

**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,)		17-2172-EL-CSS
Melisa Kuhne, Robert Schmeling, Jim and)		17-2173-EL-CSS
Laura Haid, Olga Staios, Shana Berge,)		17-2176-EL-CSS
Gregory Hoeting, Richard and Carol)		17-2180-EL-CSS
Tenenholtz, Tammy and Karl Ross, R. Allen)		17-2181-EL-CSS
Pancoast, Paul E. Smith, Jason)		17-2182-EL-CSS
Dimaculangan, John Gump, Chris)		17-2183-EL-CSS
Hendriksen, Melissa and Brian Weiss, Steve)		17-2184-EL-CSS
Kahn, Evelyn and Tim King, Anne Wymore,)		17-2185-EL-CSS
John and Sally Riestler, Phillip Griggs, David)		17-2186-EL-CSS
E. Shewmon, David and Beverly Fenton,)		17-2187-EL-CSS
Brett Leonard, Timothy H. Jones, Sharon M.)		17-2188-EL-CSS
Felman, Anita Deye, Clifford W. Fauber,)		17-2191-EL-CSS
Nicole Menkhaus, Eric Oswald, Jeremy and)		17-2192-EL-CSS
Carina Henry, James Wulker, Timothy)		17-2195-EL-CSS
Wilson, Sandra Nunn, Melanie Maughlin,)		17-2196-EL-CSS
Amber and Chris Francosky, Sean and Emily)		17-2197-EL-CSS
Hunt, Nicholas Calo, Sanford and Barbara)		17-2201-EL-CSS
Casper, Mark and Calissa Thompson, Mary)		17-2203-EL-CSS
and Michael Meno, Michael Preissler,)		17-2205-EL-CSS
Patricia McGill, Dana and Joy Steller, Mark)		17-2206-EL-CSS
Wahlquist, Gary Pauly, Emmanuel Black,)		17-2207-EL-CSS
Elizabeth Vorholt, David and Patricia)		17-2208-EL-CSS
McLean, Jack C. Daugherty, Steve and)		17-2209-EL-CSS
Nanci Schmidt, Kathleen Danner, Mr. and)		17-2210-EL-CSS
Mrs. Jeffrey R. Sims, Julia M. Guy and)		17-2211-EL-CSS
David A. Guy)		17-2213-EL-CSS
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)		17-2220-EL-CSS
)		17-2221-EL-CSS
)		17-2222-EL-CSS
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)		17-2269-EL-CSS
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)		17-2302-EL-CSS

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)	17-2320-EL-CSS
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)	17-2338-EL-CSS
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Kim Wiethorn, Karen and Majeb Dabdoub,)
Jeff and Linda Sims, Fred Vonderhaar,) Case No. 17-2344-EL-CSS
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)

**MEMORANDUM CONTRA DUKE ENERGY OHIO, INC.’S MOTION FOR
EXPEDITED PREHEARING CONFERENCES**

I. INTRODUCTION

Pursuant to Ohio Adm. Code 4901-1-12(B)(1), Complainants 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 hereby submit this reply memorandum in response to Duke Energy Ohio, Inc.'s (Duke) Motion for Expedited Prehearing Conferences.

With its motion, Duke continues to proceed as if the above-captioned cases are mere formalities or nuisances to be dispensed with quickly in order for Duke to resume its indiscriminate decimation of trees and vegetation on the complainants' properties. Duke essentially asserts that because it believes that its legal position is correct, it is entitled to special treatment and acceleration of the statutorily-proscribed process for complaints against public utilities before the Commission, as well as the Commission's rules regarding complaints. For the reasons set forth below, the Commission should deny Duke's request to expedite prehearing conferences in this case and allow the case to continue through the normal Commission process, including affording the parties ample due process.

II. DISCUSSION

The Commission should reject Duke's attempt to expedite these cases for two reasons. First, Duke does not cite proper authority for expediting the cases. Second, Duke's motion raises serious due process concerns for the complainants in the above-captioned cases.

A. Duke Fails to Cite Proper Authority for Its Motion for Expedited Prehearing Conferences.

In its Motion for Expedited Prehearing Conferences, Duke cites two legal provisions: Ohio Adm. Code 4901-1-12(A) and 4901-1-12(C).¹ Neither supports Duke's request. Ohio Adm. Code 4901-1-12(A) deals with motion practice and the requirements for making a motion before the Commission. Ohio Adm. Code 4901-1-12(C) concerns expedited treatment of motions. Duke does not, however, request expedited treatment of its motion. Rather, it appears to conflate the expedited treatment of motions with its request to expedite the treatment of these cases, even making the required recitations in asking for expedited treatment of a motion in support of its request to expedite the entire slate of cases captioned above.² Despite Duke's efforts to expand the scope of Ohio Adm. Code 4901-1-12(C), the rule specifically addresses requests to expedite rulings on motions and does not provide for a mechanism for the broader acceleration of procedural schedules.

Although not cited by Duke, Ohio Adm. Code 4901-1-26 directly addresses prehearing conferences, and its provisions also do not support Duke's motion.³ That rule explains the many purposes of prehearing conferences:

1. Resolving outstanding discovery matters, including:
 - a. Ruling on pending motions to compel discovery or motions for protective orders.
 - b. Establishing a schedule for the completion of discovery.
2. Ruling on any other pending procedural motions.
3. Identifying the witnesses to be presented in the proceeding and the subject matter of their testimony.

¹ See Motion for Expedited Prehearing Conferences at 1 (November 21, 2017) (Motion).

² Id. at 4 (notifying the Commission that it cannot certify that no party opposes the motion).

³ See Ohio Adm. Code 4901-1-26.

4. Identifying and marking exhibits to be offered in the proceeding.
5. Discussing possible admissions or stipulations regarding issues of fact or the authenticity of documents.
6. Clarifying and/or settling the issues involved in the proceeding.
7. Discussing or ruling on any other procedural matter which the commission or the presiding hearing officer considers appropriate.⁴

Duke is not requesting the scheduling of expedited prehearing conferences for any of the reasons provided for in the above-referenced rule. It does not raise any issues related to discovery. Duke does not seek to use these expedited prehearing conferences to resolve procedural matters or to obtain a ruling on pending procedural motions. It does not want to use the conferences to identify witnesses or exhibits for the hearings on the complaints or to discuss possible admissions or stipulations. In fact, Duke states that “no hearing is required.”⁵ Finally, Duke does not ask for these expedited prehearing conferences to clarify or settle the issues involved in the proceeding.

In short, Duke does not offer any of the Commission-provided justifications for scheduling a prehearing conference in its request for expedited conferences in this case. Rather, Duke appears to be requesting that the Commission expedite the scheduling of prehearing conferences in an attempt to accelerate the proceeding in general. Duke appears to be referencing the required prehearing conferences in Ohio Adm. Code 4901-9-01(G) as a way to accelerate the cases in an attempt to thwart due process. In its motion, Duke discusses the merits of the cases—and not procedural issues—and then asks for these conferences to be held to

⁴ Ohio Adm. Code 4901-1-26(A)(1-7).

⁵ Motion at 4.

“allow for an expedited resolution of these proceedings.”⁶ The Commission should reject Duke’s attempt to reshape or expedite the complaint process in a way designed to end the cases on the merits before the substantive gathering of evidence begins and without due process.

B. Duke’s Motion Threatens the Due Process Rights of Complainants Provided for by Statute and the Commission’s Rules.

A necessary corollary to Duke’s proposal to expedite the complaint process, proceed to prehearing conferences, and have the Commission resolve the cases before discovery occurs is that the Complainants would not be afforded ample due process or a full prehearing process. Specifically, Ohio Adm. Code 4901-1-16 states that the purpose of the discovery rules is “to facilitate thorough and adequate preparation for participation in commission proceedings.” Similarly, R.C. 4903.082 requires that “[a]ll parties and intervenors shall be granted ample rights of discovery.” Thus, the Ohio Administrative Code and the Ohio Revised Code together provide parties to a Commission proceeding basic due process rights as it relates to the discovery process and its purpose within the overall proceeding.

Duke asks the Commission to cut off the “thorough and adequate preparation” that the Complainants would achieve through a full discovery process before discovery even begins. Duke states that this short-circuiting of the Complainants’ discovery rights is needed so that Duke can “maintain safe and reliable service to its customers”⁷ Duke does not, however, substantiate its assertions that a standard processing of these complaints would threaten safe and reliable service. Duke essentially asks the Commission to take it on faith that safety and reliability hang in the balance as the Commission makes its ruling on Duke’s motion. That question—whether Duke’s execution of its current vegetation management plan and

⁶ Id.

⁷ Id. at 4-5.

implementation of its practices and procedures is necessary to ensure safe and reliable service— is at the heart of this case, and, as evidenced by the complaints filed in these cases, is a disputed point.⁸

The Commission should demand more than a motion accompanied by a two-page memorandum in support devoid of specific assertions before it dispenses with discovery requirements imposed by statute and its own rules and shortcuts due process. Granting Duke's motion would set a dangerous precedent that a utility facing a customer complaint would only need to make conclusory statements about the necessity of the challenged action in order to thwart the discovery process and deny the complainant a full and fair opportunity to litigate his or her claims. The Commission's rules and Ohio law entitle these Complainants to a full and fair opportunity to adjudicate their claims and the Commission should not permit Duke to limit Complainants' due process rights under the guise of expediting prehearing conferences.

⁸ See, e.g., *In the Matter of the Complaint of 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 Balsler, 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, Amended Complaint at 13-14 (November 22, 2017).

III. CONCLUSION

The Commission should deny Duke's motion for expedited prehearing conferences and, in essence, an expedited complaint process. The parties should be afforded ample rights of discovery and the Complaint should proceed through the standard complaint process with all rights of due process afforded to Complainants as set forth in the Commission's rules and Ohio law.

Respectfully submitted,

/s/ Kimberly W. Bojko

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing reply was filed and served on December 6, 2017, by electronic mail upon all parties of record.

/s/ Brian W. Dressel

Brian W. Dressel

Counsel for Complainants

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Summary: Memorandum Contra Duke Energy Ohio, Inc.'s Motion for Expedited Prehearing Conferences electronically filed by Mr. Brian W Dressel on behalf of Complainants