

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
FREDERICK VONDERHAAR,

COMPLAINANT,

CASE NO. 23-1102-EL-CSS

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on February 2, 2024

{¶ 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} Respondent Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On November 30, 2023, as amended on December 34, 2023, Mr. Fredrick Vonderhaar (Mr. Vonderhaar or Complainant) filed a complaint, stating that among other things, Duke intends to conduct tree clearing that would be in noncompliance with a 2011 agreement between Duke and Complainant regarding Duke's vegetation management plan (2011 Agreement). Mr. Vonderhaar argues that during 2016 or 2017, Duke girdled and sprayed Complainant's vegetation in direct violation of the 2011 Agreement, which killed Complainant's vegetation and posed safety issues and erosion damage to his property. Mr. Vonderhaar avers that Duke's additional tree clearing planned for December 2023, i.e., removal of approximately 50 additional trees/vegetation, would aggravate the existing

erosion issue and cause significant new damage to his property. In his complaint, Complainant mainly requests that Duke comply with the 2011 Agreement.

{¶ 4} On December 5, 2023, Complainant contacted the Commission's Legal Department via phone and indicated that Duke intended to commence tree clearing and vegetation management on December 13, 2023, despite the pendency of his complaint. Complainant requested that Duke be directed not to conduct the vegetation clearing while his complaint was pending before the Commission.

{¶ 5} On December 6, 2023, the attorney examiner placed a stay on Duke's vegetation management activity on the properties addressed in Mr. Vonderhaar's complaint during the pendency of the complaint or until otherwise ordered.

{¶ 6} On December 20, 2023, Duke filed its answer, which admits and denies some of the complaint's allegations and sets forth several affirmative defenses. Specifically, Duke admits that it identified a total of 66 trees in need of vegetation management on Complainant's properties. According to Duke, it notified Complainant of its intent to perform this work on or after December 1, 2023. Further, in its answer, Duke asserts that the 48 trees identified for removal (1) were within the Company's easements; (2) were 15 feet or taller in height at the time of identification; and (3) have mature heights of more than 15 feet. Duke submits that the identified vegetation management work is consistent with its express grants of easements and with its Programs for Inspection, Maintenance, Repair, and Replacement of Distribution and Transmission Lines, Section (f), as approved on July 30, 2020, in Case No. 20-944-EL-ESS. Furthermore, Duke states that the trees identified for removal comprise "incompatible vegetation," for which the appropriate path of mitigation is removal under its approved transmission vegetation management program.

{¶ 7} On January 9, 2024, the attorney examiner scheduled this matter for settlement conference at the Commission's offices on February 6, 2024.

{¶ 8} On January 29, 2024, Mr. Vonderhaar filed a correspondence requesting the Commission to reschedule the settlement conference for a time on or after May 1, 2024. Mr. Vonderhaar also represents that he made Duke aware of his schedule constraints regarding this case and told its representatives that Duke could trim the trees in question back to 15 feet, in the meantime. Thus, Complainant requests that the settlement conference be rescheduled.

{¶ 9} At this time, the attorney examiner finds that there is sufficient good cause such that the settlement mediation scheduled for February 6, 2024, should be cancelled and continued.¹ By subsequent entry, the attorney examiner shall reschedule the settlement conference for this case.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That the settlement conference scheduled for February 6, 2024, be cancelled and continued as provided in Paragraph 9. It is, further,

{¶ 12} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Isabel M. Marcelletti

By: Isabel M. Marcelletti
Attorney Examiner

JSA/mef

¹ The attorney examiner notes that the time period from Complainant's January 29, 2024 filing to the settlement conference scheduled for February 6, 2024, does not afford Duke the entire response period pursuant to Ohio Adm.Code 4901-9-01. However, the attorney examiner shall consider any timely subsequent response by Duke notwithstanding this Entry.

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2/2/2024 1:35:37 PM

in

Case No(s). 23-1102-EL-CSS

Summary: Attorney Examiner Entry cancelling and continuing the settlement conference scheduled for February 6, 2024 electronically filed by Ms. Mary E. Fischer on behalf of Isabel M. Marcelletti, Attorney Examiner, Public Utilities Commission of Ohio.