

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.	)	

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**REPLY BRIEF OF COMPLAINANTS  
ROBERT AND KATHLEEN SMITH**

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**I. Introduction**

Ohio Power Company (“Ohio Power”) bases its argument on Paragraph 12 of its own Tariff, asserting that Robert and Kathleen Smith (“Complainants”) are responsible for the removal and relocation of facilities from their property. Initial Post Hearing Brief of Ohio Power Company at ¶ 3. Ohio Power claims that they have no legal duty to relocate facilities that are properly within a valid easement. Ohio Power Brief at ¶ 1. However, in both their initial post-hearing brief and this brief, Complainants raise serious doubts as to the applicability of Paragraph 12, and the validity of Ohio Power’s easement as it stands today.

Ohio Power continues to maintain that Paragraph 12 of their Terms and Conditions of Service rules over this matter and is the defining law on this issue. Ohio Power Brief at ¶ 3. However, this reasoning relies on certain facts that are not pertinent to this situation. As mentioned in Complainant’s post-hearing brief, their request for relocation of the primary line was not out of convenience or to enhance the Complainant’s service, but to correct a mistake that was made 30 years ago. Post-Hearing Brief of Complainants at ¶ 1-2. Further, reliance on

Paragraph 12 requires the assumption that both Complainants are customers of the utility, which is simply not true.

Over the passage of time since 1937, the area in which Complainants' property is situated has developed immensely. These changes have extinguished the purpose for which Ohio Power was granted the easement to begin with. It is obvious that Ohio Power has taken notice of these changes due to their re-routing of power lines in the 1980s, and their cooperation in agreeing to relocate the lines at Complainants' expense. Nonetheless, Ohio Power continues to maintain that their easement is valid, and refuses to fund the relocation of their equipment from Complainants' property. Relocation of Ohio Power's facilities off of the Complainants' property requires the removal of only one pole and a mere 433 feet of power line.

Ohio Power's arguments are unconvincing and unsubstantiated. Complainants do not believe that they should be financially responsible for removing equipment that was originally installed by Ohio Power and that exists because of a now obsolete and unnecessary easement. Ohio Power is responsible for all costs associated with the relocation of their facilities from the Complainants' property.

## **II. Argument**

### **A. Complainant Kathleen Smith is not a customer and therefore is not subject to Paragraph 12 of Ohio Power's Tariff.**

Ohio Power cites Paragraph 12 of their Terms and Conditions of Service in order to persuade the Public Utilities Commission of Ohio ("Commission") that the Complainants should be responsible for the expense of relocating the poles. Ohio Power Brief at ¶ 3. However, Paragraph 12 – entitled "Work Performed on the Company's Facilities at Customer's Request" – assumes that the Complainants requesting the work are also customers. Paragraph 12 states:

Whenever, at the request of a customer and solely to suit the convenience of a 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. Under Ohio Administrative Code Section 4901:1-9-01 (A)(4), which applies to electric companies, a "customer" is defined as "any individual, corporation, company, co-partnership, association, joint venture, or government entity who has requested the construction of an electric line extension from the electric utility". Based on this definition, Complainant Kathleen Smith is not a customer of Ohio Power. There are no structures on Ms. Smith's property that require Ohio Power's services, and Ms. Smith has not requested the extension of any electric lines to her property. Therefore, Ms. Smith is not a customer of Ohio Power, or any other electrical utility for that matter, and is not obligated to pay for relocation under Paragraph 12 of Ohio Power's Tariff.

Further, a majority of the remaining power line, as well as the only pole that must be relocated, are situated on Ms. Smith's property. Because Ms. Smith's property is not serviced by Ohio Power, nor is she a customer of Ohio Power, she is not responsible for bearing the costs of work done on the facilities located on her land. As a result, Paragraph 12 is not applicable to Ms. Smith and she cannot be held liable for expenses incurred to move the lines from her property.

Although Complainant Robert Smith is a rate paying customer of Ohio Power, he is not requesting an extension of electric lines to his property as per the definition of a customer under Ohio Administrative Code Section 4901:1-9-01(A)(4). Robert Smith is simply requesting that 120 feet of primary power line be removed from his property at Ohio Power's expense. The easement is no longer necessary for Ohio Power to conduct its business, as attested to by Ohio

Power's removal of most of the line in the 1980's and Ohio Power's willingness to remove the remaining 120 feet, albeit at Robert Smith's expense.

**B. Ohio Power's willingness to relocate the power lines is further evidence that their easement is obsolete and that Ohio Power should pay to re-route the lines.**

As Complainants have argued before, the purpose for which Ohio Power was granted the easement in 1937 is no longer valid, and the easement should be terminated. This is evidenced by the fact that 946 feet out of 1317 feet of power line on Complainants' property was removed and relocated in the 1980s in response to the addition of a paved road and multiple homes.

Ohio Power has repeatedly admitted that they are willing to relocate the lines off of Complainants' property. Ohio Power Brief at ¶1, 5, 6. This is additional evidence that Ohio Power no longer needs the easement on Complainants' property. Ohio Power's willingness to move the line demonstrates that the Complainants' property is no longer a necessary element to Ohio Power's operations. Ohio Power's offer to relocate is a further indication that the easement should be terminated and that Ohio Power should be responsible for financing the relocation.

**III. Conclusion**

For the foregoing reasons, Robert and Kathleen Smith respectfully request that the Commission order that Ohio Power bear the expense of removing their primary utility line from the Complainants' property.

Date: August 15, 2014

Respectfully submitted,

/s/ Robert Smith  
**Robert Smith**

/s/ Kathleen Smith  
**Kathleen Smith**

**CERTIFICATE OF SERVICE**

The undersigned here certifies that a true and accurate copy of the foregoing post-hearing brief was served via electronic mail upon Ohio Power's counsel by means of the e-mail address listed below on this 15<sup>th</sup> day of August, 2014.

/s/ Kathleen Smith

Kathleen Smith

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

**Commission of Ohio Docketing Information System on**

**8/15/2014 10:29:05 AM**

**in**

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

Summary: Reply Reply Brief of Complainants Robert and Kathleen Smith electronically filed by Ms. Kathleen Smith on behalf of Smith, Kathleen Ms. and Smith, Robert Mr.