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April 27, 2007

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: Case No. 07-404-EL-CSS

Dear Docketing Division:

Enclose please find an original and twelve copies of the Answer of Duke Energy Ohio, Inc. in the above referenced case. Please date-stamp the two extra copies and return in the envelope provided.

Should you have any questions, please contact me at (513) 287-3842.

Very truly yours,

Anita M. Schafer
Senior Paralegal

Enclosures

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Senior Paralegal

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)	
American Building Condo Assoc.LLC)	Case No. 07-404-EL-CSS
30 E. Central Parkway #502)	
Cincinnati, OH 45202)	
)	
Plaintiff,)	
)	
v.)	
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

ANSWER OF RESPONDENT DUKE ENERGY OHIO, INC.

For its answer to the complaint of Plaintiff American Building Condo Assoc. LLC (Complainant) and which is referred to as Central Parkway Properties in the Complaint, Duke Energy Ohio, Inc., (DE-Ohio) states as follows:¹

FIRST DEFENSE

1. DE-Ohio denies the allegation that the electric service is unjust and unreasonable as stated in the "Formal Complaint Form" submitted by the Complainant.
2. DE-Ohio is without sufficient knowledge or information to admit or deny Complainant's statements in the cover letter dated April 3, 2007 and more specifically in paragraph three (3) that "the method used by Central to deliver electric service was the most economical and efficient method possible."

¹ For its Answer, DE-Ohio shall refer to American Building Condo Assoc. LLC as Central Park Properties since that is how the Complaint reads as filed.

3. As to the memo from Central Park Properties dated March 15, 2007 to the Public Utilities Commission of Ohio: DE-Ohio admits that the American Building Condominiums in the condo conversion of an 18-story limestone art deco building at 30 E. Central Parkway. DE-Ohio admits that Central Park Properties, LLC is the developer and that Turner Construction is the general contractor as contained in paragraph one (1) of the Complaint.
4. DE-Ohio denies the allegations contained in paragraph two (2) of the Complaint. DE-Ohio states that all accounts were initially set up on Rate DM. However, when a few of the condominiums were transferred to new owners, a small number were incorrectly place on DE-Ohio Residential Service Rate (Rate RS). Upon discovery that a small number of residents were being charged under the incorrect Tariff, DE-Ohio corrected the error.
5. DE-Ohio admits that it must charge rates according to its filed and Commission approved tariffs. The American Building accounts are taking three phase electric service at the meter (3 ph). DE-Ohio's Rate RS, by its terms excludes 3 ph service from its applicability. Rate RS was not designed to accommodate 3 ph electrical service. Accordingly, none of the American Building accounts are eligible for Rate RS service pursuant to the Commission approved terms of Rate RS. DE-Ohio denies the remainder of the allegations contained in paragraph three (3) of the Complaint. DE-Ohio's tariffs and their terms are publicly available and on file with the Commission and speak for themselves. DE-Ohio did inform the developer and/or the developer's agents of the terms of the Company's tariffs. DE-Ohio is charging pursuant to the terms of its tariffs, no more, no less.

6. DE-Ohio is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph four (4) of the Complaint.
7. With respect to what is listed as item number one (1) of the Complaint, DE-Ohio admits that DE-Ohio rejected the developer's initial plan to place meters on every floor. DE-Ohio explained that in multi-unit dwellings, the Company requires at least twelve (12) meters per floor for meter reading. The decision to place all meters in the basement was made solely by the developer.
8. With respect to what is listed as item number two (2) of the Complaint, DE-Ohio admits that the American Building had to accept 3 phase service to the main service switch due to grid requirements. This is common for downtown Cincinnati installations. However, beyond the main service switch, DE-Ohio denies that the American Building needed to have 3 ph 4 wire service. DE-Ohio states that at the point beyond or after the service switch a bank of 3 phase 4 wire single phase (or 1 phase) residential meters should have been installed.
9. DE-Ohio is without sufficient knowledge or information to either admit or deny the allegations contained in Complaint item number three (3).
10. DE-Ohio denies the allegations contained in Complaint item number four (4).
11. DE-Ohio denies the allegations contained in Complaint item number five (5).
12. DE-Ohio denies the allegations contained in Complaint item number six (6). Electric service is sized by the consumer, not DE-Ohio. Further, DE-Ohio states that the Company is aware of at least two other large electrical companies who bid on the American Building project and both had specifications for the installation of single phase metering, which would have avoided the problem. The developer and the developer's

agents alone chose the company to perform the electrical wiring as well as the final wiring design.

13. With respect to what is listed as item number seven (7) of the Complaint, DE-Ohio admits that a meeting took place on January 29, 2007 with condominium residents and that two engineers of DE-Ohio were sent to attend the meeting. DE-Ohio denies the remainder of the allegations contained in Complaint item number 7.
14. DE-Ohio denies the allegations contained in Complaint item number eight (8).
15. DE-Ohio denies the allegation contained in Complaint item number nine (9).
16. DE-Ohio denies the allegations contained in Complaint item number 10.
17. With respect to what is listed as item number eleven (11) of the Complaint, DE-Ohio admits that a meeting took place on February 8, 2007 in the American Building meter room. DE-Ohio denies the remainder of the allegations contained in Complaint item number 11. At that meeting DE-Ohio offered solutions as to the best way to correct the existing situation. The options discussed were to either adjust the heating coils in the furnaces, conserving energy, master meter, or rewire the entire building.
18. DE-Ohio is without sufficient knowledge or information to either admit or deny the allegations contained in Complaint item number 12a-b. Similar condominium projects in the downtown area have single phase metering for the condo units.
19. DE-Ohio is without sufficient knowledge or information to either admit or deny the statement that "those involved are willing to sign affidavits in support of the above 12 points" contained in paragraph five (5) of the Complaint.
20. DE-Ohio denies the allegation that "at the end of the day our investigation says that Cinergy approved what was being done and how it was done."

21. DE-Ohio denies the allegation that it 'started out charging these folks the RS rate, then some units this way, and others another, and then Duke changed them to various commercial rates. DE-Ohio states that all accounts were initially set up on Rate DM. However, when a few of the condominiums were transferred to new owners, a small number were incorrectly place on DE-Ohio Residential Service Rate (Rate RS). Upon discovery that a small number of residents were being charged under the incorrect Tariff, DE-Ohio corrected the error. Further, a small number of the tenants on rate DM had achieved such high levels of consumption, that they no longer qualified for rate DM and were switched to rate DS. Once again this switch was done in accordance to DE-Ohio's tariffs. DE-Ohio is without sufficient knowledge to admit or deny the remainder of the allegations in paragraph seven (7) of the Complaint.
22. In paragraph eight (8) of the Complaint which is comprised of 'bullet points,' DE-Ohio is without sufficient information to either admit or deny bullet point one (1).
23. DE-Ohio is without sufficient information to either admit or deny the allegation contained in bullet point two (2) that "one PUCO rep" told Complainant that "Duke could charge the RS rate if they desired." By law, DE-Ohio must charge all consumers pursuant to the terms and conditions of its filed and Commission approved Tariffs. PUCO personnel should know that fact.
24. DE-Ohio is without sufficient knowledge or information to either admit or deny the allegation contained in bullet point three (3) that "a Duke rep recently told us the RS rate should have been charged all-along." The Duke rep may not have had all the information he/she needed to respond to an inquiry about rates. Knowing that the building is wired

for three phase service and having the tariff, one would know that three phase service cannot be given residential rates.

25. DE-Ohio denies the allegation contained in bullet point four (4) which states that our engineers had “ to check with their office to find out how the rates had to be charged.” DE-Ohio’s representatives informed the residents that the Company was charging the tenants according to the Company’s tariffs as filed and approved by the Commission and that the Company would not openly and intentionally violate its tariffs. DE-Ohio is without sufficient knowledge or information to either admit or deny the remainder of the allegations contained in bullet point four (4) of the Complaint.
26. DE-Ohio denies that it told the condo owners in a 2007 meeting that it would charge the rate RS “if PUCO does not object.” DE-Ohio may only charge tariffed rates as they are filed and approved by PUCO. The tariff must be on file and approved by PUCO before DE-Ohio could begin charging any rates. To do anything else would violate O.R.C. 4905.22.
27. DE-Ohio denies the allegation contained in bullet point six (6).

AFFIRMATIVE DEFENSES

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

27. 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.
28. 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.

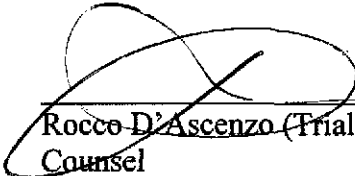
29. DE-Ohio asserts as an affirmative defense that it does not have a Commission approved tariff for residential 3ph electric service. DE-Ohio charges rates for all consumers according to the appropriate tariff for the installed electrical service.
30. DE-Ohio asserts as an affirmative defense that it breached no legal duty owed to Complainant.
31. 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.
32. 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.
33. 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.

34. 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 Central Parkway Properties, for failure to set forth reasonable grounds for complaint and to deny Complainant's Requests for Relief.

Respectfully submitted,



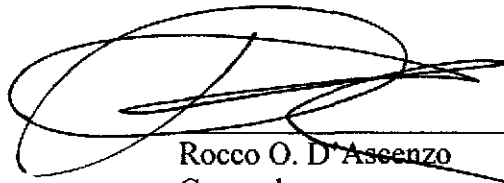
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CERTIFICATE OF SERVICE

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 27 th day of April 2007.

Charles J. Luken
Counsel for American Condo Assoc. LLC
Calfee, Halter & Griswold LLP
1100 Fifth Third Center
21 East State Street
Columbus, OH 43215



Rocco O. D'Ascenzo
Counsel