

**FILE**

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

CHARLES R. OGLE AND  
MELANIE A. OGLE

COMPLAINANTS,

VS

AMERICAN ELECTRIC POWER  
OHIO POWER COMPANY

RESPONDENT(S)

CASE NO. 08-1247-EL-CSS

**REPLY MEMORANDUM TO COMPLAINANTS' "REBUTTAL" TO THE  
MOTION TO DISMISS  
OF OHIO POWER COMPANY D/B/A  
AMERICAN ELECTRIC POWER**

Complainants' opposition to Respondent's Motion to Dismiss, although lengthy and convoluted, merely serves to emphasize why the Commission should dismiss their Complaint. As stated in Respondent's Motion to Dismiss, this Commission has no jurisdiction to issue a stay or enforce a Township moratorium by issuing a stay.<sup>1</sup> A stay is the only relief sought by Complainants.

In their "Rebuttal," Complainants do not even address the jurisdictional issue which is the basis of Respondent's Motion to Dismiss. They cite no law or authority for their position, but merely recite the litany of why they are upset with Respondent—they are unhappy with the results of the eminent domain case in the Hocking County Court of Common Pleas case, they are unhappy with the dismissal of their nuisance action in that same Court, they do not care for Respondent's conduct in the Court actions, they do not want the tower constructed on their neighbor's property, they do not want the

<sup>1</sup> *Sylvania Home Tel. Co. v. Public Utilities Com.*, 97 Ohio St. 202, 208 (Ohio 1918).

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
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Technician TM Date Processed 12/16/2008

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2008 DEC 10 AM 9:13  
PUCO

electric easement or line across their property, and, they want the Commission to enforce the Hope Township moratorium by staying construction of the tower.

Complainants spend a lot of time explaining to the Commission why they do not like Respondent, but rhetoric aside, the only actual relief that Complainants seek is an injunction or stay stopping construction of the tower and electric line. They state:

"We should not have to fight in court depleting all of our savings . . . The issue we personally have with AEP/Ohio Power are that we do not desire their above-ground electric lines on our property, nor their tower ominously towering over our property and visually impacting the southern view from inside and outside our home for the rest of our lives." (Rebuttal, page 5).

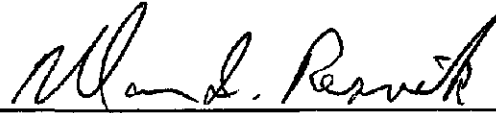
The Public Utilities Commission of Ohio does not have jurisdiction to do what Complainants desire. In essence, the Complainants want the Commission to set aside the decisions of the Hocking County Court of Common Pleas in the *eminent domain* and the injunction lawsuits. The Commission has no such jurisdiction. By statute, jurisdiction over *eminent domain* resides in the Courts (Ohio Revised Code Section 163.01 *et seq.*), and the Commission does not have the power to grant an injunction. Complainants claim they are just trying to get the Commission to "direct AEP/Ohio Power to comply with all laws in the State of Ohio, which happens to include laws of Good Hope Township." (Rebuttal, page 2), but the relief requested is still an injunction.

Complainants have adequate judicial remedies available to them through the court system. As stated in Respondent's Motion, Complainants sought an injunction from the Hocking County Court of Common Pleas based on their claim the tower was a nuisance, but their Complaint was dismissed. (Exhibit 1, Complaint, Hocking County Court of Common Pleas Case No.: 07 CV 0264, and Exhibit 2, Entry Dismissing the

Complaint). Complainants are currently appealing that decision, and are also seeking a temporary restraining order in the Fourth District Court of Appeals, which has yet to rule on either the appeal or the request for a stay. (Exhibit 3, Notice of Appeal, Exhibit 4, Request for TRO). Complainants also defended the eminent domain action filed by Respondent for an easement across their land for an electric line to serve the tower, and the Court found in favor of Respondent in that action as well (Hocking County Court of Common Pleas, Case No.: 07 CV 0124). The final entry has not been filed in that action and once it is, the Complainants will be able to appeal that decision.

The bottom line is that Complainants are asking the Commission for relief the Commission has no power to grant. The relief they are seeking is nothing more or less than a stay, whether it is asking the Commission to stay the construction of Respondent's tower and electric line, or by requesting the Commission to "enforce" a township moratorium on construction. If Complainants desire a stay, the only forum available to them is the Hocking County Court of Common Pleas, with review by the Fourth District Court of Appeals. Respondents ask that the Commission hold that it does not have jurisdiction to do what the Complainants are requesting and dismiss the Complaint.

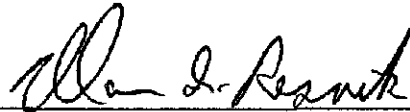
Respectfully submitted,



Marvin I. Resnik  
American Electric Power Service Corporation  
1 Riverside Plaza  
Columbus, Ohio 43215  
(614) 716-2964  
Counsel for Ohio Power Company, d/b/a  
American Electric Power

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Memorandum of Ohio Power Company d/b/a American Electric Power was served on Charles R. Ogle and Melanie A. Ogle, Complainants, at 11575 Donaldson Road, Rockbridge OH 43149, by ordinary U.S. mail prepaid, on December 10, 2008.



Marvin I. Resnik

## EXHIBIT 1

## IN THE COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO

Charles R. Ogle  
11575 Donaldson Road  
Rockbridge Ohio 43149

and

Melanie Ogle  
11575 Donaldson Road  
Rockbridge Ohio 43149,

Plaintiffs,

v.

Ohio Power Company  
825 Tech Center Drive  
Gahanna, Ohio 43230

and

Christopher T. Cline  
6060 Post Road  
Dublin, Ohio 43017

and

Teresa Jo Gubsch  
3085 Parkside Road  
Columbus, Ohio 43204

and

Margaret Ann Plahuta  
3782 Surrey Hill Place  
Upper Arlington, Ohio 43220

Defendants.

Case No. 07CV0264

Judge Gerken

HOCKING CO. CT.  
2007 NOV 21 PM 1:06  
MARIE STANLEY  
CLERK OF COURT

## EXHIBIT 1

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiffs, at all times material to this Complaint were, and still are, the owners and occupiers of the premises located at 11575 Donaldson Road, Rockbridge Ohio 43149 which real estate is more particularly described in "Exhibit A" attached hereto and incorporated herein by reference as if fully set forth.

2. Plaintiffs use and occupy such premises as their residence.

3. Defendants, Christopher T. Cline, Teresa Jo Gubsch and Margaret Ann Plahuta (collectively "Cline"), at all times material to this Complaint were, and still are, the owners of the real estate that is more particularly described in "Exhibit B" attached hereto and incorporated herein by reference as if fully set forth.

4. The real estate of Cline adjoins and abuts the Plaintiffs' real estate on the south side thereof and is visible from the Plaintiffs' residence, which is located across Donaldson Road from the property of Cline and to the north thereof.

5. Cline has granted to Defendant, Ohio Power Company ("Ohio Power"), an easement for the installation, use, maintenance, repair, replacement and removal of a telecommunications tower on the property of Cline. A copy of such easement is attached hereto as "Exhibit C" and is incorporated herein by reference as if fully set forth.

6. Upon information and belief, Plaintiffs say that Ohio Power intends to construct such telecommunications tower on the property of Cline in such a location as to be visible from the Plaintiffs' real estate and to be close enough to the Plaintiffs' property as to create health risks to the Plaintiffs and their animals, all of which constitutes a nuisance and an unreasonable interference with the rights of the Plaintiffs, insofar as the presence of such tower will cause diminution in the fair

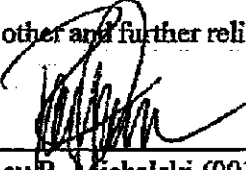
## EXHIBIT 1

market value of the Plaintiffs' land and will also pose a substantial threat of damage to the persons and property of Plaintiffs.

7. Plaintiffs will be irreparably damaged if Ohio Power is permitted to construct the proposed telecommunications tower on the property of Cline, and Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs demand the following relief, to wit:

- (a) That Ohio Power and Cline be enjoined from installing, using, maintaining or repairing a telecommunications tower on the land of Cline;
- (b) That Plaintiffs be awarded their costs herein; and
- (c) That Plaintiffs be awarded such other and further relief as the premises may warrant.



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Ray R. Michalski (0015793)  
Jeff J. Spangler (0078074)  
DAGGER, JOHNSTON, MILLER,  
OGILVIE & HAMPSON, LLP  
144 East Main Street  
P.O. Box 667  
Lancaster, Ohio 43130-0667  
(740) 653-6464  
Attorney for Plaintiffs  
[rmichalski@daggerlaw.com](mailto:rmichalski@daggerlaw.com)  
[jispangler@daggerlaw.com](mailto:jispangler@daggerlaw.com)

Filed for Record in  
HOCKING COUNTY, OHIO  
SANDRA K LEACH-HUNT  
09-17-2007 At 03:03 pm.  
SURV DEED 28.00  
OR Book 398 Page 305 - 306

## JOINT AND SURVIVORSHIP DEED

## EXHIBIT 1

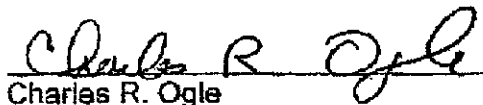
KNOW ALL MEN BY THESE PRESENTS THAT, CHARLES R. OGLE of Hocking County, Ohio, for valuable consideration paid, Grants with General Warranty Covenants, to CHARLES R. OGLE and MELANIE A. OGLE, husband and wife, for their joint lives remainder to the survivor of them, whose tax mailing address is 11575 Donaldson Road, Rockbridge, Ohio 43149, the following real property:

Situated in the Township of Good Hope, County of Hocking and State of Ohio and being the North half of the Southwest quarter of Section No. 26, T13N, R18W, containing 80 acres, more or less, including two tracts and further described on Exhibit "A" attached hereto and incorporated herein.

Prior Instrument Reference: Volume 126, Page 497, and Volume 126, Page 499,  
Official Records, Hocking County, Ohio

Parcel Nos: 5-000220.0100 and 5-000220.0000

WITNESS my hand this 17 day of September, 2007

  
Charles R. Ogle

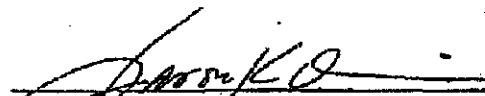
STATE OF OHIO, HOCKING COUNTY: SS

Before me, a Notary Public, in and for said County and State, personally appeared the above-named Charles R. Ogle, who acknowledged that he did sign the foregoing instrument, and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 17 day of September, 2007.



JASON K. QUIER  
Notary Public, State of Ohio  
My Commission Expires February 10, 2012

  
Notary Public, State of Ohio  
Commission Expires: 2/10/2012

This instrument prepared by Charles R. Ogle, pro se

TRANSFERRED

SEP 17 2007

KENNETH R. WILSON  
HOCKING COUNTY AUDITOR

This Conveyance has been examined  
and the Grantor has complied with  
Section 319.202 of the Revised Code,  
County Auditor.

FEE            EXEMPT N



VOL 0398 PAGE 305



## EXHIBIT 1

## Exhibit "A"

## TRACT ONE:

Situated in the Township of Good Hope, County of Hocking and State of Ohio and being the North half of the Southwest quarter of Section No. 26, T13N, R18W, containing 80 acres, more or less, excepting therefrom a 5.000-acre tract described as TRACT TWO herein.

## TRACT TWO:

Being a part of a tract of land last transferred in Vol. 215, Pg. 701, Hocking Co. Deed Records, situated in the N 1/2 of the SW 1/4 of Sec. 26, Good Hope Twp., T-13N, R-18W, Hocking Co., Ohio, and being more particularly described as follows:

Beginning, for reference, at a point on the north line of said N 1/2 of the SW 1/4, said point being referenced by an iron pin found in the center of Twp. Rd. 121, said pin being the southwesterly corner of the 32.737 Ac. tract described in Vol. 216, Pg. 316, which bears S 84 degrees 58' 40" E a distance of 147.33 ft.;

Thence S 5 degrees 01' 20" W a distance of 791.76 ft. to a point in the center of said Twp. Rd. 121, said point being the principal place of beginning for the tract herein described;

Thence continuing with the center of Twp. Rd. 121 the following three (3) courses:

- 1) S 9 degrees 23' 54" E a distance of 87.01 ft. to a point;
- 2) S 11 degrees 35' 55" E a distance of 126.45 ft. to a point;
- 3) S 9 degrees 32' 52" E a distance of 94.60 ft. to an iron pin set;

Thence leaving Twp. Rd. 121 and with new", lines the following three (3) courses:

- 1) S 80 degrees 15' 11" W a distance of 639.97 ft. to an iron pin set;
- 2) N 6 degrees 31' 39" E a distance of 454.37 ft. to an iron pin set;
- 3) S 85 degrees 37' 25" E, passing an iron pin set at 513.24 ft., going a total distance of 525.29 ft. to the principal place of beginning, containing 5.000 acres, more or less, and being subject to the right-of-way of Twp. Rd. No. 121 and all valid easements.

Cited bearings are based on the bearing system of the 32.737 Ac. tract described in Vol. 216, Pg. 316.

All iron pins described as being set are 5/8" X 30" with an attached plastic identification cap.

The above description is the result of an actual survey made by Michael P. Berry, Ohio Registered Surveyor No. 6803, August 6, 1998.

Requested By: djm 11/20/2007

## EXHIBIT 1

Probate Form 5.3

## PROBATE COURT OF FRANKLIN COUNTY, OHIO

Lawrence Belskis

ESTATE OF Iris L. Cline

DECEASED

CASE NO. 503818CERTIFICATE OF TRANSFER  
NO. 1

[Check one of the following]

☐ Decedent died intestate.☒ Decedent died testate.Decedent died on 07/14/2004 owning the real property described in this certificate. The persons to whom such real property passed by devise, descent or election are as follows:

| Name                  | Residence Address                                     | Transferee's share of decedent's interest |
|-----------------------|---|---|
| Christopher T. Cline  | 6060 Post Road<br>Dublin, Ohio 43017                  | One Third (1/3)                           |
| Teresa Jo Gubsch      | 3085 Parkside Road<br>Columbus, Ohio 43204            | One Third (1/3)                           |
| Margaret Ann Plahruta | 3782 Surrey Hill Place<br>Upper Arlington, Ohio 43220 | One Third (1/3)                           |

200500003085  
Filed For Record in  
HOCKING COUNTY, OHIO  
SANDRA K LEACH-HUNT  
On 11-23-2005 at 02:23 pm.  
CERT/TRANS 28.00  
DR Book 337 Page 667 - 668

FILED 21

JUN 17 2005

LAWRENCE A. BELSKIS  
PROBATE JUDGE200500003085  
CHRISTOPHER CLINE  
6060 POST RD  
DUBLIN, OH 43017

[Complete if applicable] The real property described in this certificate is subject to a charge of \$\_\_\_\_\_ in favor of decedent's surviving spouse, None in respect of the unpaid balance of the specific monetary share which is part of the surviving spouse's total intestate share.

12.1 - CERTIFICATE OF TRANSFER

VOL 0337 PAGE 667

EXHIBIT

B

10/1/98

Requested By: d.m. 4/26/2007

EXHIBIT 1

(Reverse of Form 12.1)

CASE NO. 503818

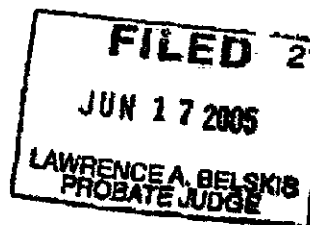
The legal description of decedent's interest in the real property subject to this certificate is: (use extra sheets, if necessary).

An undivided one half interest in the following property:

Situated in the County of Hocking and in the State of Ohio and in the Township of Good Hope and bounded and described as follows:

Being a part of the South half of the Southwest Quarter Section Twenty-six (26), Township Number thirteen (13), Range Number Eighteen (18), Hocking County, Ohio and being all of the said South half of the said quarter section excepting 13 acres sold to William Rizer by Richard Donaldson off of the west end of said tract, and making the base of the rocks on said tract the line, containing 75 acres, more or less.

APPROVED FOR TRANSFER BY  
HOCKING COUNTY ENGINEER'S OFFICE  
BY CW DATE 6-22-05



Prior Instrument Reference: 08 155 p. 448

Parcel No: 05-000216-0000

## ISSUANCE

This Certificate of Transfer is issued this JUN 17 2005 day of JUN 17 2005  
Lawrence A. Belskis  
Probate Judge  
Lawrence Belskis

Seal

## CERTIFICATION

I certify that this document is a true copy of the original Certificate of Transfer No. 2 issued on JUN 17 2005 and kept by me as custodian of the official records of this Court.

JUN 17 2005

Date

Probate Judge  
Lawrence Belskis

Approved

Christopher T. Cline  
Christopher T. Cline, Attorney for Estate

Lawrence A. Belskis  
By Lawrence A. Belskis

Seal

## TRANSFERRED

JUN 22 2005 50

KENNETH R. WILSON  
HOCKING COUNTY AUDITOR

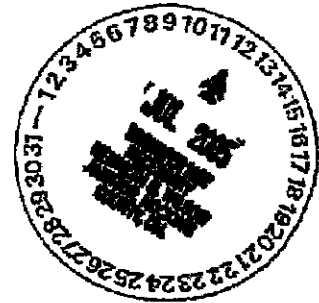
This Conveyance has been examined and the Grantor has complied with Section 319.202 of the Revised Code, County Auditor.  
FEE        EXEMPT N

Form 12.1 - Side Two - Iris L. Cline

VOL 0337 PAGE 668

## EXHIBIT 1

## EASEMENT



In consideration of the sum of \$1.00 Dollar, and other valuable consideration paid by Ohio Power Company, an Ohio corporation ("Grantee"), the receipt of which is hereby acknowledged, Christopher Cline, Teresa Gubsch and Margaret Plahuta, brother and sisters, whose address is 6060 Post Road, Dublin, Ohio 43017 ("Grantors"), hereby grant to said Grantee, its successors, assigns, lessees and licensees, an easement to construct, operate, repair, enlarge, replace, add facilities to, operate, and maintain a communications tower, utility lines, antennae, supporting ground facilities, cabinets, buildings, generators and appurtenant equipment over, upon, under, and across the following described lands situated in the County of Hocking, State of Ohio, and being a part of the Good Hope Township in Section 26, Township 13, Range 18, and recorded in Deed Volume 155, Page 448, Hocking County Recorder's Office (the "Premises").

The tower, antennae, supporting ground facilities, cabinets, buildings, generators and appurtenant equipment (the "Equipment") shall be constructed within the area indicated as "Easement Area" on Exhibit "A". The Equipment shall remain the property of the Grantee or its licensees or lessees and shall be removed if the Grantee desires to release this easement or upon termination of the initial or extended term. Grantee will be permitted to sublet one (1) collocate on the tower space within the easement area. This collocate will be reserved for any Public Safety Agency. If additional collocates are requested by the Grantee (cell carriers), then this request will require further negotiations and approval by Grantor must be obtained prior to any hookup.

Grantee shall have at all times, the right of ingress to and egress from the Easement Area for the purpose of construction, maintenance and removal. Ingress and egress shall be over a thirty (30) foot wide strip of land as shown on the attached Exhibit A and hereinafter referred to as the "Access Lane." Grantee will improve the Access Lane by grading, filling, and/or the application of a gravel or stone base. Grantee agrees to periodically maintain the access lane within reason, but shall not be required to stone or gravel the entire access lane after the initial construction has been completed. The lane surface shall be of sufficient width for vehicular access, but in no event shall exceed thirty (30) feet in width, except that fill needed to improve the lane may extend beyond the 30 feet. Grantor will be permitted to use access lane at all times.

Grantee shall also have the right to install electric lines and communication lines, whether overhead or underground, upon the Premises for the purpose of providing electric and communications service to the Equipment.



200500003396  
Filed for Record in  
HOCKING COUNTY, OHIO  
SANDRA K LEACH-HUNT  
07-13-2005 At 08:42 am.  
EASEMENT 68.00  
OR Book 339 Page 298 - 304

Requested By: djm 11/20/2007

## EXHIBIT 1

Grantee shall have exclusive control over the Easement Area and shall be permitted to grade, fill, fence and improve the Easement Area. Grantee shall further be permitted to erect a gate across the Access Lane. If said gate is erected, it will be locked at all times. Grantee may remove any and all trees, shrubbery and vegetation as necessary within the Easement Area, the Access Lane, and along the electric distribution and communication lines. There will be no removal from the Grantors property of any top soil from the easement area. All trees that have been cut down that are not chipped will have their roots removed and stacked neatly near the existing access road.

Grantee shall pay for damages to the stock, crops, fences, or structures of the Grantor caused by Grantee, its employees or contractors while engaged in the construction or maintenance of the Equipment, the Access Lane or the utility lines serving the Equipment.

Grantor shall not engage in any activity or place any object upon the Premises that interferes with the Equipment or is inconsistent with the rights herein granted.

Grantee shall indemnify and hold harmless Grantor from all damages and from all claims and causes of action for personal injury, including death, and damages asserted against Grantor resulting from the Grantee's negligent use of the Premises, except for such damages arising out of Grantor's negligence.

Grantor has full power to convey this right-of-way and easement, and warrants and will defend the same against all claims by any persons. This easement shall extend to and be binding on the undersigned, Grantor, its heirs, executors, administrators, and assigns, and the same shall extend to said Grantee, its successors, and assigns.

Grantee shall pay all utilities attributed to the operation of the Equipment and appurtenant facilities. Grantee agrees to resolve any technical interference problems resulting from the construction of said tower with other equipment located on the above referenced lands. In the event the easement is no longer used for a Communication facility, Grantee will promptly, and at no cost to the Grantors, remove all equipment, restore the site to its original condition and execute a record of release of the easement.

This instrument expresses the entire agreement between the parties, and the agent securing this grant has no authority to bind Grantee by any verbal representation or promise not herein expressed.

Witness their hands this 21 day of June, 2005.

## EXHIBIT 1

Signed and acknowledged in the presence of:

By: Christopher Cline  
Christopher Cline

By: Deborah P. Cline  
Deborah P. Cline

By: Teresa Gubsch  
Teresa Gubsch

By: Richard M. Gubsch  
Richard M. Gubsch

By: Margaret Plahuta  
Margaret Plahuta

By: Michael P. Plahuta  
Michael P. Plahuta

State of Ohio )

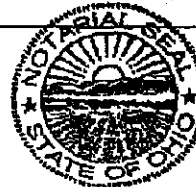
) SS:

Hocking County)

Before me, a Notary Public in and for said county and state, personally appeared the above named Christopher Cline, Deborah P. Cline, Margaret Plahuta, Michael P. Plahuta, and Teresa Gubsch and Richard P. Gubsch who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

In Witness Whereof, I have subscribed my name and affixed my official seal this 21 day of June, 2005.

Jennifer S. Jones  
Notary Public  
Commission expires \_\_\_\_\_



OFFICIAL SEAL  
JENNIFER S. JONES  
Notary Public, State of Ohio  
My Commission Expires  
September 4, 2007

This instrument was prepared by Land Management Section, Ohio Power Company.

Request By: Linn, 11/29/2007

**Linn Engineering, Inc.***Civil Engineering Consultants*

740-452-7434 • 1-800-991-7434 • FAX 740-452-5198

534 Market Street • P.O. Box 2088 • Zanesville, Ohio 43702-2088

**EXHIBIT 1****AEP - ROCKBRIDGE TELECOM TOWER SITE**

Situated in the State of Ohio, County of Hocking, Township of Good Hope, bounded and described as follows:

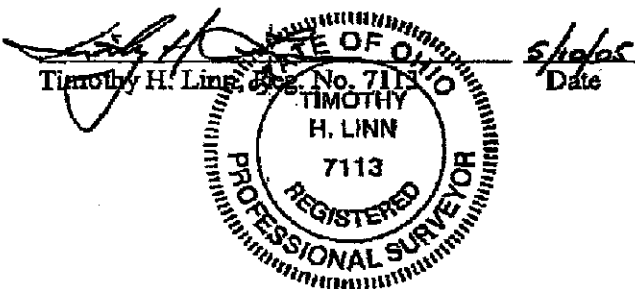
Being part of the Southwest Quarter of Section 26, Township 13, Range 18 of Good Hope Township, Congress Lands East of the Scioto River, also being part of lands now owned by Thomas G. and Iris L. Cline as the same is described in Hocking County Official Record 155-448, and more particularly described as follows:

Beginning for reference at an iron pin (by previous survey) at the southwest corner of Section 26 of Good Hope Township, Township 13, Range 18;  
thence along the south line of said Section 26 South 86 degrees 18 minutes 10 seconds East 681.38 feet to an axle found, from which a stone found on said section line bears South 86 degrees 18 minutes 10 seconds East 2042.78 feet;  
thence North 75 degrees 35 minutes 17 seconds East 627.05 feet to an iron pin set and the principal place of beginning;  
thence North 03 degrees 09 minutes 51 seconds West 150.00 feet to an iron pin set;  
thence North 86 degrees 50 minutes 09 seconds East 150.00 feet to an iron pin set;  
thence South 03 degrees 09 minutes 51 seconds East 89.96 feet to an iron pin set;  
thence South 88 degrees 53 minutes 26 seconds East 191.02 feet to an iron pin set;  
thence South 31 degrees 57 minutes 48 seconds East 23.69 feet to an iron pin set;  
thence North 88 degrees 55 minutes 39 seconds West 202.46 feet to an iron pin set;  
South 03 degrees 09 minutes 51 seconds East 40.00 feet to an iron pin set;  
South 86 degrees 50 minutes 09 seconds West 150.00 feet to the principal place of beginning,  
containing 0.61 acres, more or less, subject to all legal road right of ways and applicable easements, written or implied.

Iron pins set are 5/8 inch diameter by 30 inch long rebar with plastic identification caps.

Bearings are based on NAD 83, Ohio State Plane Coordinate System, South Zone, as per GPS observations made on 04/12/05.

This description is written based on a survey completed May 10, 2005 by Timothy H. Linn, Reg. No. 7113.



Requested By: cjm 11/20/2007

**Linn Engineering, Inc.***Civil Engineering Consultants*

740-452-7434 • 1-800-891-7434 • FAX 740-452-5198

534 Market Street • P.O. Box 2086 • Zanesville, Ohio 43702-2086

**EXHIBIT 1****AEP - ROCKBRIDGE TELECOM SITE  
INGRESS/EGRESS EASEMENT**

Situated in the State of Ohio, County of Hocking, Township of Good Hope, bounded and described as follows:

Being part of the Southwest Quarter of Section 26, Township 13, Range 18 of Good Hope Township, Congress Lands East of the Scioto River, also being an ingress and egress easement for a 20 foot access road from Donaldson Road (TR-121) to a proposed telecom tower site, located on lands now owned by Thomas G. and Iris L. Cline as the same is described in Hocking County Official Record 155-448, and more particularly described as follows:

Beginning for reference at an iron pin (by previous survey) at the southwest corner of Section 26 of Good Hope Township, Township 13, Range 18;  
thence (by previous survey) along the south line of said Section 26, South 86 degrees 18 minutes 10 seconds East 1623.76 feet to a point, passing an axle found 681.38 feet;  
thence through lands now owned by Thomas G. and Iris L. Cline (OR 155-448) the following two courses:

- 1) North 03 degrees 41 minutes 50 seconds East 261.81 feet to an iron pin set;
- 2) North 31 degrees 57 minutes 48 seconds West 11.85 feet to the centerline of an existing access road and the principal place of beginning of ingress/egress easement, being 10 feet right and left of the following described centerline;

thence along said centerline the following thirteen courses:

- 1) North 56 degrees 52 minutes 12 seconds East 5.84 feet to a point;
- 2) North 33 degrees 07 minutes 48 seconds West 8.44 feet to a point;
- 3) North 21 degrees 35 minutes 58 seconds West 31.93 feet to a point;
- 4) North 17 degrees 44 minutes 37 seconds West 134.67 feet to a point;
- 5) North 14 degrees 26 minutes 32 seconds West 49.78 feet to a point;
- 6) North 11 degrees 57 minutes 36 seconds West 167.54 feet to a point;
- 7) North 21 degrees 59 minutes 07 seconds West 96.93 feet to a point;
- 8) North 39 degrees 21 minutes 19 seconds West 104.77 feet to a point;
- 9) North 43 degrees 40 minutes 14 seconds West 84.46 feet to a point;
- 10) North 59 degrees 36 minutes 39 seconds West 59.37 feet to a point;
- 11) North 80 degrees 22 minutes 39 seconds West 101.94 feet to a point;
- 12) North 81 degrees 29 minutes 37 seconds West 50.72 feet to a point;
- 13) North 74 degrees 22 minutes 30 seconds West 38.51 feet to the terminus of the easement at the centerline of Donaldson Road (TR-121),

subject to all legal road right of ways and applicable easements, written or implied.

Iron pins set are 5/8 inch diameter by 30 inch long rebar with plastic identification caps.

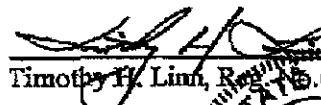


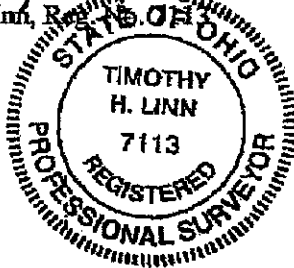
Requested by: Jim 11/27/2007

## EXHIBIT 1

Bearings are based on NAD 83, Ohio State Plane Coordinate System, South Zone, as per GPS observations made on 04/12/05.

This description is written based on a survey completed April 13, 2005 by Timothy H. Linn, Reg. No. 7113.

  
Timothy H. Linn, Registered Professional Surveyor  
Date 5/10/05



Requested By: ujm: 11/20/2007

## EXHIBIT 1

AEP - ROCKBRIDGE TELECOM SITE  
INGRESS/EGRESS EASEMENT

## LEGEND

- ⊗ Iron Pin Set, 5/8" rebar
- ⊗ Pole Found
- ⊗ Stone Found
- ⊗ Columbia Gas Well

## SITUATED IN

The State of Ohio, County of Hocking, Township of Good Hope, and being a part of the South Half of the Southwest Quarter of Section 20, T13, R12.

DATE OF SURVEY  
2/4/08

TOWER CENTER  
Lat: 4° 38' 33" N 93.911"  
Long: 82° 32' 04.928"  
Elev: 1091.25

Thomas C. & W. L. Cline  
OR 155-448

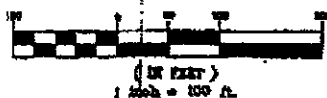
## BASIS OF BEARING

Bearings are based on NAD 83,  
Ohio State Plane Coordinate System,  
State Zone, as per GPS  
observations made on 04/12/05.

## REFERENCES

OR 155-448  
For Maps:  
Previous Survey: Section line 25-35  
By A.W. Seabright  
Jan. 26, 1952  
O & GS Monument Brown, J77425

## GRAPHIC SCALE



Project No. AEP-000



Linn Engineering, Inc.  
Civil Engineering Consultants  
P.O. Box 3087 Xenia, Ohio 45384-3087

IN THE COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO  
GENERAL DIVISION

CHARLES R. OGLE, et al., : 07CV0264  
Plaintiffs, : DISMISSAL ENTRY  
vs. :  
OHIO POWER COMPANY, et al., :  
Defendants. :

After consideration, the defendant Ohio Power Company's motion for dismissal is well-taken, and this matter is dismissed. The Court finds that there is no just cause for delay.

SO ORDERED.



Judge Thomas H. Gerken

xc: Ray R. Michalski, Esq.  
Brian L. Buzby, Esq.  
Christopher T. Cline, Esq.

IN THE COURT OF APPEALS, HOCKING COUNTY, OHIO  
FOURTH APPELLATE DISTRICT

CHARLES R. OGLE, et al.,

Plaintiffs- Appellants,

v.

OHIO POWER COMPANY, et al.,

Defendants-Appellees,

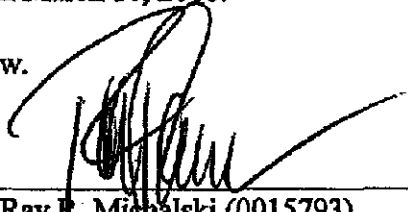
Trial Court Case No.: 07CV0264

Appellate Court Case No.: \_\_\_\_\_

**NOTICE OF APPEAL**

Notice is hereby given that Appellants, Charles R. Ogle and Melanie Ogle, hereby appeal to the Court of Appeals, Hocking County, Ohio, Fourth Appellate District, the decision of the Court of Common Pleas of Hocking County, Ohio, granting Appellees' Motion to Dismiss For Failure to State a Claim Upon Which Relief May be Granted (See, "Exhibit A" attached hereto), which decision was made a final appealable order on March 10, 2008.

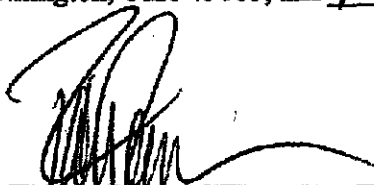
This appeal is on issues of fact and law.



Ray R. Michalski (0015793)  
D. Joe Griffith (0055499)  
Dagger, Johnston, Miller, Ogilvie & Hampson  
144 East Main Street  
P.O. Box 667  
Lancaster, Ohio 43130  
(614) 653-6464  
Attorneys for Appellants  
[rmichalski@daggerlaw.com](mailto:rmichalski@daggerlaw.com)  
[djgriffith@daggerlaw.com](mailto:djgriffith@daggerlaw.com)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal, has been served by ordinary U.S. mail service, postage prepaid, on Brian L. Buzby and Ryan P. Sherman, PORTER, WRIGHT, MORRIS & ARTHUR, LLP, Attorneys for Defendant-Appellee, Ohio Power Company, at 41 South High Street, Columbus, Ohio 43215-6194 and also upon Christopher T. Cline, Attorney for Defendants-Appellees, Christopher T. Cline, Teresa Jo Gubsch and Margaret Ann Plahuta, at 300 West Wilson Bridge Road #100, Worthington, Ohio 43085, this 1<sup>st</sup> day of April, 2008.



---

Ray R. Michalski (0015793)  
DAGGER, JOHNSTON, MILLER,  
OGILVIE & HAMPSON, LLP  
Attorney for Appellants

IN THE COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO  
GENERAL DIVISION

CHARLES R. OGLE, et al., : 07CV0264  
Plaintiffs, : DISMISSAL ENTRY  
vs. :  
OHIO POWER COMPANY, et al., :  
Defendants. :

HOCKING CO.  
COMMON PLEAS CT.  
2008 MAR 10 PM 3:01  
HARCI STAFF  
CLERK OF COURT

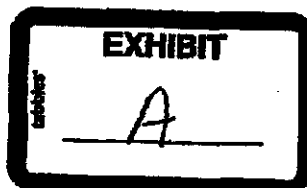
After consideration, the defendant Ohio Power Company's motion to dismiss is well-taken, and this matter is dismissed. The Court finds that there is no just cause for delay.

SO ORDERED.

  
Judge Thomas H. Gerken

xc: Ray R. Michalski, Esq.  
Brian L. Buzby, Esq.  
Christopher T. Cline, Esq.

THG/mar



**FILED**

NOV - 7 2008

HOCKING COUNTY  
COURT OF APPEALS  
NARCIE STAHR, CLERK**IN THE COURT OF APPEALS, HOCKING COUNTY, OHIO  
FOURTH APPELLATE DISTRICT**

CHARLES R. OGLE, et al.,

Appellants,

v.

OHIO POWER COMPANY, et al.,

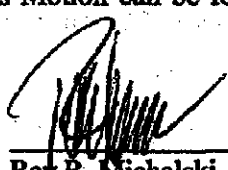
Appellees.

Trial Court Case No.: 07CV0264

Appellate Court Case No.: 08 CA 06

**MOTION FOR INJUNCTIVE RELIEF PURSUANT TO APPELLATE RULE 7**

Now come the Appellants, Charles R. Ogle and Melanie Ogle, pursuant to the provisions of Appellate Rule 7 and move this Court for an injunction prohibiting the Appellee, Ohio Power Company, from installing, using, maintaining or repairing a telecommunications tower on the land owned by Appellees, Christopher T. Cline, Teresa Jo Gubsch and Margaret Ann Plahuta. Appellants request that no bond be required. Support for this Motion can be found in the accompanying Memorandum.



Ray R. Michalski #0015793  
D. Joe Griffith #0055499  
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(740)653-8522 - Fax  
Attorneys for Appellants,  
Charles R. Ogle and Melody Ogle  
[rmichalski@daggerlaw.com](mailto:rmichalski@daggerlaw.com)  
[djgriffith@daggerlaw.com](mailto:djgriffith@daggerlaw.com)

**MEMORANDUM**

The Appellants commenced an action in the Common Pleas Court, Hocking County, Ohio, on November 21, 2007 against Appellees, Ohio Power Company ("Ohio Power") and Christopher T. Cline, Theresa Jo Gubsch and Margaret Ann Plahuta (collectively "Cline") seeking injunctive relief. The Complaint related to the use of the Cline property by Ohio Power pursuant to an easement for the installation, use, maintenance, repair, replacement and removal of a telecommunications tower, which Appellants want to prevent.

The Appellants alleged that the proposed telecommunications tower was going to be constructed by Ohio Power on the Cline property in such a location and in such a fashion as to constitute a nuisance and an unreasonable interference with the rights of the Appellants. Ohio Power and Cline filed timely Answers to the Complaint.

Thereafter, on January 11, 2008, Ohio Power filed a Motion to Dismiss Appellants' Complaint pursuant to Civil Rules 12(B)(6) and (C). The Motion was accompanied by a Memorandum in Support of the same. Ohio Power's Motion was scheduled for a non-oral hearing on February 5, 2008 at 11:00 a.m. On January 31, 2008, Cline filed a Motion and Memorandum in Support of Ohio Power's Motion to Dismiss. Thereafter, on February 4, 2008, Appellants filed a Memorandum Contra the Subject Motion to Dismiss and, on the day set for the non-oral hearing, Ohio Power filed a Motion for Leave to file a Reply in support of its Motion to Dismiss. The Reply Memorandum was filed on February 15, 2008. In the meantime, the Trial Court scheduled a status conference in the Trial Court proceeding for March 10, 2008.

On March 10, 2008, the Trial Court, which had not yet reviewed the Motion and Memoranda of Counsel, held the status conference and issued an Initial Status Conference Memo and Order on the same day. Contemporaneously, the Trial Court filed a Dismissal Entry, a copy of which is attached hereto as "Exhibit A". On April 2, 2008, Appellants filed their timely Notice of Appeal in this case.

Ohio Power obtained its easement on the Cline property for the construction of a telecommunications tower in June 2005. No effort was taken to construct the tower at that time since, according to Ohio Power, there was no electric service to the tower. After acquiring the easement for the tower, Ohio Power began efforts to obtain an easement across the Appellants' property in order to construct an electric power line for the tower. Servicing this tower with electric



power is the sole stated reason for the construction of the proposed electric line, which is now the subject of an appropriation action. (See, Ohio Power v. Ogle, et al., Case No. 07 CV 0124, Common Pleas Court, Hocking County, Ohio).

At no time prior to October 30, 2008, did Ohio Power commence any action on the Cline property aimed at the construction of the tower, with the exception of clearing the property, which will make the tower all the more visible from Appellants' home. However, notwithstanding the continuing pendency of the appropriation action and this appeal, Ohio Power did start construction of the telecommunications tower on the Cline property on or about October 30, 2008.

Ohio Power and Cline are aware that Appellants feel that the tower will constitute a nuisance and will cause a diminution in the value of the Appellants' property and otherwise cause damages to the Appellants. Appellants are of the opinion that the Trial Court's dismissal of their injunction action relating to the tower for failure to state a claim for relief was in error. They have appealed the that decision. The Appellants have not previously sought any injunctive relief regarding the tower since the Trial Court's dismissal of the initial Complaint because Ohio Power has not taken any steps to construct the tower until just last week. It is Appellants' belief that the construction of the telecommunications tower during the pendency of this appeal, will frustrate their efforts to protect their property and personal rights against damage from the tower for which they will have no adequate remedy at law as set forth in their Complaint and as noted in their Appellate Brief.

Appellants say that it would be impracticable for them to seek the relief sought by this Motion from the Trial Court, insofar as the Trial Court dismissed their Complaint for Injunctive Relief for failure to state a claim. That is why the Appellants are turning to this court for protection.

Appellants say that the tower to be constructed on the Cline property will be located in such a position as to be visible from the Appellants' real estate and to be close enough to the Appellants' property as to create health risks to the Appellants and their animals, all of which constitutes a nuisance and an unreasonable interference with the rights of the Appellants. This tower will be approximately 350 feet high and, notwithstanding representations by Ohio Power to the contrary, will not be limited to use solely by Ohio Power. It is Ohio Power's intention to allow other companies to collocate telecommunications equipment on this tower to the considerable economic benefit to Ohio Power. The presence of this tower will cause diminution in the fair market value of the Appellants' land and will also pose a substantial threat of harm by way of radio frequency radiation to the persons and property of Appellants.

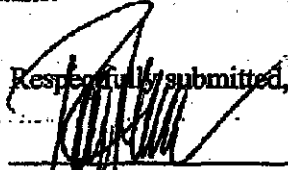
The Appellants have reviewed this Motion and have affirmed the accuracy of the factual allegations contained in this Memorandum.

Appellants further say that this relief should not be conditioned upon the filing of a bond or other security. Because of the considerable length of time that has transpired since the acquisition of the easement for this tower until the commencement of construction on the tower, it is Appellants' position that Ohio Power will not be damaged by having to wait to construct this tower until all of the proceedings, including the subject Appeal, relating to the tower are concluded.

Finally, notice of this Motion has been sent to counsel for the Appellees contemporaneously with the transmittal of it to the Court for filing and consideration.

Consequently, pursuant to the provisions of Civil Rule 7(A) and (B), Appellants respectfully request this Court to issue an injunction against Appellees restraining them from installing, using, maintaining or repairing a telecommunications tower on the land of Cline during the pendency of this Appeal without the posting of a bond by Appellants.

Respectfully submitted,

  
Ray R. Michalski #0015793  
D. Joe Griffith #0055499  
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OGILVIE & HAMPSON, LLP  
144 East Main Street  
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Attorneys for Appellants  
[rrmichalski@daggerlaw.com](mailto:rrmichalski@daggerlaw.com)  
[djgriffith@daggerlaw.com](mailto:djgriffith@daggerlaw.com)

IN THE COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO  
GENERAL DIVISION

CHARLES R. OGLE, et al., : 07CV0264  
Plaintiffs, : DISMISSAL ENTRY  
vs. :  
OHIO POWER COMPANY, et al., :  
Defendants. :

HOCKING CO.  
COMMON PLEAS CT.  
2008 MAR 10 PM 04  
NARCIE STANLEY  
CLERK OF COURT

After consideration, the defendant Ohio Power Company's motion to dismiss  
well-taken, and this matter is dismissed. The Court finds that there is no just cause for  
delay.

SO ORDERED:

  
\_\_\_\_\_  
Judge Thomas H. Gerken

xc: Ray R. Michalski, Esq.  
Brian L. Buzby, Esq.  
Christopher T. Cline, Esq.

THG/maur

EXHIBIT

A

## VERIFICATION

Now come, Charles R. Ogle and Melanie Ogle, who, after being duly cautioned and sworn according to law, say that they are of full age; that they have read the above Motion and Memorandum; that they have personal knowledge of all the facts set forth therein; and that such facts are true as they verily believe.

Charles R. Ogle  
Charles R. Ogle

Melanie A. Ogle  
Melanie Ogle

Sworn to and subscribed in my presence this 6th day of November, 2008.



CHERYL L. WESSEL  
Notary Public, State of Ohio  
Commission expires 05-05-10

Cheryl L. Wessel  
Notary Public, State of Ohio

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Injunctive Relief Pursuant to Appellate Rule 7, has been served by ordinary U.S. mail service, postage prepaid, on Brian L. Buzby and Ryan P. Sherman, PORTER, WRIGHT, MORRIS & ARTHUR, LLP, Attorneys for Appellee, Ohio Power Company, at 41 South High Street, Columbus, Ohio 43215-6194 and also upon Christopher T. Cline, Attorney for Appellees, Christopher T. Cline, Teresa Jo Gubsch and Margaret Ann Plahuta, at 300 West Wilson Bridge Road #100, Worthington, Ohio 43085, this 6th day of November, 2008.

Ray R. Michalski  
Ray R. Michalski (0015793)  
DAGGER, JOHNSTON, MILLER,  
OGILVIE & HAMPSON, LLP  
Attorney for Appellants