

David A. Eberly**
Robert A. McMahon*
Ted Copetas, Of Counsel

Attorneys at Law

*Also admitted in Kentucky
**Also admitted in Indiana

April 19, 2011

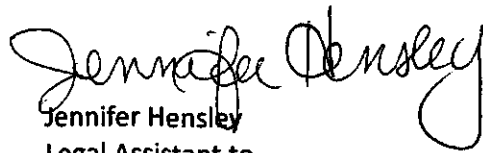
Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, OH 43215

Re: Filings

Dear Sir/Madame:

Enclosed for filing is Respondent Duke Energy Ohio, Inc.'s Memorandum in Opposition to Complainant's Application for Rehearing regarding Debbie J. Malloy v. Duke Energy Ohio, Inc., Case No. 10-158-EL-CSS and Respondent Duke Energy Ohio, Inc.'s Memorandum in Opposition to Complainant's Third Request for Continuance regarding Brenda Fitzgerald v. Duke Energy Ohio, Inc., Case No. 10-791-EL-CSS. Please file these and return file stamped copies to our office in the enclosed self addressed postage prepaid envelopes. Thank you.

Very Truly Yours,



Jennifer Hensley
Legal Assistant to
Robert A. McMahon, Esq.

Enc.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician SM Date Processed APR 20 2011

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Brenda Fitzgerald
61 Hunters Court
Amelia, OH 45102

Complainant,

v.

Duke Energy Ohio, Inc.

Respondent

Case No. 10-791-EL-CSS

PUCO

2011 APR 20 PM 12:05

RECEIVED-DOCKETING DIV

**RESPONDENT DUKE ENERGY OHIO, INC.'S
MEMORANDUM IN OPPOSITION TO
COMPLAINANT'S THIRD REQUEST FOR CONTINUANCE**

By letter to Attorney Examiner Kerry Sheets dated April 17, 2011, Complainant's husband Gerard Fitzgerald seemingly requested yet another continuance of the hearing in this action. Respondent strongly opposes this request for the following reasons:

1. Mr. Fitzgerald is not a party to this case and was not Respondent's customer under the utility account at issue in this case. He has no standing to make any requests in this action, and the actual Complainant (Brenda Fitzgerald) did not sign the request for a continuance.
2. Even if the request is considered as a motion by Complainant for a continuance, Complainant has failed to explain why this matter should be handled on an expedited basis as provided in OAC 4901-1-12(C).
3. There is no justification to continue this hearing a third time. The Commission can and should grant Respondent's Motion to Quash the 9 subpoenas served by Complainant for the reasons set forth in that motion. Continuing the hearing will

not accomplish anything but further delay and additional costs to Respondent and its ratepayers. Certainly a continuance will not invest jurisdiction in the Commission over out-of-state witnesses who do not work for Respondent and who clearly cannot be compelled to attend a hearing in Columbus, Ohio.

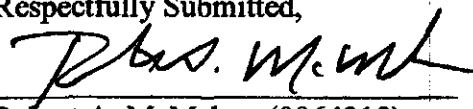
Similarly, a continuance will not change the fact that Complainant's subpoenas should be quashed because they are unreasonable, oppressive and harassing to Respondent and individuals who lack personal knowledge as to anything relating to Complainant's utility account.

4. Respondent has been ready to conduct the hearing since filing its expert testimony on October 27, 2010. Justice delayed is, indeed, justice denied in this case.

Complainant should be required to proceed at hearing on April 27th or dismiss her case.

WHEREFORE, Respondent requests that the Commission deny Complainant's third request for a continuance; and proceed with the hearing on April 27, 2011, as planned.

Respectfully Submitted,



Robert A. McMahon (0064319)
Eberly McMahon LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
513-533-3441
513-533-3554 Fax
bcmahon@emh-law.com

Attorney for Respondent
Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on Complainant by first class U.S. Mail, postage prepaid, on this 19th day of April, 2011:

Brenda Fitzgerald
123 Southern Trace Apt. B
Cincinnati, OH 45255


Robert A. McMahon