

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Robert Smith and Kathleen Smith,</b>	)	
	)	
<b>Complainants,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Case No: 13-2109-EL-CSS</b>
<b>Ohio Power Company,</b>	)	
	)	
<b>Respondent.</b>	)	

**ANSWER AND MOTION TO DISMISS OF OHIO POWER COMPANY**

Ohio Power Company (“AEP Ohio” or “Respondent”) responds to the complaint filed in this proceeding by Robert Smith and Kathleen Smith (the “Smiths” or “Complainants”) on October 21, 2013 (“Complaint”) through this Answer and Motion to Dismiss.

**ANSWER TO ALLEGATIONS**

1. AEP Ohio admits that it has a valid easement for the purpose of transmitting electric or other power in, on, along, over, through or across Complainants’ properties.
2. AEP Ohio admits that it has a power line in, on, along, over, through or across Complainants’ properties. AEP Ohio denies the remainder of paragraph 2 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
3. AEP Ohio denies paragraph 3 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
4. AEP Ohio denies paragraph 4 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
5. AEP Ohio denies paragraph 5 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.

6. AEP Ohio denies paragraph 6 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
7. AEP Ohio denies paragraph 7 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
8. AEP Ohio denies paragraph 8 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
9. AEP Ohio denies paragraph 9 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
10. AEP Ohio denies paragraph 10 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
11. AEP Ohio denies paragraph 11 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
12. AEP Ohio denies paragraph 12 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth.
13. AEP Ohio denies any and all allegations of the Complaint not specifically admitted herein.

#### **AFFIRMATIVE DEFENSES**

1. AEP Ohio asserts as an affirmative defense that under Ohio Revised Code § 4905.26 and Ohio Administrative Code § 4901-9-01(C)(3), Complainants have failed to set forth reasonable grounds for a complaint.
2. AEP Ohio asserts as an affirmative defense that at all relevant times to Complainants' claims, AEP Ohio has complied with all applicable regulations and policies, has kept accurate records, and has provided reasonable and adequate service to the Complainants

according to all applicable provisions of Title 49 of the Ohio Revised Code and regulations promulgated thereunder and in accordance with all of AEP Ohio's filed tariffs.

3. AEP Ohio reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

### **MOTION TO DISMISS**

The burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). It is well established that a complainant must state, in order to avoid dismissal of a complaint under section 4905.26, Revised Code, reasonable grounds alleging that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable. *Brock v. Ohio Edison Co.*, Case No. 11-6805-EL-CSS, Opinion and Order at 2 (March 6, 2013). In the case at bar, Complainants fail to state reasonable grounds to avoid dismissal of the Complaint.

AEP Ohio has breached no legal duty owed to Complainants and Complainants have not identified any statute, Commission rule or regulation, or regulatory policy that AEP Ohio has violated. AEP Ohio has a valid easement for the purpose of transmitting electric or other power in, on, along, over, through or across Complainants' properties. And AEP Ohio has properly maintained its facilities in, on, along, over, through or across Complainants' properties in accordance with its valid easement since it was granted. Further, AEP Ohio has no legal duty requiring it to relocate facilities that are properly within a valid easement at its expense simply because a customer requests it do so.

Accordingly, dismissal is appropriate on grounds that Complainants fail to state reasonable grounds upon which relief may be granted. Therefore, Respondent Ohio Power Company respectfully requests that the Complaint be dismissed.

### **CONCLUSION**

Having fully answered, Respondent Ohio Power Company respectfully requests the Commission dismiss the Complaint with prejudice for failure to set forth reasonable grounds upon which relief may be granted.

Respectfully submitted,

/s/ Yazen Alami  
Steven T. Nourse  
Yazen Alami  
American Electric Power Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215  
stnourse@aep.com  
yalami@aep.com

*Attorneys for Respondent Ohio Power  
Company*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via regular mail upon Complainants at the address listed below on this 5th day of November, 2013.

/s/ Yazen Alami  
Yazen Alami

Robert Smith and Kathleen Smith  
895 County Road 42  
Toronto, Ohio 43964

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/5/2013 9:58:37 AM**

**in**

**Case No(s). 13-2109-EL-CSS**

Summary: Answer and Motion to Dismiss electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company