

**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 13, 2018

{¶ 1} Duke Energy Ohio, Inc. (Duke or 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} On March 8, 2018, the Commission issued an Entry denying the interlocutory appeal filed by Duke on November 21, 2017; 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.

{¶ 5} 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. In the motion, Duke indicates that it has tried numerous times to schedule the deposition of every single Complainant in this proceeding. However, Duke states that it has only been able to depose 14 Complainants to date and has yet to depose 55 other Complainants. According to Duke, it must be allowed to depose every Complainant who has asserted a claim against the Company because each Complainant bears a burden of proof and must be willing to prosecute his or her complaint, including participation in normal discovery proceedings. Duke asserts that it has exhausted efforts to resolve this dispute and requests an expedited ruling from the Commission to compel Complainants to make themselves available for depositions.

{¶ 6} On March 14, 2018, Complainants filed a motion for protective in order to prevent further depositions of Complainants. In the motion, Complainants indicate that to date, they have either produced or agreed to produce 20 Complainants for deposition. According to Complainants, Duke has refused to hold telephonic depositions to expedite the process and for those Complainants who were not previously available due to work commitments or travel. While five Complainants were made available on March 10, 2018, Duke allegedly refused to depose these individuals because it was a Saturday.

{¶ 7} Furthermore, Complainants state that the 20 Complainants who were made available to Duke exceed the number of witnesses that Complainants will rely upon during the hearing. According to Complainants, Duke's desire to depose all Complainants is not reasonably calculated to lead to the discovery of admissible evidence. Complainants state that no new information will be gleaned from deposing more than 20 Complainants because the underlying facts as to each affected property are similar, if not identical. Additionally, Complainants believe that Commission precedent indicates that where multiple complainants file sufficiently similar complaints, only a fraction of the complainants need to testify. *See, e.g., In re Distributors Associates, Inc. v. General Telephone Company of Ohio*, Case

Nos. 79-543-TP-CSS, 79-543-TP-CSS, Opinion and Order at 5 (Apr. 1, 1981); *In re Mary E. Cogswell, et al., Complainants*, Panel Case No. 91-1421-EL-CSS, Supplemental Opinion and Order at 5 (July 22, 1993). Consequently, Complainants seek a protective order from the Commission to prevent further depositions after the depositions of the 20 selected Complainants are completed. Lastly, Complainants indicate that they do not oppose Duke's request to continue the hearing.

{¶ 8} 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. Lastly, on April 5, 2018, the attorney examiner set a procedural schedule in this matter with the hearing commencing on May 14, 2018.

{¶ 9} Based on the parties' motions, the attorney examiner finds it appropriate to schedule a prehearing conference to address these motions on April 17, 2018, at 10:00, at the Commission offices, 180 East Broad Street, 11th Floor, Hearing Room 11-D, Columbus, Ohio 43215. The prehearing conference will be transcribed by a court reporter.

{¶ 10} It is, therefore,

{¶ 11} ORDERED, That a prehearing conference be scheduled in accordance with Paragraph 9. It is, further,

{¶ 12} 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

**This foregoing document was electronically filed with the Public Utilities**

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

Summary: Attorney Examiner Entry scheduling a prehearing conference for April 17, 2018, at 10:00 a.m.; electronically filed by Vesta R Miller on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission of Ohio