

THE PUBLIC UTILITIES COMMISSION OF OHIO

**CITIZENS AGAINST CLEAR CUTTING, ET
AL.,**

COMPLAINANTS,

CASE NO. 17-2344-EL-CSS

V.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on June 11, 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 January 25, 2018, the attorney examiner scheduled a hearing in this matter to commence on February 26, 2018.

{¶ 5} On February 7, 2018, the parties filed a joint motion seeking a continuance of the procedural schedule.

{¶ 6} Upon review, the attorney examiner granted the joint motion for continuance and rescheduled the hearing to commence on April 17, 2018.

{¶ 7} 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 indicated that it had tried to depose every single Complainant in this proceeding, but had exhausted its efforts in attempting to schedule the depositions despite working with Complainants. Consequently, due to its inability to complete the depositions in a timely fashion, Duke requested the Commission to continue the hearing.

{¶ 8} On March 14, 2018, Complainants filed a motion for protective order to prevent further depositions of Complainants. In the motion, Complainants indicated that they had either produced or agreed to produce 20 Complainants for depositions. However, Duke had refused to hold telephonic depositions to expedite the process. Moreover, Complainants argued that Duke's desire to depose all Complainants, instead of a select few, was not reasonably calculated to lead to the discovery of admissible evidence.

{¶ 9} 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.

{¶ 10} Due to the parties' inability to complete depositions in a timely fashion, the attorney examiner rescheduled the hearing to commence on May 14, 2018.

{¶ 11} On May 1, 2018, the attorney examiners held a prehearing conference regarding a motion to compel discovery filed by Complainants on April 20, 2018 and granted the motion to compel, in part. The attorney examiners additionally ruled that Duke was required to provide a privilege log for any documents that were redacted due to privilege. During the conference, Duke indicated that it would produce all outstanding discovery to Complainants by May 7, 2018.

{¶ 12} On May 11, 2018, Duke filed a motion to adjust the procedural schedule. In the motion, Duke stated that it required additional time to produce discovery to Complainants, as ordered during the May 1, 2018 prehearing conference. Duke also indicated that based on telephone and email communications amongst counsel, no parties object to the motion.

{¶ 13} By Entry dated May 14, 2018, the attorney examiner granted Duke's unopposed motion and directed Duke to produce all discovery, including the privilege log, to Complainants by May 23, 2018. Further, in order to provide sufficient time to prepare for the hearing, including reviewing the discovery responses and conducting depositions, the attorney examiner rescheduled the hearing to commence on June 18, 2018.

{¶ 14} On May 29, 2018, during a teleconference, counsel for Complainants indicated that despite the attorney examiners' rulings on May 1, 2018 and May 14, 2018, Duke had failed to provide a privilege log for numerous documents that had been redacted.

{¶ 15} By email dated May 29, 2018, counsel for Duke indicated that given the focus on producing responsive documents to Complainants' counsel, it was impossible for Duke to simultaneously prepare a privilege log for the nearly 20,000 documents that the Company produced. Moreover, counsel indicated that the Company did not have internal personnel who could be dedicated to producing a privilege log, as ordered. If Duke were to retain an outside vendor, the Company estimated that it would need approximately 30 days too prepare the required privilege log.

{¶ 16} By email dated June 8, 2018, counsel for Duke indicated that it would be able to provide the privilege log to Complainants by July 6, 2018.

{¶ 17} Based on representations from both Complainants that they have not received a privilege log for redacted documents produced and Duke's acknowledgment that it has not produced a privilege log, as ordered, by May 23, 2018, the attorney examiner finds that the hearing in this matter must be rescheduled for a fourth time. Based on the parties'

availability, the attorney examiner reschedules the hearing to commence at 10:00 a.m. on September 10, 2018. The following dates have been reserved for additional hearing days: September 11-13, 2018 and September 18-21, 2018. Duke will provide all outstanding discovery, including the privilege log, as ordered on May 1, 2018, and May 14, 2018, to Complainants by July 6, 2018. If Duke fails to provide all outstanding discovery, including the privilege log, by July 6, 2018, the attorney examiners will consider precluding the introduction of evidence or witnesses by Duke on matters related to the failure to provide discovery, as authorized by Ohio Adm.Code 4901-1-23. Testimony in this matter will be due by August 27, 2018. Moreover, the attorney examiner instructs Duke to continue periodically monitoring its transmission lines in the affected geographic area and to work with the mediator assigned to this case to ensure reliable service to its customers without prejudicing Complainants.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Duke comply with the discovery deadline and parties comply with the testimony deadline set in Paragraph 17. It is, further,

{¶ 20} ORDERED, That a hearing be set in the matter in accordance with Paragraph 17. It is, further,

{¶ 21} ORDERED, That Duke continue monitoring its transmission lines in the affected geographic area in accordance with Paragraph 17. It is, further,

{¶ 22} 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/mef

This foregoing document was electronically filed with the Public Utilities

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in

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

Summary: Attorney Examiner Entry ordering compliance and rescheduling a hearing for 9/10/18 at 10:00am. electronically filed by Ms. Mary E Fischer on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission