

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINTS OF:

CITIZENS AGAINST CLEAR CUTTING, ET AL.

CASE NO. 17-2344-EL-CSS

BOB SCHMELING

CASE NO. 17-2172-EL-CSS

ROBERT SCHMELING

CASE NO. 17-2180-EL-CSS

TAMMY & KARL ROSS

CASE NO. 17-2186-EL-CSS

CHRIS HENDRIKSEN

CASE NO. 17-2196-EL-CSS

STEVE KAHN

CASE NO. 17-2197-EL-CSS

DAVID E. SHEWMON

CASE NO. 17-2207-EL-CSS

DAVID & BEVERLY FENTON

CASE NO. 17-2208-EL-CSS

BRETT LEONARD

CASE NO. 17-2209-EL-CSS

TIMOTHY H. JONES

CASE NO. 17-2210-EL-CSS

CARLYLE REID

CASE NO. 17-2212-EL-CSS

ERIC OSWALD

CASE NO. 17-2220-EL-CSS

JEREMY & CARINA HENRY

CASE NO. 17-2221-EL-CSS

MELANIE MAUGHLIN

CASE NO. 17-2225-EL-CSS

AMBER & CHRIS FRANCOSKY

CASE NO. 17-2262-EL-CSS

SEAN & EMILY HUNT

CASE NO. 17-2263-EL-CSS

NICHOLAS CALO

CASE NO. 17-2267-EL-CSS

MARY & MICHAEL MENO

CASE NO. 17-2270-EL-CSS

EMMANUEL BLACK

CASE NO. 17-2322-EL-CSS

ELIZABETH VORHOLT

CASE NO. 17-2323-EL-CSS

DAVID & PATRICIA MCLEAN

CASE NO. 17-2324-EL-CSS

JACK C. DAUGHERTY

CASE NO. 17-2330-EL-CSS

JULIA M. & DAVID A. GUY

CASE NO. 17-2369-EL-CSS

TERRI BEAN

CASE NO. 17-2454-EL-CSS

JEFFREY DEATON

CASE NO. 17-2458-EL-CSS

KIMBERELY SALLAH

CASE NO. 17-2504-EL-CSS

KRISTA & MATT WAGNER

CASE NO. 17-2518-EL-CSS

ANGELA MARTIN

CASE NO. 17-2553-EL-CSS

DAWN ROBINSON-GODWIN

CASE NO. 18-827-EL-CSS

COMPLAINANTS,

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on July 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 (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

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.

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 second joint motion 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. According to the joint motion, Duke would trim and prune P1 and P2 trees identified as an attachment to the joint motion to create a 15-foot clearance distance between the trees and the nearest transmission line to ensure reliable service to Duke's customers.

{¶ 8} On June 22, 2018, the attorney examiner granted the parties' joint motion, finding that the identified P1 and P2 trees should be pruned to ensure reliable service to Duke's customers. Furthermore, to maintain consistency in the application and subsequent modification of the stay, the attorney examiner also instructed Duke to adhere to the terms of the proposed modified stay when pruning the P1 and P2 trees on the properties of any pro se litigants who asserted similar claims as those made by CACC.

{¶ 9} On July 6, 2018, the parties filed a third joint motion 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, in Case No. 17-2344-EL-CSS. In the motion, the parties indicate that Duke has identified additional P2 trees, meaning the trees are within six to 15 feet of a transmission line or conductor. The parties indicate that Duke should be allowed to trim or prune any tree on CACC properties, including those subject to the May 3, 2018 joint partial stipulation, which comes within 15 feet of a transmission line to create a 15-foot clearance distance between the tree and the nearest transmission line. The parties indicate that 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 amend the stay of Duke's vegetation management activities and permit the proposed trimming of 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 any trees that come within 15 feet of a transmission line for any of the five transmission circuits at issue in this case should be trimmed or pruned to ensure reliable service to Duke's customers. Consequently, the November 16, 2017 stay is hereby modified to allow Duke to prune trees to create a 15-foot clearance distance between the trees and the nearest transmission line as agreed to by the parties.

{¶ 12} Furthermore, as we noted in our Entry dated June 22, 2018, maintaining consistency in the application and subsequent modification of the stay, and, consequently, any trimming or pruning activities, as to all affected property owners in the geographic area of this dispute, will help ensure safe and reliable electric service without prejudicing CACC or other complainants. Consequently, Duke is directed to adhere to the terms of the proposed modified stay when pruning trees on the properties of all affected complainants, including CACC property owners and the pro se litigants identified in the caption who have asserted similar claims in their complaints as those made by CACC. Consistent with the notice to be provided to CACC property owners, the attorney examiner instructs Duke to

directly contact and provide 72 hours notice to pro se complainants who might be affected by the pruning of trees authorized by this Entry. 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.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the November 16, 2017 stay on Duke's vegetation management activities be modified in accordance with Paragraph 11 and 12. 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

JRJ/mef

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in

Case No(s). 17-2344-EL-CSS, 17-2172-EL-CSS, 17-2180-EL-CSS, 17-2186-EL-CSS, 17-2196-EL-CSS,

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