

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINTS OF:

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

JACK C. DAUGHERTY

TERRI BEAN

JEFFREY DEATON

DAWN ROBINSON-GODWIN,

CASE NO. 17-2344-EL-CSS

CASE NO. 17-2330-EL-CSS

CASE NO. 17-2454-EL-CSS

CASE NO. 17-2458-EL-CSS

CASE NO. 18-827-EL-CSS

COMPLAINANTS,

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on June 22, 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 (CACC) filed a complaint against Duke. On November 16, 2017, the attorney examiner granted CACC's request to stay Duke from clear cutting trees on their properties. On November 22, 2017, CACC filed an amended complaint and on January 5, 2018, CACC filed a second amended complaint. Duke filed its answer to the second amended complaint on January 25, 2018.

{¶ 4} On April 3, 2018, the parties filed a joint motion to revise the stay on Duke’s vegetation management activities. On April 5, 2018, upon review, the attorney examiner granted the motion and modified the November 16, 2017 stay to allow Duke to prune two to three years of growth from three trees identified by the parties.

{¶ 5} On May 3, 2018, the parties filed a joint partial stipulation with regard to certain CACC individuals named in the second amended complaint. These particular CACC individuals withdrew from Case No. 17-2344-EL-CSS with the understanding that the stay would remain in effect for their properties during the pendency of the proceeding.¹

{¶ 6} By Entry issued June 11, 2018, the attorney examiner scheduled a hearing in this matter to commence on September 10, 2018. In the Entry, the attorney examiner also instructed Duke to continue periodically monitoring its transmission lines in the affected geographic area and to work with the assigned mediator to ensure reliable service to its customers without prejudicing CACC.

{¶ 7} On June 20, 2018, the parties filed a joint motion in Case No. 17-2344-EL-CSS to revise the stay on Duke’s vegetation management activities as related to CACC’s properties, including those properties subject to the May 3, 2018 joint partial stipulation.² In the motion, the parties indicate that since CACC has initiated this case, Duke has ceased all vegetation management on the five transmission circuits that include CACC properties, except as jointly requested by the parties on April 3, 2018, and authorized by the attorney examiner by Entry dated April 5, 2018. According to the joint motion, Duke performed an

¹ The following individuals effectively withdrew from Case No. 17-2344-EL-CSS with the understanding that the stay would continue to apply to their properties: Jeff and Linda Sims, James Johnson, Majid Qureshi, Keith Donovan, Julie Reynolds, John Lu, Robert Schneider, John Hasselbeck, Lawrence Hug, Jason Mayhall, James and Shelley Hoyer, Gary Balsler, 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.

² Duke filed a similar motion in Case No. 17-2454-EL-CSS to revise the stay currently in place in that case to allow the Company to prune trees to ensure reliable electric service to its customers.

inspection of its transmission lines in late May 2018 to identify any imminent threats to its transmission system. As a result, Duke has identified multiple trees on CACC properties that may pose an immediate threat to public safety and electric service, safety and reliability.

{¶ 8} Specifically, Duke has identified trees which are Priority 1 (P1), meaning that the trees are within 6 feet of the transmission line or conductor, and Priority 2 (P2) trees, meaning the trees are within 6-15 feet of the transmission line or conductor. A list of these trees is attached as an exhibit to the joint motion. Duke has identified P1 trees on properties owned by the following CACC individuals: Dennis Baker, Fred Vonderhaar, Greg Hoeting, and Marc Wahlquist. The Company has identified P2 trees on properties owned by the following CACC individuals: Sanford and Barbara Casper, Dennis Baker, Melissa Weiss, Shuku Nishihata, Symmes Gate Condos/Phyllis Wahl, Daniel Reece, Joseph Grossi, Olga Staios, Greg Hoeting, Fred Vonderhaar, Scott Carson, Melissa Broome, Marc Wahlquist, Anita Deye, Phillip Griggs, Lawrence and Nancy Hug, Rob and Karen Ripp, and Gary and Judith Pauly. Finally, according to the exhibit attached to the joint motion, the Company has identified P2 trees on the properties of Jack Daugherty (Case No. 17-2330-EL-CSS), Terri Bean (Case No. 17-2454-EL-CSS), Jeffrey Deaton (Case No. 17-2458-EL-CSS), and Dawn Robinson-Goodwin (Case No. 18-827-EL-CSS). These individuals are pro se litigants who have filed similar complaints against Duke as the CACC individuals.

{¶ 9} According to the joint motion, Duke will trim and prune P1 and P2 trees to create a 15-foot clearance distance between the tree and the nearest transmission line. Duke will not trim or prune more than is necessary to create a 15-foot clearance distance unless the property owner agrees and affirmatively consents otherwise. Duke has agreed to provide 72 hours notice via email to counsel for all affected CACC individuals, including those who are subject to the May 3, 2018 joint partial stipulation. Duke will provide notice to CACC's counsel by email in the event that additional work needs to be completed or if the Company needs to reschedule the work for any reason. Duke also will instruct its tree trimming personnel and representatives performing vegetation management work to knock on the door or ring the doorbell in an attempt to provide personal notice to the property

owners of their intent to enter their properties to perform vegetation management prior to starting that work. Lastly, the parties state that Duke will remove all debris from CACC individuals' properties after performing the vegetation management work.

{¶ 10} The parties request the Commission to amend the stay of Duke's vegetation management activities and permit the proposed trimming of P1 and P2 trees to ensure service reliability. The parties agree that the motion does not constitute any waiver of either party's rights regarding their legal arguments concerning Duke's vegetation management activities.

{¶ 11} Upon review, the attorney examiner finds that the parties' joint motion is reasonable and that the P1 and P2 trees identified as an attachment to the motion 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 the identified P1 and P2 trees to create a 15-foot clearance distance between the trees and the nearest transmission line as agreed to by the parties. Furthermore, the attorney examiner, while recognizing that certain pro se litigants asserting the same claims in their complaints as those made by CACC, including those in Case Nos. 17-2330-EL-CSS, 17-2458-EL-CSS, and 18-827-EL-CSS, did not request a stay of Duke's vegetation management activities as to their properties, finds that all property owners that have filed complaints against Duke as to its vegetation management activities on these five circuits deserve equitable treatment during the pendency of their cases. Maintaining consistency in the application and subsequent modification of the stay, and, consequently, any trimming or pruning activities, as to all affected property owners will help ensure safe and reliable electric service without prejudicing the complainants. As such, Duke is directed to adhere to the terms of the proposed modified stay when pruning the identified P1 and P2 trees on the properties of all affected complainants, including the above-captioned pro se litigants. Accordingly, the attorney examiner directs Duke to directly contact and provide 72 hours notice to complainants in other, similar cases pending before the Commission who might be affected by the pruning of these P1 and P2 trees. The Company should also instruct its tree trimming personnel and representatives performing

vegetation management work to knock on the door or ring the doorbell in an attempt to provide personal notice to such property owners of their intent to enter their properties to perform vegetation management prior to starting that work. The attorney examiner again notes that the joint motion does not constitute any waiver of either party's rights regarding their legal arguments concerning Duke's vegetation management activities.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the November 16, 2017 stay on Duke's vegetation management activities be modified in accordance with Paragraph 11. It is, further,

{¶ 14} ORDERED, That Duke's emergency motion filed in Case No. 17-2454-EL-CSS on June 20, 2018, be denied as moot. It is, further,

{¶ 15} 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

NJW/mef

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Case No(s). 17-2344-EL-CSS, 17-2330-EL-CSS, 17-2454-EL-CSS, 17-2458-EL-CSS, 18-0827-EL-CSS

Summary: Attorney Examiner Entry modifying stay on vegetation management activities and denying emergency motion. electronically filed by Ms. Mary E Fischer on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission