

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 August 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 or Respondent) 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 or Mr. Vonderhaar) filed a complaint, stating that, among other things, Duke intends to conduct tree clearing that would be in noncompliance with a 2011 agreement (2011 Agreement) between Duke and Complainant regarding Duke's vegetation management plan. 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 properties. 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 his properties. Complainant mainly requests that Duke comply with the 2011 Agreement.

{¶ 4} On December 5, 2023, 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 pending before the Commission.

{¶ 5} By Entry on December 6, 2023, the administrative law judge (ALJ) 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 Complainant'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, for which on November 20, 2023, it notified Complainant of its intent to perform this work on or after December 1, 2023. Further, in its answer, Duke asserts that specific to the 48 trees identified for removal, they (1) were within Respondent'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 submits 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, as approved on July 29, 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 ALJ issued an entry scheduling a settlement conference to take place 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 represented 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.

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

{¶ 10} On March 12, 2024, the ALJ issued an entry scheduling an evidentiary hearing to take place on May 8, 2024, at the Commission's offices.

{¶ 11} On April 16, 2024, Duke filed a motion to dismiss for lack of jurisdiction and request for an expedited ruling. Duke contends that any claims that Complainant may be asserting regarding erosion, property damage, aesthetic values, diminution of enjoyment of property, emotional distress, and/or diminution of property value are beyond the Commission's jurisdiction and should be dismissed with prejudice.

{¶ 12} On April 25, 2024, Complainant filed correspondence indicating that two Duke representatives were noticed by Complainant on his properties on April 24, 2024, and that as a result, the Commission's stay order was violated. On April 26, 2024, Duke filed a response to Mr. Vonderhaar's filing regarding the alleged stay violation. Duke states that Complainant incorrectly believes that the mere presence of Duke personnel within the easement at issue constitutes a violation of the Commission's stay order.

{¶ 13} Also on April 25, 2024, Mr. Vonderhaar filed a reply to Duke's motion to dismiss. Mr. Vonderhaar asks the Commission to determine the proper path going forward in order to protect his properties from Duke's vegetation management program, which Complainant considers vague. Mr. Vonderhaar also disputes Duke's request for an expedited ruling because the stay order allows Duke to trim tree back to 15 feet upon immediate threat to public safety or electric reliability concerns.

{¶ 14} On April 29, 2024, the ALJ issued an Entry determining that Mr. Vonderhaar's correspondence did not demonstrate a violation of the stay order issued on December 6, 2023. Also in the April 29, 2024 Entry, the ALJ ordered Duke's motion to dismiss be held in abeyance until after the evidentiary hearing.

{¶ 15} On April 30, 2024, Mr. Vonderhaar filed correspondence requesting that the evidentiary hearing date be continued until June 2024, because he has not had adequate time to prepare for the hearing. Also on April 30, 2024, Mr. Vonderhaar filed documentation titled, "Subpoena List of Witnesses."

{¶ 16} On May 1, 2024, Duke filed a response to Mr. Vonderhaar's request, stating that it does not oppose Complainant's request to reschedule the hearing.

{¶ 17} On May 2, 2024, the ALJ granted Mr. Vonderhaar's request to continue the evidentiary hearing and directed parties to email the ALJ proposed new dates to avoid further delay.

{¶ 18} On May 7, 2024, the ALJ issued an entry rescheduling the hearing for July 16, 2024.

{¶ 19} On June 25, 2025, Duke filed an unopposed motion to reschedule the hearing until August 26, 2024.

{¶ 20} On July 8, 2024, the ALJ issued an entry rescheduling the hearing for August 26, 2024.

{¶ 21} On August 7, 2024, Duke filed an unopposed motion to reschedule the hearing for November 19, 2024. In its memorandum of support, Duke asserts that there is good cause for its request due to the time needed to respond to Mr. Vonderhaar's most recent discovery request filed on July 29, 2024, and because Duke must also attend to other pending matters before the Commission.

{¶ 22} At this time, the ALJ finds good cause and grants Duke's unopposed motion. The evidentiary hearing is now rescheduled for November 19, 2024, beginning at 10:00 a.m. at the offices of the Commission, Hearing Room 11-C, 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.

{¶ 23} 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.

{¶ 24} 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.

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the evidentiary hearing be rescheduled for November 19, 2024, provided in Paragraph 22. It is, further,

{¶ 27} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Isabel M. Marcelletti

By: Isabel M. Marcelletti
Administrative Law Judge

JSA/mef

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

Summary: Administrative Law Judge Entry rescheduling the evidentiary hearing for November 19, 2024, beginning at 10:00 a.m. at the offices of the Commission, Hearing Room 11-C electronically filed by Ms. Mary E. Fischer on behalf of Isabel M. Marcelletti, Administrative Law Judge, Public Utilities Commission of Ohio.