

**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, )

Case No.17-2344-EL-CSS

Complainants. )

v. )

Duke Energy Ohio, Inc., )

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 claims of the following Complainants in these proceedings: 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 (collectively Complainants). The claims of these Complainants should be dismissed with prejudice because they fail to set forth reasonable grounds for complaint against Duke Energy Ohio, and Complainants lack 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

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**Attorneys for Respondent Duke Energy Ohio, Inc.**

## **MEMORANDUM OF LAW**

### **I. INTRODUCTION**

The Complainants in this case are residents of a Cincinnati suburb who filed their Complaint on November 14, 2017, or otherwise were joined through the filing of the Amended Complaint, as authorized by the Attorney Examiner's November 28, 2017, Entry. These Complainants are among a larger group of complainants who allege that, among other things, Duke Energy Ohio is clear cutting 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, unlike the claims asserted by other Complainants in this case, Duke Energy Ohio's high-voltage transmission line does not run through the property owned by the following 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. Nor does the Company's 100 foot right-of-way below that transmission line extend onto these Complainants' properties. As such, Duke Energy Ohio's vegetation management practices within its 100 foot right-of-way below that high-voltage transmission line do not directly affect any real property owned by these Complainants. Accordingly, these Complainants lack 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, the claims of these particular Complainants should be dismissed from the Amended Complaint.

## **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, Loveland, Ohio 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 do not run through the properties owned by 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 at issue in these complaint proceedings. 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 properties owned by these Complainants, the Company does not need or intend to perform vegetation management below Transmission Circuits 3881, 5483, 5487 on these properties.

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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.

### 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>

The Complainants at issue in this motion are not complaining about actions taken by Duke Energy Ohio with respect to or on their property. Instead, Duke Energy Ohio is conducting regular vegetation management along and below Transmission Circuits 3881, 5483, 5487 in Symmes Township, Loveland, Ohio and Montgomery, Ohio. Those transmission lines do not run through these Complainants' property, meaning these Complainants do not have standing to assert any claims relating to Duke Energy Ohio's vegetation management services below Transmission Circuits 3881, 5483, 5487. These Complainants essentially are 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 these Complainants' property with respect to Transmission Circuits 3881, 5483, 5487 at issue in these cases.

Like the complainant in *Powell*, the claims of these Complainants in this case do not involve any service rendered by Duke Energy Ohio to these Complainants or any other service or regulation applicable to these Complainants. 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.

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<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)

#### IV. CONCLUSION

For all of the reasons set forth above, 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

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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 4<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.  
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**Counsel for Complainants**

**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.

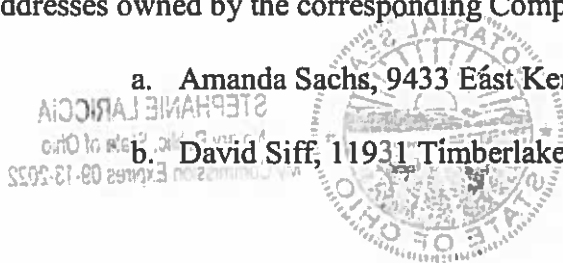
3. Duke Energy Ohio owns and operates a high-voltage transmission line that runs through portions of Symmes Township, Loveland, Ohio, and Montgomery, Ohio. These transmission lines are known as Transmission Circuits 3881, 5483, 5487.

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 following addresses owned by the corresponding Complainants identified with each property address:

a. Amanda Sachs, 9433 East Kemper Road, Loveland, OH 45140;

b. David Siff, 11931 Timberlake Drive, Cincinnati, OH 45249;





- c. Symmes Township Trustees, 10468 Blong Road, Cincinnati, OH 45249;
- d. Carrie and Dan Gause, 8362 Cypresswood Drive, Cincinnati, OH 45249;
- e. Susan Falick, 11999 Timberlake Drive, Cincinnati, OH 45249;
- f. Jerry and Lou Ullrich, 9 Coventry Court, Loveland, OH 45140;
- g. Darrelle Reese, 10240 Hightower Court, Montgomery, OH 45249;
- h. Julie Carnes, 11988 Timberlake Drive, Cincinnati, OH 45249;
- i. Todd and Michelle Bacon, 12040 Timberlake Drive, Cincinnati, OH 45249;
- j. Patricia Lohse, 12026 Timberlake Drive, Cincinnati, OH 45249;
- k. Robb and Kathleen Olson, 12138 Heathertree Court, Cincinnati, OH 45249;
- l. John and Barbara Collins, 12012 Timberlake Drive, Cincinnati, OH 45249;
- m. Valerie Van Iden, 11919 Paulmeadows Drive, Cincinnati, OH 45249;
- n. Joe Zukor, 11578 Plumhill Drive, Cincinnati, OH 45249.

6. Duke Energy Ohio not have an easement or 100-foot right-of-way below Transmission Circuits 3881, 5483, 5487 on any of the properties identified in paragraph 5 above.

7. Duke Energy Ohio does not need or intend to perform vegetation management below Transmission Circuits 3881, 5483, 5487 because those transmission lines do not run through any of the properties listed in paragraph 5 above.

FURTHER AFFIANT SAYETH NAUGHT.

  
Bryce Barton

Sworn to and subscribed to before me  
this 30<sup>th</sup> day of November, 2017:

  
Notary Public

My commission expires: 9-13-2022



STEPHANIE LARICCIA  
Notary Public, State of Ohio  
My Commission Expires 09-13-2022