

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Citizens Against)	
Clear Cutting, <i>et al.</i> ,)	
)	
Complainants.)	
)	Case No.17-2344-EL-CSS
v.)	
)	
Duke Energy Ohio, Inc.,)	
)	
Company.)	
)	

**RENEWED MOTION TO DISMISS OF
RESPONDENT DUKE ENERGY OHIO, INC.
AS TO COMPLAINANTS NOT ON COMPANY’S RIGHT OF WAY**

Now Comes Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) and respectfully moves, pursuant O.R.C. 4905.26, O.A.C. 4901-1-12 and 4901-9-01(C), to dismiss the following Complainants whose properties are not situated on the Company’s transmission lines and right of way at issue in the Second Amended Complaint: Fu K. Wong and Peony Lo, John and Sally Riester, Sandra L. Nunn, and Mark and Carissa Thompson (collectively Complainants), Amanda Sachs, David Siff, Carrie Gause, Dan Gause, Susan Falick, Jerry Ullrich, Lou Ullrich, Darrelle Reese, Julie Carnes, Todd Bacon, Michelle Bacon, Patricia Lohse, Robb Olson, Kathleen Olson, John Collins, Barbara Collins, Valerie Van Iden, Joe Zukor, and the Symmes Township Trustees (collectively Amended Complainants). These Complainants and Amended Complainants should be dismissed with prejudice because they do not own property on the subject transmission lines and, therefore, lack standing to assert claims relating to or on behalf of other property owners. Because Duke Energy Ohio does not intend to conduct any vegetation management on any of

their properties along the subject transmission lines, these Complainants and Amended Complainants fail to set forth reasonable grounds for complaint against Duke Energy Ohio.

Duke Energy Ohio is filing this Motion to clarify that the Complainants and Amended Complainants identified above should be dismissed from this action. Prior to the Complainants and Amended Complainants joining this action and filing the Second Amended Complaint, the Company previously filed Motions to Dismiss against the above-referenced Complainants and Amended Complainants. To be clear: this Motion does not supersede or replace the Motion to Dismiss the Second Amended Complaint which was filed in this case on February 2, 2018. Instead, Duke Energy Ohio hereby renews and restates separate Motions to Dismiss because these Complainants and Amended Complainants lack standing and do not set forth reasonable grounds for complaint against Duke Energy Ohio in the Second Amended Complaint.

Respectfully submitted,

/s/ Elizabeth H. Watts

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Counsel of Record

Associate General Counsel

Duke Energy Business Services, Inc.

139 Fourth Street, 1303-Main

P. O. Box 960

Cincinnati, Ohio 45202-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Rocco.D'Ascenzo@duke-energy.com

Elizabeth.Watts@duke-energy.com

Robert A. McMahon (0064319)
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206
(513) 533-3441 (telephone)
(513) 533-3554 (fax)
bcmahon@emclawyers.com

Attorneys for Duke Energy Ohio, Inc.

MEMORANDUM IN SUPPORT

On November 9, 2017, Duke Energy Ohio filed a collective Motion to Dismiss in four separate complaint cases filed by the Complainants listed above.¹ The Motion has not yet been ruled on, and now those same Complainants are parties to this action and the Second Amended Complaint filed herein.

In this case, an Amended Complaint was filed on November 22, 2017, and the following Amended Complainants were added as parties even though they do not own property through which the Company's transmission lines run and, therefore, are not on the right of way and subject to current vegetation management along those transmission lines: Amanda Sachs, David Siff, Carrie Gause, Dan Gause, Susan Falick, Jerry Ullrich, Lou Ullrich, Darrelle Reese, Julie Carnes, Todd Bacon, Michelle Bacon, Patricia Lohse, Robb Olson, Kathleen Olson, John Collins, Barbara Collins, Valerie Van Iden, Joe Zukor, and the Symmes Township Trustees. As such, the Company moved to dismiss these Amended Complainants on December 4, 2017, because they lack standing in this case and do not set forth reasonable grounds for complaint against Duke Energy Ohio.

¹ *In the Matter of the Complaint of Fu K. Wong and Peony Lo v. Duke Energy Ohio, Inc.*, Case No. 17-2170-EL-CSS, *In the Matter of the Complaint of John and Sally Riester v. Duke Energy Ohio, Inc.*, Case No. 17-2205-EL-CSS, *In the Matter of the Complaint of Sandra L. Nunn v. Duke Energy Ohio, Inc.*, Case No. 17-2224-EL-CSS, *In the Matter of the Complaint of Mark and Carissa Thompson v. Duke Energy Ohio, Inc.*, Case No. 17-2269-EL-CSS

With Complainants now seeking to dismiss their individual complaint cases and both Complainants and Amended Complainants having filed a Second Amended Complaint, there may be an open question as to whether Duke Energy Ohio's previously filed motions remain pending. In order to avoid any confusion, Duke Energy Ohio hereby renews its Motion to Dismiss filed on December 4, 2017, as if fully restated herein, as to the Complainants and Amended Complainants identified above. Because the Company's transmission lines at issue in this case do not run through their properties, and Duke Energy Ohio does not intend to conduct vegetation management along those transmission lines on their properties, these Complainants and Amended Complainants lack standing and do not set forth reasonable grounds for complaint against Duke Energy Ohio in the Second Amended Complaint.

For all of the reasons set forth above and in the Motion to Dismiss filed on December 4, 2017, Duke Energy Ohio, Inc. respectfully requests that the Commission grant its motion and dismiss the claims of Fu K. Wong and Peony Lo, John and Sally Riester, Sandra L. Nunn, and Mark and Carissa Thompson, Amanda Sachs, David Siff, Carrie Gause, Dan Gause, Susan Falick, Jerry Ullrich, Lou Ullrich, Darrelle Reese, Julie Carnes, Todd Bacon, Michelle Bacon, Patricia Lohse, Robb Olson, Kathleen Olson, John Collins, Barbara Collins, Valerie Van Iden, Joe Zukor, and the Symmes Township Trustees from the Second Amended Complaint, with prejudice.

Respectfully submitted,

/s/ Elizabeth H. Watts

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

DUKE ENERGY OHIO, INC.

139 East Fourth Street

1303-Main

P.O. Box 960

Cincinnati, Ohio 45202

Telephone: (513) 287-4320

Rocco.D'Ascenzo@duke-energy.com

Elizabeth.Watts@duke-energy.com

Robert A. McMahon (0064319)

Eberly McMahon Copetas LLC

2321 Kemper Lane, Suite 100

Cincinnati, Ohio 45206

(513) 533-3441 (telephone)

(513) 533-3554 (fax)

bcmahon@emclawyers.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was served on the following parties of record by electronic service, this 20th day of February, 2018.

/s/ Elizabeth H. Watts

Kimberly W. Bojko

Stephen E. Dutton

Brian W. Dressel

Carpenter Lipps & Leland LLP

280 Plaza, Suite 1300

280 North High Street

Columbus, OH 43215

bojko@carpenterlipps.com

Dutton@carpenterlipps.com

dressel@carpenterlipps.com

Counsel for Complainants

Terry L. Etter

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor

Columbus, Ohio 43215-4213

terry.etter@occ.ohio.gov

Counsel for the Office of the Ohio

Consumers' Counsel