



Lelle Hedding • Kristin Malhotra • Lonnie Vestal – Board of Trustees
Dan Corey – Fiscal Officer
Eric Reiners - Administrator

March 19, 2019

Deerfield Township Trustees

Re: Duke Energy Clear Cutting

Dear Commissioners of the Public Utilities Commission:

We write in this matter in support of Complainant, Heather Wright's opposition to Duke Energy Ohio's practice of clear-cutting vegetation in transmission line easements and rights-of-way. Ms. Wright is a resident of Deerfield Township and her property, like many others in the Township, hosts Duke Energy Ohio transmission lines. As Trustees of Deerfield Township in Warren County, we value safe and reliable electric service. But we do not support removal of trees and other vegetation that do not pose a legitimate risk to electric infrastructure.

Clear-cutting is irreversible. Mature trees cannot be replaced overnight, and the effects of clear-cutting will be felt by Ms. Wright and similarly situated property owners for decades to come. As a society, we have become more knowledgeable and sensitive to the importance of preserving mature trees and vegetation—they help to alleviate erosion and flooding, they clean the air, they provide shade so that we have to spend less to cool our homes in the summer. Many local governments require developers to pay substantial fees to remove trees for these reasons. How can Duke Energy Ohio clear-cut, without consequence, on other people's property?

For individual property owners, trees and vegetation provide even greater benefits. They provide habitats for songbirds and for birds of prey that hunt pests. They increase property values. They screen undesirable views. Even smaller trees can screen the lower portions of a transmission tower, so that the eyesore is less apparent from the property owner's eye-level. Removing trees that pose no threat to electric infrastructure harms property owners.

The deal brokered for every electric line easement is that the electric company can run its lines through the property and take reasonable action to protect its lines. In exchange, the property owner gets to keep the vegetation that does not threaten the lines. Clear-cutting unjustly replaces that deal. Instead, it allows the electric company to do whatever is convenient for it, without regard to need and without regard to the property owner's rights.

As the elected Trustees of Deerfield Township, we take an interest in Ms. Wright's case because it raises implications for other residents in our Township. We know that a similar case is pending, Case No. 17-2344, brought by several residents and the Symmes Township Trustees as the "Citizens Against Clear Cutting." We submitted a letter in support of those complainants in that case. It is our understanding

that the hearing has occurred in the Citizens Against Clear Cutting case and that it is awaiting a decision. We feel compelled to speak out here, too, and may seek greater involvement as this case progresses.

The clear-cutting of trees and other vegetation in the easement exceeds the PUCO-approved vegetation management plan for Duke Energy Ohio. We take no position as to Ms. Wright's belief that Duke Energy Ohio intentionally misled or lied to the Commission when it submitted the current plan. Instead, as we read the vegetation management plan it is clear that the approved plan requires more consideration for removal of vegetation—especially trees.

Duke Energy Ohio's vegetation management plan was adopted in Case No. 16-915-EL-ESS. The application submitted with the plan states its intention is to "clarify and make the terms more coherent" without any "substantive changes" to the program. The red-lined changes submitted by Duke Energy Ohio state that Duke Energy Ohio will clear vegetation away from its transmission lines at least once every six years, "which may include cutting down and removing vegetation from a Duke Energy Ohio corridor when Duke Energy Ohio has the legal right to do so." The stated goal is to "help maintain and improve safe and reliable electric service by limiting or eliminating the possibility of contact by vegetation which has grown towards the overhead transmission lines." This language replaced language stating that "Duke Energy Ohio shall provide vegetation line clearing on transmission circuits at least once every six years."

The vegetation management plan approved in 2016 states a goal (maintaining and improving safe and reliable electric service) as well as a limitation (limiting clearance to instances where Duke Energy Ohio has a "legal right" to clear). The practices implemented under this vegetation management plan, and challenged by Ms. Wright, have no apparent relation to the goal of maintaining and improving safe and reliable electric service, and appear to be beyond the rights granted to Duke Energy Ohio in Ms. Wright's easement. These practices therefore exceed the approved plan.

It is unreasonable and unjust, contrary to Section 4905.26 of the Ohio Revised Code, for a utility to indiscriminately clear-cut—without any relationship to the goal of safe and reliable service—on an easement owned by private landowners. The removal of mature trees by clear-cutting is a consequential, and irreversible, action with acute effects upon the property owner. Justice and reasonableness require that such an action impairing the individual's interest must be related to the regulatory goal of safe and reliable service to the public. To the extent that the clear-cutting serves only the convenience or efficiency of the utility, rather than the public good of safe and reliable electric service, that clear-cutting exceeds the approved plan.

The clear-cutting also exceeds Duke Energy Ohio's rights under the easement on Ms. Wright's property. The easement attached to her complaint states that the Grantee (utility) has the right "of ingress and egress over the right of way and the adjoining premises . . . to . . . cut, trim and remove or otherwise control such trees, undergrowth or overhanging branches or other obstructions . . . as, in the opinion of [the utility] may now or at any time hereafter interfere with the construction, use, maintenance, or successful operation of said facilities and/or the [transmission lines]." That grant of permission to act within the easement area depends upon an exercise of judgment by the utility with respect to interference with the utility's facilities in the easement area. Indiscriminate clear-cutting requires no judgment or opinion. As Trustees, we agree with Ms. Wright's argument that Duke Energy Ohio has no legal right to engage in its indiscriminate clear-cutting practices. If Duke Energy Ohio does not have a legal right under its easement to clear-cut, then it is not in compliance with the approved vegetation management plan.

Lastly, we wish to comment on Ms. Wright's claims that Duke Energy Ohio's vegetation management practices have caused "long-term erosion issues, decreased property values, and a mess of invasive species." She also states she wants to stop Duke Energy Ohio from using toxic herbicides on her property. We are aware that similar claims were made by the group of complainants known as the Citizens Against Clear Cutting in PUCO Case No. 17-2344, and that those claims were dismissed for lack of PUCO jurisdiction. We would suggest, however, that vegetation management practices that cause harms such as those alleged by Ms. Wright reflect on whether the practices are unjust or unreasonable under Section 4905.26 of the Ohio Revised Code. It is just and reasonable for a public utility to act so that it has the least external cost upon the private property owners with utility easements on their property. These affects are no different than a utility truck driving through a homeowner's flower beds to reach an easement. We argue that the PUCO has jurisdiction to consider the external effects of the clear-cutting practices in determining whether the practices are unjust and unreasonable, even if the PUCO does not have jurisdiction to award compensation to Ms. Wright for any damages she may suffer.

In conclusion, as the elected Trustees of Deerfield Township, we support Ms. Wright's complaint and urge the Commission to find that indiscriminate clear-cutting does not comply with Duke Energy Ohio's vegetation management plan. The practice unreasonably and unjustly infringes upon property owner's rights and harms both the individual and the Township.

Sincerely,

Trustee Lelle Hedding



Trustee Kristin Malhotra



Trustee Lonnie Vestal



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Summary: Comments Letter in Support of Complainant, Heather Wright. electronically filed by Mr. Thaddeus M Boggs on behalf of Deerfield Township Board of Trustees