

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 March 12, 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 11, 2023, as amended on December 3, 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 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 asserts 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 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.

{¶ 8} On February 8, 2024, the attorney examiner scheduled a telephonic settlement conference for February 22, 2024; however, the parties were unable to resolve the matter.

{¶ 9} Consequently, the attorney examiner now finds it appropriate to schedule this matter for a hearing. An evidentiary hearing is scheduled for May 8, 2024 beginning at 10:00 a.m. at the offices of the Commission, Hearing Room 11-D, 180 East Broad St., Columbus, Ohio 43215. All parties should register at the lobby desk and then proceed to the 11th floor in order to participate in the hearing.

{¶ 10} Any party intending to present direct, expert testimony should comply with Ohio Adm.Code 4901-1-29(A)(1)(h), which requires that all such testimony to be offered in this type of proceeding be filed and served upon all parties no later than seven days prior to the commencement of the hearing.

{¶ 11} 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). Therefore, at hearing, it shall be Complainant's responsibility to appear and present evidence in support of the complaint.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That an evidentiary hearing be scheduled for May 8, 2024, as provided in Paragraph 9. It is, further,

{¶ 14} 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

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in

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Summary: Attorney Examiner Entry scheduling evidentiary hearing for May 8, 2024, May 8, 2024 beginning at 10:00 a.m. at the offices of the Commission, Hearing Room 11-D, 180 East Broad St., Columbus, Ohio 43215 electronically filed by Debbie S. Ryan on behalf of Isabel M. Marcelletti, Attorney Examiner, Public Utilities Commission of Ohio.