

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Citizens	)	
Against Clear Cutting, <i>et al.</i> ,	)	
	)	
Complainants,	)	
v.	)	Case No. 17-2344-EL-CSS
	)	
Duke Energy Ohio, Inc.,	)	
	)	
Respondent.	)	

---

**JOINT MOTION TO REVISE STAY BY AGREEMENT**

---

Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company), together with the Citizens Against Clear Cutting (CACC), jointly moving the Public Utilities Commission of Ohio (Commission) for a modification of the Commission's stay of Duke Energy Ohio's vegetation management activities as related to the properties of those Complainants who presently comprise CACC and those Complainants who are subject to the May 3, 2018 Partial Stipulation. Reasons are set forth in the attached memorandum in support.

Respectfully submitted,

/s/ Robert A. McMahon

Rocco O. D'Ascenzo (0077651)  
Deputy General Counsel  
Elizabeth H. Watts (0031092)  
Associate General Counsel  
DUKE ENERGY OHIO, INC.  
139 East Fourth Street  
1303-Main  
P.O. Box 960  
Cincinnati, Ohio 45202  
Telephone: (513) 287-4320  
Rocco.D'Ascenzo@duke-energy.com  
Elizabeth.Watts@duke-energy.com

Robert A. McMahon (0064319)  
Eberly McMahon Copetas LLC  
2321 Kemper Lane, Suite 100  
Cincinnati, Ohio 45206  
(513) 533-3441 (telephone)  
(513) 533-3554 (fax)  
bmcmahon@emclawyers.com

**Attorneys for Duke Energy Ohio, Inc.**

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)  
Stephen E. Dutton (0096064)  
Brian W. Dressel (0097163)  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
bojko@carpenterlipps.com  
Dutton@carpenterlipps.com  
dressel@carpenterlipps.com

**Counsel for Complainants**

## **Memorandum in Support**

Duke Energy Ohio and CACC hereby jointly move the Commission to modify the Commission's stay of Duke Energy Ohio's vegetation management activities as related to the properties of those Complainants who are currently named in the Second Amended Complaint and those Complainants who are subject to the May 3, 2018 Partial Stipulation.

On November 16, 2017, the Commission issued an Entry directing that Duke Energy Ohio cease vegetation management on Complainants' properties during the pendency of the complaint proceeding. Since that time, the Company has ceased all vegetation management on the five transmission circuits that include properties of Complainants, except as jointly requested by the parties through Joint Motions filed on April 3, 2018 and June 20, 2018, and authorized by the Commission by Entries dated April 5, 2018 and June 22, 2018.

Duke Energy Ohio, Inc. has performed an inspection of its transmission lines to determine if there were any imminent threats to the electric system that should be immediately addressed. As a result of that inspection, it has been determined that there are multiple trees on Complainants' properties that may pose an immediate threat to public safety and electric service, safety and reliability. Duke Energy Ohio has identified those trees as Priority 2 (P2), meaning the trees are within 6-15 feet of the transmission line or conductor.

In order to conduct vegetation management on these P2 trees, the parties agree that the Company should be allowed to prune trees under the following conditions:

1. Duke Energy Ohio may trim and/or prune any tree on a property owned by any Complainant (including those Complainants who are subject to the May 3, 2018 Partial Stipulation) that comes within 15 feet of a transmission line so as to create a 15-foot clearance distance between the tree and the nearest transmission line. Duke Energy Ohio 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.

2. Duke Energy Ohio will provide all affected Complainants (including those Complainants who are subject to the May 3, 2018 Partial Stipulation) at least 72 hours' notice to their undersigned counsel by email prior to performing any work on Complainants' properties. Duke will provide additional notice to affected Complainants, by email to their undersigned counsel, in the event that additional work needs to be completed or if the Company needs to reschedule the work for any reason. Duke Energy Ohio also will instruct its tree trimming personnel and/or representatives performing the vegetation management work, prior to starting that 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.
3. Duke Energy Ohio will remove all debris from the Complainants' properties after performing the vegetation management work.

By agreeing to this joint motion and agreeing to conduct this limited vegetation maintenance, the parties are not waiving their legal arguments as to what constitutes what is appropriate, reasonable, lawful, or the best practices regarding Duke Energy Ohio's vegetation management activities or under the Company's easements.

Wherefore, Duke Energy Ohio and CACC respectfully request that the Commission amend the stay of the Company's vegetation management activities to permit the proposed vegetation management and to allow the pruning of trees on property owned by any Complainant (including those Complainants who are subject to the May 3, 2018 Partial Stipulation), provided that this amendment shall not be construed or used against Duke Energy Ohio or CACC in this proceeding, nor shall this agreement constitute any waiver of either party's rights regarding their legal arguments concerning Duke Energy Ohio's vegetation management activities.

Respectfully submitted,

/s/ Robert A. McMahon

Rocco O. D'Ascenzo (0077651)  
Deputy General Counsel  
Elizabeth H. Watts (0031092)  
Associate General Counsel  
DUKE ENERGY OHIO, INC.  
139 East Fourth Street  
1303-Main  
P.O. Box 960  
Cincinnati, Ohio 45202  
Telephone: (513) 287-4320  
Rocco.D'Ascenzo@duke-energy.com  
Elizabeth.Watts@duke-energy.com

Robert A. McMahon (0064319)  
Eberly McMahon Copetas LLC  
2321 Kemper Lane, Suite 100  
Cincinnati, Ohio 45206  
(513) 533-3441 (telephone)  
(513) 533-3554 (fax)  
bmcmahon@emclawyers.com

**Attorneys for Duke Energy Ohio, Inc.**

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)  
Stephen E. Dutton (0096064)  
Brian W. Dressel (0097163)  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, OH 43215  
bojko@carpenterlipps.com  
Dutton@carpenterlipps.com  
dressel@carpenterlipps.com

**Counsel for Complainants**

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

**Commission of Ohio Docketing Information System on**

**7/6/2018 11:26:02 AM**

**in**

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

Summary: Motion Joint Motion to Revise Stay by Agreement electronically filed by Mr. Robert A. McMahon on behalf of Duke Energy Ohio, Inc.