

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

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Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and, for its Answer to the Amended Complaint of Complainants (Complainants), states as follows.

**PARTIES AND JURISDICTION**

1. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraphs 1-45 of the Amended Complaint and thus denies the same, except for those matters of public record. Further answering, Duke Energy Ohio denies that the following

Complainants own property on which the Company has an easement and right-of-way where Duke Energy Ohio is conducting vegetation management services for its high voltage transmission line at issue 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..<sup>1</sup>

2. With regard to the allegations contained in Paragraph 46 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4905.02, 4905.03, 4905, and 4933 speak for themselves and, as such, no response is required. Duke Energy Ohio admits the remaining allegations of Paragraph 46 only to the extent they do not contradict the provisions of R.C. 4905.02, 4905.03, 4905, and 4933.

3. With respect to the allegations contained in Paragraph 47 of the Amended Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 46.

4. With regard to the allegations contained in Paragraph 48 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4905.06 speak for themselves and, as such, no response is required. Duke Energy Ohio admits the remaining allegations of Paragraph 48 only to the extent they do not contradict the provisions of R.C. 4905.06.

5. With regard to the allegations contained in Paragraph 49 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4905.26 and O.A.C. 4901:1-10-27 speak for themselves and, as such, no response is required. Duke Energy Ohio admits the

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<sup>1</sup> Accordingly, Duke Energy Ohio is separately filing a motion to dismiss those Complainants and their claims from this proceeding.

remaining allegations of Paragraph 49 only to the extent they do not contradict the provisions of R.C. 4905.06 and O.A.C. 4901:1-10-27.

6. With regard to the allegations contained in Paragraph 50 of the Amended Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 50 of the Amended Complaint.

7. With regard to the allegations contained in Paragraph 51 of the Amended Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 51 of the Amended Complaint.

8. With regard to the allegations contained in Paragraph 52 of the Amended Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 52 of the Amended Complaint.

9. With regard to the allegations contained in Paragraph 53 of the Amended Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 53 of the Amended Complaint.

10. With regard to the allegations contained in Paragraph 54 of the Amended Complaint, Duke Energy Ohio submits that statements regarding general propositions of law are not allegations to which a response is required. However, to the extent a response is required, Duke Energy Ohio denies the allegations contained in Paragraph 54 of the Amended Complaint. Further answering, Duke Energy Ohio states that its vegetation management activities at issue in

the Amended Complaint 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.

### **STATEMENT OF FACTS**

1. With respect to the allegations contained in Paragraph 55 of the Amended Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 54.

2. Duke Energy Ohio admits the allegations contained in Paragraph 56 of the Amended Complaint.

3. With respect to the allegations contained in Paragraph 57 of the Amended Complaint, Duke Energy Ohio denies that the following Complainants own property on which the Company has an easement and right-of-way where Duke Energy Ohio is conducting vegetation management services for its high voltage transmission line at issue 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. Duke Energy Ohio admits that the remaining Complainants own property on which the Company has an easement and right-of-way where Duke Energy Ohio is conducting vegetation management services for its high voltage transmission line at issue in these proceedings. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 57 of the Amended Complaint and thus denies the same.

4. With respect to the allegations contained in Paragraph 58 of the Amended Complaint, Duke Energy Ohio denies that the following Complainants have trees located within

the Company's easement and right-of-way where Duke Energy Ohio is conducting vegetation management services for its high voltage transmission line at issue 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. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 58 of the Amended Complaint and thus denies the same.

5. Duke Energy Ohio denies the allegations contained in Paragraph 59 of the Amended Complaint with respect to 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. Duke Energy Ohio admits the allegations contained in Paragraph 59 of the Amended Complaint with respect to the remaining Complainants.

6. With respect to the allegations contained in Paragraph 60 of the Amended Complaint, Duke Energy Ohio admits that the Company has an easement and right-of-way on property owned by certain Complainants. Further answering, Duke Energy Ohio admits that the document attached as Exhibit A to the Amended Complaint is a copy of a Grant of Easement to the Company and that such easement speaks for itself. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 60 of the Amended Complaint and thus denies the same.

7. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 61 of the Amended Complaint and thus denies the same.

8. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 62 of the Amended Complaint and thus denies the same.

9. With regard to the allegations contained in Paragraphs 63-69 of the Amended Complaint, Duke Energy Ohio states its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016, speaks for themselves. Duke Energy Ohio denies the remaining allegations contained in Paragraphs 63-69 of the Amended Complaint.

10. With regard to the allegations contained in Paragraph 70 of the Amended Complaint, Duke Energy Ohio admits that, once its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), were approved on June 13, 2016, the Company began notifying certain customers of its intent to conduct vegetation management activities. Further answering, Duke Energy Ohio admits that the documents marked as Exhibits B and C to the Amended Complaint are copies of documents that the Company delivered to certain customers. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 70 of the Amended Complaint and thus denies the same.

11. Duke Energy Ohio admits the allegations contained in Paragraph 71 of the Amended Complaint.

### **COUNT I**

1. With respect to the allegations contained in Paragraph 72 of the Amended Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 71.

2. With regard to the allegations contained in Paragraph 73 of the Amended Complaint, Duke Energy Ohio states that provisions of O.A.C. 4901:1-10-27(E)(1)(f) speak for themselves and, as such, no response is required. Duke Energy Ohio denies the remaining allegations of Paragraph 73.

3. With respect to the allegations contained in Paragraph 74 of the Amended Complaint, Duke Energy Ohio admits that the Company has an easement and right-of-way on property owned by certain Complainants. Further answering, Duke Energy Ohio admits that the document attached as Exhibit A to the Amended Complaint is a copy of a Grant of Easement to the Company and that such easement speaks for itself. Duke Energy Ohio is without sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 74 of the Amended Complaint and thus denies the same.

4. Duke Energy Ohio denies the allegations contained in Paragraph 75 of the Amended Complaint.

5. With regard to the allegations contained in Paragraph 76 of the Amended Complaint, Duke Energy Ohio states that its vegetation management activities are consistent 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 denies the remaining allegations contained in Paragraph 76 of the Amended Complaint.

6. Duke Energy Ohio denies the allegations contained in Paragraph 77 of the Amended Complaint.

## **COUNT II**

1. With respect to the allegations contained in Paragraph 78 of the Amended Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 77.

2. Duke Energy Ohio denies the allegations contained in Paragraph 79 of the Amended Complaint.

3. With regard to the allegations contained in Paragraph 80 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4905.22 speak for themselves and, as such, no response is required.

4. With regard to the allegations contained in Paragraphs 81-84 of the Amended Complaint, Duke Energy Ohio states that its vegetation management activities are consistent with its Programs for Inspection, Maintenance, Repair and Replacement of Distribution and Transmission Lines, Section (f), as approved on June 13, 2016. Answering further, Duke Energy Ohio denies that it is negatively impacting Complainants' property values. 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 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 Complainants. Duke Energy Ohio denies the remaining allegations contained in Paragraphs 81-84 of the Amended Complaint.

5. With regard to the allegations contained in Paragraph 85 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4905.22 and O.A.C. 4901:1-10-27 speak for themselves and, as such, no response is required. Duke Energy Ohio is without



sufficient knowledge as to the truth of the remaining matters asserted in Paragraph 85 of the Amended Complaint and thus denies the same.

6. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 86 of the Amended Complaint and thus denies the same. Answering further, Duke Energy Ohio denies that it is using toxic herbicides on or near Complainants' properties. Additionally, 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.

7. Duke Energy Ohio is without sufficient knowledge as to the truth of the matters asserted in Paragraph 87 of the Amended Complaint and thus denies the same. 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.

### **COUNT III**

1. With respect to the allegations contained in Paragraph 88 of the Amended Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 87.

2. With regard to the allegations contained in Paragraph 89 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4901:1-10-27(E)(2) speak for themselves and, as such, no response is required.

3. With regard to the allegations contained in Paragraph 90 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4901:1-10-27(F)(1) speak for themselves and, as such, no response is required.

4. With regard to the allegations contained in Paragraph 91 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4901:1-10-27(E)(2) speak for themselves and, as such, no response is required.

5. Duke Energy Ohio denies the allegations contained in Paragraphs 92-97 of the Amended Complaint.

#### **COUNT IV**

1. With respect to the allegations contained in Paragraph 98 of the Amended Complaint, Duke Energy Ohio re-alleges and incorporates by reference, as if fully rewritten herein, its responses to Paragraphs 1 through 97.

2. Duke Energy Ohio denies the allegations contained in Paragraph 99 of the Amended Complaint.

3. With regard to the allegations contained in Paragraph 100 of the Amended Complaint, Duke Energy Ohio states that provisions of R.C. 4905.22 speak for themselves and, as such, no response is required.

4. With regard to the allegations contained in Paragraph 101 of the Amended Complaint, Duke Energy Ohio states that provisions of O.A.C. 4901:1-10-27 speak for themselves and, as such, no response is required.

5. Duke Energy Ohio denies the allegations contained in Paragraphs 102-103 of the Amended Complaint.

### **AFFIRMATIVE DEFENSES**

1. Duke Energy Ohio asserts as an affirmative defense the easement attached to the Complaint does not concern each property owned by Complainants. Such easement, therefore, cannot support their Amended 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. Duke Energy Ohio asserts as an affirmative defense that pursuant to R.C. 4905.26 and O.A.C. 4901-9-01-(B)(3), Complainants have failed to set forth reasonable grounds for complaint.

3. Duke Energy Ohio asserts that to the extent Complainants are seeking monetary damages, such relief is beyond the scope of the Commission's jurisdiction.

4. Duke Energy Ohio asserts that to the extent the Complainants are seeking equitable relief, such relief is beyond the scope of the Commission's jurisdiction.

5. Duke Energy Ohio asserts that it has superior property rights, as confirmed by lawful grants of easement.

6. Duke Energy Ohio asserts that the following Complainants lack standing to assert claims against the Company because they do not own property on which the Company has an easement and right-of-way where Duke Energy Ohio is conducting vegetation management services for its high voltage transmission line at issue 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.

7. 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.

WHEREFORE, for the reasons stated herein, Duke Energy Ohio, Inc., respectfully requests that the Complaint against it be dismissed with prejudiced, for its costs incurred herein, and for all other relief to which it may appear entitled.

Respectfully submitted,

/s/ Elizabeth H. Watts

Amy B. Spiller (0047277) (Counsel of Record)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

P.O. Box 960

Cincinnati, Ohio 45201-0960

(513) 419-1810 (telephone)

(513) 419-1846 (fax)

[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)

[elizabeth.watts@duke-energy.com](mailto:elizabeth.watts@duke-energy.com)

Robert A. McMahon (0064319)

Eberly McMahon Copetas LLC

2321 Kemper Lane, Suite 100

Cincinnati, Ohio 45206

(513) 533-3441 (telephone)

(513) 533-3554 (fax)

[bmcMahon@emclawyers.com](mailto:bmcMahon@emclawyers.com) (e-mail)

**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 4<sup>th</sup> day of December 2017, upon the following:

Kimberly W. Bojko  
Stephen E. Dutton  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[Dutton@carpenterlipps.com](mailto:Dutton@carpenterlipps.com)

**Counsel for Complainants**

/s/ Elizabeth H. Watts  
Elizabeth H. Watts

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