

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

Shirley Bailey	)	
1083 W. Kemper Road	)	
Cincinnati, OH 45240	)	
	)	
Complainant,	)	Case No. 13-0531-GE-CSS
	)	
v.	)	
	)	
Duke Energy Ohio, Inc.	)	
	)	
Respondent.	)	

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MOTION OF DUKE ENERGY OHIO, INC.  
TO DISMISS COMPLAINT

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The Commission should dismiss this case because: (a) Complainant Shirley Bailey is not the customer of record and, therefore, lacks standing to assert claims against Duke Energy Ohio; (b) Complainant is not the real party in interest and already has a complaint case pending before the Commission; and (c) the Complaint fails to set forth reasonable grounds for complaint against Duke Energy Ohio. A memorandum of law in support of this motion is set forth below.

Respectfully submitted,

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

Elizabeth H. Watts  
Assistant General Counsel  
Duke Energy Business Services Inc.

155 East Broad Street, 21<sup>st</sup> Floor  
Columbus, OH 43215  
tel: (614) 222-1331  
fax: (614) 221-7556  
email: elizabeth.watts@duke-energy.com

Attorneys for Respondent  
Duke Energy Ohio, Inc.

### **MEMORANDUM OF LAW**

The Commission should dismiss this action because Complainant lacks standing to assert any claims against Duke Energy Ohio based on the commercial utility account at issue in the Complaint. The commercial utility account at issue in the Complaint (Account #7770-0227-30-0) is and always has been in the name of Leap of Faith Life Fellowship Ministries, Inc.<sup>1</sup> That entity is a non-profit corporation organized under Ohio law. Complainant is simply the customer contact on the account. Because Complainant is not the customer of record on the subject account, Complainant lacks standing to assert any claims against Duke Energy Ohio in connection with this commercial utility account.

To the extent Complainant mistakenly claims to be the real party in interest—which she is not—the Commission also should dismiss the Complaint because the same Complainant already has a case currently pending before the Commission. The present Complaint is duplicative and repetitive of Case No. 12-3119-EL-CSS, which remains currently pending before the Commission. While the Complaint in this case references a different customer account, the commercial account at issue in this case was addressed by the Commission in Case #SBAI0307121X, the informal complaint proceeding leading up to Case No. 12-3119-EL-CSS.

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<sup>1</sup> Corporations must be represented by attorneys in proceedings before the Commission. See, Rule 4901-1-08, Ohio Administrative Code. Therefore, should this Complainant attempt to file an amended complaint naming the actual corporate customer as the complainant, the customer must be represented by counsel. In other words, a pastor or other representative of a non-profit church, who is not a licensed attorney in the State of Ohio, cannot prosecute this action or any action on behalf of the actual customer Leap of Faith Life Fellowship Ministries, Inc.

The Commission should not allow Complainant or any customer representative to maintain separate complaint cases based on the same set of operative facts.

Finally, the Complaint should be dismissed because Complainant has not set forth and does not have reasonable grounds for complaint against Duke Energy Ohio. The Company's records confirm that neither Complainant nor any other representative of the actual customer on the commercial account at issue in this case contacted the Company to have the gas and electric services in the name of Leap of Faith Life Fellowship Ministries, Inc. disconnected. In fact, the Company was prepared to disconnect the gas and electric services for non-payment and rejected the customer's request for an extension on the disconnection based on the account history. Thereafter, Duke Energy Ohio was unable to disconnect the gas and electric services at the property on separate occasions in October 2012 because the customer failed to provide the Company with access to the premises and meters. Accordingly, the gas and electric services remained on and in the name of Leap of Faith Life Fellowship Ministries, Inc. until the new tenant began their service on November 2, 2012. Pursuant to Duke Energy Ohio's tariffs on file with the Commission, the customer of record (Leap of Faith Life Fellowship Ministries, Inc.) is responsible for providing access to gas and electric meters for purposes of connecting and disconnecting services, and remains legally and financially responsible for the payment of all utility services used on the customer's account until the Company is provided access to disconnect such services.

WHEREFORE, Respondent Duke Energy Ohio, Inc. respectfully moves this Commission to dismiss the Complaint of Shirley Bailey with prejudice; and to grant Respondent such other, further and different relief as the Commission deems just and proper.

Respectfully submitted,

/s/ Robert A. McMahon

Robert A. McMahon (0064319)

Counsel of Record

Eberly McMahon LLC

2321 Kemper Lane, Suite 100

Cincinnati, OH 45206

tel: (513) 533-3441

fax: (513) 533-3554

email: bmcMahon@emh-law.com

Elizabeth H. Watts

Assistant General Counsel

Duke Energy Business Services Inc.

155 East Broad Street, 21<sup>st</sup> Floor

Columbus, OH 43215

tel: (614) 222-1331

fax: (614) 221-7556

email: elizabeth.watts@duke-energy.com

Attorneys for Respondent

Duke Energy Ohio, Inc.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss was served via regular US Mail, postage prepaid, this 13<sup>th</sup> day of March, 2013, upon the following:

Shirley Bailey  
1083 W. Kemper Road  
Cincinnati, OH 45240

/s/ Robert A McMahon

Robert A. McMahon

**This foregoing document was electronically filed with the Public Utilities**

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**in**

**Case No(s). 13-0531-GE-CSS**

Summary: Motion MOTION OF DUKE ENERGY OHIO, INC. TO DISMISS COMPLAINT  
electronically filed by Mr. Robert A. McMahon on behalf of Duke Energy Ohio, Inc.