

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On October 21, 2013, Robert Smith and Kathleen Smith (the Smiths) filed a complaint against Ohio Power Company (Ohio Power) concerning the location of a power line across the Smiths' property. The Smiths explain that Robert Smith's grandparents signed documents for an Ohio Power easement that "included all 160 acres of their land," and that Ohio Power subsequently installed a primary power line across the property, which is now owned by Kathleen Smith. The Smiths contend that in the 1980s Ohio Power relocated much of the primary line to adjacent County Road 42 (CR 42), but still left the remainder of the primary line cutting across the property. The Smiths add that continued discussions with Ohio Power over the years have failed to remedy the situation. In the Smiths' opinion, the presence of the primary line on the property is depriving them of "free use and enjoyment" of the land. The Smiths seek removal of the primary line from their property and ask that a secondary line provide electricity to them.
- (2) Ohio Power filed its answer and motion to dismiss on November 5, 2013. Ohio Power admits that it has a valid easement on the Smiths' property and its power line is on the Smiths' property. Ohio Power denies any other assertions made by the Smiths. Ohio Power contends that it has properly maintained its facilities in accordance with the

easement, and that it has no legal duty to relocate a power line at its expense that is within a valid easement, simply because a customer requests it to do so.

- (3) By Entry issued December 4, 2013, the attorney examiner scheduled a January 16, 2014, settlement conference. The parties were unable to resolve matters at the conference.
- (4) The Smiths amended their complaint on February 25, 2014. While much of the content of their initial complaint remains the same, the Smiths reemphasize that in the past Ohio Power offered to relocate, at its expense, one of the poles on their property. The Smiths add that moving the primary line from their property to the public right-of-way will benefit Ohio Power, as Complainants would sell two lots currently restricted by Ohio Power's primary line. Further, state the Smiths, Ohio Power's primary line should have been relocated in the 1980s when nearly all of the primary line was moved to the public right-of-way along CR 42. Finally, the Smiths argue, given the number of residences now on CR 42, the best location for the easement is indeed the public right-of-way adjacent to CR 42. The Smiths request that the Commission find that Ohio Power must move the primary line to the public right-of-way near CR 42, with the cost to be borne by Ohio Power.
- (5) Ohio Power supplemented its answer on March 17, 2014. Ohio Power reaffirms its comments in its prior answer, while denying and disagreeing with the additional remarks of the Smiths' amended complaint. Ohio Power states that its prior offer to move poles on Complainants' property concerned another issue and is not relevant to this complaint. Ohio Power repeats that its valid easement allows it to serve load and customers, so it is the Smiths' responsibility to pay for moving existing facilities.
- (6) Given the parties' failure to resolve matters at the settlement conference, the attorney examiner finds that this matter should be scheduled for a hearing on June 19, 2014, at 1:00 p.m. in Hearing Room 11-D at the Commission offices, 180 East Broad Street, Columbus, Ohio 43215.

- (7) Any party intending to present direct, expert testimony should comply with Ohio Adm.Code 4901-1-29(A)(1)(h), which requires that all such testimony to be offered in this type of proceeding be filed and served upon all parties no later than seven days prior to the commencement of the hearing.
- (8) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

It is, therefore,

ORDERED, That a hearing is scheduled for June 19, 2014, at 1:00 p.m. at the Commission offices, 180 East Broad Street, 11th floor, Hearing Room 11-D, Columbus, Ohio 43215-3793. It is, further,

ORDERED, That any party intending to present direct, expert testimony comply with Finding (7). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/James Lynn

By: James M. Lynn
Attorney Examiner

JRJ/sc

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in

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

Summary: Attorney Examiner Entry orders a hearing for 06/19/2014 at 1:00 p.m. at the offices of the Commission, 11th Flr., Rm. 11-D and orders any party intending to present direct, expert testimony to comply with Finding (7). - electronically filed by Sandra Coffey on behalf of James Lynn, Attorney Examiner, Public Utilities Commission of Ohio