

FAX

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Sherry Wiley
5370 Aster Park Drive
Hamilton, OH 45011

Complainant,

v.

Duke Energy Ohio, Inc.

Respondent.

Case No. 10-2463-EL-CSS

PUCO

2011 NOV -9 PM 5:29

RECEIVED-DOCKETING DIV

**RESPONDENT DUKE ENERGY OHIO, INC.'S
MEMORANDUM IN OPPOSITION TO
COMPLAINANT'S APPLICATION FOR REHEARING**

On November 8, 2011, Complaint filed a document captioned "Appeal to Final Order Given October 12, 2011 by the Public Utilities Commission of Ohio and Kerry Sheets, Esq." That document is not an appropriate notice of appeal of the Commission's final order. Therefore, it appears that the filing is being treated as Complainant application for rehearing. However, Complainant has not remotely complied with ORC 4903.10 in her application for rehearing and, therefore, the Commission should deny that application.

ORC 4903.10 mandates that a party seeking a rehearing identify with specificity the manner in which the Commission's order was unreasonable or unlawful. *Marion v. Public Util. Comm.* (1954), 161 Ohio St. 276, 119 N.E.2d 67. Here, Complainant's application offers nothing more than a statement of her belief that she proved her case, which the Commission obviously rejected. In dismissing Complainant's complaint, the Commission addressed every so-called fact which Complainant now believes she "proved" and which Complainant lists in her

**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 W

Date Processed

NOV 10 2011

application. An application for rehearing is not intended to allow a complainant to re-litigate a case which the Commission has already decided after hearing sworn testimony and documentary evidence. Here, Complainant does not even bother to argue or present any credible evidence as to how or why the Opinion and Order dated October 12, 2011, was unreasonable or unlawful. Because Complainant failed to comply with ORC 4903.10, the Commission must deny her application for rehearing. *Disc. Cellular, Inc. v. PUC*, 2007 Ohio 53.

WHEREFORE, Respondent Duke Energy Ohio, Inc. requests that the Commission deny Complainant's application for rehearing, and grant Respondent such other, further or different relief as the Commission deems just and proper.

Respectfully submitted,



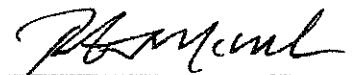
Robert A. McMahon (0064319)
Eberly McMahon LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
tel: (513) 533-3441
fax: (513) 533-3554
email: bcmahon@emh-law.com

Attorneys for Respondent
Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served via regular US Mail, postage prepaid, on the 9th day of November, 2011, upon the following:

Sherry Wiley
5370 Aster Park Drive, Apt. 909
Hamilton, OH 45011



Robert A. McMahon