

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINTS OF:

**BOB SCHMELING
ROBERT SCHMELING
CHRIS HENDRIKSEN
STEVE KAHN**

**CASE NO. 17-2172-EL-CSS
CASE NO. 17-2180-EL-CSS
CASE NO. 17-2196-EL-CSS
CASE NO. 17-2197-EL-CSS**

COMPLAINANTS,

v.

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on May 6, 2020

I. SUMMARY

{¶ 1} The Commission grants Duke Energy Ohio, Inc.'s motions to dismiss filed in the above-captioned cases due to a lack of prosecution.

II. DISCUSSION

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} The Complainants identified in the caption for this Entry filed complaints against Duke during October 2017. In their complaints, Complainants alleged that Duke is attempting to remove trees on their respective properties without making a determination that the trees actually posed a risk to the safe and reliable provision of electric service and

complete removal was necessary. They further alleged that, without such a determination, Duke has no authority to engage in the practice. In each of their individual cases, the attorney examiner granted stays of Duke's vegetation management activities, with respect to the Complainants' properties, during the pendency of their cases.

{¶ 5} On November 9, 2017, Duke filed motions to dismiss all of these cases. In the motions to dismiss, Duke alleged that Complainants did not have standing to assert claims because the Company's high-voltage transmission lines related to transmission circuits 3881, 5483, 5487 do not run through the properties owned by Complainants. Duke further explained that it did not have an easement or 100-foot right-of-way below these transmission circuits on any of the properties at issue in these proceedings. As such, Duke did not need or intend to perform vegetation management on any of these properties. Because the complaints did not involve any service rendered by Duke, the Company requested the Commission to dismiss them because they did not set forth reasonable grounds for complaint against Duke. Along with the motions to dismiss, Duke also filed an affidavit from an employee attesting to the fact that transmission circuits 3881, 5483, 5487 do not run through the Complainants' properties.

{¶ 6} On November 13, 2017, Duke filed answers in these cases. Duke denied the allegations made by Complainants. Additionally, it set forth affirmative defenses including reiterating that Complainants lacks standing to assert any claims.

{¶ 7} The attorney examiner scheduled prehearing settlement conferences in each of these cases in May and June 2018. However, Complainants did not appear for the conferences.

{¶ 8} On June 12, 2018, Duke filed renewed motions to dismiss in each of these cases. In the motions, Duke reiterated that its transmission lines related to transmission circuits 3881, 5483, and 5487 do not run through Complainants' properties and that it did not intend to conduct vegetation management on these properties. Further, Duke noted that Complainants failed to attend the prehearing settlement conferences, as scheduled, and this

was indicative of their lack of desire or intent to pursue the cases. Therefore, Duke requested that the Commission grant its motions to dismiss and dismiss Complainants' claims.

{¶ 9} Initially, we note that transmission circuits 3881, 5483, and 5487 were at issue in a related, larger proceeding, Case No. 17-2344-EL-CSS, which involved complainants located in a similar geographic area as Complainants, namely in Hamilton County, Symmes Township, Deerfield Township, and the City of Montgomery, Ohio. Two other transmission circuits, 5883 and 5887, were also at issue in that proceeding. In Case No. 17-2344-EL CSS, the Commission adopted a stipulation which allowed Duke to conduct its vegetation management activities along its transmission lines and the ability of property owners to knowledgably and consistently adhere to guidance from the Company in order to preserve an environment conducive to conducting those activities, without jeopardizing property owners' ability to enjoy and reasonably landscape their properties. *In re Citizens Against Clear Cutting, et al. v. Duke Energy Ohio, Inc.*, Opinion and Order (Jan. 15, 2020) at ¶¶ 38-41. In an abundance of caution and to ensure the uniformity of the application of vegetation management practices in the area, the Commission directs Duke and the Complainants in this case to adhere to the stipulation in Case No. 17-2344-EL-CSS if there is a need for vegetation management on Complainants' properties related to transmission circuits 3881, 5483, 5487, 5883, 5887 in the future.

{¶ 10} However, we also find that the complaints in these cases should be dismissed for lack of prosecution. As noted earlier, Complainants did not attend the prehearing settlement conferences scheduled in May and June 2018. Further, Complainants have not attempted to contact the Commission since Duke filed its renewed motions to dismiss on June 12, 2018, and have generally failed to prosecute their cases. While we do not address Duke's claim that these complainants lack standing, we nonetheless find that they should be dismissed for lack of prosecution and Duke's motions to dismiss will be granted to the extent that Duke argues this point. Accordingly, these cases should be dismissed and be closed of record.

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That Duke's motions to dismiss the cases identified in the caption for this Entry should be granted. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon each party and interested person of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

AS/mef

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Case No(s). 17-2172-EL-CSS, 17-2180-EL-CSS, 17-2196-EL-CSS, 17-2197-EL-CSS

Summary: Entry granting Duke Energy Ohio, Inc.'s motions to dismiss filed in the above-captioned cases due to a lack of prosecution electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio