

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 April 5, 2018

{¶ 1} Duke Energy Ohio, Inc. (Duke or the Company) 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. On November 16, 2017, the attorney examiner granted Complainants' request to stay Duke from clear cutting trees on their properties. On November 22, 2017, Complainants filed an amended complaint and on January 5, 2018, Complainants filed a second amended complaint. Duke filed its answer to the second amended complaint on January 25, 2018.

{¶ 4} By Entry issued February 8, 2018, the attorney examiner scheduled a hearing in this matter to commence on April 17, 2018. Pursuant to Ohio Adm.Code 4901-1-29(A)(1)(h), the attorney examiner set April 3, 2018, as the deadline for the filing of expert testimony.

{¶ 5} On March 8, 2018, the Commission issued an Entry denying the interlocutory appeal filed by Duke on November 21, 2017 and affirming the stay on Duke's vegetation management activities previously granted by the attorney examiner; granting a motion to dismiss filed by Duke on December 4, 2017, with regard to certain individuals; and sua sponte dismissing certain claims raised by Complainants, as they fell outside of the Commission's jurisdiction. The Entry also directed the attorney examiner to schedule a prehearing conference so the parties could work with a Legal Department mediator to modify the scope of the stay during the pendency of this proceeding and allow Duke to ensure reliable service to its customers without prejudicing the Complainants.

{¶ 6} On March 13, 2018, Duke filed a motion to compel Complainants' depositions and continue the hearing, a memorandum in support, and a request for an expedited ruling.

{¶ 7} By Entry issued on March 14, 2018, the attorney examiner, pursuant to the Commission's directive in its March 8, 2018 Entry, scheduled a prehearing conference on March 22, 2018, in the Commission's office with a Legal Department mediator.

{¶ 8} On March 14, 2018, Complainants filed a motion for protective order to prevent further depositions of Complainants. On March 20, 2018, Complainants filed a memorandum contra Duke's motion to compel. On March 21, 2018, Duke filed a memorandum contra Complainants' motion for protective order.

{¶ 9} On March 30, 2018, Duke filed a motion to revise the stay on vegetation management currently in place and a request for an expedited ruling. In the motion, Duke states that it conducted a ground patrol assessment during the week of March 26, 2018, in the geographic area that comprises Complainants' claims. As a result of the inspection, Duke requests the Commission to rule on this motion in an expedited manner to ensure that vegetation management can occur promptly to provide reliable service to its customers.

{¶ 10} By Entry dated April 2, 2018, the attorney examiner continued the hearing in this matter based on the motions parties filed on March 13, 2018, and March 14, 2018.

Furthermore, based on Duke's March 30, 2018 motion, the attorney examiner scheduled a prehearing conference on April 5, 2018.

{¶ 11} On April 3, 2018, the parties filed a joint motion to revise the stay on Duke's vegetation management activities. In the motion, the parties indicate that on March 22, 2018, during the mediation with the Legal Department mediator, Duke agreed to conduct an inspection of its transmission lines to determine imminent threats that should be immediately addressed. After performing the inspection, Duke determined that two trees located on Complainants Melissa and Peter Broome and Dennis Baker's homes and one tree located on the property line of Complainants Fred Vonderhaar and Gregory Hoeting's homes pose an immediate threat to service reliability. The parties state that they have agreed that Duke should prune two to three years of growth from each of these trees. The parties also indicate that by filing the joint motion, neither party is waiving legal arguments as to what constitutes appropriate and reasonable practices regarding Duke's vegetation management activities.

{¶ 12} The attorney examiner finds that the parties' joint motion is reasonable and that the three identified trees should be pruned to ensure reliable service to Duke's customers. Consequently, the November 16, 2017 stay is hereby modified to allow Duke to prune two to three years of growth from the three trees identified by the parties.

{¶ 13} Furthermore, the attorney examiner has reserved Hearing Room 11-D on April 17, 2018, at the Commission offices, 180 East Broad Street, 11th Floor, Columbus, Ohio 43215 because the parties have indicated they wish to continue mediation with the Legal Department mediator.

{¶ 14} Lastly, based on the parties' availability, the attorney examiner reschedules the hearing on this matter to commence on May 14, 2018, 10:00 a.m., at the Commission offices, Hearing Room 11-D, 180 East Broad Street, 11th Floor, Columbus, Ohio 43215.

The following dates have been reserved for additional hearing days: May 17-18, 2018, May 21-25, 2018, and June 11, 2018.

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That the prehearing conference previously scheduled on April 5, 2018 be cancelled. It is, further,

{¶ 17} ORDERED, That the November 16, 2017 stay on Duke's vegetation management activities is modified in accordance with Paragraph 12. It is, further,

{¶ 18} ORDERED, That a hearing be set in the matter in accordance with Paragraph 14. It is, further,

{¶ 19} 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

jrj/vrm

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

Summary: Attorney Examiner Entry cancelling the prehearing conference scheduled for April 5, 2018; modifying the November 16, 2017 stay on Duke's vegetation management activities; and scheduling a hearing on May 14, 2018, at 10:00 a.m.; electronically filed by Vesta R Miller on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission of Ohio