

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

INITIAL POST HEARING BRIEF OF OHIO POWER COMPANY

I. INTRODUCTION AND STATEMENT OF FACTS

In 1937, Ohio Power Company (“AEP Ohio” or the “Company”) was granted an easement for the purpose of transmitting electric power in, on, along, over, through or across property currently owned by Robert Smith and Kathleen Smith (the “Smiths” or (“Complainants”). Complaint at ¶1. AEP Ohio has properly maintained its facilities in, on, along, over, through or across Complainants’ properties in accordance with its easement since it was granted. The Complainants acknowledge the existence of AEP Ohio’s easement and do not contest its validity. Complaint at ¶1; Transcript (hereinafter “Tr.”) at 30:7-12. Nonetheless, Complainants request that the Public Utilities Commission of Ohio (“Commission”) order AEP Ohio to relocate its facilities at the Company’s expense. Amended Complaint at ¶17. Although the Company 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, AEP Ohio is willing to relocate its lines to accommodate Complainants’ request, but the Company’s terms and conditions of service and fundamental cost causation principles dictate that the Smiths should bear the costs of the relocation.

II. STANDARD OF REVIEW

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 for their Complaint. AEP Ohio has breached no legal duty owed to Complainants and Complainants fail to allege or provide evidence tending to show 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. Therefore, the Complaint should be denied on the basis that Complainants fail to state reasonable grounds upon which relief may be granted.

III. ARGUMENT

Paragraph 12 of AEP Ohio's terms and conditions of service – titled “Work Performed on the Company's Facilities at Customer's Request” – provides that the Smiths should bear the costs of their requested relocation since they are the customers requesting work to be performed on the Company's facilities:

Whenever, at the request of a customer and solely to suit the convenience of the customer, work is performed on the Company's facilities or the Company's facilities are relocated, the customer shall pay to the Company, in advance, the estimated total cost of such work. This cost shall be itemized by major categories and

shall include the Company's standard overheads and be credited with the net value of any salvageable material. The actual costs for the work performed will be determined after its completion and the appropriate additional charge or refund will be made to the customer.

Ohio Power Company Tariff P.U.C.O. No. 20 at Para. 12. At the hearing, AEP Ohio witness Michele Jeunelot confirmed that Complainants' request to have the line relocated would be governed by Paragraph 12. Tr. at 25. Therefore, pursuant to the Company's terms and conditions of service as approved by the Commission, the Smiths should bear the costs of the relocation.

Moreover, Paragraph 12 of the Company's terms and conditions of service incorporates and reflects fundamental principles of cost causation. In other words, Paragraph 12 recognizes that the customer requesting a line relocation solely to suit the convenience of the customer should bear the costs incurred to relocate the line. At the hearing, Mrs. Jeunelot testified that if the Company was to bear the costs of the relocation, as the Smiths contend, those costs would ultimately be passed along to the Company's other customers, even though neither the Company nor its other customers receive a benefit from the relocation. Tr. at 35-36. In fact, Mrs. Jeunelot testified that there may be additional costs or burdens imposed on the Company by accommodating the Smith's request. Tr. at 34-35. By arguing that the Company should pay for the costs of the relocation, the Smiths would have the Commission ignore fundamental principles of cost causation. The Smiths seek to pass on to AEP Ohio's other customers the costs of a relocation they requested solely to suit their convenience while retaining the benefit of the relocation for themselves. The Commission surely recognized the inequities of such a position when it approved Paragraph 12 of the Company's terms and conditions of service.

Although the Company 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, AEP Ohio is willing to relocate its lines to accommodate Complainants' request. But Paragraph 12 of the Company's terms and conditions of service and fundamental cost causation principles dictate that the Smiths should bear the costs of the relocation.

IV. CONCLUSION

The Smiths are not without a remedy if they feel that the Company's facilities are restricting the future use of their property. They can pay to have the facilities relocated and the Company is willing to relocate its lines to accommodate Complainants' request. However, neither the Company nor its customers should be required to pay for a relocation made solely to suit the convenience of the Complainants. For the foregoing reasons, the Complaint should be denied.

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 electronic mail upon the individuals identified below on this 1st day of August, 2014.

/s/ Yazen Alami

Yazen Alami

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Summary: Brief Initial Post Hearing Brief electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company