

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 February 8, 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 30, 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} On 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} On January 9, 2024, the attorney examiner scheduled this matter for settlement conference at the Commission's offices on February 6, 2024.

{¶ 8} On January 29, 2024, Mr. Vonderhaar filed correspondence requesting the Commission to reschedule the settlement conference for a time on or after May 1, 2024. Mr. Vonderhaar also represents that he made Duke aware of his schedule constraints regarding this case and told its representatives that Duke could trim the trees in question back to 15 feet, in the meantime. Thus, Complainant requests that the settlement conference be rescheduled.

{¶ 9} On February 2, 2024, the attorney examiner issued an entry cancelling the in-person settlement conference scheduled for February 6, 2024, while establishing that the settlement conference would be rescheduled by subsequent entry.

{¶ 10} Also on February 2, 2024, Duke filed a memorandum contra Complainant's motion to postpone the settlement conference until or after May 1, 2024. In its memorandum, Duke explains that it would not be efficient or fair to postpone the settlement conference for the time Mr. Vonderhaar requested because there is an alternative format option available. Duke acknowledges Complainant's offer to trim vegetation in the meantime, but Duke argues that this proposal ignores the nature of the vegetation management work that has been identified to be performed, which includes pruning and vegetation removal. Duke underscores that removal of the related vegetation is necessary to ensure safe and reliable power to customers and perpetual pruning is not an adequate substitute. The Company argues that this work should ideally be completed before the upcoming growing season and delay is prejudicial. Duke adds that returning to the same property repeatedly requires incurring additional costs and is a cumbersome and inefficient use of personnel and contractors. Duke represents that it has made multiple attempts to resolve issues with Mr. Vonderhaar via one-on-one meetings and site visits over the past several years. The Company responds that Mr. Vonderhaar should not be allowed to unilaterally suspend the prosecution of his own complaint for three months and delay things further. In conclusion, Duke asserts that the magnitude resulting from the delay requested by Complainant should be considered good cause under Ohio Adm.Code

4901-9-01(G) to warrant the settlement conference to be conducted telephonically or by virtual conferencing technology.

{¶ 11} At this time, the attorney examiner finds good cause to reschedule the settlement conference to be conducted telephonically. The attorney examiner notes that in its memorandum contra, Duke states that it would not object to rescheduling the mediation not more than 14 days after February 6, 2024. However, due to scheduling conflicts, the mediation shall take place on February 22, 2024, via teleconference.

{¶ 12} Accordingly, a telephonic settlement conference shall be scheduled for February 22, 2024, at 1:00 p.m. To enter the conference, the parties must dial (614) 721-2972 and enter the passcode 231869903# when prompted.

{¶ 13} Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the public utility 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.

{¶ 14} To better facilitate the settlement conference by telephone, it will be beneficial for all parties and the mediating attorney examiner to have access to any alleged agreements or documentation that is related to Mr. Vonderhaar's complaint filed on November 30, 2023. Therefore, Mr. Vonderhaar and Duke shall provide copies of all documentation the parties intend to discuss during the telephonic settlement conference to one another by email and transmit copies to the mediating attorney examiner, Matthew Sandor, via email at the address previously used by the parties during informal communication. All documentation should be received by no later than February 20, 2024.

{¶ 15} 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).

{¶ 16} It is, therefore,

{¶ 17} ORDERED, That the telephonic settlement conference be scheduled for February 22, 2024, at 1:00 p.m., as indicated in Paragraph 12. It is, further,

{¶ 18} ORDERED, That both Complainant and Respondent exchange copies of documents with each other and the mediating attorney examiner, in accordance with Paragraph 14. It is, further,

{¶ 19} 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

GNS/dr

**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 23-1102-EL-CSS

Summary: Attorney Examiner Entry scheduling a telephonic settlement conference for February 22, 2024, at 1:00 p.m. electronically filed by Debbie S. Ryan on behalf of Isabel M. Marcelletti, Attorney Examiner, Public Utilities Commission of Ohio.