

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Fu K. Wong)
Peony Lo,)
8397 Heritage Drive)
Cincinnati, Ohio 45249,)

Complainants,)

v.)

Duke Energy Ohio, Inc.,)

Respondent.)

Case No. 17-2170-EL-CSS

Robert Schmeling,)
12133 Paulmeadows Court)
Cincinnati, Ohio 45249,)

Complainant,)

v.)

Duke Energy Ohio, Inc.,)

Respondent.)

Case No. 17-2172-EL-CSS

Case No. 17-2180-EL-CSS

Chris Hendrickson,)
11261 Terwilligers Valley Lane)
Cincinnati, Ohio 45249,)

Complainant,)

v.)

Duke Energy Ohio, Inc.,)

Respondent.)

Case No. 17-2196-EL-CSS

Steve Kahn,)
8900 Terwilligers Trail)
Cincinnati, Ohio 45249,)
)
 Complainant,)
)
 v.)
)
 Duke Energy Ohio, Inc.,)
)
 Respondent.)
)

Case No. 17-2197-EL-CSS

John and Sally Riester,)
12025 Paulmeadows Drive)
Cincinnati, Ohio 45249,)
)
 Complainants,)
)
 v.)
)
 Duke Energy Ohio, Inc.,)
)
 Respondent.)
)

Case No. 17-2205-EL-CSS

Sandra Nunn,)
11251 Terwilligers Run)
Cincinnati, Ohio 45249,)
)
 Complainant,)
)
 v.)
)
 Duke Energy Ohio, Inc.,)
)
 Respondent.)
)

Case No. 17-2224-EL-CSS

Nicholas Calo,)
8386 Cypresswood)
Cincinnati, Ohio 45249,)
)
 Complainant,)
)
 v.)
)
 Duke Energy Ohio, Inc.,)
)
 Respondent.)
)

Case No. 17-2267-EL-CSS

Mark Thompson)
Carissa Thompson,)
8508 Whisper Woods Lane)
Cincinnati, Ohio 45249,)
)
 Complainants,)
)
 v.)
)
 Duke Energy Ohio, Inc.,)
)
 Respondent.)
)

Case No. 17-2269-EL-CSS

Mary Meno)
Michael Meno,)
8663 Birchbark Drive)
Cincinnati, Ohio 45249)
)
 Complainant,)
)
 v.)
)
 Duke Energy Ohio, Inc.)
)
 Respondent.)
)

Case No. 17-2270-EL-CSS

**MOTION TO DISMISS OF
RESPONDENT DUKE ENERGY OHIO, INC.**

Now Comes Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) and respectfully moves, pursuant to O.R.C. 4905.26, O.A.C. 4901-1-12 and 4901-9-01(C), to dismiss the Complaints filed in these proceedings by Fu K. Wong and Peony Lo, Robert Schmeling, Chris Hendricksen, Steve Kahn, John and Sally Riester, Sandra L. Nunn, Nicholas Calo, Mark and Carissa Thompson, and Mary and Michael Meno (collectively Complainants). These Complaints should be dismissed with prejudice because they fail to set forth reasonable grounds for complaint against Duke Energy Ohio, and Complainants lack standing to assert claims relating to or on behalf of other property owners.

I. INTRODUCTION

The Complainants in these ten cases are residents of a Cincinnati suburb who filed their Complaints between October 20-30, 2017. These Complainants are among a larger group of complainants who allege that, among other things, Duke Energy Ohio is clear cutting vegetation within its easements and a 100 foot right-of-way under a high-voltage transmission line that runs through Symmes Township and the City of Montgomery, Ohio. These nine Complainants filed nearly identical Complaints with the Public Utilities Commission of Ohio (the Commission) in a collective effort to assert claims against Duke Energy Ohio and to stop the Company's vegetation management practices below its high-voltage transmission line. However, unlike the facts at issue in certain other cases,¹ Duke Energy Ohio's high-voltage transmission line does not run through the property owned by the Complainants in these ten cases, nor does the Company's

¹ See, e.g., *In the Matter of the Complaint of Joseph Grossi v. Duke Energy Ohio, Inc.*, Case No. 17-2126-EL-CLL

100 foot right-of-way below that transmission line extend onto these Complainants' property. As such, Duke Energy Ohio's vegetation management practices within its 100 foot right-of-way below that high-voltage transmission line does not directly affect any real property owned by the Complainants in these ten cases. Accordingly, the Complainants in these ten cases lack both standing and reasonable grounds to assert any claims against Duke Energy Ohio in connection with the Company's vegetation management practices within its 100 foot right-of-way below that high-voltage transmission line.² For these reasons, Complainants' Complaints should be dismissed.

II. FACTUAL BACKGROUND

Duke Energy Ohio regularly trims and removes vegetation below and near its transmission and distribution lines as part of the Company's ongoing vegetation management program. These services are necessary to assure the safe and reliable operation of the Company's transmission and distribution grid. In order to perform those services, Duke Energy Ohio has easements and rights-of-way on property owned by third-parties.

In these ten cases, there is only one high-voltage transmission line at issue. Duke Energy Ohio owns and operates high-voltage transmission lines that run through portions of Symmes Township and Montgomery, Ohio.³ These transmission lines are known as Transmission Circuits 3881, 5483, 5487. Duke Energy Ohio has valid easements and a 100-foot right-of-way below Transmission Circuits 3881, 5483, 5487 with respect to all property through which those transmission lines run. As confirmed in the attached affidavit of Duke Energy Ohio's Vegetation

² Although these cases have not been consolidated, the Complaints are nearly identical and the Complainants all share the same status, namely that Duke Energy Ohio's high-voltage transmission line and the 100 foot right-of-way below that line do not run through their property. Therefore, for efficiency purposes, Duke Energy Ohio is filing this motion to dismiss in all of the cases captioned above.

³ The facts regarding Duke Energy Ohio's transmission line at issue in these ten complaint cases are set forth in the attached Affidavit of Bryce Burton, a Vegetation Management (VM) Specialist I.

Management (VM) Specialist I, Transmission Circuits 3881, 5483, 5487 do not run through any of the nine properties at issue in these complaint proceedings. In other words, because Duke Energy Ohio does not have an easement or 100-foot right-of-way below Transmission Circuits 3881, 5483, 5487 on any of the properties at issue in these ten complaint proceedings, the Company does not need or intend to perform vegetation management below Transmission Circuits 3881, 5483, 5487 on any of these properties.

III. LEGAL ARGUMENT

Pursuant to O.R.C. 4905.26, a complainant is required to state reasonable grounds for a complaint before a case may go forward.⁴ In the absence of a clear statement of the mandatory reasonable grounds, a complaint should be dismissed.⁵

In these ten cases, the Complainants are not complaining about actions taken by Duke Energy Ohio with respect to or on their property. Instead, Duke Energy Ohio is conducting regular vegetation management along and below Transmission Circuits 3881, 5483, 5487 in Symmes Township and Montgomery, Ohio. Those transmission lines do not run through these nine Complainants' property, meaning these Complainants do not have standing to assert any claims relating to Duke Energy Ohio's vegetation management services below Transmission Circuits 3881, 5483, 5487. These Complainants essentially are complaining about service being done by Duke Energy Ohio at other property owners' homes because the Company does not have a right-of-way or easement on these nine Complainants' property with respect to Transmission Circuits 3881, 5483, 5487 at issue in these cases.

⁴ See, e.g., *Ohio Utilities Co. v. Public Utilities Com.*, 58 Ohio St. 2d 153, 156-157 (1979)

⁵ See, e.g., *In the Matter of the Complaint of Diana Williams v. Ohio Edison Co.*, Case No. 08-1230-EL-CSS, 2009 Ohio PUC LEXIS 918, *11 (holding that a complaint must stand on its own and cannot proceed forward without a clear statement of reasonable grounds); *In the Matter of the Complaint of Richard Powell, d.b.a. Scioto Lumber Company, Complainant, v. The Cincinnati Gas & Electric Company*, 88-916-GE-CSS, 1988 Ohio PUC LEXIS 674, *4 (dismissing complaint because, among other reasons, it does not involve a service rendered to the complainant or any regulation affecting the complainant)

Like the complainant in *Powell*, supra, the complaints in these ten cases do not involve any service rendered by Duke Energy Ohio to these Complainants or any other service or regulation applicable to these Complainants. Therefore, the Commission should dismiss these ten complaints with prejudice because they do not set forth reasonable grounds for complaint against Duke Energy Ohio.

III. CONCLUSION

For all of the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission grant its motion to dismiss with prejudice.

Respectfully submitted,

/s/ Elizabeth H. Watts

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 9th day of November, 2017, by electronic transmission or U.S. mail, postage prepaid, upon the persons listed below.

/s/ Elizabeth H. Watts
Elizabeth H. Watts

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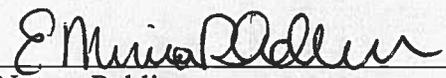
- c. Chris Hendrickson, 11261 Terwilligers Valley Lane, Cincinnati, OH 45249;
 - d. Steve Kahn, 8900 Terwilligers Trail, Cincinnati, OH 45249;
 - e. John and Sally Riester, 12025 Paulmeadows Drive, Cincinnati, OH 45249;
 - f. Sandra Nunn, 11251 Terwilligers Run, Cincinnati, OH 45249,
 - g. Nicholas Calo, 8386 Cypresswood, Cincinnati, OH 45249; and
 - h. Mark and Carissa Thompson, 8508 Whisper Woods Lane, Cincinnati, OH 45249;
 - i. Mary and Michael Meno, 8663 Birchbark Drive, Cincinnati, OH 45249
6. Duke Energy Ohio not have an easement or 100-foot right-of-way below Transmission Circuits 3881, 5483, 5487 on any of the properties identified in paragraph 5 above.
7. Duke Energy Ohio does not need or intend to perform vegetation management below Transmission Circuits 3881, 5483, 5487 because those transmission lines do not run through any of the properties listed in paragraph 5 above.

FURTHER AFFIANT SAYETH NAUGHT.



Bryce Burton

Sworn to and subscribed to before me
this 9th day of November, 2017:



Notary Public
My commission expires: July 8, 2022



E. MINNA ROLFES-ADKINS
Notary Public, State of Ohio
My Commission Expires
July 8, 2022