

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
PHILLIP HAMMER,**

COMPLAINANT,

CASE NO. 19-1586-EL-CSS

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on October 25, 2019

{¶ 1} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Duke Energy Ohio, Inc. (Duke), is a public utility as defined in R.C. 4905.02. Accordingly, Duke is subject to the Commission's jurisdiction.

{¶ 3} On August 15, 2019, Phillip Hammer (Complainant) filed a complaint against Duke. In addition to other allegations, Complainant alleged that Duke is attempting to remove 30 or more trees on his property located in Batavia Township in Clermont County, Ohio, without determining that the trees actually pose a risk and complete removal is necessary. Complainant further alleged Duke's legal department has advised him that only Duke contractors can trim trees on his property, and he is not allowed to retain his own arborist to do the same. Lastly, Complainant requested that the Commission order Duke to stay its implementation of its current vegetation management plan, as it relates to his property, during the pendency of this complaint.

{¶ 4} On August 26, 2019, Duke filed an answer to the complaint and generally denied all of Complainant's allegations. Duke also set forth affirmative defenses, including that Complainant failed to set forth reasonable grounds for complaint. With

regard to the Complainant's request to stay all vegetation management activities on Complainant's property during the pendency of this matter, Duke stated that the Commission is without jurisdiction to resolve issues of equity. Further, Duke stated that any vegetation management activities in which it may engage are permissible under express grants of easement and consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section(f), as approved on June 13, 2016.

{¶ 5} By Entry dated September 27, 2019, the attorney examiner granted, in part, Complainant's request to stay Duke from implementation of its current vegetation management plan, as it relates to his property, during the pendency of this complaint. To ensure that Duke continues to provide safe and reliable service to its customers, the attorney examiner authorized Duke to trim and prune trees on Complainant's property that come within 15 feet of a transmission or distribution line at issue during the pendency of this case. The attorney examiner also directed Duke to adhere to the terms of the modified stay in place in Citizens Against Clear Cutting, Case No. 17-2344-EL-CSS and related cases, granted via Entry dated July 11, 2018. The attorney examiner noted that maintaining consistency in the application of all trimming and pruning activities, where practicable, would ensure safe and reliable electric service without prejudicing Complainant and other, similarly situated property owners located in Duke's service area. Additionally, to allow parties to continue exploring a resolution of the complaint, the attorney examiner scheduled a settlement conference for October 29, 2019.

{¶ 6} On October 2, 2019, Duke filed an application for review and an interlocutory appeal of the attorney examiner's September 27, 2019 Entry.

{¶ 7} On October 7, 2019, Complainant filed a memorandum contra to Duke's application for review and interlocutory appeal.

{¶ 8} On October 25, 2019, counsel for Complainant informed the attorney examiner that Complainant wishes to continue working directly with Duke to reach settlement of the issues identified in the complaint.

{¶ 9} Based on Complainant's counsel's assertion, the attorney examiner finds that the settlement conference scheduled for October 29, 2019, is no longer necessary and should be cancelled. The parties are instructed to inform the attorney examiner about the progress of their settlement discussions. The parties should also inform the attorney examiner when they reach a resolution or if they require a hearing to be scheduled.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the settlement conference scheduled for October 29, 2019, be canceled. It is, further,

{¶ 12} ORDERED, That the parties keep the attorney examiner apprised as further explained in Paragraph 9. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Anna Sanyal

By: Anna Sanyal
Attorney Examiner

JRJ/kck

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in

Case No(s). 19-1586-EL-CSS

Summary: Attorney Examiner Entry Settlement Conference for 10/29/19 canceled until further notice by parties. electronically filed by Mrs. Kelli C King on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission of Ohio