

BEFORE


THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Charles R. Ogle and Melanie A. Ogle,)	
)	
Complainants,)	
)	
v.)	Case No. 08-1247-EL-CSS
)	
American Electric Power and Ohio Power Company,)	
)	
Respondents.)	

ENTRY

The Commission finds:

- (1) On November 21, 2008, Charles R. Ogle and Melanie A. Ogle (complainants) filed a complaint against American Electric Power and Ohio Power Company (respondents). Complainants allege that they are residents of Good Hope Township in Hocking County and that respondents are constructing a telecommunications tower in their township in violation of the Good Hope Township Board of Trustees Moratorium adopted November 13, 2008, which places a temporary moratorium on the construction and installation of telecommunications facilities. Complainants allege that respondents' actions violate the Ohio Revised Code and complainants request that the Commission issue a "stay," or its equivalent, against respondents to stop the construction.
- (2) On November 25, 2008, respondents filed an answer and motion to dismiss. In its answer, respondents state that the tower is being constructed on property next to complainants' property. In addition, respondents argue that the Commission has no jurisdiction in this matter.
- (3) On December 2, 2008, complainants filed a letter asking that the Commission not take any action on respondents' motion to dismiss the complaint until complainants have an opportunity to rebut the respondents' answer and motion to dismiss.

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- (4) On December 3, 2008, complainants filed a "Rebuttal to Answer of AEP/Ohio Power." In this pleading, complainants stated that they had filed a nuisance complaint in the Hocking County Court in *Charles R. and Melanie Ogle v. Ohio Power Company, et al.* Case No. 07CV0264, which was dismissed (November 21, 2007). They also noted that they have filed an appeal of that decision and have also filed a request for a "stay" or its equivalent. Complainants argue that they believe a stay is within the Commission's jurisdiction to order. Attached to its pleading were various documents including information regarding telecommunications towers, correspondence from the respondents regarding the tower, a map of Good Hope Township, and a description of an easement.
- (5) On December 10, 2008, respondents filed a reply memorandum to complainants' rebuttal pleading. Respondents argue that the only relief sought by complainants is a stay to enforce a township moratorium and that the Commission has no jurisdiction to take such action. Respondents also argue that the remedy available to complainants is through the court system. Respondents claim that the Hocking County Court of Common Pleas dismissed complainants' request for an injunction finding that the tower was not a nuisance. Respondents attached a copy of the November 21, 2007, decision of the Hocking County Court of Common Pleas in Case No. 07CV0264 wherein the court dismissed the complaint. Respondents argue that complainants have remedies available and that complainants have taken such actions including appealing the Hocking County Court's decision and requesting a temporary restraining order in the Fourth District Court of Appeals.
- (6) On December 15, 2008, complainants filed a response to the reply memorandum of respondents. Complainants contend that the Commission has jurisdiction to consider this matter and that respondents continue to construct the telecommunications tower. Complainants further claim that respondents are not being truthful when they deny that the tower will be used for telecommunications purposes. Complainants also note that they are not requesting that the Commission "set aside" the decisions of the Hocking County Court of Common Pleas. Complainants state that they are

merely requesting that the Commission hold a hearing on these issues, to afford the Commission an opportunity to investigate the allegations of the complaint.

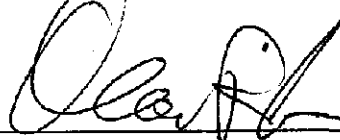
- (7) Upon review, it appears that the Commission has no jurisdiction to act in this case. Complainants request that the Commission enforce the November 13, 2008, Good Hope Township Board of Trustees Hocking County, Ohio moratorium against the respondents. Complainants have also noted in their pleadings that the respondents' actions in connection with the telecommunications tower may violate laws regarding nuisance and easements. The powers of the Commission are conferred by statute and it possesses no authority other than that vested in it. *City of Cincinnati v. Public Utilities Commission of Ohio* (1917), 96 Ohio St. 270, 117 N.E. 381. The Commission has no statutory jurisdiction to enforce a township ordinance against a public utility, nor render decisions regarding violations of easements or nuisance actions. In addition, complainants have not alleged reasonable grounds in their complaint for a violation under Section 4905.26, Revised Code. Accordingly, the complaint should be dismissed for lack of jurisdiction.

It is, therefore,

ORDERED, That the complaint be dismissed. It is, further,

ORDERED, That a copy of this entry be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



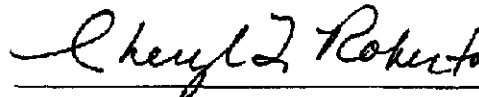
Paul A. Centolella



Ronda Hartman Kergus



Valerie A. Lemmie



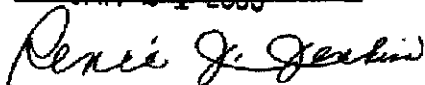
Cheryl L. Roberto

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Renee J. Jenkins
Secretary