

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINTS OF:

BARRY CORRADO
DAWN ROBINSON-GODWIN
LYNN E. MATTHEWS

CASE NO. 18-493-EL-CSS
CASE NO. 18-827-EL-CSS
CASE NO. 18-1585-EL-CSS

COMPLAINANTS,

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

FINDING AND ORDER

Entered in the Journal on February 13, 2020

I. SUMMARY

{¶ 1} The Commission dismisses the complaints filed by Complainants because these individuals previously agreed to be bound by the Opinion and Order issued in Case No. 17-2344-EL-CSS on January 15, 2020.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the jurisdiction of this Commission.

{¶ 3} 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.

{¶ 4} The Complainants identified in the caption for this Finding and Order have respectively filed complaints against Duke on March 26, 2018, May 8, 2018, and October 19, 2018. In their complaints, Complainants alleged that Duke is attempting to remove trees on

their respective properties without making a determination that the trees actually posed a risk to the safe and reliable provision of electric service and complete removal was necessary. They further alleged that, without such a determination, Duke has no authority to engage in the practice.

{¶ 5} Previously, on November 14, 2017, Citizens Against Clear Cutting (CACC) filed a complaint against Duke in Case No. 17-2344-EL-CSS (*CACC Case*). CACC are located in a similar geographic area as Complainants, namely in Hamilton County, Symmes Township, Deerfield Township, and the City of Montgomery, Ohio. CACC also made similar allegations as Complainants. On November 16, 2017, the attorney examiner granted CACC's request to stay Duke from clear cutting trees on their properties. Finally, on July 11, 2018, the attorney examiner granted the parties' joint motion to allow Duke to prune trees and create a 15-foot clearance distance. Furthermore, to maintain consistency in the application and subsequent modification of the original stay on CACC properties, the attorney examiner directed Duke to adhere to the terms of the proposed modified stay when pruning trees on the properties of all similarly situated complainants.

{¶ 6} The Complainants identified in this Finding and Order, along with Duke, filed joint partial stipulations respectively on October 9, 2018, October 10, 2018, and January 15, 2019. In these stipulations, the parties agreed that Complainants would be afforded the same protection as CACC and that Duke would not attempt to conduct vegetation management activities on Complainants' properties in a manner inconsistent with the stay in the *CACC Case*. Further, the parties agreed that they would be bound by the final decision in the *CACC Case*.

{¶ 7} A hearing in Case No. 17-2344-EL-CSS was held on November 6, 2018 and concluded on November 8, 2018. The parties in that matter filed initial post-hearing briefs on December 17, 2018 and reply briefs on January 4, 2019. Following the hearing, Duke, CACC, and the Office of the Ohio Consumers' Counsel engaged in further settlement negotiations and filed a joint stipulation and recommendation (Stipulation) on December 17, 2019.

{¶ 8} On January 15, 2020, the Commission issued an Opinion and Order approving the Stipulation in Case No. 17-2344-EL-CSS. The Commission found that the Stipulation was the product of serious bargaining among capable, knowledgeable parties; benefited ratepayers and the public interest as a package; and did not violate any important regulatory principle or practice. The Commission also found that the Stipulation struck an appropriate balance between Duke's efforts to effectively conduct its vegetation management activities along its transmission lines and the ability of property owners to knowledgeably and consistently adhere to guidance from the Company in order to preserve an environment conducive to conducting those activities, without jeopardizing their ability to enjoy and reasonably landscape their properties. *In re Citizens Against Clear Cutting, et al. v. Duke Energy Ohio, Inc.*, Opinion and Order (Jan. 15, 2020) at ¶¶ 38-41. A copy of the Opinion and Order is attached to this Finding and Order.

{¶ 9} Per the Stipulation, Duke will offer all complainants who filed complaints related to Duke's vegetation management activities on or prior to the effective date of the Stipulation the same settlement benefits offered to CACC under the terms of the Stipulation (Stipulation at 9). Further, pursuant to the joint partial stipulations filed by the parties in the above-captioned cases, Duke is also bound to provide Complainants the same settlement benefits as CACC under the Stipulation. Moreover, we find that the stipulations the parties filed in above-captioned cases meet the three criteria the Commission utilizes in evaluating settlements. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994). We find that the stipulations appear to be the product of serious bargaining among capable, knowledgeable parties because counsel for all parties routinely participate in complex Commission proceedings and have extensive experience practicing before the Commission in utility matters. We next find that the stipulations benefit ratepayers and is in the public interest because they resolve Complainants' outstanding issues in a manner consistent with the approach outlined in the *CACC Case* and aligns Duke's future vegetation management activity in the entire geographic area in question. Finally, we find that the stipulations do not appear to violate any important regulatory principle or practice and, thus, satisfies the third and final criterion. Therefore, in light of

the the Stipulation in Case No. 17-2344-EL-CSS and the joint partial stipulations filed by Complainants in the above-captioned cases, the Commission finds that these particular cases should be dismissed and closed of record.

III. ORDER

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That complaints filed by Complainants in the above-captioned cases be dismissed and closed of record. It is, further,

{¶ 12} ORDERED, That a copy of this Finding and Order be served upon each party and interested person of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

AS/mef

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
CITIZENS AGAINST CLEAR CUTTING, ET AL.,**

COMPLAINANTS,

v.

CASE NO. 17-2344-EL-CSS

DUKE ENERGY OHIO, INC.,

RESPONDENT.

OPINION AND ORDER

Entered in the Journal on January 15, 2020

I. SUMMARY

{¶ 1} The Commission approves the joint stipulation and recommendation filed on behalf of Citizens Against Clear Cutting, et al., Duke Energy Ohio, Inc., and the Ohio Consumers' Counsel on December 17, 2019.

II. DISCUSSION

A. *Procedural History*

{¶ 2} On November 14, 2017, Citizens Against Clear Cutting (Complainants) filed a complaint against Duke Energy Ohio, Inc. (Duke or the Company). Complainants are located in Hamilton County, Symmes Township, Deerfield Township, and the City of Montgomery, Ohio. Complainants alleged that Duke is attempting to remove trees on their respective properties without making a determination that the trees actually posed a risk to the safe and reliable provision of electric service and complete removal was necessary. They further alleged that without such a determination, Duke has no authority to engage in the practice.

{¶ 3} Along with their complaint, Complainants requested that the Commission issue a stay of the implementation of Duke's approved vegetation management plan, as it

relates to the Complainants' properties, as well as a stay of the clear cutting and removal of trees and vegetation on the Complainants' properties, during the pendency of the complaint. Complainants indicated that the stay is necessary because Duke could commence clear cutting trees immediately. The attorney examiner granted Complainants' motion to stay on November 16, 2017.

{¶ 4} On November 21, 2017, Duke filed an application for review and interlocutory appeal of the attorney examiner's Entry granting Complainants' motion to stay, pursuant to Ohio Adm.Code 4901-1-15. On November 27, 2017, Complainants filed a memorandum contra to Duke's application for review and interlocutory appeal, pursuant to Ohio Adm.Code 4901-1-15(D). On March 7, 2018, the attorney examiner certified Duke's interlocutory appeal to the Commission.

{¶ 5} On December 4, 2017, Duke filed a motion to dismiss certain Complainants' claims pursuant to R.C. 4905.26, Ohio Adm.Code 4901-1-12 and 4901-9-01(C). On December 19, 2017, Complainants filed a memorandum contra to Duke's motion to dismiss.

{¶ 6} On December 28, 2017, Duke filed a motion for leave to file a reply and a reply memorandum in support of its motion to dismiss. On January 4, 2018, Complainants filed a memorandum contra to Duke's motion for leave to file a reply in support of its motion to dismiss.

{¶ 7} On January 25, 2018, the attorney examiner granted Complainants' January 5, 2018 motion to amend its November 22, 2017 amended complaint, thereby permitting additional complainants with similar claims to join this proceeding.

{¶ 8} On January 25, 2018, Duke filed an answer to Complainants' second amended complaint, which was filed on January 5, 2018 (Complainants Ex. 1).

{¶ 9} On February 5, 2018, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this matter, which is addressed below in this Opinion and Order.

{¶ 10} On March 8, 2018, the Commission denied Duke’s interlocutory appeal of the attorney examiner’s November 16, 2017 Entry granting Complainants’ motion to stay. The Commission also granted a motion to dismiss filed by Duke on February 2, 2018, in part, with regard to certain claims raised by Complainants and with regard to certain individuals who lacked standing to assert claims against Duke.

{¶ 11} A hearing in this matter was held on November 6, 2018 and concluded on November 8, 2018. The parties filed initial post-hearing briefs on December 17, 2018 and reply briefs on January 4, 2019.

{¶ 12} Following the hearing, Duke, Complainants, and OCC (collectively, Signatory Parties) engaged in further settlement negotiations and filed a joint stipulation and recommendation (Stipulation) on December 17, 2019, in which the parties aver all issues in the complaint case have been resolved.

B. *Applicable Law*

{¶ 13} Duke is a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the jurisdiction of this Commission. Public utilities are required to “furnish necessary and adequate service and facilities * * * and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable.” R.C. 4905.22. 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. Finally, in complaint proceedings, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Therefore, it is the responsibility of a complainant to present evidence in support of the allegations made in a complaint.

{¶ 14} Specific to this proceeding and requirements pertaining to vegetation management, the Commission’s rules require electric companies to “establish, maintain, and comply with written programs, policies, procedures, and schedules for the inspection,

maintenance, repair, and replacement of its transmission and distribution circuits and equipment.” Ohio Adm.Code 4901:1-10-27(E)(1). The written program must address vegetation control in rights-of-way. Ohio Adm.Code 4901:1-10-27(E)(1)(f). Additionally, Ohio Adm.Code 4901:1-10-27(E)(2) requires the plan, along with supporting justification and rationale based upon generally accepted industry practices and procedures, as well as all revisions and amendments, to be filed with the Commission.

{¶ 15} Duke filed a modified vegetation management plan on April 28, 2016. *In re Duke Energy Ohio, Inc.*, Case No. 16-915-EL-CSS (2016 Plan Case), Application (Apr. 28, 2016). The modified vegetation management plan was approved automatically, pursuant to Ohio Adm.Code 4901:1-10-27(F)(2), on June 13, 2016.

C. OCC’s Motion to Intervene

{¶ 16} On February 5, 2018, OCC filed an unopposed motion to intervene in this matter. In its motion, OCC stated it sought intervention pursuant to R.C. 4903.221 because OCC and the residential customers it represents may be adversely affected by this case. OCC specified that while residential customers are part of this case, they do not represent the interests of all other residential customers who are subject to Duke’s tree-clearing policies and practices. OCC has been actively involved in this proceeding and is, in fact, one of the Signatory Parties to the Stipulation. Upon review of the criteria contained in R.C. 4903.221 and the five factors in Ohio Adm.Code 4901-1-11(B), and OCC’s interests, we find that OCC’s motion is reasonable and, thus, should be granted.

D. Summary of Evidence and Party Arguments Presented at Hearing

{¶ 17} The specific transmission circuits at issue in this case are 3881, 5483, 5487, 5883, 5887, which are located in Hamilton County, specifically in Symmes Township, Deerfield Township, Loveland, Ohio, and Montgomery, Ohio (Tr. Vol I at 155), Entry (Mar. 8, 2018) at ¶30. According to Duke, the Company obtained easements for its rights-of-way in this area in the 1950s, when the area was rural. By the 1980s, much of the area had been developed. (Duke Ex. 2 at 10.) Previously, Duke stated it maintained its rights-of-way in a

manner which accommodated property owner desires by performing vegetation maintenance (Duke Ex. 2 at 10). However, these areas now have a significant number of incompatible trees in the rights-of-way. (Duke Ex. 2 at 8-9.) Duke claimed this incompatible vegetation has become dense and tall and is impacting public safety, reliability, and access to the transmission facilities (Duke Ex. 2 at 9).

{¶ 18} To mitigate incompatible vegetation, Duke elaborated that it currently follows an integrated vegetation management (IVM) program strategy to manage trees and other vegetation along transmission lines and ensure reliable service and minimize outages. This program was rolled out in the Duke Energy Midwest service territory, which includes the area involved in the complaint, in the 2010 to 2011 time frame. (Duke Ex. 2 at 6.)

{¶ 19} Duke stated that around the end of 2012, the Company completed its initial focus of moving transmission lines, which are above 200 kV, and thus subject to the North American Electric Reliability Organization's (NERC) jurisdiction, into the IVM program strategy. Thereafter, in 2016, Duke stated shifted its focus to its 138 kV system in Ohio, which it claims performs a similar function as the 230 kV system in other jurisdictions in which Duke owns and operates transmission facilities. (Duke Ex. 2 at 11.)

{¶ 20} Duke noted that its IVM program includes the use of various rights-of-way vegetation management tools including mechanical, herbicide and/or manual floor maintenance, tree pruning, and tree felling including the removal of dangerous and hazardous trees along the outside edge of rights-of-way. Duke explained that the objective of the IVM program is to actively maintain transmission rights-of-way such that compatible vegetation, which include low growing woody shrub species and herbaceous grasses, can exist in the rights-of-way corridor, rather than simply attempting to control or maintain incompatible trees from growing into close proximity with energized conductors. (Duke Ex. 2 at 6; Duke Ex. 5 at 8.) Duke defined incompatible vegetation generally as any vegetation within a right-of-way that at its mature height poses a risk of growing into the power lines (Duke Ex. 2 at 25; Duke Ex. 5 at 8).

{¶ 21} In accordance with guidelines it provides to homeowners regarding transmission right-of-way zones, for the 138 kV lines at issue here, Duke explained that the 100-foot right-of-way corridor is broken up into a wire zone, which extends 20 feet beyond the outermost conductor on either side, and a border zone comprised of the remaining portion of the right-of-way. Duke noted that it explains the border zone and wire zone concepts and related restrictions to the general public in both printed and online materials. (Duke Ex. 5 at 8; Duke Ex. 2 at 14-15; Duke Ex. 3 at 9; Tr. Vol. I at 150.) Duke noted that tree species are not permitted within the wire zone, but low growing shrubs and grasses are permitted with prior written approval from the Company. Trees may exist in the border zone, but Duke stated that they cannot exceed, at maturity, 15 feet in height. (Duke Ex. 2 at 16.)

{¶ 22} Duke also stated that there is no evidence in the record to support Complainants' contention that the Company intended to remove all vegetation from the transmission rights-of-way and to clear cut all trees within the Company's easements. Instead, Duke contended that it is engaging in selective removal of incompatible trees, while also mechanically mowing dense vegetation in more rural areas, and selectively applying herbicides. (Tr. Vol. I at 232-234; Tr. Vol. II at 412.)

{¶ 23} During the hearing, Complainants alleged several issues with Duke's new IVM approach toward vegetation management, including that Duke failed to demonstrate how its proposed vegetation management protocol of removing all trees and vegetation within the right-of-way is necessary for the provision of safe or reliable service. Complainants further noted that Duke's policies and the implementation of its vegetation management plan are unjust and unreasonable, in violation of R.C. 4905.22. (Complainants Ex. 1 at 18-21; Complainants Ex. 13 at 2; OCC/Complainants Joint Ex. 1A, Attach. JDW-7, Attach. JDW-9; Tr. Vol. III at 713-717). OCC and Complainants also urged the Commission to find that Duke mischaracterized the changes to its vegetation management programs in April 2016 as non-substantive, which misled the Commission and the public regarding the nature of Duke's vegetation management program for its transmission lines, in violation of

Ohio Adm.Code 4901:10-27(E)(2) and (F)(1), as well as Ohio Adm.Code 4901:1-10-24(D) (Complainants Ex. 1 at 21-23). Regardless of whether Duke's vegetation management plan was appropriately filed, Complainants also claimed that Duke's implementation of the vegetation management plan filed in the *2016 Plan Case* is unjust and unreasonable and inconsistent with the Company's actual vegetation management practices (Complainants Ex. 1 at 23-24). In fact, Complainants argued that a majority of the concepts Duke's witnesses raise to support the reasonableness of Duke's vegetation management plan, including the wire-border zone, are not included within the plan filed with the Commission. Contrary to Duke's position during the evidentiary hearing, the Complainants asserted that the filed vegetation management plan does not authorize indiscriminate clear cutting; rather, the plan provides for the maintaining of minimum clearances to help maintain and improve safe and reliable electric service (Complainants Ex. 14, Attach. G at 3). Complainants added that Duke cannot assert that it holds a legal right to remove trees and vegetation in its right-of-way pursuant to the terms of its easements with the property owners, without first conducting an assessment to determine whether the tree removal is necessary to maintain safe and reliable electric service (Duke Ex. 2 at 4-5; Complainants Ex. 5, Attach. B).

{¶ 24} Overall, Complainants claimed that the sudden and extreme shift in Duke's vegetation management philosophy is not necessary to maintain safe and/or reliable electric service, especially given that Duke's historical practices were able to maintain such service and effectively mitigate risks to the transmission system without disregarding the wishes of surrounding property owners. (Complainants Ex. 4 at 8; Complainants Ex. 5 at 13; Complainants Ex. 11 at 9-10, Attach. E; Complainants Ex. 35 at 10-15.)

E. Summary of the Stipulation

{¶ 25} As noted above, the Stipulation was filed on December 17, 2019, subsequent to the evidentiary hearing, and the Signatory Parties aver that the Stipulation resolves all issues raised in this proceeding relative to the vegetation management program for electric transmission lines of the Company. The following includes a non-exhaustive list of the

provisions that must be incorporated into Duke's vegetation management program, as agreed upon in the Stipulation:

{¶ 26} Term of Agreement for Non-NERC Transmission Voltages: The term of the settlement agreement will be for a period of 12 years, which includes two transmission clearing cycles. The agreement is applicable to the vegetation management practices of Duke regarding the transmission line rights of way or corridors in this case, to the Complainants, and to those who have previously filed complaints against Duke with the Commission regarding Duke's vegetation management practices and who reach settlements with Duke stating that their properties would be treated consistent with the terms of this agreement. Additionally, portions of the vegetation management approach adopted in the Stipulation will be reflected in Duke's new vegetation management plan, which will be filed with the Commission and be applicable to all properties in Duke's service territory.

{¶ 27} Duke Vegetation Management Changes for Maintained/Landscaped Areas: Duke will be transitioning to a "threat and condition-based strategy" for its vegetation management program, subject to the easement rights granted to Duke. This strategy will define compatible and incompatible vegetation within and outside of transmission rights of way, and deemphasize the wire zone/border zone concept to allow for a more flexible approach.

- a. Duke will utilize condition measurements, currently LiDAR (Light Detection and Ranging) technology, to identify vegetation threats of incompatible vegetation within or outside of transmission rights of way.
- b. For the 138kV system, clearance distances following the completion of a utility vegetation management cycle will be in the range of 20 feet to 30 feet under all operating conditions (allowing for flexibility in assessing varying species and growth rates).
- c. Compatible vegetation will, generally, include any vegetation with a maximum mature height of 15 feet. However, from an access perspective,

vegetation no closer horizontally on the ground than 25 feet from any Duke ground-mounted structure will be permitted.

- d. Incompatible vegetation is defined as vegetation within or outside the transmission rights of way that will mature to a height or size that will pose a grow-in, fall-in, or blowing-together threat within six years to the transmission conductor, or that will limit or block access, or the safe and reliable operation, emergency restoration, or maintenance activity, which is typically within 25 feet from any Duke ground-mounted structures. This definition does allow for proper arboricultural pruning under certain limited circumstances.
- e. Priority removal protocol will focus on removing incompatible vegetation that will be a threat over the next six years based on average growth rates for vegetation that cannot be managed through proper arboricultural pruning.

{¶ 28} Non-NERC Priority Removal Protocol:

- a. Phase 1 will focus on removing non-manageable incompatible vegetation that are grow-in threats inside or outside the transmission rights of way (Category 1 threat)¹ and blowing-together threats within the transmission rights of way (Category 4 threats) for maintained/landscaped areas.
- b. Phase 2 will focus on removing healthy incompatible vegetation that are fall-in threats within the transmission right of way (Category 2 threats) for maintained/landscaped areas.
- c. After the 12-year period subject to the Stipulation, the focus will be on maintaining transmission rights of way by removing incompatible vegetation consistent with Duke's vegetation management program on file with the Commission as that time.

¹ The category definitions provided for in the Stipulation are consistent with the NERC Reliability Standard FAC-003-4 Transmission Vegetation Management.

{¶ 29} Duke shall not use herbicides on any owners' properties without first notifying the affected property owner. All property owners may opt out of herbicide application by contacting Duke via the designated contact set forth in the information provided at the time of notice to the property owner.

{¶ 30} Duke will provide guidance and recommendations via a brochure or literature that references for compatible vegetation and acceptable planting locations. Additionally, a designated contact will be identified to review and discuss questions regarding compatible vegetation plantings.

{¶ 31} Amended Vegetation Management Program Application: Duke will file an application containing an amended vegetation management program with the Commission that is based on a modified IVM strategy consistent with the terms of the Stipulation, and will include the following clarifications:

- a. Over the 12-year period from 2020 to 2032, Duke will perform reclamation work consistent with the Non-NERC Priority Removal Protocol designated above, followed by a transition to a more steady application of pruning manageable incompatible vegetation.
- b. Duke's transmission vegetation management program is based on an IVM strategy that targets removals of incompatible vegetation to minimize potential outages to the transmission system and ensure necessary access within all transmission rights of way. The reason for IVM is to create, promote, and conserve sustainable plant communities that are compatible with the intended use of the site, and manage or target for removal incompatible plants that may conflict with the intended use of the site. This approach is recognized as an industry best management practice and is in alignment with utility industry standards.

{¶ 32} The Signatory Parties reserve the right to oppose any portion of Duke's amended vegetation management program application that, in their judgement, is not consistent with the terms of the Stipulation.

{¶ 33} The Signatory Parties agree that the terms of the Stipulation will not be construed to mean that any party is relinquishing any legal right with respect to existing easements.

{¶ 34} In the event any federal law or state law (Ohio) relating to vegetation management is amended or changed subsequent to the execution of the Stipulation, and such change would render performance under the Stipulation a regulatory compliance violation, such changed law or rule shall control. However, notwithstanding the terms of the Stipulation and subject to the easements rights granted to Duke, in an emergency situation that puts the public health and safety or transmission system safety or reliability at risk, Duke may do whatever is reasonably necessary to mitigate the immediate threat.

F. Consideration of the Stipulation

{¶ 35} Since the beginning of this proceeding, the Commission has encouraged all parties to engage in settlement negotiations to find an amicable resolution to the issues noted above. Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123,125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 36} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re The Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re*

Restatement of Accounts and Records, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

{¶ 37} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 38} The Commission finds that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties. We note that Duke and OCC routinely participate in complex Commission proceedings and that counsel for the Signatory Parties have extensive experience practicing before the Commission in utility matters. Most importantly, however, this Stipulation is the result of two rounds of extensive settlement negotiations, the second of which consisted of approximately six months of discussion.

{¶ 39} The second criterion is that the settlement, as a package, should benefit ratepayers and the public interest. Clearly, the resolution of this complaint case involving numerous property owners, as well as potentially resolving several other outstanding

complaint cases dealing with Duke's vegetation management practices, results in a public benefit. Notably, the Stipulation provides for improvements in communicating expectations regarding acceptable forms of vegetation within and outside of the transmission rights of way, mitigating the likelihood of future disputes over planned vegetation management, as well as necessarily reducing the risk associated with potential outages caused by vegetation-related reasons. Duke presented evidence during the hearing that its past practices of vegetation management are no longer sufficient, and a change in the philosophy and manner of vegetation management practices is now necessary to minimize threats to the transmission circuits and lines in question and ensure safe and reliable electric service in the area of the dispute (Duke Ex. 2 at 8, 10-11, 17; Tr. Vol. I at 184, 227; Duke Ex. 3 at 7-9, 18-20; Duke Ex. 5 at 5). The Stipulation effectuates this new, necessary philosophy. Furthermore, we find the Stipulation ensures that property owners will be treated consistently, yet flexibly, throughout Duke's service territory, alleviating yet another concern raised by Complainants during the hearing. Finally, although Duke acknowledged that the IVM strategy may involve a high up-front cost, ratepayers will benefit from decreased costs over time as IVM is implemented due to the Company's ability to better manage the transmission corridors and rights of way with compatible vegetation (Tr. Vol. III at 654). Accordingly, we find that the Stipulation, as a package, benefits ratepayers and the public interest.

{¶ 40} The Commission further finds the Stipulation does not appear to violate any important regulatory principle or practice and, thus, satisfies the third and final criterion. In fact, as noted in the Stipulation, the designated categories of work to be performed by Duke complies with the NERC Reliability Standard FAC-003-4 Transmission Vegetation Management, which is the successor of the standard discussed at length during the evidentiary hearing, resulting in a consistent approach for all of Duke's transmission circuits (Duke Ex. 2 at 9-10; Duke Ex. 3 at 3-6). We further acknowledge that the Stipulation requires Duke to file an amended vegetation management program with the Commission, in which both OCC and Complainants will have an opportunity to file objections and be afforded additional due process as deemed necessary by the Commission.

{¶ 41} Overall, the Commission finds that the Stipulation strikes an appropriate balance between Duke's efforts to effectively conduct its vegetation management activities along its transmission lines and the ability of property owners to knowledgably and consistently adhere to guidance from the Company in order to preserve an environment conducive to conducting those activities, without jeopardizing their ability to enjoy and reasonably landscape their properties. We recognize the issues in this proceeding were complicated. Resolution of them through this Stipulation will enable all parties to more effectively achieve their objectives than would be the case through a resolution imposed by Commission order. We agree that, in the long term, implementing vegetation management best practices through reclamation and IVM is in the best interests of all parties and communities involved, the terms of the Stipulation will certainly allow for that transition to be much more seamless and acceptable to affected property owners and the surrounding community (Duke Ex. 2 at 9).

{¶ 42} As a final matter, we agree with the Signatory Parties, which includes all parties involved in this proceeding, that the Stipulation is supported by adequate data and information in the existing record, and find that no additional formal proceedings regarding the reasonableness of the Stipulation will be necessary. See *In re Columbus S. Power Co. and Ohio Power Co.*, Case Nos. 03-2570-EL-UNC and 04-23-EL-UNC, Finding and Order (Jan. 21, 2004) (where the Commission approved a stipulation between Staff and the utilities without first holding a hearing). Similarly, we note that we will, nonetheless, maintain jurisdiction over any disputes between the parties arising from the Stipulation or its implementation. Accordingly, we find that the Stipulation is reasonable and should be approved.

III. ORDER

{¶ 43} It is, therefore,

{¶ 44} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 45} ORDERED, That the Stipulation filed by Complainants, Duke, and OCC be approved and this case be dismissed. It is, further,

{¶ 46} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Dennis P. Deters

MJA/kck

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Case No(s). 18-0493-EL-CSS, 18-0827-EL-CSS, 18-1585-EL-CSS

Summary: Finding & Order the Commission dismisses the complaints filed by Complainants because these individuals previously agreed to be bound by the Opinion and Order issued in Case No. 17-2344-EL-CSS on January 15, 2020. electronically filed by Docketing Staff on behalf of Docketing