

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

Ohio Power Company (“AEP Ohio” or “Respondent”) responds to the “Amended Complaint” filed in this proceeding by Robert Smith and Kathleen Smith (the “Smiths” or “Complainants”) on February 25, 2014 through this Supplemental Answer and Motion to Dismiss.

As a threshold procedural matter, Complainants do not have the right to unilaterally amend their complaint at this time. Rather, the Complainants should have obtained leave from the Respondent or the Commission under Civ. Proc. R. 15(A), since AEP Ohio already filed an answer and a motion to dismiss and the additional response time has long passed. The Complainants do not offer an explanation – let alone any justification – for their amended allegations. Since it is procedurally defective, the Amended Complaint should be ignored or rejected. If the Commission does grant Complainants permission to amend their complaint, the process for adjudicating this case should not start over or otherwise be extended.

In any case, the additional allegations made in the Amended Complaint do not change the substantive issues presented in this case. Complainants have still failed to carry their burden of proof and have failed to state a claim, as discussed in AEP Ohio's original Motion to Dismiss (filed on November 5, 2013). Likewise, AEP Ohio has not violated any duty owed to Complainants and has properly maintained its facilities in the vicinity of Complainants' property.

Accordingly, AEP Ohio reaffirms its original answer, affirmative defenses and dismissal arguments and adds the following in response to the new paragraphs added to the end of the Complaint:

1. AEP Ohio denies paragraph 14 of the Complaint. It is inaccurate to state that moving the existing line is in the best interest of AEP Ohio. The existing line is adequately serving load and customers and has not been an issue for AEP Ohio.
2. AEP Ohio denies paragraph 15 of the Complaint. AEP Ohio had no need to move the line in the 1980s as it has no need to move the line today. The offer made to move poles on the Complainants' property was in response to another issue at this location which has been resolved and has no bearing on this complaint. AEP Ohio has no need to move the existing facilities and as such will not bear the cost of doing so.
3. AEP Ohio denies paragraph 16 of the Complaint for want of knowledge or information sufficient to form a belief as to its truth. AEP Ohio has a valid easement at this property and is using the easement to currently serve load and customers. The existing easement is valid and AEP Ohio has no need or obligation to abandon the existing signed easement by the Complainants' family members. AEP Ohio has the right to use the existing easement and the facilities located within it. It is the Complainants' responsibility to pay for the costs to move existing facilities since it is of no benefit to the Company to move

the existing line. Since AEP Ohio has a valid easement and is not a body of the government the Complainants' fourth amendment rights are not at issue in this Complaint.

4. AEP Ohio disagrees with the requested relief in subparagraph (1) of paragraph 17.

Regardless of a public easement being available, the existing easement remains valid.

Often times Ohio Power seeks private easements in order to avoid moving lines located in public easement from such things as road construction projects.

5. AEP Ohio disagrees with the requested relief in subparagraph (2) of paragraph 17.

Complainants have no basis to compare an offer made in good faith to resolve a separate issue at this address. The cost of the two projects the Complainants mention are completely different. In addition, the initial offer to move poles at AEP Ohio's expense benefited AEP Ohio whereas the request the Complainants have does not benefit the Company in any way.

6. AEP Ohio disagrees with the requested relief in subparagraph (3) of paragraph 17. The Commission lacks any basis to order AEP Ohio to move the existing facility since a valid easement exists and the existing lines are serving customer load adequately.

7. AEP Ohio disagrees with the requested relief in subparagraph (4) of paragraph 17. AEP Ohio has no obligation to move the existing lines at its own expense since doing such offers no benefit to AEP Ohio. Respondent has provided the Complainants with a cost estimate to move the line. AEP Ohio will voluntarily relocate the existing facilities only if the Complainants pay the cost of relocation.

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
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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 17th day of March
2014.

/s/ Yazen Alami
Yazen Alami

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