

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Robert Schmeling</b>	)	
12133 Heathertree Court	)	
Cincinnati, Ohio 45249,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 17-2180-EL-CSS
	)	Case No. 17-2172-EL-CSS
	)	
<b>Duke Energy Ohio, Inc.,</b>	)	
	)	
Respondent.	)	

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

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For its Answer to the Complaints of Robert Schmeling (Complainant), Duke Energy Ohio, Inc., (Duke Energy Ohio or Respondent) states as follows:

1. The Complaints 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 both Complaints.

2. In response to the allegations contained in the Complaint in Case No. 17-2172-EL-CSS, Duke Energy Ohio submits that statements regarding requested relief, the lack of objection to trimming trees, and 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 is without sufficient knowledge as to the truth of the opinions of Complainants and thus denies the same. Further answering, Duke Energy Ohio states that the Public Utilities Commission of Ohio (the Commission) is without jurisdiction to resolve issues of equity, as

inferred by Complainant's statement. Finally, Duke Energy Ohio states that its actions are 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 Symmes Township and the city of Montgomery and 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 and, as such, the Company cannot be deprived of its right to engage in permissible and lawful activities. Duke Energy Ohio further states that the Public Utilities Commission of Ohio (Commission) is without jurisdiction to issue equitable relief, including the relief requested herein. All remaining allegations of this Complaint are denied.

3. In response to the allegations contained in the second paragraph of the Complaint in Case No. 17-2180-EL-CSS, Duke Energy Ohio denies that it is negatively impacting property values in Symmes Township and the city of Montgomery. Duke Energy Ohio admits 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 Symmes Township and the city of Montgomery. All remaining allegations of this paragraph are denied.

4. Duke Energy Ohio denies the allegations contained in the third paragraph of the Complaint in Case No. 17-2180-EL-CSS. 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.

5. In response to the allegations contained in the fourth paragraph of the Complaint in Case No. 17-2180-EL-CSS, Duke Energy Ohio submits that statements regarding requested relief are not allegations to which a response is required. Duke Energy Ohio further submits that Complainant lacks standing to assert relief on behalf of other citizens of Symmes Township and the City of Montgomery. However, to the extent a response is required, Duke Energy Ohio denies that it is using toxic herbicides on Complainant's property. Answering further, Duke Energy Ohio states that its actions are 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 Symmes Township and the city of Montgomery and 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. Duke Energy Ohio further states that the Commission is without jurisdiction to issue equitable relief, including the relief requested herein. All remaining allegations of this paragraph are denied.

6. With regard to the documents attached to the Complaint in Case No. 17-2180-EL-CSS, Duke Energy Ohio states the easement provided by Complainant is not relevant to his property. Answering further, Duke Energy Ohio states that the easement provides it with the unambiguous right to remove trees and other obstructions in the easement and right-of-way with regard to the real property to which the easement pertains. All remaining allegations, as inferred or implied by the documents attached to the Complaint, are denied.

7. 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 Robert Schmeling for failure to set forth reasonable grounds for the Complaint and to deny Complainants' request for relief, if any.

Respectfully submitted,

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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:

Robert Schmeling  
12133 Heathertree Court  
Cincinnati, Ohio 45249

/s/ Elizabeth H. Watts  
Elizabeth H. Watts

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 17-2172-EL-CSS, 17-2180-EL-CSS**

Summary: Answer of Duke Energy Ohio, Inc. electronically filed by Ms. Emily Olive on behalf of Duke Energy Ohio and Spiller, Amy B. Ms. and Watts, Elizabeth H. Ms. and McMahon, Robert A. Mr.