

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)
EDITH LEE-PAYNE against **THE DETROIT**)
EDISON COMPANY, DTE ENERGY COMPANY,) Case No. U-15532
and **MICHIGAN CONSOLIDATED GAS COMPANY.**)
_____)

At the October 29, 2009 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On February 9, 2009, Edith Lee-Payne (complainant and petitioner) filed a complaint against DTE Energy Company, The Detroit Edison Company, and Michigan Consolidated Gas Company¹ (Detroit Edison), alleging that Detroit Edison violated Commission regulations by failing to properly clear trees from power lines near her home at 19353 Santa Rosa Drive, Detroit, Michigan, where an electrical fire occurred on July 4, 2003.²

On March 20, 2009, Detroit Edison filed an answer and affirmative defenses denying the allegations and asserting that this proceeding is barred by *res judicata* and collateral estoppel because Ms. Lee-Payne has already adjudicated the same claims in Wayne County Circuit Court.

¹There are no allegations in the complaint involving gas service. All allegations in the complaint address services provided by The Detroit Edison Company.

²The complainant's address was incorrectly listed in the Commission's July 16, 2009 order as 1952 Santa Rosa Drive.

Pursuant to due notice, on March 31, 2009, Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ) held an evidentiary hearing. The Commission Staff (Staff) participated in the hearing. On June 9, 2009, the ALJ issued a Proposal for Decision (PFD).

On July 16, 2009, the Commission issued an order dismissing the complaint (July 16 order).

On August 17, 2009, the complainant filed a petition for rehearing. On September 3, 2009, Detroit Edison filed a response to the petition, and on September 8, 2009, the Staff filed a response. Detroit Edison and the Staff point out that the petition for rehearing rehashes claims made by the complainant during the proceeding and addressed by the Commission in the July 16 order.

The petition for rehearing is filed pursuant to 1999 AC, R 460.17403 (Rule 403), and is “based on claims of error and newly discovered evidence on facts or circumstances arising subsequent to the close of the record.” Petition, p. 1. The petition contains twelve numbered claims of error.

The first claim of error states:

Commencing with the written Instructions for Filing a Formal Complaint provided by MPSC staff, differ significantly from Rules of Practice and Procedure Before the Commission, R 460.17505 Formal complaints; content, on page 17 of 20. This Rule is misleading with the requirement of the presence of an attorney unless a small business or commercial customer, a corporation or limited liability company, etc., an attorney is a MUST implying a customer need not have an attorney. A demand for a contested case is not listed on the written Instructions and is in the Rules of Practice and Procedure Before the Commission. R 460.17101 Definitions in the Rules of Practice and Procedure does not provide a definition of a contested case.

Petition, pp. 2-3. 1999 AC, R 460.17309(1) (Rule 309(1)), provides that in a contested case, “all parties shall be represented by licensed attorneys, except that individuals who are not licensed attorneys may represent themselves.” The complainant’s right to an attorney was discussed with her at the outset of her hearing; she chose to represent herself. 1 Tr 10, 12-13. The complainant instigated a contested case by filing a complaint. The definition of “contested case,” which

appears in MCL 24.203(3), is referred to in Rule 309(1). The fact that the complainant chose to represent herself was addressed in the July 16 order, p. 13. This rule was properly applied in complainant's case, and the Commission finds no error.

In the second claim of error the petitioner argues that the Commission has the authority under MCL 460.6(1) and MCL 460.10c to award damages in this case.³ The petition states, "Complainant has relied on the aforementioned Instructions of the MPSC, laws and statutes [sic] for the enacted regulation, oversight, and enforcement of Detroit Edison for the consistently improper Line Clearance Program the utility has adopted resulting damages and losses the Complainant has incurred as a result." Petition, p. 4. The Commission finds that any claim of error with regard to the issue of damages is moot because the Commission dismissed the complaint.

In the third claim of error the petitioner argues that the Commission wrongfully rejected her complaint filings for failure to meet *prima facie* requirements. The complainant's February 9, 2009 complaint was found to meet those requirements, and the Commission conducted an evidentiary hearing on that complaint. The Commission finds no error.

In the fourth claim of error the petitioner states "Complainant has purported as being in 'Pro se' not 'In propria persona' or 'In Pro Per.'" Petition, p. 4. These terms are interchangeable. The Commission finds that the complainant was properly referred to during the proceeding as *pro se*. To the extent that the petitioner claims error on the basis of unfair treatment, this argument was addressed by the Commission in the July 16 order, p. 13.

³The complainant is a residential electric customer and made no claim under the Customer Choice and Electricity Reliability Act, MCL 460.10 *et seq.*

In the fifth claim of error the petitioner argues that the ALJ violated the Code of Judicial Conduct, and that her evidence was ignored by the ALJ. This argument was made in the proceeding and addressed by the Commission in the July 16 order, p. 13.

There is no sixth claim of error.

In the seventh and eighth claims of error the petitioner argues that she was denied a prehearing conference. This argument was made in the proceeding and addressed by the Commission in the July 16 order, p. 13.

In the ninth claim of error the petitioner argues that she was denied discovery. This argument was made in the proceeding and addressed by the Commission in the July 16 order, p. 13.

In the tenth claim of error the petitioner seems to argue that she was denied the right to subpoena witnesses. The petitioner made no request to subpoena witnesses at any time during the pendency of her contested case. The Commission finds no error.

In the eleventh and twelfth claims of error the petitioner argues that the Staff refused to investigate her claims and withheld evidence from her. This argument was made in the proceeding and addressed by the Commission in the July 16 order in the discussion of her claims of unfair treatment, p. 13. The petitioner was afforded an evidentiary hearing in which the Staff participated. The Commission finds no error.

Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can

show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

THEREFORE, IT IS ORDERED that the petition for rehearing is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of October 29, 2009.

Mary Jo Kunkle, Executive Secretary