

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Individual Complaints of )	Case Nos.	17-2126-EL-CSS
Joseph Grossi, Fu Wong and Peony Lo, Bob )		17-2170-EL-CSS
Schmeling, Melissa and Peter Broome, Melisa )		17-2172-EL-CSS
Kuhne, Robert Schmeling, Jim and Laura )		17-2173-EL-CSS
Haid, Olga Staios, Shana Berge, Gregory )		17-2176-EL-CSS
Hoeting, Richard and Carol Tenenholtz, )		17-2180-EL-CSS
Tammy and Karl Ross, R. Allen Pancoast, Paul )		17-2181-EL-CSS
E. Smith, Jason Dimaculangan, John Gump, )		17-2182-EL-CSS
Chris Hendriksen, Melissa and Brian Weiss, )		17-2183-EL-CSS
Steve Kahn, Evelyn and Tim King, Anne )		17-2184-EL-CSS
Wymore, John and Sally Riester, Phillip )		17-2185-EL-CSS
Griggs, David E. Shewmon, David and )		17-2186-EL-CSS
Beverly Fenton, Brett Leonard, Timothy H. )		17-2187-EL-CSS
Jones, Sharon M. Felman, Anita Deye, Clifford )		17-2188-EL-CSS
W. Fauber, Nicole Menkhaus, Eric Oswald, )		17-2191-EL-CSS
Jeremy and Carina Henry, James Wulker, )		17-2192-EL-CSS
Timothy Wilson, Sandra Nunn, Melanie )		17-2193-EL-CSS
Maughlin, Amber and Chris Francosky, Sean )		17-2195-EL-CSS
and Emily Hunt, Nicholas Calo, Sanford and )		17-2197-EL-CSS
Barbara Casper, Mark and Calissa Thompson, )		17-2201-EL-CSS
Mary and Michael Meno, Michael Preissler, )		17-2203-EL-CSS
Patricia McGill, Dana and Joy Steller, Mark )		17-2205-EL-CSS
Wahlquist, Gary Pauly, Emmanuel Black, )		17-2206-EL-CSS
Elizabeth Vorholt, David and Patricia McLean, )		17-2207-EL-CSS
Jack C. Daugherty, Steve and Nanci Schmidt, )		17-2208-EL-CSS
Kathleen Danner, Mr. and Mrs. Jeffrey R. )		17-2209-EL-CSS
Sims, Julia M. Guy and David A. Guy )		17-2210-EL-CSS
)		17-2211-EL-CSS
)		17-2213-EL-CSS
)		17-2214-EL-CSS
)		17-2219-EL-CSS
)		17-2220-EL-CSS
)		17-2221-EL-CSS
)		17-2222-EL-CSS
)		17-2223-EL-CSS
)		17-2224-EL-CSS
)		17-2225-EL-CSS
)		17-2262-EL-CSS
)		17-2263-EL-CSS
)		17-2267-EL-CSS
)		17-2268-EL-CSS
)		17-2269-EL-CSS
)		17-2270-EL-CSS

)	17-2302-EL-CSS
)	17-2314-EL-CSS
)	17-2315-EL-CSS
)	17-2316-EL-CSS
)	17-2320-EL-CSS
)	17-2322-EL-CSS
)	17-2323-EL-CSS
)	17-2324-EL-CSS
)	17-2330-EL-CSS
)	17-2335-EL-CSS
)	17-2343-EL-CSS
)	17-2343-EL-CSS
)	17-2369-EL-CSS
)	
)	
In the Matter of the Complaint of Kim )	
Wiethorn, Karen Dabdoub, Jeff and Linda )	
Sims, Fred Vonderhaar, Donald and Nancy )	Case No. 17-2344-EL-CSS
Jacob, James Johnson, Majid Qureshi, Keith )	
Donovan, Julie Reynolds, John Lu, Robert )	
Schneider, Amanda Sachs, John Hasselbeck, )	
Lawrence Hug, Dennis Mitman, Nicole Hiciu, )	
Jason Mayhall, James and Shelley Hoyer, )	
Theresa Reis, Gary Balser, David Siff, and the )	
Symmes Township Trustees )	
)	

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**MOTION TO CONSOLIDATE CASES, REQUEST FOR STAY,  
AND REQUEST FOR EXPEDITED RULING OF STAY**

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Now come Kim Wiethorn, Karen 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, and the Symmes Township Trustees (collectively, Citizens Against Clear Cutting (CACC)), and pursuant to Ohio Adm. Code Section 4901-1-02(A)(6) hereby respectfully move

for an order consolidating the fifty-seven (57) above-captioned cases,<sup>1</sup> all of which concern the alleged unjust, unreasonable, and unlawful policies and practices stemming from the clear cutting and obliterating of trees and other vegetation by Respondent Duke Energy Ohio, Inc. (“Duke”). CACC submits that consolidation is appropriate as there are common legal issues and substantially similar facts between the pending complaint proceedings and consolidation will enable their efficient administration. To date, no procedural schedule has been issued in any of the above-captioned cases.

On October 31, 2017, in Case No. 17-2126-EL-CSS, the Attorney Examiner granted Mr. Grossi’s motion to stay Duke from clear cutting all trees located on his property pending the outcome of his complaint case.<sup>2</sup> Additionally, on November 16, 2017, in Case No. 17-2344-EL-CSS, the Attorney Examiner granted an expedited request to issue a stay of the implementation of Duke’s vegetation management plan as it related to the Complainants’ properties and stayed the clear cutting and removal of trees and vegetation on the Complainants’ properties during the pendency of the complaint.<sup>3</sup>

Given the imminent threat of clear cutting that will cause irreparable injury in each of the above-listed individual complaint cases, Citizens Against Clear Cutting hereby requests that the Commission grant this motion and extend the stay of Duke’s clear cutting and removal of trees and vegetation granted in Case Nos. 17-2126-EL-CSS and 17-2344-EL-CSS to each of the above-captioned individual complainants to protect the property owners and/or customers during

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<sup>1</sup> Except for one complainant (not included in the above-captioned cases), all complainants who filed individual complaints with the PUCO that are subject to this motion and who have been contacted, have expressed a desire to consolidate these cases.

<sup>2</sup> *In the Matter of the Complaint of Joseph Grossi v. Duke Energy Ohio, Inc.*, Case No. 17-2126-EL-CSS, Entry at 1 (October 31, 2017) (Grossi Complaint).

<sup>3</sup> *In the Matter of the Complaint of Kim Wiethorn, et al. v. Duke Energy Ohio, Inc.*, Case No. 17-2344-EL-CSS Entry at 1 (November 16, 2017) (CACC Complaint).

the pendency of the complaints.<sup>4</sup> Furthermore, because Duke has stated its intent to take legal action and/or proceed with clear cutting immediately, time is of the essence and an immediate ruling is necessary. Therefore, CACC hereby request that the Commission issue an expedited ruling on this request for a stay of the clear cutting and tree and vegetation removal for all pending complaints against Duke pursuant to Ohio Adm. Code 4901-1-12(C).<sup>5</sup>

For the foregoing reasons, as well as the reasons more fully explained in the accompanying Memorandum in Support, the Commission should grant CACC's Motion to Consolidate Cases and Request for Stay during the pendency of the filed complaints.

Respectfully submitted,

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*Counsel for Citizens Against Clear Cutting*

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<sup>4</sup> Ohio Adm. Code 4901-1-12 and 4901-9-01(E).

<sup>5</sup> CACC cannot certify that Duke does not object to such request.

## **MEMORANDUM IN SUPPORT**

### **I. Procedural Background**

On October 16, 2017, Joseph Grossi filed a complaint for alleged unfair and unjust vegetation management practices against Duke, relating to Duke's clear cutting and obliterating of trees, negatively impacting property values in Symmes Township and the City of Montgomery, which includes 180 single family homes, 3 apartment buildings, and 31 condominiums.<sup>6</sup>

On October 19, 2017, Mr. Grossi requested an emergency order from the Commission to stop the clear cutting of all trees in the utility easement on his property until the Commission has ruled upon his complaint.<sup>7</sup> On October 31, 2017, the Attorney Examiner found that Mr. Grossi's request was reasonable and granted Mr. Grossi's motion to stay.<sup>8</sup>

Since Mr. Grossi filed his complaint on October 16, 2017, 56 subsequent complaint cases have been filed by similarly situated, individual complainants relating to Duke's clear cutting and tree and vegetation removal policies and practices in Hamilton County, Symmes and Deerfield Townships, and Montgomery, Ohio.<sup>9</sup>

On November 14, 2017, CACC filed a complaint on behalf of 22 complainants alleging that Duke is attempting to indiscriminately clear cut its customers' trees across several communities, including, but not limited to, Hamilton County, Symmes Township, Deerfield Township, and Montgomery, Ohio.<sup>10</sup> CACC complainants alleged that Duke is attempting to

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<sup>6</sup> See Grossi Complaint at 2.

<sup>7</sup> See Grossi Complaint, Emergency Stop Cut Request (Oct. 19, 2017).

<sup>8</sup> See Grossi Complaint, Entry at 1 (October 31, 2017) (Grossi Stay Order).

<sup>9</sup> One complainant of the 56 has expressed a desire not to have his complaint consolidated. Thus, that complaint is not included in the above-captioned cases.

<sup>10</sup> See CACC Complaint at 1-2, 10-16.

remove trees and vegetation on their property without making a determination that the trees actually pose a risk and complete removal is necessary in violation of the Commission's rules and the utility easements. CACC complainants also allege that Duke's policies, practices, and implementation of its vegetation management plan are unjust and unreasonable.

On November 16, 2017, the Attorney Examiner granted the expedited request to issue a stay of the implementation of Duke's vegetation management plan as it related to the Complainants' properties and stayed the clear cutting and removal of trees and vegetation on the CACC complainants' properties during the pendency of the complaint.<sup>11</sup>

All 57 above-captioned cases remain pending and no procedural schedules have been issued in any of the proceedings.

## **II. Consolidation of the Proceedings is Consistent with Commission Precedent**

The Commission has historically recognized the benefit of consolidating cases where there are common issues and efficiencies to be gained.<sup>12</sup> Consolidation has further been found to be warranted in a demonstrated absence of prejudice and to avoid redundancy.<sup>13</sup>

Here, consolidation of the above-captioned cases satisfies the relevant criteria and, as such, the proceedings should be combined. Each proceeding concerns the same or similar alleged unfair business practices stemming from the clear cutting and obliterating of trees by Duke and the implementation of its vegetation management plan. The unjust, unreasonable, and

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<sup>11</sup> *In the Matter of the Complaint of Kim Wiethorn, et al. v. Duke Energy Ohio, Inc.*, Case No. 17-2344-EL-CSS Entry at 1 (November 16, 2017) (CACC Stay Order).

<sup>12</sup> *In the Matter of the Inquiry into the 1989 Long-Term Forecast Report of the Ohio Gas Company*, Case No. 89-0874-GA-GCR, *et al.*, Opinion and Order (June 26, 1989) ("[C]onsolidation of the hearings is appropriate because common issues exist between these proceedings and the consolidation will enhance the efficiency of the proceedings...").

<sup>13</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Rates*, Case No. 08-0709-EL-AIR, *et al.*, Entry (September 12, 2008) ("[N]o party would be prejudiced by this action....[C]onsolidation...would be reasonable, in the interests of efficiency and the elimination of redundancy.").

unlawful policies, practices and implementation of Duke's vegetation management plan implicates all complainants' properties.

No party will be prejudiced by consolidation as procedural schedules have not been issued and thus no deadlines have expired. Additionally, any party will be afforded ample opportunity to engage in the proceedings after the consolidation. As is apparent from the common issues involved in the proceedings, efficiencies will be achieved upon consolidation. Moreover, efficiencies will be achieved by combining resources for purposes of resolving the complaints. In this regard, it is further evident that redundancy can be eliminated to the extent common issues exist in the above-captioned cases.

Counsel for CACC and Mr. Grossi has reached out to the complainants in the above-captioned cases that are the subject of this motion to consolidate. Although counsel has been unable to make contact with all complainants, she can certify that the complainants listed below affirmatively support consolidation of these matters:

- Joseph Grossi, Case No. 17-2126-EL-CSS
- Melissa and Peter Broome, Case No. 17-2173-EL-CSS
- Olga Staios, Case No. 17-2182-EL-CSS
- Shana Berge, Case No. 17-2183-EL-CSS
- R. Allen Pancoast, Case No. 17-2187-EL-CSS
- Paul E. Smith, Case No. 17-2188-EL-CSS
- John Gump, Case No. 17-2192-EL-CSS
- Evelyn and Tim King, Case No. 17-2201-EL-CSS
- John and Sally Reister, Case No. 17-2205-EL-CSS
- Jason Dimaculangan, Case No. 17-2191-EL-CSS
- Sharon M. Felman, Case No. 17-2211-EL-CSS
- Timothy Wilson, Case No. 17-2223-EL-CSS
- Jim and Laura Haid, Case No. 17-2181-EL-CSS
- Phillip Griggs, Case No. 17-2206-EL-CSS
- James Wulker, Case No. 17-2222-EL-CSS
- Mark and Calissa Thompson, Case No. 17-2269-EL-CSS
- Mark Wahlquist, Case No. 17-2316-EL-CSS
- Steve and Nanci Schmidt, Case No. 17-2335-EL-CSS
- Kathleen Danner, Case No. 17-2343-EL-CSS

- Sandra Nunn, Case No. 17-2224-EL-CSS
- Melisa Kuhne, Case No. 17-2176-EL-CSS
- Patricia McGill, Case No. 17-2314-EL-CSS
- Clifford Fauber, Case No. 17-2214-EL-CSS

### **III. Request for Stay and Request for Expedited Treatment**

In order to preserve the issues at stake in the complainants, CACC also requests that the Commission extend the stay issued in Case Nos. 17-2126-EL-CSS and 17-2344-EL-CSS to each of the above-captioned complainants. These cases all concern the unjust, unreasonable, and unlawful removal of trees and vegetation by Duke and the legal issues surrounding the complaints would be rendered moot if Duke continues to clear cut and indiscriminately remove trees and vegetation as the complaints are pending. The Commission has correctly determined that it has the power to issue a stay of Duke's vegetation management activities,<sup>14</sup> and it should continue to use that authority to extend the stay to all complainants who have filed similar complaints against Duke.

Duke has stated its intention to begin removing trees and other vegetation immediately and to commence legal action against customers who do not acquiesce and give permission to Duke to remove trees and vegetation on their property.<sup>15</sup> Duke's tree cutting has commenced and affected customers and their property could be injured at any time, and, therefore, time is of the essence. Citizens Against Clear Cutting hereby requests that the Commission issue an expedited ruling on this request for a stay of Duke's clear cutting and tree and vegetation removal for all pending complaints against Duke under Ohio Adm. Code 4901-1-12(C).<sup>16</sup> Expedited treatment is appropriate and necessary to stop Duke from inflicting irreparable

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<sup>14</sup> See CACC Stay Order at 1; Grossi Stay Order at 1.

<sup>15</sup> See CACC Complaint at 2.

<sup>16</sup> Citizens Against Clear Cutting cannot certify that Duke does not object to such request.



damage upon the property of the individuals involved in the above-captioned complaints prior to the Commission's determination that Duke is within its rights to inflict said damage.

#### IV. Conclusion

For the reasons set forth herein, Citizens Against Clear Cutting respectfully requests that the Commission issue an order consolidating the above-captioned cases and issue an expedited order staying Duke's implementation of its plan to clear cut trees on the properties involved in the above-captioned cases.

Respectfully submitted,

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*Counsel for Citizens Against Clear Cutting*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on November 17, 2017 by electronic mail upon the persons listed below.

Amy B. Spiller  
Elizabeth H. Watts  
Duke Energy Business Services  
139 East Fourth Street  
1303-Main  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Cincinnati, Ohio 45202

/s/ Kimberly W. Bojko  
Kimberly W. Bojko

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**Case No(s). 17-2344-EL-CSS**

Summary: Motion To Consolidate Cases, Request for Stay and Request for Expedited Ruling of Stay electronically filed by Mrs. Kimberly W. Bojko on behalf of Complainants