**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| Lynn E. Matthews | ) | |
| | ) | |
| Complainant. | ) | Case No.18-1585-EL-CSS |
| v. | ) | |
| | ) | |
| Duke Energy Ohio, Inc., | ) | |
| | ) | |
| Respondent. | ) | |

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**MEMORANDUM CONTRA COMPLAINANT'S**
**REQUEST FOR STAY OF VEGETATION MANAGEMENT**

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## I. INTRODUCTION

Complainant Lynn Matthews filed a complaint on October 19, 2018. Complainant did not file a separate motion or request for the Commission to stay vegetation management activities by Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) on his property, but did include such a request in the prayer for relief in his complaint. Duke Energy Ohio timely filed its answer on November 8, 2017, and responded to all allegations of the complaint. But the Company did not otherwise respond to Complainant's prayer for relief, which did not contain allegations of fact and law which warranted responses. As ordered by the Attorney Examiner, Duke Energy Ohio now responds directly to Complainant's request for a stay of the implementation of the Company's vegetation management program on his property: that request should be denied because the Complaint does not set forth any factual or legal basis that would provide grounds for the Commission to grant such a request.

## II. DISCUSSION

It is well settled in Ohio that the Commission is a creature of the General Assembly and may exercise no jurisdiction or powers except as expressly conferred by statute.[1] As the Ohio Supreme Court held in *Penn Central*, "The General Assembly has granted the power of injunctive relief solely to the courts in Ohio. It has conferred no such right upon the Public Utilities Commission, and the commission, in exercising such power, has exceeded its statutory jurisdiction."[2]

The Complainant is seeking a remedy here that exceeds the Commission's statutory authority. The Commission has no equitable authority to grant this request and order Duke Energy Ohio not to implement its vegetation management program (which has been approved by the Commission) or not to "clear cut" or remove trees within the Company's acknowledged easement. Moreover, even if the Commission had the power to grant injunctive relief, which *Penn Central* clearly rejects, granting such injunctive relief without due process to support a conclusion that injunctive relief is necessary or appropriate to preserve the status quo is unlawful.

After all, Complainant readily admits in his Complaint that Duke Energy Ohio has an easement and right-of-way on his property. That easement, which is attached to and incorporated into the Complaint as Attachment A, expressly provides, in pertinent part, that

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[1] See, *Penn Cent. Transp. Co. v. Public Utilities Com.*, 35 Ohio St. 2d 97, 99, 298 N.E.2d 587, 589 (1973), paragraph 1 of the syllabus, citing *Toledo v. Pub. Util. Comm.* (1939), 135 Ohio St. 57; *Akron & Barberton Belt Rd. Co. v. Pub. Util. Comm.* (1956), 165 Ohio St. 316; *Baltimore & Ohio Rd. Co. v. Pub. Util. Comm.* (1968), 16 Ohio St. 2d 60; *Ohio Bus Line* v. *Pub. Util. Comm.* (1972), 29 Ohio St. 2d 222; see also, *Ohio Mfrs' Asso. v. Public Utilities Com.*, 46 Ohio St. 2d 214, 217 (1976) ( "the commission possesses no power or authority except that conferred and vested in it by statute"); *In the Matter of the Complaint of Harry G. Dworkin Complainant, v. East Ohio Gas Co.*, Case No. 88-1716-GA-CSS, 1989 Ohio PUC LEXIS 230, *2 ("The Commission lacks jurisdiction to grant injunctive relief"); *In the Matter of the Complaint of Richard Powell, d.b.a. Scioto Lumber Company, Complainant, v. The Cincinnati Gas & Electric Co.*, Case No. 88-916-GE-CSS, 1988 Ohio PUC LEXIS 674, *4 ("As also correctly pointed out by CG&E, the Commission is without jurisdiction to award the type or relief [injunctive] sought by Complainant").

[2] *Id*. at 101

Duke Energy Ohio has "the right to cut, trim or remove any trees, overhanging branches or other obstructions within and without the limits of the above described right of way and easement which in the opinion of the grantee's engineers may endanger the safety of or interfere with the construction, operation or maintenance of said system." Duke Energy Ohio has made that determination. Therefore, the Commission should not enjoin the Company's lawful exercise of its rights to conduct vegetation management along its high-voltage transmission lines based on nothing more than baseless allegations of a complaint. That is especially true in this case when one of the Company's transmission lines is a 345 kV line that falls within NERC's jurisdiction.

## III. Conclusion

Duke Energy Ohio, Inc. requests that, upon review, the Commission deny Complainant's request for a stay of vegetation management activities on Complainant's property.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Duke Energy Ohio, Inc., was served via regular US Mail postage prepaid, or by electronic mail service, this 27th day of November, 2018, upon the following:

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Summary: Memorandum MEMORANDUM CONTRA COMPLAINANT'S REQUEST FOR STAY OF VEGETATION MANAGEMENT electronically filed by Carys Cochern on behalf of Watts, Elizabeth H. Ms.