

FILE

RECEIVED-DOCKETING DIV

2007 JUL 24 PM 4: 23

PUCO

SCHOTTENSTEIN  
ZOX & DUNN CO., LPA

GREGORY J. DUNN  
614/462-2339  
FAX - 614/462-5135  
E-MAIL: GDUNN@SZD.COM

July 24, 2007

**VIA HAND-DELIVERY**

Renee J. Jenkins  
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street, 13<sup>th</sup> Floor  
Columbus, OH 43215

**RE: Case No. 06-653-EL-ORD**

Dear Ms. Jenkins:

Enclosed please find the original and 11 copies of Dublin's Reply Comments in the above captioned case. Please file-stamp and return one copy of the Reply Comments to me via the courier who has delivered this to your office.

Thank you for your assistance and attention to this matter.

Sincerely,

 (s, ATP)

Gregory J. Dunn  
Attorney for the City of Dublin

GJD:rac

Attachments

cc: Jane Brautigam, City Manager, Dublin, Ohio  
Stephen Smith, Law Director, City of Dublin

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician SM Date Processed 7/24/07

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's	:	
Review of Chapters 4901:1-9, 4901:1-10,	:	
4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24	:	Case No. 06-653-EL-ORD
and 4901:1-25 of the Ohio Administrative	:	
Code.	:	

---

**REPLY COMMENTS OF CITY OF DUBLIN, OHIO, TO INITIAL COMMENTS FILED  
BY THE OFFICE OF THE OHIO CONSUMER COUNSEL, THE APPALACHIAN  
PEOPLE'S ACTION COALITION, EDMONT NEIGHBORHOOD COALITION,  
COMMUNITY ACTION PARTNERSHIP EMPOWERMENT CENTER OF GREATER  
CLEVELAND, COMMUNITIES UNITED FOR ACTION, AND CONSUMERS FOR  
FAIR UTILITY RATES AND PROCEDURAL REQUESTS.**

---

**STEPHEN J. SMITH  
LAW DIRECTOR  
CITY OF DUBLIN, OHIO  
Gregory J. Dunn, Counsel of Record  
(0007353)**

**Schottenstein Zox & Dunn Co., LPA  
250 West Street  
Columbus, Ohio 43215  
[gdunn@szd.com](mailto:gdunn@szd.com)  
(614) 462-2339 (p)**

**July 24, 2007**

## **TABLE OF CONTENTS**

<b>I)</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II)</b>	<b>VEGETATION MANAGEMENT PROGRAMS.....</b>	<b>2</b>
1)	<b>Electric Utilities Should Be Required To Provide Notice To And         Consult With Political Subdivision Arborists Prior To Commencing         Scheduled Vegetation Management.....</b>	<b>2</b>
2)	<b>All Vegetation Management Activities Should Be Conducted with         Regard For Community Aesthetics.....</b>	<b>3</b>
3)	<b>Clear Cutting Should Be Prohibited. ....</b>	<b>4</b>
<b>III)</b>	<b>PROCEDURAL REQUESTS.....</b>	<b>4</b>
<b>IV)</b>	<b>CONCLUSION .....</b>	<b>5</b>

## **D) INTRODUCTION**

By entry dated April 4, 2007, PUCO staff initiated a review of the Ohio Administrative Code ("OAC") rules captioned above. OAC section 4901:1-10 governs minimum service and safety standards for service provided by electric utilities. OAC section 4901:1-21 contains rules for operation by competitive retail electric service ("CRES"). OAC section 4901:1-22 sets forth electronic interconnection standards. OAC section 4901:1-23 covers electric service provider enforcement. OAC section 4901:1-24 governs application procedures to apply for licensure to operate as a CRES. And, OAC section 4901:1-25 contains regulations related to electric market monitoring.

By entry dated April 23, 2007, the PUCO attorney examiner in this matter issued an entry ordering the following procedural schedule: (1) initial comments on the rules to be filed by June 8, 2007, and (2) reply comments to be filed no later than July 24, 2007. On June 8, 2007, counsel for the Ohio Consumers Counsel and additional entities captioned above (hereinafter collectively referred to as "OCC") filed initial comments to the PUCO rule proposals.

Paragraph II, section D, on page 15 of the OCC initial comments, entitled "Lack of Vegetation Management Rules," cites OAC section 4901:1-10-29(E) as requiring electric utilities to have programs for right of way vegetation control and states that specific requirements for such vegetation management programs are not defined in the OAC. To that end, the OCC comments contain a draft of proposed rule amendments to OAC section 4901:1-10-28(H) creating vegetation management program rules.

Before continuing in this reply to the OCC initial comments, it should be noted that OAC section 4901:1-10-29(E) is not the section of the OAC requiring electric utilities to have programs for right of way vegetation control. Instead, the requirement for such programs is

contained in OAC section 4901:1-10-27(E). This is likely a typographical error contained in the OCC comments.

Notwithstanding, the City of Dublin submits the following reply to the initial comments of the OCC regarding vegetation control and management programs:

## **II) VEGETATION MANAGEMENT PROGRAMS**

### **1) Electric Utilities Should Be Required To Provide Notice To And Consult With Political Subdivision Arborists Prior To Commencing Scheduled Vegetation Management**

OCC proposed rule section 4901:1-10-28(H)(1)(J) requires written notice be provided to impacted property owners regarding planned vegetation management. It is not uncommon for Ohio municipalities and other political subdivisions to have arborists that coordinate vegetation management in their respective subdivisions. Political subdivision arborists should be notified of and participate in approving vegetation management to be conducted by electric utilities on public right of ways and where private property owners request such assistance. Therefore, in addition to notice provided to property owners, we suggest the following language be added to this section:

*Not less than 30 days prior to commencing scheduled vegetation management, the electric utility shall provide notice to the arborist representing each political subdivision in which it has planned vegetation management. For vegetation management to be conducted on public land and public rights of way, and when private property owners file a request with the political subdivision, electric utilities shall determine with the arborist the method of conducting any clearing, cutting, trimming, removing, and inspection that is part of the scheduled vegetation management.*

## **2) All Vegetation Management Activities Should Be Conducted with Regard For Community Aesthetics**

OCC proposed rule section 4901:1-10-28(H)(1)(G)(d)-(e) requires that electric utilities develop vegetation management programs based on current standards outlined by the International Society of Arboriculture (“ISA”) and the American National Standards for Tree Care Operation (“ANSTCO). Additionally, section 4901:1-10-28(H)(1)(H) of the proposed rules require that transmission line management meet the requirements of the National Electric Safety Code for minimum clearances between the transmission line and the closest branch beneath it. This section of the OCC’s draft of rules also sets forth specific requirements for clearances near transmission lines.

Notwithstanding aesthetic standards contained in the ISA and ANSTCO guidelines and potential conflicting requirements that may be contained in the National Electric Safety Code, to ensure that aesthetic concerns are properly addressed in electric utility vegetation management plans, it is requested that a specific statement regarding aesthetics be included in the OAC rules. The following language is suggested:

*Prior to conducting any scheduled vegetation management over public rights of way, electric utilities and arborists representing political subdivisions in which the vegetation management is planned shall agree upon a vegetation management method that will, among other things, promote the aesthetic character of the political subdivision, promote public health, safety, and general welfare by preserving the physical nature of public and private property in the political subdivision. The arborists and the electric utility shall consider the impact of the vegetation management plan on local, state, and national eco systems, local property values, noise pollution, air temperature, smog, pollutants, topsoil erosion, and smaller understory vegetation.*

### **3) Clear Cutting Should Be Prohibited**

Clearcutting or clearfelling is a practice where all or most trees in an area are entirely removed or a large portion of them are severely cut without regard to their proximity to transmission lines or conductors. For electric utilities, clearcutting is the cheapest way to conduct vegetation management. In contrast, clearcutting causes the most unpleasant aesthetic results. It is undeniably true that clearcutting has a strongly negative visual impact that takes years to reverse.

The City of Dublin has previously opposed clear cutting practices by electric utilities and opposes any vegetation management rule that would allow for clearcutting as part of a vegetation management plan. To that end, the city of Dublin submits the following proposal for section 4901:1-10-28 of the OAC:

*To protect health, safety, and general of Ohioans and to assist in sustaining the value of public and private property, vegetation management plans drafted pursuant to this chapter shall seek to protect and nurture trees and other vegetation that grow on land. Electric utilities are prohibited from clearcutting and shall not include clearcutting as part of any vegetation management plan drafted pursuant to this chapter.*

### **III) PROCEDURAL REQUESTS**

The City of Dublin, as do all other municipal corporations, villages, and townships in the state of Ohio have an interest in ensuring that regulations for the electric utility industry are drafted in a manner that is consistent with the aesthetic and other concerns related to private and public property in their boundaries. For that reason, the City of Dublin respectfully requests to be added as a party to the instant matter and all future rule reviews of OAC section 4901 as it relates to the provision of electric service. The city of Dublin also requests to be notified of all future technical conferences, procedural conferences, and substantive and other conferences on this matter. Additionally, the City of Dublin suggests that PUCO consider adding, as interested

parties, in this and future matters related to OAC section 4901 all Ohio municipalities, villages, and townships.

#### **IV) CONCLUSION**


The City of Dublin requests that, as part of any vegetation management program, electric utilities be required to provide notice of scheduled vegetation management to arborists representing political subdivisions. Vegetation management plans should also require that aesthetic concerns be addressed prior to conducting vegetation management. Finally, electric utilities should be prohibited from utilizing clearcutting as a method of vegetation management on public rights of way and private property.

Procedurally, the City of Dublin requests to be added as a party to the instant matter and all future rule reviews of OAC section 4901 as it relates to the provision of electric service.

**Respectfully submitted,**

**STEPHEN J. SMITH  
LAW DIRECTOR, CITY OF DUBLIN, OHIO**

**By:**

 (By ATP)

**Gregory J. Dunn (0007353)**

**Counsel of Record**

**Schottenstein, Zox & Dunn, Co., LPA**

**250 West Street, Columbus, Ohio 43215**

**City of Dublin, Ohio**

**5200 Emerald Parkway**

**43017-1006**



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments of City of Dublin, Ohio to Initial Comments filed by the Office of the Ohio Consumer Counsel, The Appalachian People's Action Coalition, Edgmont Neighborhood Coalition, Community Action Partnership Empowerment Center of Greater Cleveland, Communities United for Action, and Consumers for Fair Utility Rates and Procedural Requests was served this 24<sup>th</sup> day of July, 2007 by electronic mail upon the following parties:

Samuel C. Randazzo  
Lisa G. McAlister  
Daniel J. Neilsen  
Joseph M. Clark  
McNees, Wallace & Nurik LLC  
Fifth Third Center  
21 East State Street, 17th Floor  
Columbus, OH 43215-4228  
[sam@mwncmh.com](mailto:sam@mwncmh.com),  
[lmcalister@mwncmh.com](mailto:lmcalister@mwncmh.com),  
[dneilsen@mwncmh.com](mailto:dneilsen@mwncmh.com), and  
[jclark@mwncmh.com](mailto:jclark@mwncmh.com)

Richard C. Reese  
Jeffrey L. Small  
Office of Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
[small@occ.state.oh.us](mailto:small@occ.state.oh.us) and  
[reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater Seymour and Pease LLP  
52 East Gay Street  
P. O. Box 1008  
Columbus, OH 43216-1008  
[mhpetricoff@vssp.com](mailto:mhpetricoff@vssp.com) and  
[smhoward@vssp.com](mailto:smhoward@vssp.com)

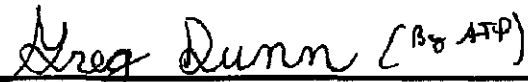
Marvin I. Resnik  
Steven T. Nourse  
American Electric Power Service Corp.  
1 Riverside Plaza, 29th Floor  
Columbus, OH 43215  
[miresnik@aep.com](mailto:miresnik@aep.com) and  
[stnourse@aep.com](mailto:stnourse@aep.com)

Paul A. Colbert  
Associate General Counsel  
Tamara R. Reid McIntosh  
Regulatory Legal Liaison  
Duke Energy Ohio, Inc.  
139 East Fourth Street  
P.O. Box 960  
Cincinnati, OH 45201-0960  
[pcolbert@cinergy.com](mailto:pcolbert@cinergy.com) and  
[tamara\\_mcintosh@duke-energy.com](mailto:tamara_mcintosh@duke-energy.com)

Dona R. Seger-Lawson  
Director, Regulatory Operations  
The Dayton Power & Light Company  
1065 Woodman Drive  
Dayton, OH 45432  
[Dona.seger-lawson@dplinc.com](mailto:Dona.seger-lawson@dplinc.com)

James W. Burk  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
[burkj@firstenergy.com](mailto:burkj@firstenergy.com)

Kathy J. Kolich, Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
[kjkolich@firstenergy.com](mailto:kjkolich@firstenergy.com)

  
\_\_\_\_\_  
Gregory J. Dunn