

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINTS OF:
ROBERT SCHMELING
BOB SCHMELING,**

**COMPLAINANTS,
v.**

**CASE NO. 17-2172-EL-CSS
CASE NO. 17-2180-EL-CSS**

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on April 19, 2018

{¶ 1} 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.

{¶ 2} Respondent, Duke Energy Ohio, Inc. (Duke), is a public utility as defined in R.C. 4905.02. As such, Duke is subject to the Commission's jurisdiction.

{¶ 3} On October 23, 2017, Robert Schmeling filed Case No. 17-2180-EL-CSS against Duke, alleging that Duke is negatively impacting property values in Symmes Township and the city of Montgomery by clear cutting and obliterating all trees located within a 100-foot right-of-way under transmission wires. On that same day, Mr. Schmeling also filed Case No. 17-2172-EL-CSS against Duke, requesting that the Commission issue an emergency stop cut order to prevent Duke from clear cutting trees on his property as Duke indicated it could commence clear cutting trees as early as October 30, 2017.

{¶ 4} On November 9, 2017, Duke filed a motion to dismiss in both cases and on November 13, 2017, Duke filed an answer in both cases. In its motion to dismiss, Duke indicates that its high-voltage transmission line does not run through the property owned by Mr. Schmeling. Consequently, Duke believes that Mr. Schmeling lacks standing and

reasonable grounds to assert any claims against it pursuant to R.C. 4905.26. Consequently, Duke requests that Commission dismiss Mr. Schmeling's complaint with prejudice.

{¶ 5} At this time, and notwithstanding Duke's motion to dismiss, the attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of the complaint. As stated in Ohio Adm.Code 4901-1-26, any statement made in an attempt to settle this matter without the need for an evidentiary hearing is generally inadmissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits either party from initiating settlement negotiations prior to the scheduled settlement conference.

{¶ 6} Accordingly, a settlement conference shall be scheduled for May 29, 2018, at 10:00 a.m., in Conference Room 1247 at the offices of the Commission, 180 East Broad Street, 12th Floor, Columbus, Ohio 43215. If a settlement is not reached at the conference, the attorney examiner may conduct a discussion of procedural issues including discovery deadlines, possible stipulations of fact, and potential hearing dates.

{¶ 7} Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the public utility shall investigate the issues raised in the complaint prior to the settlement conference. All parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, the parties shall bring with them relevant documents that are necessary to cultivate an understanding of the issues raised in the complaint and to facilitate settlement negotiations.

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

{¶ 9} It is, therefore,

{¶ 10} ORDERED, That a settlement conference be held on May 29, 2018, at 10:00 a.m. in Conference Room 1247, as stated in Paragraph 6. It is, further,

{¶ 11} ORDERED, That a copy of this Entry be served upon each party and interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Anna Sanyal

By: Anna Sanyal
Attorney Examiner

jrj/vrm

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4/19/2018 3:17:32 PM

in

Case No(s). 17-2172-EL-CSS, 17-2180-EL-CSS

Summary: Attorney Examiner Entry scheduling settlement conference for May 29, 2018, at 10:00 a.m.; electronically filed by Vesta R Miller on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission of Ohio