



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket UE21705
Order UE05-07

IN THE MATTER of a referral under
Section 42 of the Electric Power Act by Arnold
Twijnstra.

BEFORE THE COMMISSION
on Friday, the 12th day of August, 2005.

Maurice Rodgerson, Chair
Weston Rose, Commissioner
Anne Petley, Commissioner

Order

Compared and Certified a True Copy

(Sgd) *Heather R. Walker*

Technical and Regulatory
Services Division

IN THE MATTER of a referral under
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Reasons for Order

1. Introduction

[1] This is a referral under Section 42 of the *Electric Power Act*, R.S.P.E.I. 1988 Cap. E-4, by Arnold Twijnstra. The referral requests an investigation and an award of damages against the Maritime Electric Company, Limited (“Maritime Electric”, the Utility” or the “Company”) for damages arising out of an accident that occurred on October 2, 2003.

[2] Mr. Twijnstra’s referral commenced by way of letter to the Commission dated April 6, 2005. After an exchange of correspondence dated May 6, 2005, between Trevor W. Nicholson, acting for Mr. Twijnstra, and William G. Lea, Q.C., acting for Maritime Electric, Commission staff wrote to the parties requesting submissions on the issue of jurisdiction. Mr. Nicholson responded by letter dated May 30, 2005 and Mr. Lea responded by letter dated June 3, 2005. Mr. Nicholson forwarded a letter dated June 15, 2005 apparently in response to Mr. Lea’s letter June 3, 2005. Mr. Lea responded on June 19, 2005.

[3] The Commission has thoroughly reviewed the material filed by both parties in this matter and acknowledges and thanks counsel for their submissions.

2. Facts and Issue

[4] Mr. Twijnstra submits that, on October 2, 2003—while his corn harvester was being driven beneath two transmission lines owned by Maritime Electric—an electrical current *arced* from the transmission lines to the harvester causing damage to the harvester. The material on file indicates that the harvester was operating in a field to the south of the Company’s Summerside substation. The Company’s transmission lines that run across the property are two 138 KV lines. It is unclear whether Maritime Electric had an easement for the placement of the transmission lines across the field now owned by Mr. Twijnstra.

[5] It would appear from the material on file that Crawford Adjusters Group (“Crawford Adjusters”) was involved on behalf of the Company’s insurers and that Crawford Adjusters obtained an appraisal of damage to the harvester from Land and Sea Appraisal Inc. The appraisal assessed damages in the amount of \$8,026.65, inclusive of GST. Mr. Nicholson filed other appraisals indicating that, given the damage to the equipment, the harvester had decreased substantially in value and that the damages were significantly more than \$8,026.65.

[6] The documentation filed by Mr. Twijnstra alleges that the Utility was deficient in installing or maintaining or installing and maintaining the transmission line at an appropriate height. The material from Crawford Adjusters indicates that this issue is in dispute.

[7] Maritime Electric submits that the Commission has no jurisdiction in this matter. Mr. Twijnstra submits that the Commission does have jurisdiction.

3. Discussion & Findings

[8] Section 42 of the *Electric Power Act* reads as follows:

Notwithstanding anything in any statute of this province, when a public utility, by its Act of incorporation or otherwise, is authorized and empowered to do any act which causes or may cause damage to the property of any person, and no agreement can be reached as to the amount of damages caused by any such act, either party may refer the matter to the Commission, and the Commission may proceed to investigate such matter, after notice to the parties, and may award damages, together with reasonable costs.

[9] Counsel for Mr. Twijnstra contends that Maritime Electric has admitted liability in this matter. Counsel’s submission is based on a letter dated March 2, 2004 from Michael Lynds of Crawford Adjusters. The letter discusses the damage to the harvester as well as the contents of the appraiser’s report included with the letter. Counsel’s submission is that liability is admitted by Maritime Electric as a result of this letter and that the only issue to be determined is damages. Counsel for Mr. Twijnstra therefore submits that the matter is within the jurisdiction of the Commission under Section 42 of the *Electric Power Act*.

[10] Maritime Electric submits that accidents of this nature are not within the jurisdiction of the Commission. In its submission of May 6, 2005, the Utility argues that, even if the damages resulted to the harvester as a result of the power line being too low, the damages did occur as a result of an **act** that Maritime Electric was authorized to do.

[11] This argument appears to suggest that the *act* complained of must be an authorized act that **directly** rather than **indirectly** causes the damage. Counsel

for Maritime Electric continues this line of reasoning in his letter of June 3, 2005 when, after dealing at length with the legislative background of Section 42 of the *Electric Power Act*, he states that section 42 imposes a form of *absolute liability*. Mr. Lea further states:

It is not, therefore all and omissions of a utility to which s. 42 applies; it is acts that a utility is authorized and empowered to do which cause damage or may cause damage that are within the scope of s. 42(1)... In Mr. Twijnstra's case, if Maritime Electric is at fault, the fault would be in having its lines too low (which is denied), and damage incidental to that sort of conduct, negligence, is not damage that the utility is empowered and authorized to cause; it is a matter for the courts.

[12] In his letter of June 15, 2005, Mr. Nicholson agrees with Mr. Lea's position that section 42 *imposes a form of absolute liability* in that the act complained of must be one the utility was authorized to do and that it is the act that would or might cause damage. Mr. Nicholson argues that the maintenance of utility poles and lines are authorized acts and these are acts that cause or might cause damage.

[13] The commission has carefully considered the letter of March 2, 2004, from Michael Lynds of Crawford Adjusters. In our view, there is no admission of liability in it. If anything, Mr. Lynds appears to be disputing the question of whether the transmission lines were too low.

[14] Since there is no admission of liability on the part of Maritime Electric, the Commission must consider and determine its jurisdiction. In order to make this determination, we must turn our attention the Legislature's intention in enacting section 42 of the *Electric Power Act*.

[15] For liability to arise under section 42, *a public utility, by its Act of incorporation or otherwise, [must be] authorized and empowered to do [an] act*. The Canada Business Corporations Act governs Maritime Electric. A corporation under that statute *has the capacity and, subject to this Act, the rights, powers and privileges of a natural person* [section 15(1)]. In addition, Maritime Electric is governed by the *Electric Power Act*. Under that *Act*, the Utility is obliged to provide electric service in all areas of the Province of Prince Edward Island except the City of Summerside. [Section 2.2]

[16] Under subsection 26(1) of the *Electric Power Act*.

The Commission is empowered to make regulations and orders respecting equipment..., extension of works or systems... and other matters as it considers necessary or advisable for the safety, convenience, or service of the public, or for the proper carrying out of this Act or of any contract, charter, or franchise involving the use of public property or rights.

[17] Subsection 26(2) of the *Electric Power Act* reads as follows:

Subject to this Act, the Commission may make regulations requiring a public utility to conduct its operations in such a manner that it does not unnecessarily interfere with, or cause unnecessary damage or inconvenience to, the public.

[18] In addition, under sections 41 and 43 of the *Electric Power Act*, the Commission may empower a utility to interfere with private property rights if it is in the public interest and necessary for the Utility's operations.

[19] From this, the Commission concludes that:

- (a) the governing statute of Maritime Electric provides it with wide ranging powers to do a number of acts;
- (b) the Legislature, in passing the *Electric Power Act*, concluded that the provision of electric energy to the residents of Prince Edward Island would be most efficiently provided by monopolies and that Maritime Electric is the primary electric utility;
- (c) interference with private property rights by the Utility is, in certain circumstances, justified as being in the public interest; and
- (d) the Commission should regulate certain powers of the Utility, including the Utility's rates and, to a limited extent, the Utility's authority to interfere with property rights of individuals.

[20] It is, we believe, commonly accepted that bodies such as the Commission are created for the purpose of assembling specialized expertise respecting the regulation of public utilities. The issue that both parties have effectively placed before the Commission is the question of the extent or limit of that expertise.

[21] Counsel for Mr. Twijnstra submits that, as Maritime Electric is empowered to erect and maintain utility poles and lines and that these are acts that either cause or may cause damage to the property of another person, Maritime Electric should be held liable for damages that flow from these acts. In our view, this appears to suggest that, as the provision of electric energy to customers in Prince Edward Island is essentially a dangerous activity, Maritime Electric and its customers should bear the costs of damages resulting from the activities of establishing and operating the power system.

[22] The Utility, on the other hand, submits that the true purpose of section 42 of the *Act* is to limit recovery for damages to those acts that are directly the result of a utility exercising the powers granted to it. Thus, in this case, if damages resulted to a member of the public directly from the act of constructing or extending its electric power system, the Utility would be liable and all damages would be borne by the Utility and its customers. However, if damages resulted from a consequential act of the Utility in failing to build or

maintain its system properly, the Courts, under the normal rules of negligence, should determine liability.

[23] The Commission considers the argument advanced by the Utility to be more persuasive. In our view, standards are established for the construction of utility lines and other transmission and distribution equipment. Standards require, for example, that power lines be isolated from the public in terms of height or, in the case of large substations, in terms of protective enclosures. In our opinion, if damages result to a member of the public through violation or, for that matter, non-violation of these standards, such issues should be before the Courts with their acknowledged expertise in the area of determining negligence and the damages that might result therefrom.

[24] In the Commission's view, the principal function of specialized quasi-judicial bodies such as the Commission is to regulate the operations of a utility, to ensure that the utility is operating efficiently and in the long term interests of the public and that just and reasonable rates are charged for the various services provided by the utility. For all of these reasons, the Commission believes that it was not the intention of the Legislature to vest in the Commission the power to determine damages flowing either directly or indirectly from all acts of a utility. Accordingly, we accept the arguments of the Utility and find that we have no jurisdiction in this matter.

4. Disposition

[25] An order declaring that the Commission is without jurisdiction in this matter will therefore issue.

IN THE MATTER of a referral under
Section 42 of the Electric Power Act by
Arnold Twijnstra.

Order

UPON reading and considering the referral under Section 42 of
the *Electric Power Act* by Arnold Twijnstra for an award of damages
arising out of an accident which occurred on October 2, 2003;

AND UPON reading and considering the submissions of
counsel and the applicable law;

NOW THEREFORE, for the reasons given in the
annexed Reasons for Order;

IT IS ORDERED AND DECLARED THAT

the Commission is without jurisdiction in this matter.

DATED at Charlottetown, Prince Edward Island, this 12th
day of August, 2005.

BY THE COMMISSION:

(Sgd) Maurice Rodgerson

Maurice Rodgerson, Chair

(Sgd) Weston Rose

Weston Rose, Commissioner

(Sgd) Anne Petley

Anne Petley, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1) and 13(2) of the *Act* provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.

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