

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Ed Browning

Complainant,

v.

Ohio Power Company,

Respondent.

Case No. 20-1002-EL-CSS

PUCO

2021 AUG -3 AM 11:10

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COMPLAINANT'S RESPONSE TO AEP OHIO'S JULY 23, 2021 MOTION TO DISMISS
COMPLAINANT'S CASE

PUCO's July 9, 2021 Journal Entry, page 3, paragraph 9 states, "Mr. Browning's original complaint filed May 7, 2020, contained no allegations that would put Respondent on notice of the claims asserted in the July 7, 2021 letter. Accordingly, the attorney examiner finds that the July 7, 2021 letter should be construed as an amended complaint"

Complainant objects to this assertion by PUCO and AEP. Complainant's July 7, 2021 letter contained consistent information that was in fact **provided to PUCO and AEP Ohio on July 14, 2020.**

On July 14, 2020 both PUCO (then Attorney Examiner Anna Sanyal) and AEP Ohio (then attorney, Tanner Wolffran) were provided specifics in a 10 page document packet detailing Complainant's case.

Information in that mailing detailed and clarified AEP's actions, the facts involved, exhibits, photos, and costs incurred by Complainant to date. Complainant also put AEP on notice of the potential loss of income if the power wire was not moved and second story renovations could not be accomplished. Both the PUCO and AEP Ohio have these documents available to them so there is no need for Complainant to include this information.

Since PUCO has construed that Complainant's allegations are 'new', AEP Ohio asserts that Complainant's case has grown 'stale' and should be dismissed. Complainant maintains that no 'new' allegations have been asserted against AEP Ohio since AEP Ohio's attorney had notice of these allegations on June 14, 2020. Notice to Complainant of 'new' allegations should have arisen on June 14, 2020 and not now, when the impending trial is weeks away.

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AEP cannot claim Complainant's claims are stale when its own delay tactics caused circumstances to change.

This case was filed with PUCO in March of 2020. Complainant had a present tense, legitimate claim under Section 4905.26 at that time. This case should have been set for a hearing with PUCO before the set date of August 23, 2021. Moreover, Respondent, AEP Ohio could have moved the dangerous and hazardous wire as requested and moot this case. It did not and Complainant decided to take different actions. The fact remains that AEP was in violation of Section 4905.26 and the Commission should hear testimony and allow Complainant to prove his allegations under this statute.

AEP admits that the Commission has jurisdiction over claims brought under Chapters 4901, 4903, 4905, 4907, 4909, 4921, 4923 and 4927 of the Revised Code (Motion to Dismiss p. 9). The Court should allow the hearing to move forward so Complainant can prove the violations and the Court can remand the case to the Court of Common Pleas so that it may determine appropriate damages.

PUCO should not consider Complainant's claim as 'stale' due to their own administrative actions in setting a reasonable trial date for Complainant

Complainant admits that PUCO faced many obstacles due to COVID-19 but Complainant's case should not be jeopardized by their administrative actions. PUCO through Matthew Sandor established a trial date that AEP was in agreement to be held October 26, 2020. On September 2, 2020 PUCO cancelled the hearing date due to COVID issues.

Complainant heard nothing until he contacted PUCO on December 2, 2020 (3 months elapsed). Complainant was then informed that the case had been reassigned to attorney examiner Schabo and Davis. Proposed trial dates were communicated for March, April or May of 2021. On April 28, 2021 these dates were cancelled and new hearing dates were schedule for June or July. On May 13, 2021 PUCO reset the hearing to an August timeframe.

Complainant states valid claims of AEP's violation of Chapter 49 of the Ohio Revised Code regardless of the tort claims to which AEP objects.

This case involves more than just tort claims by Complainant. It involves a 'Prescriptive Rights Easement' owned by AEP. And, as an easement holder AEP owes the owner the right of safety and to be free from hazardous electrical wires that do not conform to specific height and clearances over buildings and structures. Complainant does not question AEP's 'Prescriptive Rights Easement'. Complainant does question AEP's assertion that that easement allows them to charge fees to anyone who requests a wire change, for any reason.

In conclusion, there are valid claims presented here upon which the Commission can rule. Complainant requests the Commission to deny AEP's Motion to Dismiss and allow this case to proceed.

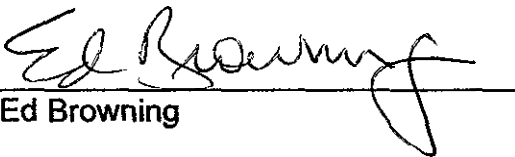
Respectfully submitted,


Ed Browning, Complainant

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was Served upon Respondent at the address listed below by regular U.S. mail, postage prepaid, on this 2nd day of August, 2021.

Spencer C. Meador
Porter, Wright, Morris and Arthur LLP
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215


Ed Browning