

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Buryl Ray Allison,)	
)	
Complainant,)	
)	
v.)	
)	Case No. 12-1546 -EL-CSS
American Electric Power Company,)	
)	
Respondent.)	
)	

ANSWER AND MOTION TO DISMISS OF OHIO POWER COMPANY

American Electric Power Company aka Ohio Power Company (“OPCo” or “Respondent”) responds to the Complaint filed in this proceeding by Buryl Ray Allison (“Mr. Allison” or “Complainant”) through its Answer and Motion to Dismiss.

ANSWER

1. OPCo is a public utility, as defined by R.C. 4905.03(A)(4) and is duly organized and existing under the laws of the State of Ohio.
2. OPCo admits that Mr. Allison resides at 3824 Mainesville Road W., Junction City, Ohio 43748, that Mr. Allison is not a customer and receives no electric service from OPCo at that address, and that OPCo owns transmission lines which cross Complainant’s property.

3. Complainant erroneously claims that he is entitled to treble damages, an amount awarded by courts for timber trespass involving only *reckless* destruction without privilege to enter onto the property.
4. OPCo has a valid easement on the right of way, obtained in 1953, and as part of the easement, OPCo obtained standard rights to trim and remove trees. Specifically, OPCo's easement (attached) grants the right to "cut and, at its option, remove from said premises or the premises of [then property owner] adjoining the same on either side, any trees, overhanging branches or other obstructions which may endanger the safety or interfere with the use of said towers or fixtures or wires attached thereto or any structure on said premises..."
5. OPCo clearly has a legal right to trim and remove trees in the right of way and has an established practice of trimming and removing trees such as those in question.
6. The Commission is well aware of the regulatory requirements for service reliability and safety to avoid tree contact with lines and the critical need for efficient vegetation management, especially as it relates to transmission lines such as the line in question.
7. A representative of OPCo met with the Complainant in an attempt to mutually resolve the dispute, offering to pay the customer \$1500 for the wood from the trees, which is the proper timber price for the trees cut on the right of way pursuant to the easement.

MOTION TO DISMISS

1. OPCo is fully within its rights to trim and remove trees within the easement and OPCo breached no legal duty owed to Complainant.
2. Complainant failed to state reasonable grounds upon which relief may be granted.

3. Complainant has not identified any Commission rule or regulation that it believes OPCo has violated.
4. Accordingly, dismissal is appropriate grounds that Complainant fails to state a claim against OPCo.

WHEREFORE, OPCo respectfully requests that the instant action be dismissed.

CONCLUSION

Having fully answered, OPCo respectfully moves this Commission to dismiss the Complaint of Buryl Ray Allison for failure to set forth reasonable grounds for the complaint and to deny Complainant's request for relief.

Respectfully submitted,

//s/ Sophia L. Chang
Steven T. Nourse
Sophia L. Chang
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
(614) 716-1606
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stnourse@aep.com
slchang@aep.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer and Motion to Dismiss of Ohio Power Company was served by regular U.S. mail, postage prepaid, upon Complainant Buryl Ray Allison at the address listed below on this 4th day of June 2012.

//s/ Sophia L. Chang

Sophia L. Chang

American Electric Power Service Corp.

1 Riverside Plaza, 29th Floor

Columbus, OH 43215

Tel: (614) 716-1279

slchang@aep.com

Counsel for Ohio Power Company

Buryl Ray Allison

3824 Mainesville Road W.

P.O. Box 372

Junction City, Ohio 43748

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RECORD OF DEEDS
OHIO POWER

Name and Address

Est. No. 153-154 Map No. 1848

Drp. No. 2-4-53

J. P. & G. C. Klingler

Mr. Grace C. Klingler

W.O. 600/1584-1/1-150

This Indenture, made this 5th day of February 1923

by and between Grace C. Klingler

~~unmarried~~ (unmarried) of the County of Franklin State of Ohio, part 7 of the first part, and THE OHIO POWER COMPANY, a corporation organized and existing under the laws of the State of Ohio, party of the second part.

Witnesseth: That for and in consideration of the sum of One Dollar in hand paid to the party of the first part by the party of the second part, the receipt of which is hereby acknowledged, said party of the first part hereby grants, bargains, sells, conveys, and warrants to the party of the second part, its successors and assigns forever, a right of way and easement with the right, privilege, and authority to said party of the second part, its successors, assigns, lessees, and tenants to construct, erect, operate and maintain a line of towers and wires for the purpose of transmitting electric or other power, in, on, along, over, through or across the following described lands situated in

Jackson

Township, in the

County of Perry in the State of Ohio, and part of Section No. 9-16 Township No. 15N and Range No. 16W and bounded:

On the North by the lands of Loren H. Pearson

On the East by the lands of Margaret Metzger-Chester & B. Wernert

On the South by the lands of E. Metzger-C. & B. Wernert-M. Metzger

On the West by the lands of N. H. & M. E. Palmer-N. H. Palmer-I. Love

Construction under this easement shall be on one of a center line course as shown on the Ohio Power Co. drawing 30-2712053, sheet 39 of sheet of maps 1848. A copy of which is in the possession of both of the parties hereto.

TOGETHER with the right to said party of the second part, its successors and assigns, to place, erect, maintain, inspect, add to the number of, and relocate at will, towers, crossarms or fixtures, and string wires and cables, adding thereto from time to time, across, through or over the above described premises, to cut and, at its option, remove from said premises or the premises of the party of the first part adjoining the same on either side, any trees, overhanging branches or other obstructions which may endanger the safety or interfere with the use of said towers or fixtures or wires attached thereto or any structure on said premises, and the right of ingress and egress to and over said above described premises, and any of the adjoining lands of the party of the first part, at any and all times, for the purpose of patrolling the line, of repairing, renewing or adding to the number of said towers, structures, fixtures and wires, and for doing anything necessary or useful or convenient for the enjoyment of the easement herein granted, also the privilege of removing at any time any or all of said improvements erected upon, over, or on said land, together with the rights, easements, privileges and appurtenances in or to said lands which may be required for the full enjoyment of the rights herein granted; provided however, the said THE OHIO POWER COMPANY, its successors or assigns, shall further pay to me/us or my/our heirs or assigns, the sum of Fifty Dollars (\$50.00) for each tower erected on said lands, hereinbefore described, from time to time, whenever and as soon as any towers are erected thereon. Grantee will immediately repair or replace all fences, gates, drains and ditches damaged or destroyed by it on said premises or pay Grantor all damages done to the fences, drains, ditches, crops and stock on the premises herein described, caused by the construction, operation and maintenance of said lines. It is understood and agreed between the parties hereto that no building or structure shall be placed by the grantors herein, their heirs, successors, lessees, or assigns, under or within fifty (50) feet (measured horizontally) of any tower or wire to be constructed over said premises. All claims for damages caused in the operation and maintenance of said lines, shall be made at the office of the Grantee at 21 South First Street, Newark, Ohio, or mailed to P.O. Box 911, Newark, Ohio, within thirty days after such damages accrue. If Grantor and Grantee cannot agree on the amount of damages, the same shall be arbitrated. Any trees cut will be paid for by Board Measure, using Scribner's Lumber Rules, at the market price in vicinity, and this indenture contains all agreements, expressed or implied, between the parties hereto.

On Have and to Hold the same unto said party of the second part, its successors and assigns.

In Witness Whereof, the party of the first part has hereunto set her hand the day and year first above written.

Signed and Acknowledged in the presence of:

Mr. A. Johnston C.A. Johnston

Dorothy A. Hamner

Grace C. Klingler

THE STATE OF OHIO,

Franklin County

Before me, a Notary Public

in and for said County, personally appeared the above named Grace C. Klingler

who acknowledged that she did sign the within instrument and that the same is
free act and deed.

IT WITNESS WHEREOF, I have hereunto set my hand and official seal on this 5th
day of February A. D. 19 53

My commission expires Dorothy A. Hamner Notary Public
DOROTHY A. HAMNER
NOTARY PUBLIC, FRANKLIN COUNTY, OHIO
MY COMMISSION EXPIRES JAN. 6, 1958

THE STATE OF OHIO,

Franklin County

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#462181

Name Mrs. Grace C. Klingler
Address 708 N. Brown Ave.
Central
Franklin, Ohio

Map No. 153-154 Map No. 1848

Received for Record
At 8:10 o'clock a.m.

FEB 14 1953
RECORDED IN VOL. 161 PAGE 537

Paul E. Gordon
Recorder
FRANKLIN COUNTY, OHIO

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Recorded in Deed Records 19
Volume Page

Recorder
of County
State of

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Case No(s). 12-1546-EL-CSS

Summary: Answer and Motion to Dismiss of Ohio Power Company electronically filed by Miss Sophia L Chang on behalf of American Electric Power Company