

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Elizabeth Vorholt</b>	)	
9501 Bainsbrook Ct.	)	
Cincinnati, OH 45249	)	
	)	
Complainant,	)	Case No. 17-2323-EL-CSS
	)	
v.	)	
	)	
<b>Duke Energy Ohio, Inc.</b>	)	
	)	
Respondent.	)	

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

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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 Complaint filed in these proceedings by Elizabeth Vorholt (Complainant). This Complaint should be dismissed with prejudice because it fails to set forth reasonable grounds for complaint against Duke Energy Ohio, and Complainant lacks standing to assert claims relating to or on behalf of other property owners. A memorandum of law in support of this motion is attached.

Respectfully submitted,

/s/ Elizabeth H. Watts

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

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## MEMORANDUM OF LAW

### **I. INTRODUCTION**

The Complainant is a resident of a Cincinnati suburb who filed her Complaint on November 8, 2017. Complainant alleges in her Complaint that she is opposed to Duke Energy Ohio's vegetation management plan to cut 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. However, the Company's high-voltage transmission line does not run through the property owned by the Complainant in this case, nor does the Company's 100 foot right-of-way below that transmission line extend onto this Complainant's 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 Complainant. Accordingly, the Complainant lacks 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. For these reasons, Complainant's Complaint 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.

Duke Energy Ohio owns and operates high-voltage transmission lines that run through portions of Symmes Township and Montgomery, Ohio.<sup>1</sup> 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 Management (VM) Specialist I, Transmission Circuits 3881, 5483, 5487 does not run through property at issue in this case. 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 the property at issue in this case, the Company does not need or intend to perform vegetation management below Transmission Circuits 3881, 5483, 5487 on this property.

### **III. LEGAL ARGUMENT**

O.R.C. 4905.26 requires a complainant to state reasonable grounds for a complaint before a case may go forward.<sup>2</sup> In the absence of a clear statement of the mandatory reasonable grounds, a complaint should be dismissed.<sup>3</sup>

In this case, the Complainant is not complaining about actions taken by Duke Energy Ohio with respect to or on her 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 this Complainant's property, meaning this Complainant does not have standing to assert any claims

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

<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)

relating to Duke Energy Ohio's vegetation management services below Transmission Circuits 3881, 5483, 5487. This Complainant essentially is 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 this Complainant's property with respect to Transmission Circuits 3881, 5483, 5487 at issue in these cases.

Like the complainant in *Powell*, supra, the complaint in this case does not involve any service rendered by Duke Energy Ohio to this Complainant or any other service or regulation applicable to this Complainant. Therefore, the Commission should dismiss this complaint with prejudice because it does not set forth reasonable grounds for complaint against Duke Energy Ohio.

#### **IV. 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

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

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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 29th day of November, 2017, by electronic transmission or U.S. mail, postage prepaid, upon the persons listed below.

Elizabeth Vorholt  
9501 Bainsbrook Ct.  
Cincinnati, OH 45249

/s/ Elizabeth H. Watts  
Elizabeth H. Watts

**AFFIDAVIT OF BRYCE BURTON**

STATE OF OHIO )  
 ) SS  
COUNTY OF HAMILTON )

Bryce Burton, being first duly sworn and under oath, deposes and states as follows:

1. I am employed by Duke Energy Business Services. Since April 2016, I have worked as a Vegetation Management (VM) Specialist I for various Duke Energy affiliates in the Midwest, Carolinas and Florida. I have personal knowledge of all facts set forth in this affidavit.

2. As a Vegetation Management (VM) Specialist I, I am responsible along with my colleagues for planning, implementing, documenting, and inspecting Duke Energy Ohio, Inc.'s (the Company) vegetation management program along its transmission and distribution lines. That program includes assessing, planning, re-clearing, documenting, and inspecting the transmission or distribution rights-of-way of vegetation to assure the safe and reliable operation of the transmission or distribution grid.

3. Duke Energy Ohio owns and operates a high-voltage transmission line that runs through portions of Symmes Township and Montgomery, Ohio. These transmission lines are known as Transmission Circuits 3881, 5483, 5487.

4. 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.

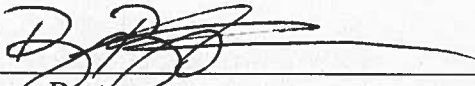
5. Transmission Circuits 3881, 5483, 5487 do not run through the property owned by Complainant Elizabeth Vorholt at 9501 Bainsbrook Ct., Cincinnati, OH 45249.

6. Duke Energy Ohio not have an easement or 100-foot right-of-way below Transmission Circuits 3881, 5483, 5487 on Complainant's property.

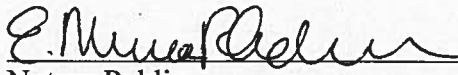


7. Duke Energy Ohio does not need or intend to perform vegetation management below Transmission Circuits 3881, 5483, 5487 on Complainant's property because those transmission lines do not run through on Complainant's property.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Bryce Burton

Sworn to and subscribed to before me  
this 16<sup>th</sup> 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