



Ohio Revised Code and regulations promulgated thereunder, and in accordance with all of Duke Energy Ohio's filed tariffs.

5. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, the Company acted in conformance with O.A.C. 4901:1-10-23 and R.C. 4933.28.
6. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, the Company acted in conformance with the Percentage of Income Payment Plan ("PIPP"), Special Reconnection Procedures/Winter 2009-2010, Special Maintenance of Service Procedures/Winter 2009-2010 and Other Special Procedures implemented by the Commission with respect to Complainant, and that Complainant did not take advantage of such programs even after Duke Energy Ohio offered them to her.
7. Duke Energy Ohio asserts as an affirmative defense that Gerald Fitzgerald is not the Company's customer as defined in OAC 4901:1-18-01(E) and, therefore, did not have any right to change the subject customer's account, make payment arrangements on that account or otherwise alter that account relationship between Duke Energy Ohio and its customer.
8. Duke Energy Ohio asserts as an affirmative defense that Complainant has not stated any request for relief, including relief which may be granted by this Commission.
9. Duke Energy Ohio asserts that to the extent Complainant is seeking monetary damages, such relief is beyond the scope of the jurisdiction of this Commission.
10. Duke Energy Ohio asserts as an affirmative defense that Complainant has failed to join a necessary party.

11. Duke Energy 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, Duke Energy Ohio, Inc. respectfully moves this Commission to dismiss the Complaint of Brenda Fitzgerald for failure to set forth reasonable grounds for the Complaint and to deny Complainant's Request for Relief, if any.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer to the complaint of Brenda Fitzgerald was served via regular US Mail, postage prepaid, this 28<sup>th</sup> day of June, 2010, upon the following:

Brenda Fitzgerald  
61 Hunters Court  
Amelia, OH 45102

  
Robert A. McMahon