

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**JACOB SCHAD, JR.**

**Complainant,**

**v.**

**OHIO EDISON COMPANY,**

**Respondent.**

**Case No. 10-790-EL-CSS**

**ANSWER OF RESPONDENT OHIO EDISON COMPANY**

Respondent Ohio Edison Company ("Ohio Edison") for its Answer to the Complaint of Jacob Schad, Jr. ("Complainant"):

1. With respect to the allegations contained in the first unnumbered paragraph of the Complaint:

- a. Admits that it is a public utility, as defined by R.C. 4905.03(A)(4), and is duly organized and existing under the laws of the State of Ohio.
- b. Admits that on or about December 28, 2007, a contractor working on behalf of Ohio Edison removed from Complainant's property approximately 90 trees, including hemlocks, a juniper and other brush. Ohio Edison states that the vegetation in question, which had the potential to interfere with or endanger the 69 kilovolt ("kV") transmission line running above it, was removed pursuant to Ohio Edison's easement over Complainant's property and Ohio Edison's utility vegetation management program. Ohio Edison denies that it maintains a "clear cut" policy or that

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removal of such vegetation was done in accordance with a "clear cut" policy.

- c. Admits that it has a valid easement across Complainant's property and that this easement in part provides:

The easement and rights herein granted shall include . . . the right to trim, cut, remove or otherwise control at any and all times such trees, limbs, underbrush or other obstructions within or adjacent to said right-of-way as may interfere with or endanger said structures, wires or appurtenances, or their operation.

Ohio Edison denies any allegations in the Complaint that are inconsistent with this language. Ohio Edison avers that the vegetation removed from the property was within the right-of-way provided in the easement.

- d. Denies otherwise the allegations contained in that paragraph for lack of knowledge sufficient to form a belief as to the truth thereof.

2. With regard to the allegations contained in the second unnumbered paragraph of the Complaint:

- a. Denies that the vegetation at issue never interfered with the operation of the 69 kV line running above Complainant's property. Ohio Edison avers that pursuant to its utility vegetation management program, that vegetation was, by virtue of its species and location, incompatible with the 69 kV line and was subject to removal. Ohio Edison further avers that, if left unremoved, Complainant's vegetation would have interfered with the safe and reliable operation of the 69 kV line.
- b. Admits that the easement in part provides: "The Grantors reserve the right to use the ground between said structures and beneath said wires, provided

that such use does not interfere with or obstruct the rights herein granted . . . .” Ohio Edison denies any allegations in the Complaint that are inconsistent with this language.

- c. Denies otherwise the allegations contained in that paragraph for lack of knowledge sufficient to form a belief as to the truth thereof.

3. With regard to the allegations contained in the third unnumbered paragraph, admits those allegations.

4. Denies the allegations contained in paragraph 1 of Complainant’s “claims.” Ohio Edison avers that continued “maintenance” of Complainant’s incompatible vegetation, either by Complainant or others, was inconsistent with the easement and with Ohio Edison’s utility vegetation management program, and that the continued presence of that vegetation would have interfered with or endangered the safe and reliable operation of the 69 kV line.

5. Denies the allegations contained in paragraph 2 of Complainant’s “claims.”

6. Denies the allegations contained in paragraph 3 of Complainant’s “claims.”

7. Denies the allegations contained in paragraph 4 of Complainant’s “claims.”

8. Denies the allegations contained in paragraph 5 of Complainant’s “claims.”

9. Denies the allegations contained in paragraph 6 of Complainant’s “claims.”

10. Denies the allegations contained in paragraph 1 of Complainant’s list of proposed “remedies.”

11. Denies the allegations contained in paragraph 2 of Complainant’s list of proposed “remedies.”

12. Denies the allegations contained in paragraph 3 of Complainant’s list of proposed “remedies.”

13. Denies the allegations contained in paragraph 4 of Complainant's list of proposed "remedies."

14. Denies the allegations contained in paragraph 5 of Complainant's list of proposed "remedies."

15. Denies the allegations contained in paragraph 6 of Complainant's list of proposed "remedies."

16. Denies the allegations contained in paragraph 7 of Complainant's list of proposed "remedies."

17. Denies generally any allegation not specifically admitted or denied herein, pursuant to O.A.C. § 4901-9-01(D).

#### **FIRST DEFENSE**

18. Avers that interpretation of Ohio Edison's easement over Complainant's property is beyond the scope of the Commission's jurisdiction. Nevertheless, the easement is unambiguous and gave Ohio Edison the right to "remove . . . all trees . . . , underbrush or other obstructions within or adjacent to said right-of-way as may interfere with or endanger" Ohio Edison's lines.

## **SECOND DEFENSE**

19. Avers that Ohio Edison at all times has complied with Title 49, Ohio Revised Code; the rules, regulations, and orders of the Commission; and Ohio Edison's tariff and utility vegetation management program.

## **THIRD DEFENSE**

20. Avers that removal of Complainant's vegetation was required by Ohio Edison's utility vegetation management program, which has been reviewed and approved by the Commission.

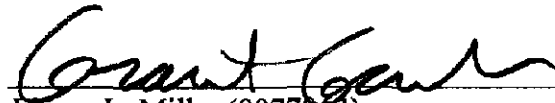
## **FOURTH DEFENSE**

21. Avers that the Commission lacks the authority to award certain of the relief requested by Complainant.

## **FIFTH DEFENSE**

22. Reserves the right to raise additional defenses as warranted by discovery in this matter.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT  
OHIO EDISON COMPANY

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was sent by first class U.S. mail, postage prepaid, and e-mail to the following person this 28th day of June, 2010:

O. Joseph Murray  
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An Attorney for Respondent