

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Robert Schmeling)	
12133 Paulmeadows Court)	
Cincinnati, Ohio 45249)	
)	
<i>Complainant,</i>)	
)	Case No. 17-2172-EL-CSS
v.)	Case No. 17-2180-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
<i>Respondent.</i>)	
Steve Kahn,)	
8900 Terwilligers Trail)	
Cincinnati, Ohio 45249,)	
)	
<i>Complainant,</i>)	
)	Case No. 17-2197-EL-CSS
v.)	
)	
Duke Energy Ohio, Inc.,)	
)	
<i>Respondent.</i>)	
Chris Hendrickson,)	
11261 Terwilligers Valley Lane)	
Cincinnati, Ohio 45249,)	
)	
<i>Complainant,</i>)	
)	Case No. 17-2196-EL-CSS
v.)	
)	
Duke Energy Ohio, Inc.,)	
)	
<i>Respondent.</i>)	

**RENEWED MOTION TO DISMISS OF
RESPONDENT DUKE ENERGY OHIO, INC.
AS TO COMPLAINANTS NOT ON COMPANY'S RIGHT OF WAY**

Now Comes Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) and respectfully moves, pursuant O.R.C. 4905.26, O.A.C. 4901-1-12 and 4901-9-01(C), to dismiss the following Complainants whose properties are not situated on the Company's transmission lines and right of way: Robert Schmeling, Steve Kahn, and Chris Hendriksen (collectively Complainants). These Complainants should be dismissed with prejudice because they do not own property on the subject transmission lines and, therefore, lack standing to assert claims relating to or on behalf of other property owners. Because Duke Energy Ohio does not intend to conduct any vegetation management on any of their properties along the subject transmission lines, these Complainants fail to set forth reasonable grounds for complaint against Duke Energy Ohio. Additionally, without communication, prior notice or authorization, Complainants failed to appear at their scheduled settlement conferences held May 29, 2018, June 5, 2018, and June 6, 2018, respectively. The Complainants' failure to attend these settlement conferences, or communicate their reasons for failing to attend, indicate their lack of desire and intent to pursue their cases.

Duke Energy Ohio previously filed a Motion to Dismiss against the above-referenced Complainants on November 9, 2017. To be clear, Duke Energy Ohio hereby renews and restates its Motions to Dismiss because these Complainants lack standing and do not set forth reasonable grounds for complaint against Duke Energy Ohio.

Respectfully submitted,

/s/ Elizabeth H. Watts

Rocco O. D'Ascenzo (0077651)
Deputy General Counsel
Elizabeth H. Watts (0031092)
Counsel of Record
Associate General Counsel
Duke Energy Business Services, Inc.
139 Fourth Street, 1303-Main
P. O. Box 960
Cincinnati, Ohio 45202-0960
(513) 287-4359 (telephone)
(513) 287-4385 (facsimile)
Rocco.D'Ascenzo@duke-energy.com
Elizabeth.Watts@duke-energy.com

Robert A. McMahon (0064319)
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206
(513) 533-3441 (telephone)
(513) 533-3554 (fax)
bcmahon@emclawyers.com

Attorneys for Duke Energy Ohio, Inc.

MEMORANDUM IN SUPPORT

On November 9, 2017, Duke Energy Ohio filed a collective Motion to Dismiss in four separate complaint cases filed by the Complainants listed above.¹ The Motion has not yet been ruled on and the Complaints remain outstanding.

Since these Complaints remain outstanding, and in order to avoid any confusion, Duke Energy Ohio hereby renews its Motion to Dismiss filed on November 9, 2017, as if fully restated herein, as to the Complainants identified above. Because the Company's transmission lines at issue in these cases do not run through their properties, and Duke Energy Ohio does not intend to conduct vegetation management along those transmission lines on their properties, these Complainants lack standing and do not set forth reasonable grounds for complaint against Duke Energy Ohio.²

Additionally, each of the above named Complainants failed to attend their scheduled settlement conferences. Although the Commission is not bound by the Ohio Rules of Civil Procedure, they are instructive. The Ohio Rules of Civil Procedures provide for the involuntary dismissal of an action when "the plaintiff fails to prosecute...or comply with any court order..." Ohio Civ. R. 41(B)(1). In a formal complaint, the complainant is obliged to appear to defend his or her complaint.³ Here, Complainants were given proper notice of a settlement conference, scheduled by the Attorney Examiner in these cases, and they failed to appear, without giving prior notice or communication to either Duke Energy Ohio or the Commission. The Complainants' failure to attend these scheduled settlement conferences and having neglected to

¹ *In the Matter of the Complaint of Robert Schmeling v. Duke Energy Ohio, Inc.*, Case Nos. 17-2172-EL-CSS and 17-2180-EL-CSS, *In the Matter of the Complaint of Chris Hendriksen v. Duke Energy Ohio, Inc.*, Case No. 17-2196-EL-CSS, *In the Matter of the Complaint of Steve Kahn v. Duke Energy Ohio, Inc.*, Case No. 17-2197-EL-CSS.

² *In the Matter of the Complaint of Citizens Against Clear Cutting et al. v. Duke Energy Ohio, Inc.*, Case No. 17-2344-EL-CSS (Entry dated Mar. 8, 2018), at ¶¶43, 57.

³ *In the Matter of the Complaint of Larry Sturgill and Patricia Gilgenbach v. Northeast Ohio Public Energy Counsel*, Case No. 17-2127-GA-CSS (Entry dated Apr. 11, 2018) at ¶16.

provide a reason for their absences is indicative of their lack of desire or intent to continue reasonably pursuing their cases.⁴ Further, requiring Duke Energy Ohio to incur additional time and expense in the defense of these baseless actions is unjustified given the Complainants' failure to reasonably pursue these actions and, notably, the absence of any legal merit whatsoever to claims by property owners who do not live along the Company's transmission lines and on whose properties Duke Energy Ohio does not intend to conduct vegetation management.

For all of the reasons set forth above and in the Motion to Dismiss filed on November 9, 2017, Duke Energy Ohio, Inc. respectfully requests that the Commission grant its motion and dismiss the claims of Robert Schmeling, Chris Hendriksen, and Steve Kahn, with prejudice.

⁴ *In the Matter of the Complaint of Lawrence E. Davis v. Ohio Edison Company*, Case No. 15-2020-EL-CSS, Entry at P 7. See also, *In the Matter of Shawn Anderson v. Duke Energy Ohio, Inc.*, Case No. 16-1564-EL-CSS, Entry at P 17.

Respectfully submitted,

/s/ Elizabeth H. Watts

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

DUKE ENERGY OHIO, INC.

139 East Fourth Street

1303-Main

P.O. Box 960

Cincinnati, Ohio 45202

Telephone: (513) 287-4320

Rocco.D'Ascenzo@duke-energy.com

Elizabeth.Watts@duke-energy.com

Robert A. McMahon (0064319)

Eberly McMahon Copetas LLC

2321 Kemper Lane, Suite 100

Cincinnati, Ohio 45206

(513) 533-3441 (telephone)

(513) 533-3554 (fax)

bcmahon@emclawyers.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was served on the following parties of record by U.S. First Class Mail or by electronic service, this 12th day of June, 2018.

/s/ Elizabeth H. Watts

Robert Schmeling
12133 Paulmeadows Court
Cincinnati, Ohio 45249

Steve Kahn
8900 Terwilligers Trail
Cincinnati, Ohio 45249

Chris Hendriksen
11261 Terwilligers Valley Lane
Cincinnati, Ohio 45249

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Case No(s). 17-2172-EL-CSS, 17-2180-EL-CSS, 17-2197-EL-CSS, 17-2196-EL-CSS

Summary: Motion Renewed Motion to Dismiss of Respondent Duke Energy Ohio, Inc. as to Complainants not on Company's Right of Way electronically filed by Ms. Emily Olive on behalf of Duke Energy Ohio and D'Ascenzo, Rocco O. Mr. and Watts, Elizabeth H. Ms. and McMahon, Robert A. Mr.