

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Afriye Owusu
20 Bent Tree Drive
Fairfield, Ohio 45014

Complainant

vs.

Duke Energy Ohio, Inc.

Respondent

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Case No. 16-1733-EL-CSS

**DUKE ENERGY OHIO, INC.'S
MOTION TO STRIKE AND TO CONTINUE HEARING
AND REQUEST FOR EXPEDITED RULING**

Now come Duke Energy Ohio, Inc. (Company or Duke Energy Ohio), in accordance with Rule 4901-1-12 and 4901-1-13, Ohio Administrative Code (O.A.C.), and hereby submits to the Public Utilities Commission of Ohio (Commission) a Motion to Strike and Motion to Continue the procedural schedule in the above-captioned case. The Company requests expedited treatment of this motion, pursuant to O.A.C. 4901-1-12(C).

The reasons for the motion are set forth more fully in the Memorandum in Support.

Respectfully Submitted,

/s/ Elizabeth H. Watts

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

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MEMORANDUM IN SUPPORT

I. Statement of Facts

The complaint in this proceeding was filed on August 16, 2016. Duke Energy Ohio submitted an answer to the Complaint and a Motion to Dismiss on September 6, 2016. By Entry dated December 22, 2016, the matter was set for settlement conference and for a hearing to be held on March 2, 2017.

On October 3, 2016 (27 days after the Company filed its Motion to Dismiss), Complainant filed a document entitled “Sworn Statement of Afriye Owusu in Opposition to Motion to Dismiss.” Thereafter, on December 15, 2016 (100 days after the Company filed its Motion to Dismiss), Complainant submitted yet another “Sworn Statement of Afriye Owusu in Opposition to Motion to Dismiss,” attaching additional documentation relating to his claim. Both “Sworn Statements” appear to be an attempt by Complainant to respond to Duke Energy Ohio’s Motion to Dismiss or, alternatively, an attempt by Complainant to file evidentiary material without the Company’s ability to cross-examine him on the facts therein.

II. Argument

Regardless of how Complainant’s filings are interpreted, they are in flagrant disregard of the Commission’s procedural rules.

First, the Commission’s rules do not allow for two memorandum contra a motion. Rule 4901-1-12, O.A.C., states that any party may file a memorandum contra within fifteen days after the service of a motion.

Second, both responses to the motion to dismiss were filed late; the first was 12 days late and the second was an amazing 85 days late. For these reasons, both purported responses must be stricken.

Furthermore, even if not stricken because of lateness or redundancy, both of these filings fail to address any of the Company's arguments for dismissal. Contrary to their titles, they do not appear to be responses to the Company's motion, but consists instead of various medical records that are legally unsubstantiated and irrelevant to any matter within the Commission's jurisdiction. These illegal and unsupported documents – which Complainant seeks to enter into the record of the case without the Company's opportunity to cross-examine – should be stricken from the case as well. It appears that Complainant is improperly seeking to submit evidence into the record prior to hearing and without any substantiation. Such blatant disregard for the Commission's normal rules of practice must not be condoned. The Complainant may not seek to inject irrelevant and unsubstantiated material into the record in this manner and therefore these responses must be stricken.

III. Motion to Continue

Rule 4901-1-13, O.A.C., provides that continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown. Duke Energy Ohio respectfully requests that the Commission grant a motion to continue in this proceeding to allow time to take Complainant's deposition and to permit additional settlement negotiation if appropriate. Additionally, counsel for the Company is otherwise occupied with additional proceedings before the Commission, making adequate preparation for hearing in this matter impossible. Thus, it is respectfully requested that this matter be continued for at least sixty days.

An expedited ruling is required in this case due to the imminent hearing date and the scheduling of other proceedings that overlap with the prosecution of this case.

IV. Conclusion

Duke Energy Ohio respectfully requests that Complainant's second Opposition to Motion to Dismiss be stricken. Complainant further submits that good cause exists for a continuance and requests that the Attorney Examiner grant the motion on an expedited basis for the reasons set forth above.

Respectfully Submitted,

/s/ Elizabeth H. Watts

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via regular U.S. Mail, postage prepaid, this 20th day of February, 2017, upon the following:

Afriye Owusu
Post Office Box 181571
Fairfield OH 45018

/s/ Elizabeth H. Watts
Elizabeth H. Watts