

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMPLAINT OF
FREDRICK VONDERHAAR,

COMPLAINANT,

v.

CASE NO. 23-1102-EL-CSS

DUKE ENERGY OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on January 9, 2024

{¶ 1} 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.

{¶ 2} Respondent Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On November 13, 2023, as amended on December 4, 2023, Mr. Fredrick Vonderhaar (Complainant) filed a complaint stating that, among other things, Duke intends to conduct tree clearing that would be in noncompliance with a 2011 agreement between Duke and Complainant regarding Duke's vegetation management plan (2011 Agreement). Mr. Vonderhaar argues that during 2016 or 2017, Duke girdled and sprayed Complainant's vegetation in direct violation of the 2011 Agreement, which killed Complainant's vegetation and posed safety issues and erosion damage to his property. Mr. Vonderhaar avers that Duke's additional tree clearing planned for December 2023, i.e., removal of approximately 50 additional trees/vegetation, would aggravate the existing erosion issue and cause

significant new damage to Mr. Vonderhaar's property. In his complaint, Complainant mainly requests that Duke comply with the 2011 Agreement.

{¶ 4} On December 5, 2023, the Complainant contacted the Commission's Legal Department via phone and indicated that Duke intended to commence tree clearing and vegetation management on December 13, 2023, despite the pendency of his complaint. Complainant requested that Duke be directed not to conduct the vegetation clearing while his complaint was before the Commission.

{¶ 5} By Entry dated December 6, 2023, the attorney examiner placed a stay on Duke's vegetation management activity on the properties relevant to Mr. Vonderhaar's complaint during the pendency of the complaint or until otherwise ordered.

{¶ 6} On December 20, 2023, Duke filed its answer, which admits and denies some of the complaint's allegations and sets forth several affirmative defenses. Specifically, Duke admits that it identified a total of 66 trees in need of vegetation management on Complainant's properties and, on November 20, 2023, notified Complainant of its intent to perform this work on or after December 1, 2023. Further, in its answer, Duke asserts that the 48 trees identified for removal: (1) were within the Company's easements; (2) were 15 feet or taller in height at the time of identification; and (3) have mature heights of more than 15 feet. Duke raises that the identified vegetation management work is consistent with its express grants of easements and with its Programs for Inspection, Maintenance, Repair, and Replacement of Distribution and Transmission Lines, Section (f), as approved on July 30, 2020, in Case No. 20-944-EL-ESS. Furthermore, Duke states that the trees identified for removal comprise "incompatible vegetation," for which the appropriate path of mitigation is removal under its approved transmission vegetation management program.

{¶ 7} At this time, the attorney examiner finds that this matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution in lieu of an evidentiary hearing. In accordance with Ohio Adm.Code 4901-1-26, any statements made in an attempt to settle

this matter without the need for an evidentiary hearing will not generally be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's legal department will facilitate the settlement process. However, nothing prohibits any party from initiating settlement negotiations prior to the scheduled settlement conference.

{¶ 8} Accordingly, a settlement conference shall be scheduled for February 6, 2024, at 10:00 a.m. at the offices of the Commission, Room 1246, 180 East Broad Street, Columbus, Ohio 43215. Visitors should register at the building lobby desk and then proceed to the 11th floor to participate in, or attend, the settlement conference.

{¶ 9} Pursuant to Ohio Adm.Code 4901-1-26(F) the representatives of the electric services company shall investigate the issues raised in the complaint prior to the settlement conference. All parties participating in the conference shall be prepared to discuss settlement of the issues raised and shall have authority to settle those issues. In addition, the parties shall bring with them relevant documents that are necessary to cultivate an understanding of the issues raised in the complaint and to facilitate settlement negotiations.

{¶ 10} As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That a settlement conference be scheduled for February 6, 2024, as provided in Paragraph 8. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Isabel M. Marcelletti

By: Isabel M. Marcelletti
Attorney Examiner

PAS/dr

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

1/9/2024 10:05:32 AM

in

Case No(s). 23-1102-EL-CSS

Summary: Attorney Examiner Entry scheduling a settlement conference for February 6, 2024, at 10:00 a.m. at the offices of the Commission, Room 1246, 180 East Broad Street, Columbus, Ohio 43215 electronically filed by Debbie S. Ryan on behalf of Isabel M. Marcelletti, Attorney Examiner, Public Utilities Commission of Ohio.