

FILE

BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of the Complaint of
Richard Devlin
14 Easley Drive, Apt.300
Milford, OH 45150

Complainant

v.

Duke Energy Ohio, Inc.

Respondent


Case No. 08-31-EL-CSS

**DUKE ENERGY OHIO, INC.'S MOTION
FOR LEAVE TO FILE ANSWER TO COMPLAINT *INSTANTER***

Duke Energy Ohio, Inc. (DE-Ohio) respectfully moves the Public Utilities Commission of Ohio (Commission) for leave to file its Answer to Complaint *Instanter*. A copy of the Answer is attached and incorporated herein. A memorandum in support of this motion is also attached.

Wherefore, DE-Ohio respectfully requests that this Commission grant its Motion for Leave to File Answer to Complaint *Instanter* and accept the same for filing.

Respectfully submitted,



Paul A. Colbert (0058582)

Associate General Counsel

Elizabeth H. Watts (0031092)

Assistant General Counsel

Duke Energy Shared Services Inc.

139 East Fourth Street

Rm 2500 Atrium II

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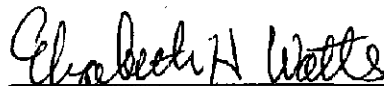
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MEMORANDUM IN SUPPORT

On January 14, 2008, Complainant, Richard Devlin, filed a formal complaint form with the Public Utilities Commission of Ohio (Commission). The complaint states his dissatisfaction with his utility bill from Duke Energy Ohio (DE-Ohio) and further notes "low income allowance". Although Complainant's complaint neglects to state a claim, it was embodied in a "formal complaint" form and therefore required, pursuant to 4901: 9-01 (D) Ohio Administrative Code (O.A.C.), an Answer in response from DE-Ohio. Accordingly, DE-Ohio's Answer was required to be filed on February 4, 2008. Through inadvertent administrative error, the answer to this complaint was not filed on February 4, 2008. As a result, DE-Ohio seeks to file its Answer with this Motion for Leave to File Answer *Instantly*.

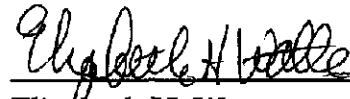
Granting DE-Ohio's Motion for Leave to File Answer *Instantly*, one day later, will not be the cause of any undue prejudice or delay. Wherefore, DE-Ohio respectfully requests that the Commission grant its motion and accept for filing its Answer to Complaint of Richard Devlin. Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on the following by first class U.S. mail, postage prepaid, this 5th day of February, 2008.


Elizabeth H. Watts

Richard Devlin
14 Easley Dr., Apt. 300
Milford, OH 45150

Richard Devlin
14 Easley Drive, Apt.300
Milford, OH 45150

V.

Duke Energy Ohio, Inc.

For its Answer to the Complaint of Richard Devlin (Complainant), Duke Energy Ohio, Inc. (DE- Ohio) states as follows:

1. In response to the allegations contained in the Complaint, DE-Ohio denies the allegation contained in the complaint that the “generation charges are excessive for the amount of kWh used.” The generation energy charge is a tariffed rate provided in DE-Ohio’s Commission-approved tariff.
2. In response to the allegations contained in the remainder of the complaint, DE-Ohio is without sufficient knowledge or information to either admit or deny that Complainant is on a “low income allowance” or that there is or should be “one charge for the whole building.”

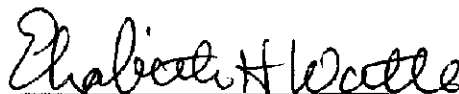
AFFIRMATIVE DEFENSES

3. 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.
4. DE-Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, DE-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 DE-Ohio's filed tariffs.
5. DE-Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, the Company is acting in conformance with O.A.C. 4901:1-10-23 and R.C. 4933.28.
6. DE-Ohio asserts as an affirmative defense that Complainant has not stated any request for relief that can be granted by this Commission.
7. DE-Ohio asserts that to the extent Complainant is seeking monetary damages, such relief is beyond the scope of the jurisdiction of this Commission.
8. 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.

CONCLUSION

WHEREFORE, having fully answered, DE-Ohio respectfully moves this Commission to dismiss the Complaint of Richard Devlin for failure to set forth reasonable grounds for the complaint and to deny Complainant's Request for Relief.

Respectfully Submitted,

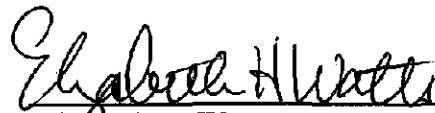


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to the complaint of Richard Devlin was served via regular US Mail postage prepaid, this 5th day of February 2008, upon the following:

Richard Devlin
14 Easley Dr., Apt. 300
Milford, Ohio 45150


Elizabeth H. Watts