BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Shirley Bailey )

1083 W. Kemper Road )

Cincinnati, OH 45240 )

)

Complainant, ) Case No. 13-0531-GE-CSS

)

v. ) )

Duke Energy Ohio, Inc. )

)

Respondent. )

**ANSWER OF RESPONDENT DUKE ENERGY OHIO, INC.**

For its Answer to the Complaint of Shirley Bailey (Complainant), Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) states as follows:

1. Duke Energy Ohio denies that Complainant called the Company in September 2012 to have the subject utility services disconnected.
2. Duke Energy Ohio denies that Leap of Faith Life Fellowship Ministries, Inc., the customer of record on this commercial account, did not receive its monthly statements or a final bill in accordance with the Company’s billing practices and tariffs on file with the Commission.
3. Duke Energy Ohio admits that Leap of Faith Life Fellowship Ministries, Inc., the customer of record on this commercial account, received written notice dated December 18, 2012, in connection with its overdue and unpaid utilities account.
4. Duke Energy Ohio denies all allegations of the Complaint not expressly admitted herein.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim against Duke Energy Ohio upon which relief may be granted.
2. Duke Energy Ohio asserts as an affirmative defense that pursuant to R.C. 4905.26 and O.A.C. 4901-9-01-(B)(3), Complainant has failed to set forth reasonable grounds for complaint.
3. Duke Energy Ohio asserts as an affirmative defense that Complainant lacks standing to assert any claims against the Company in connection with the commercial utility account at issue in the Complaint. The commercial utility account at issue in the Complaint (Account #7770-0227-30-0) is and always has been in the name of Leap of Faith Life Fellowship Ministries, Inc. That entity is a non-profit corporation organized under Ohio law. Complainant is simply the customer contact on the account. Because Complainant is not the customer of record on the subject account, Complainant lacks standing to assert any claims against Duke Energy Ohio in connection with this commercial utility account.
4. Duke Energy Ohio asserts as an affirmative defense that Complainant is not the real party in interest and has failed to join necessary and indispensable parties, including the commercial customer of record, to these proceedings.
5. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant’s claims, Duke Energy Ohio has provided reasonable and adequate service and has billed the Complainant according to all applicable provisions of Title 49 of the Ohio Revised Code and regulations promulgated thereunder, and in accordance with all of Duke Energy Ohio’s filed tariffs.
6. Ohio asserts as an affirmative defense that at all times relevant to Complainant’s claims, the Company acted in conformance with O.A.C. 4901:1-10 with respect to the safe and reliable provision of electric services at the property leased by its customer Leap of Faith Life Fellowship Ministries, Inc.
7. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant’s claims, the Company acted in conformance with O.A.C. 4901:1-10-22-23 and R.C. 4933.28 with respect to the Company’s billings to its customer Leap of Faith Life Fellowship Ministries, Inc.
8. Duke Energy Ohio asserts as an affirmative defense that the Complaint is duplicative and repetitive of Case No. 12-3119-EL-CSS currently pending before the Commission. While the Complaint in this case references a different customer account, the commercial account at issue in this case was addressed by the Commission in Case #SBAI0307121X, the informal complaint proceeding leading up to Case No. 12-3119-EL-CSS. The Commission should not allow Complainant or any customer representative to maintain separate complaint cases based on the same set of operative facts.
9. Duke Energy Ohio asserts as an affirmative defense that its customer Leap of Faith Life Fellowship Ministries, Inc. requested, received and enjoyed the benefit of the gas and electric services provided by the Company and, therefore, should pay Duke Energy Ohio for such services regardless of any technical or alleged issues or problems associated with the meters and billings.
10. Duke Energy Ohio asserts as an affirmative defense that Complainant did not contact the Company during September 2012 to have the gas and electric services in the name of Leap of Faith Life Fellowship Ministries, Inc. disconnected. Further answering, the Company’s records show that, on September 27, 2012, a representative from the Company’s Business and Industrial group telephoned Shirley Bailey, the contact of record for this commercial customer, and left a message that the service was to be disconnected for non-payment.  When Mrs. Bailey returned the phone call that same day, she requested an extension on the disconnection, which the Company declined based on the account history. Thereafter, Duke Energy Ohio was unable to disconnect the gas and electric services at the property on October 17, 2012, because the doors were locked and the key provided by the customer did not work. On October 30, 2012, the Company tried a second time to disconnect the gas and electric service.  The Company’s records reflect that no one in the front of the building had a key to the space rented by Leap of Faith Life Fellowship Ministries, Inc. Accordingly, the gas and electric services remained on and in the name of Leap of Faith Life Fellowship Ministries, Inc. until the new tenant began their service on November 2, 2012. Pursuant to Duke Energy Ohio’s tariffs on file with the Commission, the customer of record (Leap of Faith Life Fellowship Ministries, Inc.) is responsible for providing access to gas and electric meters for purposes of connecting and disconnecting services, and remains legally and financially responsible for the payment of all utility services used on the customer’s account until the Company is provided access to disconnect such services.
11. Duke Energy Ohio asserts as an affirmative defense that Complainant have not stated any damages or request for relief, including relief which may be granted by this Commission.
12. Duke Energy Ohio asserts as an affirmative defense that the Company has already credited Leap of Faith Life Fellowship Ministries, Inc.’s account for all payments made and other credits to which Leap of Faith Life Fellowship Ministries, Inc. is entitled under Duke Energy Ohio’s tariffs on file with the Commission.
13. Duke Energy Ohio reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

## Conclusion

WHEREFORE, having fully answered, Respondent Duke Energy Ohio, Inc. prays that the Commission dismiss the Complaint of Shirley Bailey for failure to set forth reasonable grounds for the Complaint and to deny Complainant’s Request for Relief, if any.

Respectfully submitted,

/s/ Robert A. McMahon

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Attorneys for Duke Energy Ohio, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served via regular US Mail, postage prepaid, this 13th day of March, 2013, upon the following:

Shirley Bailey

1083 W. Kemper Road

Cincinnati, OH 45240

/s/ Robert A. McMahon