

## BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of  
 Al Roane  
 30 E. Central Parkway #901  
 Cincinnati, OH 45202

Plaintiff,

v.

Duke Energy Ohio, Inc.,

Respondent.

Case No. 07-281-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 Al Roane (Complainant), Duke Energy Ohio, Inc., (DE-Ohio) states as follows:

FIRST DEFENSE

1. DE-Ohio admits that Al Roane is a consumer of DE-Ohio whose residence is 30 E. Central Parkway #901, Cincinnati OH 45202, also known as the American Building. DE-Ohio denies the remainder of the allegations in paragraph one (1) of the Complaint.
2. DE-Ohio admits that all residents of the building are currently being charged pursuant to Rate DM or DS rather than Rate RS. DE-Ohio admits that the building was a former office building before conversion and the power to it is all 3 phase. DE-Ohio denies the allegations that there is no 3 phase usage in any residential unit. The building is wired for three phase electrical service (3 ph) and each tenant's meter receives 3 ph service.

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Regardless of what the units may or may not require they are wired for and receive 3 ph service.

3. DE-Ohio denies Complainant's allegation that the residential units should be charged pursuant to Rate RS and that the owners are entitled to any refund or billing adjustment. Rate RS was not designed to accommodate 3phase electrical service and expressly excludes 3 ph service from its applicability. DE-Ohio is without sufficient information to admit or deny the remainder of the allegations in paragraph three (3) of the Complaint.

#### AFFIRMATIVE DEFENSES

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

4. 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.
5. 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.
6. 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.
7. DE-Ohio asserts as an affirmative defense that it breached no legal duty owed to Complainant.

8. 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.
9. 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.
10. 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.
11. 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 Al Roane, for failure to set forth reasonable grounds for complaint and to deny Complainant's Requests for Relief.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Rocco D'Ascenzo', is written over a horizontal line.


Rocco D'Ascenzo (Trial Attorney)  
Counsel

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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 28th day of March 2007.

Al Roane  
30 E. Central Parkway #901  
Cincinnati, OH 45202

  
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Rocco O. D'Ascenzo  
Counsel