

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

JOINT PARTIAL STIPULATION

I. Introduction

Ohio Adm. Code 4901-1-30 allows for any two parties to a proceeding to enter into a written stipulation resolving some or all of the issues in that proceeding. Pursuant to that rule, Lynn E. Matthews, Complainant in the above-captioned matter, hereby enters into this Joint Partial Stipulation, pursuant to the foregoing terms of this Joint Partial Stipulation, with Duke Energy Ohio, Inc. (Duke Energy Ohio) in order to facilitate a resolution of this case and avoid the need for a formal hearing.

This Joint Partial Stipulation represents an efficient, just, and reasonable means to resolve Complainant's claims. The Joint Partial Stipulation does not violate any regulatory principle or precedent and is the result of serious and equitable bargaining between the Parties. The Parties recognize that the Joint Partial Stipulation is not binding on the Public Utilities Commission of Ohio (Commission), but assert that it is entitled to careful consideration by the Commission. In order to resolve this case, the Parties agree, and recommend, as set forth below.

II. Recitals

WHEREAS, Complainant filed a Complaint against Duke Energy Ohio regarding the Company's vegetation management plan, practices, and procedures and requested that the Commission issue a stay of Duke's implementation of its current vegetation management plan on Complainant's property during the pendency of the Complaint on October 19, 2018; and

WHEREAS, Complainant's request for a stay was granted by Entry on December 3, 2018; and

WHEREAS, the Parties have engaged in discussions regarding the nature of these proceedings, including the expenditure of time and resources required to prosecute this matter before the Commission; and

WHEREAS, the Parties agree that any Commission decision that results from a separate and previously-filed proceeding entitled *Citizens Against Clear Cutting et al. v. Duke Energy Ohio, Inc.*, Case No. 17-2344-EL-CSS (the "CACC Case"), which is pending before the Commission, will dictate Duke Energy Ohio's future implementation of its vegetation management plan, practices, policies, and procedures on the property of Complainant listed in this Complaint and throughout its service territory; and

WHEREAS, this Joint Partial Stipulation is the result of negotiations between the Parties and is entitled to careful consideration by the Commission; and

WHEREAS, acceptance of this Joint Partial Stipulation will enable the Parties to avoid the time and expense of conducting a separate hearing in this case, which will be to the benefit of all Parties.

NOW, THEREFORE, the Parties stipulate, agree, and recommend that the Commission approve this Joint Partial Stipulation pursuant to the terms contained herein.

III. Joint Recommendation of the Parties

The Parties agree to the following terms:

- A. Complainant is entitled to the protection of the stay, as amended, that is currently in effect under the Commission's Entry in this proceeding dated December 3, 2018, regarding Duke Energy Ohio's vegetation management plan, practices, and policies and implementation of such on Complainant's property.
- B. Duke Energy Ohio will not attempt to conduct or actually conduct vegetation management activities on the property of Complainant in a manner that would be inconsistent with the stay issued by the Commission on December 3, 2018 in this proceeding, except as otherwise authorized by the Commission or as required to address an immediate safety and reliability concern arising from a force majeure event.¹
- C. Complainant will be afforded the same protections or receive the same relief regarding Duke Energy Ohio's vegetation management plan, practices, and policies and implementation of such that arise or result from the final order issued in the CACC Case, as affirmed or modified after the exhaustion of all requests for rehearing and/or appeals therefrom.

IV. Procedural Matters

- A. The Parties agree that the Commission should hold this matter in abeyance and not schedule a formal hearing or other procedural schedule pending a final decision in the CACC Case, and the exhaustion of all requests for rehearing and/or appeals therefrom.

¹ A force majeure event is defined as an event beyond the reasonable control of Duke Energy Ohio, that could not be remedied by the exercise of due diligence and that was not reasonably foreseeable, including without limitation, acts of God, natural disaster, terrorist acts, or wars.

- B. The Parties agree that they will be bound in this case by the final decision in the CACC Case, as affirmed or modified after the exhaustion of all requests for rehearing and/or appeals therefrom.
- C. This Joint Partial Stipulation is conditioned upon its acceptance in its entirety by the Commission. Should the Commission modify the Joint Partial Stipulation in any way, a Party may withdraw from the Joint Partial Stipulation.
- D. If the Commission modifies the Joint Partial Stipulation, the Party will not oppose an Application for Rehearing to the extent that the Application for Rehearing asks the Commission to accept this Joint Partial Stipulation in its entirety without modification.

IN WITNESS THEREOF, the undersigned Parties agree to this Joint Partial Stipulation as of this 15th day of January, 2019. The undersigned Parties respectfully request that the Commission issue an Order adopting this Joint Partial Stipulation.

Respectfully submitted,

/s/ *Brian W. Dressel*

Kimberly W. Bojko (0069402)

Brian W. Dressel (0097163)

Carpenter Lipps & Leland LLP

280 Plaza, Suite 1300

280 North High Street

Columbus, OH 43215

bojko@carpenterlipps.com

dressel@carpenterlipps.com

Attorneys for Lynn E. Matthews

/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 hereby certify that a true copy of the foregoing Joint Partial Stipulation was served by electronic mail on all counsel of record in this matter on January 15, 2019.

/s/ *Brian W. Dressel*

Brian W. Dressel

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

1/15/2019 3:41:24 PM

in

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

Summary: Stipulation Joint Partial Stipulation electronically filed by Mr. Brian W Dressel on behalf of Lynn E. Matthews