
PUBLIC UTILITIES - OHIO

Corder v. Ohio Edison Company

Court of Appeals of Ohio, Seventh District, Harrison County - December 30, 2022 - N.E.3d - 2022 WL 18140100 - 2022-Ohio-4818

Landowners brought action seeking declaratory and injunctive relief regarding scope electrical transmission line easement, specifically whether electric utility could use herbicides to control vegetation within easement.

The Court of Common Pleas entered a judgment after sua sponte finding that Public Utilities Commission of Ohio (PUCO) had exclusive jurisdiction. Landowners appealed and the Court of Appeals reversed. Utility sought discretionary review and the Supreme Court reversed in part. On remand, the Court of Common Pleas granted summary judgment in the declaratory judgment action favor of landowners. Utility appealed.

The Court of Appeals held that:

- Easements did not authorize use of herbicide to control vegetation;
- Evidence did not support conclusion that purpose of easements was for utility to act preemptively to control vegetation; and
- Use of herbicides was not absolutely necessary for utility to fully clear brush and trees from easements.

Electrical transmission line easements giving electric utility “the right to trim, cut and remove” limbs, trees, and underbrush did not authorize utility to use herbicide to control vegetation within easements; language in easements was ambiguous, and ambiguity was required to be resolved in landowners’ favor.

Evidence did not support conclusion that purpose of electric utility’s electrical transition line easements was for utility to act preemptively to control vegetation, including by use of herbicides, where there was no history of herbicide use on easements, there was no evidence that herbicide use was contemplated as one of the rights granted in the easements, and utility first contemplated use of herbicides on easements more than 50 years after easements were executed.

Use of herbicides was not absolutely necessary for electric utility to fully clear brush and trees from its electrical transition line easements, as part of the purpose of the easements, and thus herbicide use was not within the scope of the easements, where utility did not contemplate the use of herbicides on the easements for at least the first 50 years of the life of the easements.

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