

**BEFORE THE
PA PUBLIC UTILITY COMMISSION**

DEBORAH A. REDMAN,

Complainant

V.

FIRST ENERGY AND PENELEC,
CHARLES E. JONES, JR.
CEO, FirstEnergy Corp.
76 Main St.
Akron, OH 44308,

Respondent

No. C-2019-3013582

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JAN 17 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Tuesday, 14 January 2020 (mailed)

**COMPLAINANT'S RESPONSE TO RESPONDENT PENELEC'S
OPPOSITION TO HER MOTION FOR SUMMARY JUDGMENT**

Comes now Complainant Dr. Deborah A. Redman and, after recapping the Complaint, responds to Respondent Penelec's Opposition to her Motion for Summary Judgment.

Summary of Complaint. For clarity, Dr. Redman's Complaint is recapped briefly here.¹ There is a huge, old wisteria vine (like a large tree) growing near the power lines that has to be removed because it is making the property at 414 Park Avenue in Meadville uninhabitable and causing life-threatening conditions for anyone on the property (affecting also five neighboring properties). Because the state of Pennsylvania has *designated wisteria as an invasive species that poses an "ecological threat" and must be*

¹ A detailed explanation of the Complaint can be found in Response to Respondent's Answer (to Dr. Redman's Complaint, mailed on 11 December 2019).

controlled, i.e., killed and removed,² no other course of action but destruction of the wisteria is possible. As it is close to or directly on the power lines, to ensure safety FirstEnergy and Penelec must destroy the wisteria.

The wisteria has a massive root system that has clogged the sewage lines, causing toilet clogs that are making the home uninhabitable. Trying to keep the two toilets in the house working has created life-threatening conditions. The toilets back up so badly at times that it takes the entire day to open them up. Dr. Redman is mobility impaired and cannot keep going upstairs to the second-floor toilet, which works better given the long drop to the sewage pipes, because the downstairs toilet clogs chronically. She has a very limited ability to walk (about half an hour spread over a day), yet has to go upstairs to the second-floor toilet to defecate. Even toilet paper in the downstairs toilet causes serious clogging. It is so bad that occasionally she has to deposit used tissue in a waste paper basket and carry it upstairs. When the downstairs toilet clogs, it has taken as long as a day to unclog it and the additional hot water and Green Gobbler drain cleaner has cost her many hundreds of dollars (over \$400 to date). She is unable to frequently stand and use a plunger on the toilets, often for more than an hour, to free up the line, without becoming dizzy and ill (and unable to work effectively) for weeks.

² See the PA Department of Conservation and National Resources (DCNR) Fact Sheet "Invasive Species in Pennsylvania: Chinese and Japanese Wisteria," available in flier form from the state and as a PDF on the DCNR website. A copy is incorporated into Drs. Redman's Response to Respondent's Answer as Att. 1.

Wisteria wraps itself around vegetation and strangles it so there are a lot of dying trees and other plants on the property, resulting in constant debris, some dead branches so large that they could seriously harm or kill people if they fell on them. The huge amount of debris from strangled vegetation causes a lot of cleanup time, challenging Dr. Redman because she is disabled and normally uses an electric scooter, but cannot use it in the yard and is forced to stand, walk, carry heavy branches and bags of debris – all of which she cannot do without becoming ill.

Penelec/FirstEnergy oppose destruction of the wisteria even though it damages their power lines, raising their costs, and because there is no law stating that wisteria must be destroyed.³

* * * * *

1. In her “Answer” to Dr. Redman’s Motion for Summary Judgment, Penelec Attorney Morris seeks to have the Pennsylvania Public Utility Commission (PUC) deny Complainant Redman’s Motion for Summary Judgment. Penelec’s pleading should have been labeled “Opposition to Motion for Summary Judgment” to avoid confusion, as an answer is usually to a complaint. For clarity’s sake, Complainant Redman is referring to Penelec’s response to her Motion for Summary Judgment as “Opposition.”

2. Dr. Redman received a paper copy of the Respondent Penelec’s Opposition to

³ The argument that there is no law is Penelec’s position in its Answer of Penelec to Motion for Summary Judgment at 4, #2. The legal status of wisteria in Pennsylvania is set forth in the Pennsylvania Fact Sheet that is cited in footnote 2 *supra*.

her Motion for Summary Judgment around 5:00 p.m. on Friday, 10 January 2020. While she received an e-mailed copy in late afternoon on the Monday of the same week, Dr. Redman waited for a paper copy because photos were involved. At least in its online “Consumer Complaint Procedures Guide,” the PUC does not set forth rules for the time to respond to motions for summary judgment,⁴ but by any standards, this Response is as prompt as humanly possible, particularly given that Complainant is disabled, has never during these proceedings been accommodated, and is suffering badly from the circumstances created by Penelec/FirstEnergy.⁵

3. Penelec Attorney Morris requests that the PUC deny Dr. Redman’s Motion for Summary Judgment due to a genuine material dispute of the facts, namely, whether the wisteria plant has been “removed.” According to Respondent Penelec, the wisteria has been “removed” because photos and James Stelter’s affidavit prove it is off the power lines. Opposition, Att. 1. The gist of Mr. Stelter’s affidavit, which is located in paragraph 6, states in its entirety:

On December 12, 2019, I visited the Service Location and confirmed there is no wisteria on Penelec’s power lines interfering with the delivery of safe and reliable service to the Service Location. The attached photos, taken December 19, 2019, by Chuck Evanoff, a Penelec employee, accurately reflect my findings on December 12, 2019.

Opposition, Att. 1. The three photos alluded to, with date stamps 3:11 p.m., 3:13 p.m.,

⁴ And where the PUC specifies times, it does not indicate whether the days are business days or consecutive days, thus creating ambiguity.

⁵ Her requests for accommodation have been ignored.

3:12 p.m., show the power lines and the wisteria “tree” with its many robust shoots.

4. But in Dr. Redman’s view, the photos Penelec took in December 2019 appear to show wisteria shoots *on the power lines*. In the one stamped 3:11, it looks like the wisteria shoots are on the line. In the one stamped 3:13, it looks like the wisteria is on or very near the lines so it would hit the line in a breeze or wind. And in the one stamped 3:12, the wisteria appears to be on the line. Whether or not they are on the lines, the wisteria shoots are clearly close enough that with wind, they will hit the power lines. And that will cause all the problems Dr. Redman has described in her pleadings. *See her Response to Respondent’s Answer and other pleadings.*

5. Penelec’s claim that there is no wisteria on the power lines is patently false and designed to mislead the PUC. It is true that at times, due to the wind and the winter season, wisteria shoots are not on the power lines. While very occasionally shoots are not on lines, most of the time shoots are entwined on the lines, sitting on the lines, or hitting the lines while being manipulated by the wind. Penelec understands that wisteria is a deciduous plant that in winter will recede due to loss of leaves and halted growth. That makes the current time of the year favorable for collecting photos of the wisteria plant near, but not on, the lines. Nonetheless, currently (Saturday, 11 January 2020 to Tuesday, 14 January) there are four shoots entwined around the power lines and one sitting on the lines – even though on Friday and Saturday Meadville had rain and wind storms with winds up to 60 mph.

6. Penelec does not explain Dr. Redman's photos provided in her Response to Respondent's Answer. In Attachment 6, there are six photos, all taken around 19 August 2019, four of which capture wisteria shoots entwined around the power lines (photos 3, 4, 6) or on the lines (photo 1, in two places).

7. And a last point with respect to the photos: Penelec is playing with the word *remove*. The online version of *Merriam-Webster* defines the word *remove* as "to move by lifting, pushing aside, or taking away or off" and "to get rid of: eliminate." It is obvious from context that Dr. Redman is arguing the all wisteria plants on her property and neighboring properties must be gotten rid of, destroyed, eliminated, while Respondent Penelec is using the first definition, meaning to take the wisteria off the power lines, a useless exercise given the rate of growth of wisteria and the fact that it does serious damage underground, for instance, as Dr. Redman explained, destroying sewage lines and thus causing toilet backups (making her home uninhabitable), destabilizing buildings, and more. See Dr. Redman's Response to Respondent's Answer. Most important, not destroying all the wisteria – the main "tree" and all offshoots – undermines Pennsylvania law. See the PA Department of Conservation and National Resources (DCNR) Fact Sheet "Invasive Species in Pennsylvania: Chinese and Japanese Wisteria."

8. Respondent Penelec leaves out a whole series of problems that it and FirstEnergy have not addressed, ostensibly hoping the *Decision-Making Body* will not notice. For instance, not mentioned are these things:

- 8.1 Penelec staff was at Dr. Redman's property in December 2019 and took photos, but did not invite Dr. Redman to join in endorsement because they knew they were distorting and misrepresenting the truth. Dr. Redman would have been happy to confirm that occasionally wisteria is not on the power lines, but she would never confirm the falsehood that wisteria is never on the power lines. She will also not confirm that if wisteria shoots are near the lines, they will not hit the lines when the wind is blowing.
- 8.2 Penelec does not mention the life-threatening conditions this situation poses for Dr. Redman and anyone else on the property given that the plant debris resulting from the strangling action of wisteria causes very large branches to come down, so large they could harm or even kill those they hit. *See photo 5 in Att. 6, Response to Respondent's Answer.*
- 8.3 Penelec does not mention the life-threatening conditions for Dr. Redman caused by wisteria clogging sewage lines, which means that Dr. Redman must take stairs to go to the upstairs bathroom every time she has to defecate because the downstairs toilet always clogs when someone tries to flush fecal material. She also spends hours standing and using a plunger to unclog both toilets, which randomly clog even with a small amount of toilet paper. Standing makes her very ill as she can only walk/stand for a brief time during a day. That is why she uses an electric scooter to get around (when out of her home). It is also filthy work, degrading, and very time-consuming, posing a threat to her health and robbing her of a considerable amount of income.
- 8.4 Penelec does not mention that wisteria on the power lines damages their lines, creating a cost factor to Penelec/First Energy. *This is the utterly irrational aspect of Penelec's defense of the wisteria. Why would any business defend damage to its materials and higher costs?*
- 8.5 Penelec fails to mention the damage wisteria does to trees, shrubs, plant life, and structures on the affected properties.
- 8.6 Penelec does not mention that the legal status of wisteria in Pennsylvania requires its *destruction* – not removal from lines. *See the Fact Sheet put out by the state's DCNR, "Invasive Species in Pennsylvania: Chinese and Japanese Wisteria" and footnote 2 above.*

All of these matters that Penelec left out and FirstEnergy never responded to support

summary judgment. (That is why they were left out.)

9. Penelec seems to assert that FirstEnergy is not responsible for anything Dr. Redman complains of. FirstEnergy representatives were at 414 Avenue in Meadville in October 2017 and spring 2019 when the situation was assessed and cutting of the wisteria commenced. Penelec Attorney Morris can assert what she wants, but she is keeping FirstEnergy's lawyer, John Munsch, informed of this process by supplying him with copies of the pleadings. *See, e.g.*, her letter to the PUC dated 6 January 2020 that accompanied her Opposition which she titled "Answer to Motion for Summary Judgment."

10. Penelec and PUC have never considered the Americans with Disabilities Act (ADA) worth taking into consideration and thus do not appear to be aware that *Dr. Redman is not physically able to attend a hearing*. But a hearing is not necessary. Dr. Redman's Motion for Summary Judgment and Response to Respondent's Answer clearly show that the law requires that the wisteria be destroyed – by Penelec/FirstEnergy since it is near or on power lines, making it too dangerous for the involvement of members of the public.

11. WHEREFORE, Complainant Redman requests that the *Decision-Making Body*⁶ see Respondents' arguments for what they are, *intellectual dishonesty*, grant Dr.

⁶ Dr. Redman has moved to have a neutral body composed of Meadville area residents decide the matter, but the motion has not been ruled upon.

Redman's Motion for Summary Judgment and impose monetary penalties on Penelec, FirstEnergy, and their CEO Mr. Jones for their fraud on the *Decision-Making Body*.

Yours respectfully,

Deborah A. Redman

Deborah A. Redman
414 Park Ave.
Meadville, PA 16335
Tel: 814-853-3770

Tuesday, 14 January 2020 (put in U.S. mail)

Verification: I, Deborah A. Redman, hereby state that the facts set forth above are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa C.S. §4904 (relating to unsworn falsification to authorities).

Deborah A. Redman

Deborah A. Redman

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January 2020 I served a copy of this Complainant's Response to Respondent's Answer to Her Motion for Summary Judgment on

Attorney Margaret A. Morris
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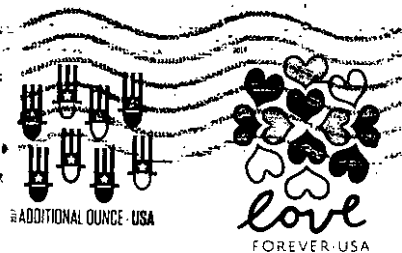
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