

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Amber Francosky</b>	)	
<b>Chris Francosky</b>	)	
9425 East Kemper Road	)	
Loveland, Ohio 45140	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 17-2262-EL-CSS
	)	
<b>Duke Energy Ohio, Inc.</b>	)	
	)	
Respondent	)	

---

**ANSWER OF DUKE ENERGY OHIO, INC.**

---

For its Answer to the Complaint of Amber Francosky and Chris Francosky (Complainants), Duke Energy Ohio, Inc., (Duke Energy Ohio or Respondent) states as follows:

1. The Complaint is not in a form allowing for specific admission or denial as to individual allegations. Accordingly, Duke Energy Ohio generally denies the allegations set out in the Complaint.

2. In response to the allegations contained in the second paragraph of the Complaint, Duke Energy Ohio denies that it is negatively impacting property values in Symmes Township and the city of Montgomery. Duke Energy Ohio admits that it is exercising its lawful right, pursuant to grants of easement, to engage in vegetation management activities that include, but are not limited to, removing vegetation within its easement and right-of-way. Such removal is necessary to enable the continued safe and reliable operation of high-voltage power lines used in

the provision of service to Duke Energy Ohio's customers, including those located in Symmes Township and the city of Montgomery. All remaining allegations of this paragraph are denied.

3. Duke Energy Ohio denies the allegations contained in the third paragraph of the Complaint. Answering further, Duke Energy Ohio states that its actions are consistent with its express grants of easement and with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016. All remaining allegations of this paragraph are denied.

4. In response to the allegations contained in the fourth paragraph of the Complaint, Duke Energy Ohio submits that statements regarding requested relief are not allegations to which a response is required. Duke Energy Ohio further states that Complainants lack standing to assert claims on behalf of other residents of Symmes Township and the City of Montgomery. However, to the extent a response is required, Duke Energy Ohio denies that it is using toxic herbicides on Complainants' property. Answering further, Duke Energy Ohio states that its actions are necessary to enable the continued safe and reliable operation of high-voltage power lines used in the provision of service to Duke Energy Ohio's customers, including those located in Symmes Township and the city of Montgomery and are consistent with its express grants of easement and with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016. Duke Energy Ohio further states that the Public Utilities Commission of Ohio (Commission) is without jurisdiction to issue equitable relief, including the relief requested herein. All remaining allegations of this paragraph are denied.

5. With regard to the documents attached to the Complaint, Duke Energy Ohio states the easement provided by Complainants is not relevant to their property or the lawful actions

Duke Energy Ohio intends to undertake on Complainants' property so as to enable the continued safe and reliable operation of its high-voltage transmission system. Answering further, Duke Energy Ohio states that the easement provides it with the unambiguous right to remove trees and other obstructions in the easement and right-of-way. However, with regard to certain statements therein, Duke Energy Ohio states that the terms of its lawfully obtained easements speak for themselves and further denies that its request, as docketed under Case No. 16-915-EL-ESS, has not been approved. Said request was approved pursuant to O.A.C. 4901:1-10-27(F)(2). Duke Energy Ohio further states that it has engaged in extensive community outreach, interacting with individual property owners on whose property the Respondent possesses easement rights and will be working. All remaining allegations, as inferred or implied by the documents attached to the Complaint, are denied.

6. With regard to the allegation that a stop order be issued, Duke Energy Ohio states that the Commission is without jurisdiction to resolve issues of equity. Answering further, Duke Energy Ohio states that any vegetation management activities in which it may engage are permissible under express grants of easement and consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016. All remaining allegations of this paragraph are denied.

7. Statements regarding the lack of objection to trimming trees are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio is without sufficient knowledge as to the truth of the opinions of complainants and thus denies the same. Answering further, Duke Energy Ohio states that its practices are permissible under express grants of easement and consistent with its Programs for Inspection, Maintenance, Repair

and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016.

8. Statements regarding the date on which activities may commence are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio states that the Commission is without jurisdiction to resolve issues of equity, as inferred by such statement. Answering further, Duke Energy Ohio states that its practices are permissible under express grants of easement and consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016 and, as such, it cannot be deprived of its right to engage in permissible and lawful activities.

9. Duke Energy Ohio denies each and every allegation of fact and conclusion of law not expressly admitted herein.

#### **AFFIRMATIVE DEFENSES**

1. Duke Energy Ohio asserts as an affirmative defense the easement attached to the Complaint does not concern the property owned by Complainants. Such easement, therefore, cannot support the Complaint. Answering further, such easement expressly confirms the rights of Duke Energy Ohio to engage in vegetation management activities with regard to the property on which such easement exists.

2. The Complainants do not assert any allegations of fact that would give rise to a cognizable claim against Duke Energy Ohio.

3. Duke Energy Ohio asserts as an affirmative defense that pursuant to R.C. 4905.26 and O.A.C. 4901-9-01-(B)(3), Complainants have failed to set forth reasonable grounds for complaint.

4. Duke Energy Ohio asserts as an affirmative defense that Complainants have not stated any request for relief that can be granted by this Commission.

5. Duke Energy Ohio states as an affirmative defense that Complainants lack standing to assert any claims against the Respondent in respect of property for which they are not the lawful property owners of record.

6. Duke Energy Ohio asserts that to the extent Complainants are seeking monetary damages, such relief is beyond the scope of the Commission's jurisdiction.

7. Duke Energy Ohio asserts that to the extent the Complainants are seeking equitable relief, such relief is beyond the scope of the Commission's jurisdiction.

8. Duke Energy Ohio asserts that it has superior property rights, as confirmed by lawful grants of easement.

9. Duke Energy Ohio reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

### **CONCLUSION**

WHEREFORE, having fully answered, Duke Energy Ohio respectfully requests that the Commission dismiss the Complaint of Amber Francosky and Chris Francosky for failure to set forth reasonable grounds for the Complaint and to deny Complainants' request for relief, if any.

Respectfully submitted,

/s/ Elizabeth H. Watts

Amy B. Spiller (0047277) (Counsel of Record)  
Deputy General Counsel  
Elizabeth H. Watts (0031092)  
Associate General Counsel  
Duke Energy Business Services LLC  
139 East Fourth Street, 1303-Main  
P.O. Box 960  
Cincinnati, Ohio 45201-0960  
(513) 419-1810 (telephone)  
(513) 419-1846 (fax)  
[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)  
[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)

/s/ Robert A. McMahon

Robert A. McMahon (0064319)  
Eberly McMahon Copetas LLC  
2321 Kemper Lane, Suite 100  
Cincinnati, Ohio 45206  
(513) 533-3441 (telephone)  
(513) 533-3554 (fax)  
[bcmahon@emclawyers.com](mailto: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 16<sup>th</sup> day of November 2017, upon the following:

Amber Francosky  
Chris Francosky  
9425 East Kemper Road  
Loveland, OH 45140

/s/ Elizabeth H. Watts

Elizabeth H. Watts