

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|-------------------------------|---|-------------------------|
| Marc Wahlquist |) | |
| 9429 E. Kemper |) | |
| Loveland, Ohio 45140 |) | |
| |) | |
| Complainant |) | Case No. 17-2316-EL-CSS |
| |) | |
| v. |) | |
| |) | |
| |) | |
| Duke Energy Ohio, Inc. |) | |
| |) | |
| Respondent |) | |

**MEMORANDUM CONTRA THE EMERGENCY STOP REQUEST OF
COMPLAINANT, MARC WAHLQUIST**

I. INTRODUCTION

Complainant Marc Wahlquist submitted his complaint on November 7, 2017. Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) timely responded with an answer on November 22, 2017. Thereafter, Complainant submitted a request for an emergency “stop cut” order for alleged “clear cutting” of trees within a 100 foot easement that Complainant readily admits exists on his property. Duke Energy Ohio is responding to the request despite the fact that it was not served on the Company, nor does the request provide any factual or legal basis that would provide grounds for the Commission to grant such a request. The request fails to articulate a credible basis for the request set forth therein and accordingly should be denied.

II. DISCUSSION

Complainant Marc Wahlquist (Complainant) has requested an “emergency stop cut order” for which there is no legal precedent. This request was filed with the Commission, but not served on Duke Energy Ohio, as required by O.A.C 4901-1-05(A). Further exacerbating the legal infirmity and lack of foundation for the request, Complainant sets forth no facts or information upon which the Commission could rely in granting such a request.

It is well settled in Ohio that the Commission is a creature of the General Assembly and may exercise no jurisdiction or powers except as expressly conferred by statute.¹ As the Ohio Supreme Court held in *Penn Central*, “The General Assembly has granted the power of injunctive relief solely to the courts in Ohio. It has conferred no such right upon the Public Utilities Commission, and the commission, in exercising such power, has exceeded its statutory jurisdiction.”²

The Complainant is seeking a remedy here that exceeds the Commission’s statutory authority. The Commission has no equitable authority to grant this request and order Duke Energy Ohio not to “clear cut” any trees within the 100 feet utility easement such an order would constitute an unlawful injunction.

Moreover, even if the Commission had the power to grant injunctive relief, which *Penn Central* clearly rejects, granting such injunctive relief without due process to support a

¹ See, *Penn Cent. Transp. Co. v. Public Utilities Com.*, 35 Ohio St. 2d 97, 99, 298 N.E.2d 587, 589 (1973), paragraph 1 of the syllabus, citing *Toledo v. Pub. Util. Comm.* (1939), 135 Ohio St. 57; *Akron & Barberton Belt Rd. Co. v. Pub. Util. Comm.* (1956), 165 Ohio St. 316; *Baltimore & Ohio Rd. Co. v. Pub. Util. Comm.* (1968), 16 Ohio St. 2d 60; *Ohio Bus Line v. Pub. Util. Comm.* (1972), 29 Ohio St. 2d 222; see also, *Ohio Mfrs’ Asso. v. Public Utilities Com.*, 46 Ohio St. 2d 214, 217 (1976) (“the commission possesses no power or authority except that conferred and vested in it by statute”); *In the Matter of the Complaint of Harry G. Dworkin Complainant, v. East Ohio Gas Co.*, Case No. 88-1716-GA-CSS, 1989 Ohio PUC LEXIS 230, *2 (“The Commission lacks jurisdiction to grant injunctive relief”); *In the Matter of the Complaint of Richard Powell, d.b.a. Scioto Lumber Company, Complainant, v. The Cincinnati Gas & Electric Co.*, Case No. 88-916-GE-CSS, 1988 Ohio PUC LEXIS 674, *4 (“As also correctly pointed out by CG&E, the Commission is without jurisdiction to award the type or relief [injunctive] sought by Complainant”).

² *Id.* at 101

conclusion that injunctive relief is necessary or appropriate to preserve the status quo is unlawful. After all, Complainant readily admits in his Complaint that Duke Energy Ohio has an easement and right-of-way on his property.

III. CONCLUSION

Duke Energy Ohio requests that, upon review, the Commission deny Complainant's request for an "emergency stop cut order" to stop the Company's lawful vegetation management policies and procedures within its acknowledged easement and right-of-way on Complainant's property.

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 (e-mail)
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)
bcmahon@emclawyers.com (e-mail)

Attorneys for Respondent Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Duke Energy Ohio, Inc., was served via regular US Mail postage prepaid, or by electronic mail service, this 27th day of November 2017, upon the following:

Marc Wahlquist
9429 E. Kemper
Loveland, Ohio 45140

/s/ Elizabeth H. Watts