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Rocco O. D'Ascenzo  
Counsel

**VIA OVERNIGHT MAIL**

PUCO

March 16, 2007

Public Utilities Commission of Ohio  
Docketing Division  
13<sup>th</sup> Floor  
180 East Broad Street  
Columbus, OH 43215-3716

RE: In the Matter of the Complaint:  
James Byerly, Jr.; Benjamin F. Wissel; Shirley J. Newman; Daniel J. Ledford; and  
Patricia B. Ingram v. Duke Energy Ohio, Inc.  
Case Nos. 07-196-EL-CSS; 07-197-EL-CSS; 07-198-EL-CSS; 07-263-EL-CSS;  
and 07-265-EL-CSS

Dear Sir or Madam:

Enclosed please find an original and 12 copies of Duke Energy Ohio's Answer in each of the following cases:

1. PUCO Case No. 07-196-EL-CSS James Byerly, Jr. v. Duke Energy Ohio, Inc.;
2. PUCO Case No. 07-197-EL-CSS Benjamin F. Wissel v. Duke Energy Ohio, Inc.;
3. PUCO Case No. 07-198-EL-CSS Shirley J. Newman v. Duke Energy Ohio, Inc.;
4. PUCO Case No. 07-263-EL-CSS Daniel J. Ledford v. Duke Energy Ohio, Inc.; and
5. PUCO Case No. 07-265-EL-CSS Patricia B. Ingram v. Duke Energy Ohio, Inc.

Please return two (2) file-stamped copies of each filing to me in the overnight mail envelope provided.


If you have any questions, please feel free to contact me at (513) 287-4326.

Sincerely,

  
Rocco O. D'Ascenzo.  
Counsel

ROD/sew  
Enclosures

cc: All parties of record (w/encl.)

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## BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )

Daniel J. Ledford )

30 East Central Parkway #903 )

Cincinnati, OH 45202 )

Plaintiff, )

v. )

Duke Energy Ohio, Inc., )

Respondent. )

Case No. 07-263-EL-CSS

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ANSWER OF RESPONDENT DUKE ENERGY OHIO, INC.

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For its answer to the complaint of Plaintiff Daniel J. Ledford (Complainant), Duke Energy Ohio, Inc., (DE-Ohio) states as follows:

FIRST DEFENSE

1. DE-Ohio admits that 30 East Central Parkway is a 17 story Condominium developed in a former office building in downtown Cincinnati.
2. DE-Ohio admits that the building contains residential condominium units and a limited number of retail spaces, currently unoccupied.
3. DE-Ohio admits that the building is supplied with 3 phase electrical service.
4. DE-Ohio is without sufficient information to admit or deny Complainant's allegation that some residential units are being billed at the commercial rate while others have been billed at the residential rate.

5. DE-Ohio denies that it applies rates in a capricious or discriminatory manner.
6. DE-Ohio denies that the residential units in the building should be billed at DE-Ohio's Residential Service (Rate RS) rate. Rate RS by its Commission approved terms does not apply to three phase electric service.
7. DE-Ohio denies Complainant's allegation that "Duke Claims that they cannot bill at residential rates due to PUCO regulations." DE-Ohio cannot charge rates contrary to its tariffs. DE-Ohio is without sufficient information or belief to admit or deny Complainant's claim that "former Cinergy did bill at the residential rate." Once again, the service at the building is 3 phase service. DE-Ohio's Rate RS expressly excludes 3 phase service from applicability.
8. DE-Ohio denies Complainant's allegation that the Company is seeking permission "to bill residential units at the appropriate residential rates." DE-Ohio is seeking no such permission. DE-Ohio's Rate RS was not designed to accommodate 3 phase residential service. DE-Ohio's rates DM and DS however apply to 3 phase service.
9. DE-Ohio denies Complainant's allegation that Complainants should be charged pursuant to Rate RS and that the Consumers are entitled to any refund or bill credit. At all times relevant, DE-Ohio has charged the Complainant according to the appropriate tariffed rate for the 3 phase service being provided. Rate RS was not designed to accommodate 3 phase electrical service and expressly excludes 3 phase service from its applicability.

#### AFFIRMATIVE DEFENSES

In addition to the foregoing specific answers to the allegations raised by Complainant, DE-Ohio raises the following defenses:

10. DE-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.
11. DE-Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, DE-Ohio has provided reasonable and adequate service under applicable tariffed rates to Complainant in accordance with all applicable provisions of Title 49 of the Ohio Revised Code and regulations promulgated thereunder, and in accordance with DE-Ohio's filed tariffs, and all applicable state and federal laws and industry standards.
12. DE-Ohio asserts as an affirmative defense that it does not have a Commission approved tariff for residential 3ph electric service. DE-Ohio charges rates for all consumers according to the appropriate tariff for the installed electrical service.
13. DE-Ohio asserts as an affirmative defense that it breached no legal duty owed to Complainant.
14. DE-Ohio asserts as an affirmative defense that to the extent that Respondent violated any applicable statute, regulation, industry standard, reliability guidelines or tariff provision, which is expressly denied, such violation was not the proximate cause of any injury alleged by Complainant.
15. DE-Ohio asserts that the Complainant is requesting this Commission award monetary damages or adjusts bills back to the time of the purchase of the condominium, that service has been rendered and billed according to the metered service and that such a remedy is outside the jurisdiction of this Commission.
16. DE-Ohio asserts as an affirmative defense that the Company did not perform the actual wiring of the building. DE-Ohio did what it could to prevent the installation of 3ph service to the residential units. In October 2003 DE-Ohio was contacted concerning

service availability for the subject address. DE-Ohio representatives met with the building owners and their consulting agent on June 14, 2004. DE-Ohio was provided load calculations, and a one line wiring diagram from the electrician which showed 3ph 4W meters being installed for the residential condominium units. DE-Ohio advised against this course. DE-Ohio met with the electrician who referred them to the consultant on the project to advise against installation of 3ph wiring. DE-Ohio's last conversation with consultants was in March 2005. It was expressed to DE-Ohio by the building consultant that they understood the cost difference and were still pursuing the installation of 3 ph metering due to the size of the units.

17. DE-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.

WHEREFORE, having fully answered, Duke Energy Ohio, Inc., respectfully moves this Commission to dismiss the Complaint of Daniel J. Ledford, for failure to set forth reasonable grounds for complaint and to deny Complainant's Requests for Relief.

Respectfully submitted,



Rocco D'Ascenzo (Trial Attorney)

Counsel

Paul A. Colbert

Associate General Counsel

Duke Energy Ohio, Inc.

139 East Fourth Street, Rm 25 AT II

Cincinnati, OH 45201-0960

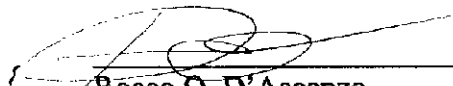
Telephone: (513) 287-4326

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer was sent via regular U.S. Mail, postage prepaid to the following party of record this 16th day of March 2007.

Daniel J. Ledford  
30 East Central Parkway #903  
Cincinnati, OH 45202

  
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Rocco O. D'Ascenzo  
Counsel