

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

Kim Wiethorn, Karen and Majeb Dabdoub, Jeff )  
and Linda Sims, Fred Vonderhaar, Donald and )  
Nancy Jacob, James Johnson, Majid Qureshi, Keith )  
Donovan, Julie Reynolds, John Lu, Robert )  
Schneider, Amanda Sachs, John Hasselbeck, )  
Lawrence Hug, Dennis Mitman and Susan Shorr, )  
Nicole Hiciu, Jason Mayhall, James and Shelley )  
Hoyer, Theresa Reis, Gary Balser, David Siff, )  
Carrie and Dan Gause, Phyllis Wahl, Susan Falick, )  
Jerry and Lou Ullrich, Dan and Vicki Kemmeter, )  
Kim Carrier, Anthony and Mary Beth Andrews, )  
Dan and Michele Reece, Deloris Reese, Darrelle )  
Reese, Richelle Schimpf, Julie Carnes, Todd and )  
Michelle Bacon, Patricia Lohse, Dennis Baker, )  
Jenny and Charlie Gast, Robb and Kathleen Olsen, )  
Nancy Steinbrink, John and Barbara Collins, )  
Jonathan Mackey, Valerie Van Iden, and the )  
Symmes Township Trustees, )  
)  
Complainants. )  
)  
v. )  
)  
Duke Energy Ohio, Inc., )  
)  
Respondent. )

Case No.17-2344-EL-CSS

---

**REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS OF  
RESPONDENT DUKE ENERGY OHIO, INC.**

---

**I. INTRODUCTION**

As set forth in the Motion to Dismiss filed by Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company), the Company owns and operates high-voltage transmission lines that run

through portions of Symmes Township, Loveland, Ohio and Montgomery, Ohio.<sup>1</sup> These transmission lines are known as Transmission Circuits 3881, 5483, 5487. In their Amended Complaint, Complainants take issue with the Company's vegetation management policies and practices being done on the Company's easements and within a 100-foot right-of-way below Transmission Circuits 3881, 5483, 5487. No other transmission circuits are at issue in the Amended Complaint.

However, as confirmed in the affidavit of Duke Energy Ohio's Vegetation Management (VM) Specialist I, Transmission Circuits 3881, 5483, 5487 do **not** run through the properties owned by Complainants Amanda Sachs, David Siff, Carrie Gause, Dan Gause, Susan Falick, Jerry Ullrich, Lou Ullrich, Darrelle Reese, Julie Carnes, Todd Bacon, Michelle Bacon, Patricia Lohse, Robb Olson, Kathleen Olson, John Collins, Barbara Collins, Valerie Van Iden, Joe Zukor, and the Symmes Township Trustees. Therefore, Duke Energy Ohio does not have an easement or 100-foot right-of-way below Transmission Circuits 3881, 5483, 5487 on the properties owned by those Complainants, meaning the Company does not need or intend to perform vegetation management below Transmission Circuits 3881, 5483, 5487 on their properties.

Contrary to Complainants' argument in their memorandum contra, Complainants may not assert claims for alleged injuries sustained by other property owners in the community or elsewhere. Instead, because O.R.C. 4905.26 requires a complainant to state reasonable grounds for a complaint before a case may go forward, a complainant necessarily must have standing to bring its complaint and state those reasonable grounds.

---

<sup>1</sup> The facts regarding Duke Energy Ohio's transmission line at issue in this case are set forth in the Affidavit of Bryce Burton, a Vegetation Management (VM) Specialist I attached to the Motion to Dismiss.

## II. LEGAL ARGUMENT

Under Complainants' theory, any customer of a public utility may file and go forward on a complaint against a public utility for a service-related issue regardless of whether that customer is affected by the service. In other words, Complainants incorrectly assert that the mere fact that Complainants are *customers* of Duke Energy Ohio entitles them to go forward on a complaint against the Company for any service being performed by the Company, regardless of whether that service affects them, their property, their gas and electric service, monthly bills, etc. Complainants' theory is legally flawed, and not supported by law or common sense.

The Commission is well aware that O.R.C. 4905.26 requires a complainant to state reasonable grounds for a complaint before a case may go forward.<sup>2</sup> And, in the absence of a clear statement of the mandatory reasonable grounds, a complaint must be dismissed.<sup>3</sup> Duke Energy Ohio noted both standards in its Motion to Dismiss.

In response, Complainants cite to various allegations in the Amended Complaint in the hopes of salvaging their ability to go forward with claims and issues wholly unrelated to them.<sup>4</sup> Notably, Complainants do not dispute the facts set forth in the affidavit of Bryce Burton attached to the Company's Motion to Dismiss that Transmission Circuits 3881, 5483, 5487 do not run through their property. Instead, the individual Complainants stress that their status as customers of Duke Energy Ohio trumps all other factors. And the Symmes Township Trustees allege that some other transmission circuit owned by Duke Energy Ohio transverses a corner of the township's real property, thereby entitling the Symmes Township Trustees to proceed on their

---

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

<sup>3</sup> 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)

<sup>4</sup> Memorandum Contra at 2-3

Complaint even though Duke Energy Ohio currently is not conducting vegetation management below those other transmission circuits.

Neither those allegations nor the case law cited by Complainants enable their Amended Complaint to survive Duke Energy Ohio's Motion to Dismiss. The three cases cited by Complainants<sup>5</sup> do not involve motions to dismiss, standards governing such motions, or the need to have standing to assert a claim. Nor do Complainants' purported legal authorities provide a substantive analysis about whether a public utility's customer may state a claim for relief with respect to service being conducted on another customer's property.

Complainants' efforts to distinguish the Company's legal authorities are likewise unpersuasive. Much like the complainant in *Powell, supra*, none of these Complainants have concerns about a service rendered by Duke Energy Ohio *to them*—as opposed to some unidentified third party—or that the Company failed to comply with a regulation applicable to them. Instead, they essentially seek an advisory opinion from the Commission regarding Duke Energy Ohio's vegetation management practices and plans even though those plans, as approved by the Commission, do not impact these Complainants or their property.

Whether a complaint is filed before the Commission or in court, a party must have standing to be entitled to have a tribunal decide the merits of the dispute.<sup>6</sup> In order to have standing, “a litigant must assert its own rights, not the claims of third parties.”<sup>7</sup> Here, the Complainants at issue in Duke Energy Ohio's Motion to Dismiss all but concede that they lack standing by readily admitting that the Company's transmission circuits at issue do not cross their property and, therefore, the Company is not conducting vegetation management on their

---

<sup>5</sup> Memorandum Contra at fn 13

<sup>6</sup> See, e.g., *Util. Serv. Partners v. PUC* (2009), 2009-Ohio-6764 ¶49, 124 Ohio St.3d 284, citing *N. Canton v. Canton*, 114 Ohio St.3d 253, 2007-Ohio-4005 ¶11.

<sup>7</sup> *Id.*

property. Therefore, the Commission should dismiss the Amended Complaint with prejudice as to these Complainants because the Amended Complaint does not set forth reasonable grounds for their complaint against Duke Energy Ohio.

### **III. CONCLUSION**

For all of these reasons, Duke Energy Ohio respectfully requests that the Commission grant its motion and dismiss the claims of Amanda Sachs, David Siff, Carrie Gause, Dan Gause, Susan Falick, Jerry Ullrich, Lou Ullrich, Darrelle Reese, Julie Carnes, Todd Bacon, Michelle Bacon, Patricia Lohse, Robb Olson, Kathleen Olson, John Collins, Barbara Collins, Valerie Van Iden, Joe Zukor, and the Symmes Township Trustees from the Amended Complaint with prejudice.

Respectfully submitted,

/s/ Elizabeth H. Watts

Amy B. Spiller (0047277)  
Deputy General Counsel  
Elizabeth H. Watts (0031092)  
Associate General Counsel  
Duke Energy Business Services, Inc.  
139 Fourth Street, 1303-Main  
P. O. Box 960  
Cincinnati, Ohio 45202-0960  
(513) 287-4359 (telephone)  
(513) 287-4385 (facsimile)  
Amy.Spiller@duke-energy.com  
Elizabeth.Watts@duke-energy.com

Robert A. McMahon (0064319)  
Eberly McMahon Copetas LLC  
2321 Kemper Lane, Suite 100  
Cincinnati, Ohio 45206  
(513) 533-3441 (telephone)  
(513) 533-3554 (facsimile)  
bmcMahon@emclawyers.com

Attorneys for Respondent Duke Energy Ohio, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 28<sup>th</sup> day of December, 2017, by electronic transmission or U.S. mail, postage prepaid, upon the persons listed below.

/s/ Elizabeth H. Watts  
Elizabeth H. Watts

Kimberly W. Bojko, Esq.  
Stephen E. Dutton, Esq.  
Brian Dressel, Esq.  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[Dutton@carpenterlipps.com](mailto:Dutton@carpenterlipps.com)  
[dressel@carpenterlipps.com](mailto:dressel@carpenterlipps.com)