

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Lynn E. Matthews)	
)	
Complainant.)	
v.)	Case No. 18-1585-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

ANSWER OF DUKE ENERGY OHIO, INC.

For its Answer to the Complaint of Lynn E. Matthews (Complainant), Duke Energy Ohio, Inc. (Duke Energy Ohio or Respondent), states as follows.

OPENING PARAGRAPHS

1. The opening paragraphs of the Complaint are not in a form allowing for specific admission or denial as to individual allegations. Accordingly, Duke Energy Ohio generally denies the allegations set out in such paragraphs. Further answering, Duke Energy Ohio states that Complainant owns property on which the Company has an easement and right-of-way in connection with a 345 kV transmission line along which Duke Energy Ohio is permitted to and does conduct vegetation management services for that high voltage transmission line at issue in these proceedings.

PARTIES

2. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 1 of the Complaint and thus denies the same, except for those matters of public record.

3. With regard to the allegations contained in Paragraph 2 of the Complaint, Duke Energy Ohio states that provisions of R.C. 4905.02, 4905.03, 4905, and 4933 speak for themselves and, as such, no response is required. Duke Energy Ohio admits the remaining allegations of Paragraph 2 only to the extent they do not contradict the provisions of R.C. 4905.02, 4905.03, 4905, and 4933.

JURISDICTION

4. With respect to the allegations contained in Paragraph 3 of the Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 2.
5. With regard to the allegations contained in Paragraph 4 of the Complaint, Duke Energy Ohio states that provisions of R.C. 4905.06 speak for themselves and, as such, no response is required. Duke Energy Ohio admits the remaining allegations of Paragraph 4 only to the extent they do not contradict the provisions of R.C. 4905.06.
6. With regard to the allegations contained in Paragraph 5 of the Complaint, Duke Energy Ohio states that provisions of R.C. 4905.26 and Ohio Adm. Code 4901:1-10-27 speak for themselves and, as such, no response is required. Duke Energy Ohio admits the remaining allegations of Paragraph 5 only to the extent they do not contradict the provisions of R.C. 4905.06 and Ohio Adm. Code 4901:1-10-27.
7. With regard to the allegations contained in Paragraph 6 of the Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 6 of the Complaint.

8. With regard to the allegations contained in Paragraph 7 of the Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 7 of the Complaint.
9. With regard to the allegations contained in Paragraph 8 of the Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 8 of the Complaint.
10. With regard to the allegations contained in Paragraph 9 of the Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 9 of the Complaint.
11. With regard to the allegations contained in Paragraph 10 of the Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 10 of the Complaint.
12. With regard to the allegations contained in Paragraph 11 of the Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 11 of the Complaint.
13. With regard to the allegations contained in Paragraph 12 of the Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy

Ohio denies the allegations contained in Paragraph 12 of the Complaint. Further answering, Duke Energy Ohio states that its vegetation management activities at issue in the Complaint are consistent with its express grants of easement and with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016.

STATEMENT OF FACTS

14. With respect to the allegations contained in Paragraph 13 of the Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 12.
15. Duke Energy Ohio admits the allegations contained in Paragraph 14 of the Complaint.
16. With respect to the allegations contained in Paragraph 15 of the Complaint, Duke Energy Ohio admits the allegations contained in Paragraph 15 of the Complaint.
17. With respect to the allegations contained in Paragraph 16 of the Complaint, Duke Energy Ohio admits that Complainant owns property on which the Company has an easement and right-of-way in connection with a 345 kV transmission line along which Duke Energy Ohio is permitted to and does conduct vegetation management services for that high voltage transmission line at issue in these proceedings. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 16 of the Complaint and thus denies the same.
18. Duke Energy Ohio admits the allegations contained in Paragraph 17 of the Complaint.
19. With respect to the allegations contained in Paragraph 18 of the Complaint, Duke Energy Ohio states only that its easement speaks for itself. Duke Energy Ohio is without

sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 18 of the Complaint and thus denies the same.

20. With respect to the allegations contained in Paragraph 19 of the Complaint, Duke Energy Ohio states only that its easement speaks for itself. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 19 of the Complaint and thus denies the same.
21. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 20 of the Complaint and thus denies the same.
22. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 21 of the Complaint and thus denies the same.
23. With regard to the allegations contained in Paragraphs 22-31 of the Complaint, Duke Energy Ohio states its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016, speaks for themselves. Duke Energy Ohio denies the remaining allegations contained in Paragraphs 22-31 of the Complaint.
24. With regard to the allegations contained in Paragraph 32 of the Complaint, Duke Energy Ohio admits that, once its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), were approved on June 13, 2016, the Company began notifying certain customers of its intent to conduct vegetation management activities. Further answering, Duke Energy Ohio admits that the documents marked as Exhibits B and C to the Complaint are copies of documents that the Company delivered to certain customers. Duke Energy Ohio is without sufficient

knowledge as to the truth of the remaining matters asserted in Paragraph 32 of the Complaint and thus denies the same.

25. With regard to the allegations contained in Paragraph 33 of the Complaint, Duke Energy Ohio states its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016, speaks for themselves. Duke Energy Ohio denies the remaining allegations contained in Paragraph 33 of the Complaint.

COUNT I

26. With respect to the allegations contained in Paragraph 34 of the Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 33.
27. With regard to the allegations contained in Paragraph 35 of the Complaint, Duke Energy Ohio states that provisions of Ohio Adm. Code 4901:1-10-27(E)(1)(f) speak for themselves and, as such, no response is required. Duke Energy Ohio denies the remaining allegations of Paragraph 35.
28. With respect to the allegations contained in Paragraph 36 of the Complaint, Duke Energy Ohio admits that the Company has easements and right-of-way on property owned by Complainant. Further answering, Duke Energy Ohio admits that its easements speak for themselves. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 36 of the Complaint and thus denies the same.
29. With regard to the allegations contained in Paragraph 37 of the Complaint, Duke Energy Ohio states that provisions of Ohio Adm. Code 4901:1-10-27 speak for themselves and,

as such, no response is required. Duke Energy Ohio denies the remaining allegations of Paragraph 37 of the Complaint.

30. With regard to the allegations contained in Paragraph 38 of the Complaint, Duke Energy Ohio states that its vegetation management activities are consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016. Duke Energy Ohio denies the remaining allegations contained in Paragraph 38 of the Complaint.
31. Duke Energy Ohio denies the allegations contained in Paragraph 39 of the Complaint.

COUNT II

32. With respect to the allegations contained in Paragraph 40 of the Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 39.
33. Duke Energy Ohio denies the allegations contained in Paragraph 41 of the Complaint.
34. With regard to the allegations contained in Paragraph 42 of the Complaint, Duke Energy Ohio states that provisions of R.C. 4905.22 speak for themselves and, as such, no response is required.
35. With regard to the allegations contained in Paragraphs 43-46 of the Complaint, Duke Energy Ohio states that its vegetation management activities are consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016. Answering further, Duke Energy Ohio admits that it is exercising its lawful right, pursuant to grants of easement, to engage in vegetation management activities that include, but are not limited to, removing vegetation within its right-of-way. Such removal is necessary to enable the

continued safe and reliable operation of high-voltage power lines used in the provision of service to Duke Energy Ohio's customers, including Complainant. Duke Energy Ohio denies the remaining allegations contained in Paragraphs 43-46 of the Complaint.

36. With regard to the allegations contained in Paragraph 47 of the Complaint, Duke Energy Ohio states that provisions of R.C. 4905.22 and Ohio Adm. Code 4901:1-10-27 speak for themselves and, as such, no response is required. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 47 of the Complaint and thus denies the same.
37. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 48 of the Complaint and thus denies the same. Additionally, Duke Energy Ohio states that its use of herbicides on or near Complainant's property is necessary to enable the continued safe and reliable operation of high-voltage power lines used in the provision of service to Duke Energy Ohio's customers, including Complainant, and is consistent with its express grants of easement and with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016.
38. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 49 of the Complaint and thus denies the same. Answering further, Duke Energy Ohio states that its actions are necessary to enable the continued safe and reliable operation of high-voltage power lines used in the provision of service to Duke Energy Ohio's customers, including Complainant, and are consistent with its express grants of easement and with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016.

- 39. Duke Energy Ohio denies the allegations contained in Paragraph 50 of the Complaint.
- 40. Duke Energy Ohio denies the allegations contained in Paragraph 51 of the Complaint.
- 41. With regard to the allegations contained in Paragraph 51 of the Complaint, Duke Energy Ohio states that its vegetation management activities are consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016. Answering further, Duke Energy Ohio admits that it is exercising its lawful right, pursuant to grants of easement, to engage in vegetation management activities that include, but are not limited to, pruning and removing vegetation within its right-of-way. Such pruning and removal are necessary to enable the continued safe and reliable operation of high-voltage power lines used in the provision of service to Duke Energy Ohio's customers, including Complainant. Duke Energy Ohio denies the remaining allegations contained in Paragraph 51 of the Complaint.

COUNT III

- 42. With respect to the allegations contained in Paragraph 52 of the Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 51.
- 43. With regard to the allegations contained in Paragraph 53 of the Complaint, Duke Energy Ohio states that provisions of Ohio Adm. Code 4901:1-10-27(E)(2) speak for themselves and, as such, no response is required.
- 44. With regard to the allegations contained in Paragraph 54 of the Complaint, Duke Energy Ohio states that provisions of Ohio Adm. Code 4901:1-10-27(F)(1) speak for themselves and, as such, no response is required.

45. With regard to the allegations contained in Paragraph 55 of the Complaint, Duke Energy Ohio states that provisions of Ohio Adm. Code 4901:1-10-27(E)(2) speak for themselves and, as such, no response is required.
46. With regard to the allegations contained in Paragraph 56 of the Complaint, Duke Energy Ohio states that provisions of Ohio Adm. Code 4901:1-10-24(D) speak for themselves and, as such, no response is required.
47. Duke Energy Ohio denies the allegations contained in Paragraphs 57-63 of the Complaint.

COUNT IV

48. With respect to the allegations contained in Paragraph 64 of the Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 63.
49. Duke Energy Ohio denies the allegations contained in Paragraph 65 of the Complaint.
50. With regard to the allegations contained in Paragraph 66 of the Complaint, Duke Energy Ohio states that provisions of R.C. 4905.22 speak for themselves and, as such, no response is required.
51. With regard to the allegations contained in Paragraph 67 of the Complaint, Duke Energy Ohio states that provisions of Ohio Adm. Code 4901:1-10-02 and 4901:1-10-27 speak for themselves and, as such, no response is required.
52. Duke Energy Ohio denies the allegations contained in Paragraphs 68-69 of the Complaint.
53. Duke Energy Ohio denies all allegations of the Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

54. Duke Energy Ohio asserts as an affirmative defense that its easements on Complainant's property expressly confirm the rights of Duke Energy Ohio to engage in vegetation management activities with regard to the property on which such easement exists.
55. Duke Energy Ohio asserts as an affirmative defense that pursuant to R.C. 4905.26 and Ohio Adm. Code 4901-9-01-(B)(3), Complainant has failed to set forth reasonable grounds for complaint.
56. Duke Energy Ohio asserts that to the extent Complainant is seeking monetary damages, such relief is beyond the scope of the Commission's jurisdiction.
57. Duke Energy Ohio asserts that to the extent the Complainant is seeking equitable relief, such relief is beyond the scope of the Commission's jurisdiction.
58. Duke Energy Ohio asserts that it has superior property rights, as confirmed by lawful grants of easement.
59. Duke Energy Ohio asserts that to the extent the Complainant asserts claims relating to soil erosion and property damage, such relief is beyond the scope of the Commission's jurisdiction.
60. Duke Energy Ohio asserts as an affirmative defense that Complainant's claims are barred by the doctrines of collateral estoppel and/or res judicata.
61. Duke Energy Ohio asserts as an affirmative defense that Complainant is barred from collaterally attacking the Company's Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016.

62. Duke Energy Ohio asserts as an affirmative defense that the Company is not conducting vegetation management along the distribution lines that cross Complainant's property. Therefore, Complainant lacks standing to assert such claims that would involve nothing more than an advisory opinion from the Commission.
63. Duke Energy Ohio reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

WHEREFORE, for the reasons stated herein, Duke Energy Ohio, Inc., respectfully requests that the Complaint against it be dismissed with prejudiced, for its costs incurred herein, and for all other relief to which it may appear entitled.

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)

bmcmahon@emclawyers.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Duke Energy Ohio, Inc., was served via regular US Mail postage prepaid, or by electronic mail service, this 8th day of November, 2018, upon the following:

Kimberly W. Bojko
Stephen E. Dutton
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, OH 43215
bojko@carpenterlipps.com
Dutton@carpenterlipps.com

Counsel for Complainant

/s/ Elizabeth H. Watts
Elizabeth H. Watts

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/8/2018 4:01:06 PM

in

Case No(s). 18-1585-EL-CSS

Summary: Answer of Duke Energy Ohio, Inc. electronically filed by Carys Cochern on behalf of Watts, Elizabeth H. Ms.