

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF  
PHILLIP HAMMER,

COMPLAINANT

v.

CASE NO. 19-1586-EL-CSS

DUKE ENERGY OHIO INC.,

RESPONDENT.

## ENTRY

Entered in the Journal on January 26, 2022

### I. SUMMARY

{¶ 1} The Commission grants Complainant and Respondent's joint motion to dismiss with prejudice.

### II. DISCUSSION

{¶ 2} 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.

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

{¶ 4} On August 15, 2019, Phillip Hammer (Complainant) filed a complaint against Duke. In addition to other allegations, Complainant alleged that Duke was 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 was necessary. 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.

{¶ 5} Pursuant to Ohio Adm.Code 4901-9-01(B), a copy of the complaint was mailed to Respondent on March 11, 2021.

{¶ 6} 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. Further, Duke explained that any vegetation management activities in which it may engage are permissible under express grants of easement and are consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines filed in accordance with Ohio Adm.Code 4901:1-10-27(E)(1)(f) and approved on June 13, 2016.

{¶ 7} 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. Additionally, to allow parties to continue exploring a resolution of the complaint, the attorney examiner scheduled a settlement conference for October 29, 2019.

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

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

{¶ 10} On August 16, 2021, Duke filed correspondence in the docket indicating that it believed the matter should be scheduled for hearing. Subsequently, on August 18, 2021, Duke filed a motion to lift the existing vegetation management stay.

{¶ 11} Thereafter, on August 30, 2021, the parties filed a joint motion to set an expedited procedural schedule in this proceeding, requesting that the Commission lift the vegetation management stay filed on August 18, 2021.

{¶ 12} Complainant then filed a motion to amend the complaint on September 24, 2021. Duke filed a memorandum contra the motion to amend the complaint on October 5, 2021, to which Complainant filed a reply on October 12, 2021. Duke then filed an answer to the purported amended complaint on October 14, 2021.

{¶ 13} By Entry issued October 5, 2021, the attorney examiner adopted the parties' proposed procedural schedule, setting the evidentiary hearing to commence on December 15, 2021.

{¶ 14} Thereafter, on November 15, 2021, the parties filed a joint motion to suspend and continue the procedural schedule pending settlement.

{¶ 15} On November 24, 2021 Commission granted the joint motion to suspend and continue the procedural schedule.

{¶ 16} On December 7, 2021, the parties filed a joint motion to dismiss the complaint. In the joint motion, Respondent and Complainant state that all issues in the complaint have been resolved and request that the matter be dismissed with prejudice.

{¶ 17} The Commission finds the joint motion to be reasonable and grants the joint motion to dismiss with prejudice. Consequently, Duke's interlocutory appeal filed on October 2, 2019 is denied as moot.

### III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the joint motion to dismiss the complaint, with prejudice, be granted. It is, further,

{¶ 20} ORDERED, That Duke's interlocutory appeal filed on October 2, 2019, be denied as moot. It is, further,

{¶ 21} ORDERED, That this case be closed of record. It is, further,

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

COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis Deters

MJA/IMM/mef

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Summary: Entry granting Complainant and Respondent's joint motion to dismiss with prejudice. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio