

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Citizens Against Clear Cutting, et al.)	
)	
Complainants,)	
)	
v.)	Case No. 17-2344-EL-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent)	

JOINT PARTIAL STIPULATION

I. Introduction

Ohio Adm. Code 4901-1-30 allows for any two, or more, parties to a proceeding to enter into a written stipulation resolving some or all of the issues in that proceeding. Pursuant to that rule, Citizens Against Clear Cutting (CACC), Complainants in the above-captioned matter, hereby enter into this Partial Stipulation, pursuant to the foregoing terms of this Partial Stipulation, with Duke Energy Ohio, Inc. (Duke Energy Ohio) in order to reduce the number of named Complainants who will participate in this case and prosecute the Complaint.¹ The Parties recognize that this Partial Stipulation applies to the following named Complainants and their properties named in the Second Amended Complaint: Jeff and Linda Sims, James Johnson, Majid Qureshi, Keith Donovan, Julie Reynolds, John Lu, Robert Schneider, John

¹ Complaint against Duke Energy Ohio was filed on November 14, 2017; an Amended Complaint was accepted on November 28, 2017 and a Second Amended Complaint was accepted on January 25, 2018. Complainants have moved to amend the Second Amended Complaint, filing a Third Amended Complaint on April 9, 2018 (collectively, Complaint).

Hasselbeck, Lawrence Hug, Jason Mayhall, James and Shelley Hoyer, Gary Balser, Phyllis Wahl, Dan and Vicki Kemmeter, Deloris Reese, Jenny and Charlie Gast, Nancy Steinbrink, Shana Berge, Gregory Hoeting, Richard and Carol Tenenholtz, R. Allen Pancoast, Jason Dimaculangan, Phillip Griggs, Sharon M. Felman, Clifford W. Fauber, James Wulker, Timothy Wilson, Patricia McGill, Gary Pauly, Kathleen Danner, Greg Chtelmakh, Wayne and Betty Davis, Rob and Karen Ripp, Shuku Nishihata, Mark Lykins, Anne Wymore, Dan and Michelle Reece, and Anita Deye.

The foregoing named Complainants withdrawing from the Complaint are herein referred to as the “Withdrawing Complainants.”

This Partial Stipulation represents an efficient, just, and reasonable means to limit the number of Complainants who will participate in and prosecute the Complaint. The Partial Stipulation does not violate any regulatory principle or precedent and is the result of serious and equitable bargaining between the Parties. The Parties recognize that the Partial Stipulation is not binding on the Public Utilities Commission of Ohio (Commission), but assert that it is entitled to careful consideration by the Commission. For purposes of limiting the number of named Complainants, the Parties agree, and recommend, as set forth below.

II. Recitals

WHEREAS, Complainants filed a Complaint against Duke Energy Ohio regarding the Company’s vegetation management plan, practices, and procedures on November 14, 2017 and additional Complainants joined their claims to the initial Complaint by an Amended Complaint accepted on November 28, 2017 and a Second Amended Complaint was accepted on January 25, 2018, which Complainants moved to amend, filing the Third Amended Complaint on April 9, 2018; and

WHEREAS, the Parties have engaged in discussions regarding the nature of these proceedings, including the expenditure of time and resources required to prosecute this matter before the Commission on behalf of the 65 Complainants listed in the Complaint; and

WHEREAS, the Parties agree that any Commission decision that results from this proceeding will dictate Duke Energy Ohio's future implementation of its vegetation management plan, practices, policies, and procedures on the properties of all Complainants listed in the Complaint and throughout its service territory; and

WHEREAS, this Partial Stipulation is the result of negotiations between the Parties and is entitled to careful consideration by the Commission; and

WHEREAS, acceptance of this Partial Stipulation will result in a streamlined hearing and discovery process in the above-captioned matter, which will be to the benefit of all Parties.

NOW, THEREFORE, the Parties stipulate, agree, and recommend that the Commission approve this Partial Stipulation pursuant to the terms contained herein.

III. Joint Recommendation of the Parties

The Parties agree that the Withdrawing Complainants will withdraw, without prejudice, from participating in this proceeding as named Complainants and prosecuting the Complaint as named Complainants pursuant to the following terms:

- A. Each Withdrawing Complainant will continue to have the protection of the stay, as amended, that is currently in effect under the Commission's Entry dated April 5, 2018, regarding Duke Energy Ohio's vegetation management plan, practices, and policies and implementation of such for all properties along the five transmission circuits that are the subject of this proceeding.
- B. Each Withdrawing Complainant will be afforded the same protections or receive the same relief regarding Duke Energy Ohio's vegetation management plan, practices,

and policies and implementation of such that arise or result from the Order issued in this proceeding as if the Withdrawing Complainant had not withdrawn as named Complainants in this case.

- C. Duke Energy Ohio will not attempt to conduct or actually conduct vegetation management activities on the properties of the Withdrawing Complainants in a manner that would be inconsistent with the amended stay and Order in this proceeding, except as otherwise authorized by the Commission or as required to address an immediate safety and reliability concern arising from a force majeure event.²
- D. Each Withdrawing Complainant may rely upon and utilize the Order issued to enforce or comply with the relief ordered by the Commission regarding Duke Energy Ohio's vegetation management plan, practices, and policies and implementation of such as if the Withdrawing Complainants had not withdrawn from the Complaint.

IV. Procedural Matters

- A. This Partial Stipulation addresses certain Withdrawing Complainants withdrawing from this case in order to resolve this matter efficiently by reducing the number of Complainants and therefore limiting the hearing and discovery process that would otherwise require the expenditure of significant resources by all Parties.
- B. This Partial Stipulation is conditioned upon its acceptance in its entirety by the Commission. Should the Commission modify the Partial Stipulation in any way, a Party may withdraw from the Partial Stipulation and the Withdrawing Complainants shall have the right to re-join this case and actively participate in the above-captioned

² A force majeure event is defined as an event beyond the reasonable control of Duke Energy Ohio, that could not be remedied by the exercise of due diligence and that was not reasonably foreseeable, including without limitation, acts of God, natural disaster, terrorist acts, or wars.

complaint proceeding or any subsequent proceeding.

C. If the Commission modifies the Partial Stipulation, none of the Parties will oppose an Application for Rehearing to the extent that the Application for Rehearing asks the Commission to accept this Partial Stipulation in its entirety without modification.

IN WITNESS THEREOF, the undersigned Parties agree to this Partial Stipulation as of this 30th day of April, 2018. The undersigned Signatory Parties respectfully request that the Commission issue an Order adopting this Partial Stipulation.

Respectfully submitted,

/s/ Kimberly W. Bojko

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Stipulation was served by electronic mail on all parties of record in this matter on May 2, 2018.

/s/Kimberly W. Bojko
Kimberly W. Bojko

This foregoing document was electronically filed with the Public Utilities

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in

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

Summary: Stipulation Partial Stipulation Withdrawing Some Complainants from Complaint electronically filed by Mr. Brian W Dressel on behalf of Complainants