying lines on this property, or any other individual property other than as set forth in the tariff. Mr. Taylor may exercise his option to have the lines buried, but the costs must be paid as set forth in PacifiCorp's tariff.

Damages: Mr. Taylor's original complaint sought PacifiCorp liability for aesthetic damage and likely death of some foliage as a result of its trimming practices. In response to PacifiCorp's motion to dismiss Mr. Taylor stated that he was not asking the Commission to impose damages, but was merely asking PacifiCorp to accept on their own liability for the aesthetic damage and death of some foliage. Since it appears that Mr. Taylor is not asking this Commission for relief in the form of damages, we will not address this issue further.

Additional Concerns: Two additional concerns arise from this matter. The first is that additional conflicts with customers will arise if PacifiCorp's approach to applying its adopted standards is done in a strident and completely unyielding manner. As Mr. Miller stated, there is room for interpretation regarding the standards. Each situation

encountered by tree trimmers is also different, and it seems that this area deserves frequent judgment calls, and the best possible communication and cooperation with landowners. We would encourage PacifiCorp and its contractors to, when dealing with landowners, use any discretion it has, within the parameters necessary to promote safety and system reliability, to work with the customers.

The second concern is about how the standards are explained to customers. In the testimony it was implied that since PacifiCorp had made a presentation to the Commission regarding its tree trimming standards, that those standards were approved by this Commission. They were not. While we encourage and appreciate presentations such as the one discussed in testimony in this matter, they should not be interpreted as official approval of the material presented. Likewise, we will not, as requested by counsel for PacifiCorp, enter an order in this case "reaffirming" the company standards.

Pursuant to the Mr. Taylor's request for a stay and the agreements made while the matter was before the Supreme Court, a stay of this order will be included, pending final resolution of the case before the Supreme Court.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Complainant's request for an order barring trimming by PacifiCorp or lessening the clearances sought by PacifiCorp, is denied.
2. This order is stayed pending Mr. Taylor's appeal before the Utah Supreme Court. During the stay, PacifiCorp may not perform the tree trimming contemplated and will defer any trimming until final resolution of the appeal before the Court.

DATED at Salt Lake City, Utah, this 30th day of September, 2003.

/s/ Douglas C. Tingey
Administrative Law Judge

Approved and Confirmed this 30th day of September, 2003, as the Report and Order of the Public Service Commission of Utah.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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