

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>John D. Gump</b>	)	
12026 Paulmeadows Drive	)	
Cincinnati, Ohio 45249	)	
	)	
Complainant	)	Case No. 17-2192-EL-CSS
	)	
v.	)	
	)	
	)	
<b>Duke Energy Ohio, Inc.</b>	)	
	)	
Respondent	)	

---

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

---

For its Answer to the Complaint of John D. Gump (Complainant), 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 first paragraph of the Complaint concerning the allegation that a stop order be issued, Duke Energy Ohio states that the Public Utilities Commission of Ohio (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.

3. In response to the allegations contained in the second paragraph of the Complaint, 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 Complainant 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.

4. In response to the allegations contained in the third paragraph of the Complaint, 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.

5. In response to the allegations contained in the fourth paragraph of the Complaint, Duke Energy Ohio denies that it is negatively impacting the value of Complainant's property. Further answering, Duke Energy Ohio states 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 the city of Cincinnati. All remaining allegations of this paragraph are denied.

6. Duke Energy Ohio denies the allegations contained in the fifth 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.

7. The allegations in the sixth paragraph of the Complaint regarding the filing of an informal complaint are 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 this paragraph of the Complaint and states that the Company otherwise has responded to all allegations of the formal Complaint filed by Complainant.

8. 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 Complainant. 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 Complainant does 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), Complainant has failed to set forth reasonable grounds for complaint.

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

5. Duke Energy Ohio states as an affirmative defense that Complainant lacks standing to assert any claims against the Company in respect of property for which he is not the lawful property owner of record.

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

7. Duke Energy Ohio asserts that, to the extent the Complainant is 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 John D. Gump for failure to set forth reasonable grounds for the Complaint and to deny Complainant's 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  
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)  
bmcMahon@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 13<sup>th</sup> day of November 2017, upon the following:

John D. Gump  
12026 Paulmeadows Drive  
Cincinnati, Ohio 45249  
Jdgump999@gmail.com

/s/ Elizabeth H. Watts

Elizabeth H. Watts