

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
CITIZENS AGAINST CLEAR CUTTING, ET
AL.,**

COMPLAINANTS,

v.

CASE NO. 17-2344-EL-CSS

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on January 25, 2018

{¶ 1} Duke Energy Ohio, Inc. (Duke) is a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the jurisdiction of this Commission.

{¶ 2} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 3} On November 14, 2017, Citizens Against Clear Cutting (Complainants) filed a complaint against Duke. Complainants are located in Hamilton County, Symmes Township, Deerfield Township, and the City of Montgomery, Ohio. Complainants allege that Duke is attempting to remove trees on their property without making a determination that the trees actually pose a risk to the safe and reliable provision of electric service and complete removal is necessary. They further allege that without such a determination, Duke has no authority to engage in the practice.

{¶ 4} Along with their complaint, Complainants requested that the Commission issue a stay of the implementation of Duke's vegetation management plan as it relates to the Complainants' properties, as well as a stay of the clear cutting and removal of trees and vegetation on the Complainants' properties during the pendency of the complaint.

Complainants indicated that the stay is necessary because Duke could commence clear cutting trees immediately.

{¶ 5} Duke filed an answer on December 4, 2017.

{¶ 6} The attorney examiner granted Complainants' motion to stay on November 16, 2017.

{¶ 7} On November 21, 2017, Complainants filed a motion to consolidate cases, request for stay, and request for expedited ruling of stay. Complainants also request that the Commission extend the stay of the implementation of Duke's vegetation management plan already in place to the additional litigants during pendency of this proceeding.

{¶ 8} On November 22, 2017, Complainants filed a motion to amend the complaint, an expedited request extend the stay, and an amended complaint. In the motion, Complainants indicate that additional residents have expressed a desire to join the case and a stay of Duke's vegetation management should be extended to these litigants. The attorney examiner granted Complainants' motion, permitted the additional litigants to join the proceeding, and extended the stay to these litigants by Entry dated November 28, 2017.

{¶ 9} On January 5, 2018, Complainants filed a motion to amend the first amended complaint filed on November 22, 2017, an expedited request to extend the stay, and an amended complaint attached to the motion. In the motion, Complainants explain that similar to the rationale stated in the first motion to amend the complaint, additional residents from the affected communities have emerged and stated a desire to join this case. The additional residents desire to join this case because they all have filed their own, similar complaints in separate dockets before the Commission and have received notice from Duke regarding its intent to commence clear cutting on their properties. Complainants also indicate that if the Commission grants this motion, Complainants who now desire to join this second amended complaint will subsequently file notices of withdrawal in the pending, separate cases. Complainants explain that this will streamline the Commission's docket by substantially decreasing the number of open cases concerning Duke's vegetation

management plan. Complainants indicate two of the Complainants who originally expressed a desire to joint the first amended complaint have now decided to withdraw from the above-captioned proceeding and they have been removed from the caption. Lastly, Complainants request that the Commission extend the stay of the implementation of Duke's vegetation management plan to all Complainants named in the second amended complaint.

{¶ 10} On January 22, 2017, Duke filed a memorandum contra to Complainants' motion to amend the first amended complaint. In the memorandum, Duke states that it does not oppose Complainants' second amended complaint. However, Duke requests that the Commission grant its motion to dismiss, which it filed on December 4, 2017, with regard to certain Complainants.

{¶ 11} Ohio Adm.Code 4901-1-06, provides, in pertinent part, that upon motion of any party for good cause shown the attorney examiner may authorize the amendment of any complaint filed with the Commission. Upon review, the attorney examiner finds Complainants' January 5, 2018, motion to amend the first amended complaint reasonable because, as Complainants note, this will allow the Commission to streamline its docket and consider all claims regarding Duke's vegetation management plan in one proceeding. Accordingly, the additional Complainants listed in the motion are hereby permitted to join this proceeding. Moreover, until further notice, Duke should continue to stay its vegetation management plan and stay the clear cutting and removal of these additional Complainants' trees and vegetation on their properties during the pendency of this matter.

{¶ 12} Furthermore, the attorney examiner sets the following procedural schedule for this matter. A prehearing conference shall be scheduled for February 5, 2018, at 10:00 a.m. at the offices of the Commission, Hearing Room 11-D, 180 East Broad St. Columbus, Ohio 43215. An evidentiary hearing shall be scheduled from February 26, 2018 to March 2, 2018, beginning at 10:00 a.m. on February 26, 2018 at the offices of the Commission, Hearing Room 11-D, 180 East Broad St., Columbus, Ohio 43215. Additionally, testimony should be filed no later than February 12, 2018, in order to allow sufficient time for review and depositions prior to the hearing.

{¶ 13} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That the additional Complainants' January 5, 2018 request to join this proceeding be granted. It is, further,

{¶ 16} ORDERED, That the additional Complainants' January 5, 2018 request to stay the clear cutting of trees on their properties is granted. It is, further,

{¶ 17} ORDERED, That Duke should stay its vegetation management plan and stay the clear cutting and removal of the additional Complainants' trees and vegetation on their properties during the pendency of this Complaint. It is, further,

{¶ 18} ORDERED, That a prehearing conference and an evidentiary hearing be scheduled, in accordance to Paragraph 12. It is, further,

{¶ 19} ORDERED, That testimony be filed no later than February 12, 2018. It is further,

{¶ 20} ORDERED, That Complainants' November 21, 2017 motion to consolidate be denied as moot. It is, further,

{¶ 21} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Anna Sanyal

By: Anna Sanyal
Attorney Examiner

gap/vrm

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

Summary: Attorney Examiner Entry granting to amend complaint and setting forth procedural schedule; electronically filed by Vesta R Miller on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission of Ohio