

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Scott W. Johnson,)	
)	
Complainant,)	
)	
v.)	Case No. 09-590-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) On July 1, 2009, Scott W. Johnson (Mr. Johnson) contacted his Congresswoman, Jean Schmidt, to complain that Duke Energy Ohio, Inc. (Duke) had excessively cleared vegetation near its power lines, resulting in loss of wildlife and restricted water flow in a nearby creek. Mr. Johnson's complaint was forwarded by Congresswoman Schmidt's staff to the Office of the Ohio Consumers' Counsel (OCC), which then forwarded the complaint to the Commission on July 13, 2009.
- (2) On August 3, 2009, Duke answered Mr. Johnson's complaint. Duke denied that it had performed vegetation management in a manner that was unreasonable or improper, or in a manner that did not conform to Duke's policies.
- (3) After postponement of several settlement conferences at Mr. Johnson's request, the parties met for a March 26, 2010, settlement conference and were unable to resolve matters. Shortly thereafter, Mr. Johnson informed the attorney examiner that he desired to proceed to hearing.
- (4) By attorney examiner entry issued June 21, 2010, a hearing date of July 16, 2010, was scheduled. However, on July 12, 2010, counsel for Mr. Johnson docketed a letter requesting a continuance of the hearing date. Counsel for Mr. Johnson explained that he would be out of state on July 16, 2010. Duke's counsel informed the attorney examiner that it did not object to the continuance.

- (5) Given that counsel for Mr. Johnson has a scheduling conflict on July 16, 2010, the attorney examiner concludes that the request for a continuance is reasonable. Therefore, the continuance request shall be granted, and the hearing date shall be rescheduled to September 10, 2010, at the Commission offices, 10:00 A.M., Hearing Room 11-D, 180 East Broad Street, Columbus, Ohio 43215-3793. As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Public Util. Comm.* (1996), 5 Ohio St.2d 189.
- (6) Any party intending to present direct, expert testimony should comply with Rule 4901-1-29(A)(1)(h), Ohio Administrative Code, which requires that all such testimony to be offered in this type of proceeding be filed and served upon all parties no later than seven days prior to the commencement of the hearing.

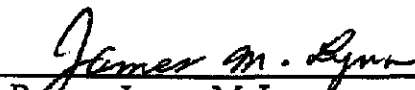
It is, therefore,

ORDERED, That the hearing date shall be rescheduled as described in Finding (5). It is, further,

ORDERED, That any party intending to present direct, expert testimony comply with Finding (6). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By _____

James M. Lynn
Attorney Examiner

grt
/dah

Entered in the Journal

JUL 27 2010



Renee J. Jenkins
Secretary