

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Gail Lykins, Personal Representative of)
Dorothy Easterling and Estill Easterling)
11312 Orchard Street)
Cincinnati, OH 45241)

Complainant,)

v.)

Duke Energy Ohio, Inc.)

Respondent.)

Case No. 15-298-GE-CSS

**DUKE ENERGY OHIO, INC.'S MEMORANDUM IN OPPOSITION TO
COMPLAINANT JEFFREY PITZER'S SECOND MOTION TO COMPEL**

I. Introduction

Complainant, Jeffrey Pitzer, seeks to compel the production of information in connection with a complaint case that is limited to discrete events occurring in the fall of 2011. Yet, in doing so, Complainant misstates the facts related to the discovery completed to date and misunderstands the practice before the Public Utilities Commission of Ohio ("Commission"). As discussed herein, the Commission should deny Complainant's motion to compel.

Duke Energy Ohio, Inc. ("Duke Energy Ohio" or "Company") fully answered or otherwise properly responded to the discovery requests propounded by Complainant, including identifying witnesses and providing two available dates for their depositions. Complainant is not Duke Energy Ohio's customer of record on the Account at issue in this case. Therefore, the Company cannot simply turn over confidential Account documents to Complainant or his attorney. The Company agreed to provide responsive documents relating to the Account following the execution of a confidentiality agreement. But the parties did not discuss, and thus did not agree upon, which party

would draft the agreement. Notwithstanding this fact and although he was able, through counsel, to prepare the confidentiality agreement necessary to obtain the relevant and confidential responsive documents and/or information that Duke Energy Ohio remains willing to produce, Complainant now wrongly claims that Duke Energy Ohio is at fault. Complainant also never noticed the depositions of Duke Energy Ohio's witnesses, which he now wants the Commission to compel. Complainant's motion to compel lacks merit and, therefore, should be denied in its entirety.

II. Factual Background of the Account and Complainant's Claim¹

This case is about the limited history from 2011 of one of Duke Energy Ohio's customer accounts, namely the gas and electric account (Account #0120-0420-20-6, hereinafter the "Account") in the name of Estill Easterling at 11312 Orchard Street, Cincinnati, Ohio 45241 (the "Property"). When Duke Energy Ohio originally filed its Answer to the Complaint, the Company was under the impression that the named customer on the account (Estill Easterling) was one of the decedents, whose interests, along with those of his mother Dorothy Easterling, are represented by Complainant, the Personal Representative of the Estates of Dorothy Easterling and Estill Easterling, and Complainant's counsel. Duke Energy Ohio later learned that its customer on this Account was Estill Easterling III, the deceased husband and father of Dorothy Easterling and Estill Easterling IV, respectively, and that the Easterlings continued to receive gas and electric service to the Property for years after the death of Estill Easterling III. That fact is and will be important with respect to the application of certain regulatory provisions relating to the disconnection of services to the Account for non-payment.

¹ Just as the Company did in response to the OCC's motion to intervene, Duke Energy Ohio provides this background information to put Complainant's discovery requests in their proper context in light of the issues and underlying facts relevant to this complaint proceeding.

The fact that the Account had past due charges and, therefore, was subject to disconnection for non-payment after October 28, 2011, is not contested. In the Complaint, Complainant admits that, “[a]t the time Duke disconnected the services at the property, the account had a balance of \$381.25, with \$233.01 of the balance being comprised of past due charges.”² Complainant also attached to the Complaint select Duke Energy Ohio bills for the Account. The bill issued by Duke Energy Ohio in October 2011 identifies the past due charges and is clearly labeled as a “DISCONNECT NOTICE.”³ Moreover, as more fully explained in Duke Energy Ohio’s Answer, the Company included a bill insert⁴ with the October 2011 bill. That insert fully explains the various issues, rights, payment plans and contact information relating to the Account and all of Duke Energy Ohio’s consumer accounts.

Despite the required notices of disconnection having been made by Duke Energy Ohio, Complainant alleges that the Company failed to comply with O.A.C. 4901:1-18-05(B), which concerns the winter heating season.⁵ That season is defined under Commission regulation as the “time period from November first through April fifteenth.”⁶ Significantly, the winter heating season is not synonymous with the Winter Rule. Notably Complainant has not alleged that the Company’s customer (Estill Easterling III), Dorothy Easterling, Estill Easterling IV, or anyone acting on any of their behalves contacted Duke Energy Ohio during the period relevant to the Winter Rule, made a payment of \$175 to Duke Energy Ohio, or entered into a payment plan with the Company, all of which are required under the Winter Rule.⁷ The history of the Account at

² Complaint at 2.

³ See the Duke Energy Ohio monthly bill for the Account generated on October 4, 2011, attached to the Complaint.

⁴ “Ohio Residential Disconnection Notice” dated October 2011.

⁵ Complaint, at 3.

⁶ O.A.C. 4901:1-18-01(U).

⁷ *In the Matter of the Commission’s Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order; see also Complaint, at 2, which references a payment of \$143.49 in October 2011.

issue in this action firmly establishes that the Winter Rule has no bearing whatsoever on Complainant's claims. The only regulatory provisions at issue in the Complaint in this action are OAC 4901:1-18-05 and 4901:1-18-06, and Duke Energy Ohio fully complied with both provisions.

Moreover, the Duke Energy Ohio bills for the Account attached to the Complaint demonstrate that the Company disconnected the electric service to the Account for the non-payment of electric services provided to the Account from August 3 through September 1, 2011. On its face, the additional one-third payment plan available to a customer under O.A.C. 4901:1-18-05(B)(3) is only "for any bills that include any usage occurring from November first to April fifteenth of each year."⁸ Therefore, the allegations *in* the Complaint are contradicted by the utility bills attached *to* the Complaint because the Account was not disconnected for the non-payment of any bills including usage during the winter heating season.

Duke Energy Ohio is only required to offer the payment plans identified in O.A.C. 4901:1-18-05 to the customer once the customer contacts the Company.⁹ As explained in Duke Energy Ohio's Answer, no one ever contacted the Company to avoid a delinquency or propose a payment plan. Nothing in O.A.C. 4901:1-18-05 remotely indicates that any of the identified payment plans are automatically triggered when a utility receives a partial payment, as Complainant seemingly believes. That is especially true when, as in this instance, Duke Energy Ohio received a partial payment on October 12, 2011 – twenty days *before* the winter heating season even started on November 1st under O.A.C. 4901:1-18-05(B)(3).

⁸ See, OAC 4901:1-18-05(B)(3).

⁹ See, OAC 4901:1-18-05(A).

Further, Duke Energy Ohio fully advised its customer¹⁰ of all rights available under all payment plans identified in O.A.C. 4901:1-18-05 (and even the Winter Rule) when it mailed the Ohio Residential Disconnection Notice to the Property with the October 4, 2011, bill. The Company further advised its customer and any consumers living at the Property of their rights when the electric service was disconnected for non-payment on November 4, 2011, and the Company's technician left the required notice at the Property. Complainant will not be able to dispute these facts.

As further explained in Duke Energy Ohio's Answer, Complainant cannot prevail on a claim under O.A.C. 4901:1-18-06(B) because it is simply not true that "Duke has been unable to provide documentation or evidence that it complied with the ten-day notice requirement under O.A.C. 4901:1-18-06(B)."¹¹ Duke Energy Ohio has the form 10-day notice that the Company used in October 2011, and the Company's records for the subject Account reflect that Duke Energy Ohio mailed the 10-day notice to the Property on October 19, 2011. Yes, by that time someone had made a *partial* payment of \$143.49 to Duke Energy Ohio on October 12, 2011, but that payment was less than the amount required to be paid to avoid disconnection, as reflected in the bill generated by Duke Energy Ohio on October 4, 2011, and attached to the Complaint.

Finally, as Duke Energy Ohio further explained in its Answer and is reflected in an attachment to the Complaint, Duke Energy Ohio did not disconnect the gas service at the Property on November 4, 2011. The Company only disconnected the electric service at that time for non-payment.¹²

¹⁰ Since the Account remained in the name of Estill Easterling, whom Duke Energy Ohio now knows was the deceased husband of Dorothy Easterling, all bills and notices were addressed to "Estill Easterling" at the Property.

¹¹ Complaint at 3.

¹² See Multiple Service Request, a copy of which is attached to the Complaint. As this document confirms, the disconnect for non-pay order for gas service was canceled on November 4, 2011.

Duke Energy Ohio provides this detailed history to demonstrate that the factual and legal issues in this action are *very* limited and specific only to the Account, the payment history on the Account, and Duke Energy Ohio's procedures and actions leading up to disconnection of only the electric service on November 4, 2011, for non-payment. No other residential utility customer or consumer is impacted by this action. Similarly, the history and disconnection of other residential utility accounts has no bearing on this case and the Commission's determination of the facts and issues relating to the only Account at issue in this case.

III. Complainant's Discovery Requests and Duke Energy Ohio's Answers/Objections

Having the proper context about what this case is really about, Duke Energy Ohio turns its attention to the discovery requests at issue here. Complainant moves to compel Duke Energy Ohio's responses to Interrogatory Nos. 3, 10, 11, 14, 18, 19 and 20 and Document Request Nos. 1 and 7. Copies of the Company's responses to these discovery requests are attached hereto for the Commission's convenience. Complainant also moves to compel the depositions of Duke Energy Ohio's witnesses.

Complainant's Interrogatories

- Interrogatory No. 3: In response to Complainant's request that Duke Energy Ohio identify "the names, addresses and telephone numbers of each and every person whom you will or may call as a non-expert witness at hearing of this matter," the Company properly objected on attorney-client privilege and work product doctrine grounds.¹³ After all, which witnesses *may* be called at hearing necessarily depends on the nature of Complainant's case and the mental impressions of Duke Energy Ohio's attorney regarding legal strategy. Duke

¹³ *In the Matter of the Complaint of David Wellman v. Ameritech Ohio*, Case No. 99-768-TP-CSS, *et al.*, Entry, at pg. 5 (June 2, 2002)(complainant's motion seeking to compel identification of witnesses to be called at hearing denied as respondent was not required, under O.A.C. 4901-1-16(C), to disclose lay witnesses).

Energy Ohio is scheduled to depose Complainant's witnesses on September 16, at which time the Company will learn the exact nature of Complainant's case and decide what information will be necessary to respond to and defend Complainant's claims. Furthermore, despite the offense feigned by Complainant in his motion, Duke Energy Ohio's response cannot reasonably come as a surprise. Complainant, through his counsel, asserted the same objection in answering a similar question posed by the Company.¹⁴ And just as Complainant has done, in response to Interrogatory No. 2, the Company identified two people with knowledge (Mitch Carmosino and Josh Danzinger), and separately agreed to make those individuals available for deposition. Therefore, while Duke Energy Ohio still has not decided who will be needed to testify at the hearing, the Company previously identified two individuals with relevant knowledge and agreed to make them available for deposition.

- Interrogatory No. 10: Complainant asked that Duke Energy Ohio identify payments made on the relevant Account (by whomever) between August 1, 2011, and December 1, 2011. The Company properly objected because, among other things, Complainant already has the requested information¹⁵ and any information beyond November 20, 2011, is not remotely relevant because that was the date on which Dorothy Easterling and Estill Easterling IV were discovered in their home. Nonetheless, Duke Energy Ohio identified the only payment – albeit a partial and late payment – of \$143.49 that the Company received on October 12, 2011. Complainant well knows there were no other payments on the Account during the relevant time period, so there is nothing left to compel.

¹⁴ See Exhibit A, Complainant's Responses to Duke Energy Ohio's Interrogatories, Interrogatory No. 3.

¹⁵ See Complainant's Complaint and Duke Energy Ohio bills bearing bates stamp numbers "Duke Energy-5," "Duke Energy-6," and "Duke Energy-7" attached thereto. See also, Duke Energy Ohio response to Pitzer Document Request 01-006.

- Interrogatory No. 11: Complainant misrepresents in his motion that all he wants to know from this interrogatory is “the identity of all Duke personnel who might have knowledge of the utility account at issue.” That simply is not true. Instead, Complainant actually asked Duke Energy Ohio, a Fortune 100 company with thousands of employees and automated billing and payment records, to “identify any and all persons who were aware of any payments made on the Account identified in your answer to Interrogatory No. 10.” Complainant did not specify any time period for when someone, whether affiliated with Duke Energy Ohio or otherwise, may have become “aware” of the payment specified by the Company in response to Interrogatory No. 10. As Duke Energy Ohio explained in its response, the requested information is not remotely relevant, assuming the Company even was able to ascertain who became “aware” of that payment at some unidentified point in time. Complainant claims that he subsequently narrowed this interrogatory through a letter dated July 20th from his attorney, a copy of which is attached as Exhibit C to attorney Lane’s affidavit. Again, that is not true. In fact, in that letter Complainant’s attorney actually *expanded* the scope of his interrogatory from initially wanting to know the people “aware” of the payment(s) identified by Duke Energy Ohio in response to Interrogatory No. 10 to later wanting the identity of all “persons employed by Duke who may have knowledge of *the relevant payment history*.”¹⁶ As such, Complainant went in the opposition direction, yet still seeks overbroad information that is not remotely relevant to the case at hand.¹⁷

¹⁶ See, attorney Lane’s July 20th letter attached as Exhibit C his affidavit.

¹⁷ *In the Matter of the Complaint of David Wellman v. Ameritech Ohio*, Case No. 99-768-TP-CSS, *et al.*, Entry, at pg. 9 (June 2, 2002)(denying motion seeking to compel documents not essential to the issues in the case).

- Interrogatory No. 14: Complainant conveniently fails to acknowledge in his motion that Duke Energy Ohio fully responded to this interrogatory by both identifying and producing documents as authorized by OAC 4901-1-19(C). The Company further identified another confidential document and agreed to produce it upon the execution of an appropriate confidentiality agreement. Thereafter, the parties did not reach an agreement on who would prepare the initial draft of such an agreement. Yet, Complainant now places the blame on Duke Energy Ohio for not preparing a document his counsel could have previously prepared. Complainant is obligated to use extra-judicial means to resolve discovery disputes before burdening this Commission's resources with a motion to compel.¹⁸ Complainant attempts to demonstrate adherence to this requirement by inferring that Duke Energy Ohio's counsel has reneged on its agreement to provide relevant and responsive information about the Account subject to a confidentiality agreement.¹⁹ Duke Energy Ohio's counsel has done no such thing. The August 21, 2015, response merely provides that Duke Energy Ohio is standing on its prior objections and responses.²⁰ To infer anything more and to use this response as the basis for a motion to compel suggests a preference not to first address discovery-related issues on an informal basis. That is hardly an appropriate use of a motion to compel with respect to a fully-answered interrogatory.
- Interrogatory No. 18: The breadth of this discovery request is astounding – “Identify any and all complaints and/or lawsuits that have been charged or filed against you which allege your liability for the Wrongful Death of a customer(s) whose service you

¹⁸ O.A.C. 4901-1-23(C).

¹⁹ Cite to pitzer motion

²⁰ Cite to pitzer exhibit

disconnected, including the disposition of each complaint and/or lawsuit.” Duke Energy Ohio properly objected to this interrogatory because it seeks information that has nothing whatsoever to do with the limited facts and claims in this case, the history of the Account at issue in this case, and the Company’s disconnection of only the electric service at the subject property after the amount due and owing on the Account admittedly was not paid in a timely manner. Duke Energy Ohio’s objections to this ridiculous discovery request are proper and valid and consistent with Commission precedent.²¹

- Interrogatory No. 19: Incredibly, in a case limited to distinct facts about the single Account at issue in the Complaint, Complainant actually requests that Duke Energy Ohio “[i]dentify each and every instance of a disconnection of utility services at any residence that you serve in the State of Ohio from January 1, 2011 to the present.” Duke Energy Ohio properly objected to this interrogatory which, on its face, seeks information that has nothing whatsoever to do with this case. Once again, in his motion, Complainant flatly misrepresents what has transpired in this case. Complainant **never** “offered to work with Duke on reasonably narrowing the parameters”²² of this interrogatory—claiming otherwise is simply not true. The only facts and issues relevant in this case involve the single Account in the name of Estill Easterling and the facts leading up to and surrounding the Company’s

²¹ *In the Matter of the Application of Middletown Code Company, a Subsidiary of SunCoke Energy, Inc., for a Certificate of Environmental Compatibility and Public Need to Build a Cogeneration Facility*, Case No. 08-281-EL-BGN, Entry, at pg. 2 (November 4, 2008)(denying motion to compel on matters not relevant to the proceeding); *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind-powered Electric Generation Facilities in Champaign County, Ohio*, Case No. 08-666-EL-BGN, Entry, at pp. 5-6 (October 30, 2009)(denying motion to compel requests for information that were overly broad or not relevant to the pending proceeding); *In the Matter of the Petitions of Bauman v. The Western Reserve Telephone Company*, Case No. 90-1095-TP-PEX, *et al.*, 1991 Ohio PUC LEXIS 325 *8-9 (March 14, 1991)(denying motion to compel information not relevant to the issues raised in the proceeding); *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, *et al.*, Opinion and Order, at pg. 12 (September 2, 2003)(denying motion to compel information on matters not relevant to the subject matter of the proceeding).

²² See, attorney Lane’s July 20th letter attached as Exhibit C his affidavit.

disconnection of the electric services to that Account on November 4, 2011. Nothing more. Whatever happened with Duke Energy Ohio's other residential customers in the state of Ohio whose gas²³ and electric services were disconnected from January 1, 2011, to the present has absolutely nothing to do with what happened in this particular case and whether, as Complainant claims, "Duke did not follow the proper procedures in discontinuing utility service in this instance."²⁴ Complainant is correct, as "this instance" is the only thing relevant in this case.

- Interrogatory No. 20: Even though a single Account is at issue in this case, in this interrogatory Complainant wants Duke Energy Ohio to look back to Interrogatory No. 12 and identify "any and all customer accounts in Ohio for which you have not disconnected utility services, despite such customer's violation of the rules you have set forth in Interrogatory 12, for the period of time from January 1, 2011 to the present." So now, Complainant somehow thinks it is relevant and appropriate for the Company to spend incredible resources identifying every instance throughout the entire state for a 5 ½ year period of time where Duke Energy Ohio did *not* disconnect a residential customer's gas or electric service. Complainant does not bother to explain in his motion how or why this interrogatory is appropriate. As with Interrogatory No. 19, it also is untrue for Complainant to claim that he offered to narrow the scope of this interrogatory. What is true, however, is that Duke Energy Ohio properly objected to this interrogatory and stands by those objections.

Complainant's Document Requests

²³ Duke Energy Ohio did not disconnect the gas services on the subject Account. Therefore, the rules, regulations, policies and procedures relating to a residential customer's gas account and the disconnection thereof have nothing to do with this case.

²⁴ See, Complainant's motion at 3.

- Request No. 1: By its very nature, Complainant’s request that Duke Energy Ohio “[p]roduce each and every document you intend to refer to, rely on, or admit as an exhibit at hearing of this matter” necessarily goes to the heart of the Work Product Doctrine. And it is worth mentioning here that Duke Energy Ohio is defending this action, and that Complainant has the burden of proof. At present, Duke Energy Ohio has no idea what type of case Complainant will put forth or what “evidence” Complainant will concoct because he does not and cannot possibly have personal knowledge of the facts and events surrounding the Account at issue in this case. Therefore, Duke Energy Ohio is not required to disclose its trial strategy to Complainant or otherwise tell Complainant now what documents it will use in defending this claim. Further, Duke Energy Ohio has fully complied with Complainant’s relevant discovery requests regarding the Account. Complainant is not entitled to a proverbial “road map” of Duke Energy Ohio’s defense. Indeed, this Commission’s regulations include no such disclosure obligation and, as is the practice before the Commission, parties do not exchange exhibit lists prior to a hearing. Thus, although Complainant’s counsel may be subject to such disclosure requirements under the federal rules of court or the scheduling orders of the state’s trial courts, no such requirement exists here.
- Request No. 7: This request directs Duke Energy Ohio to Interrogatory No. 10, in response to which the Company identified the single partial and late payment of \$143.49 that the Company received on October 12, 2011, in connection with the subject Account. Complainant is well aware of that single payment, as his predecessor and spouse (prior Complainant Gail Lykins) specifically referenced that payment in the Complaint.²⁵

²⁵ See, Complaint at 2.

Therefore, it is not entirely clear why Complainant wants the Commission to compel the Company's production of information that Complainant already has.²⁶ But it is clear that such a request is not contemplated under O.A.C. 4901-1-16(G). Furthermore, the Company is willing to produce the confidential document once the parties execute an appropriate confidentiality agreement. Yet again, it is simply not true for Complainant to claim that Duke Energy Ohio ever refused to provide a confidentiality agreement.

Depositions

This portion of Complainant's motion to compel is particularly egregious. In response to Complainant's Interrogatory No. 3, Duke Energy Ohio identified two current employees, Mitch Carmosino and Josh Danzinger, and indicated that Complainant may contact those employees through the Company's counsel. Similarly, by email on July 27, 2015,²⁷ Duke Energy Ohio's attorney indicated that Messrs. Carmosino and Danzinger could be available for deposition on September 18 or 21. As set forth in that same email, the Company's attorney further asked that Complainant's counsel confirm one of those dates "at the earliest convenience." Three weeks later, Complainant's attorney sent a letter to Duke Energy Ohio's counsel, but he still did not select one of the offered dates or ever notice the depositions. Instead, the next "communication" that the Company received was the present motion to compel. Perhaps worse than including this non-existent issue in his motion, Complainant falsely claims in the motion that "Duke identified these individuals but has not provided any names or addresses for them."²⁸ That averment does not make sense, nor is it remotely true, as previously explained.

²⁶ *In the Matter of the Complaint of David Wellman v. Ameritech Ohio*, Case No. 99-768-TP-CSS, *et al.*, Entry, at pg. 6 (June 2, 2002) (denying motion seeking to compel documents already in complainant's possession).

²⁷ See, Exhibit F to attorney Lane's affidavit.

²⁸ See, motion at 4.

Duke Energy Ohio remains willing to produce the two employees for deposition, and will do so on September 18, as the Company has told Complainant's counsel. As such, the claimed need for information in order to issue subpoenas does not exist. Complainant's effort to compel contact information for previously identified witnesses ignores both that which Complainant already possesses and the practice before the Commission. As to the former, to the extent counsel deems it necessary, subpoenas can be issued to counsel for the identified individuals, consistent with Duke Energy Ohio's discovery response that such persons could be contacted through counsel. It is noteworthy, however, that such a request is not reflective of the customary practice before the Commission. In Commission proceedings, the deposition appearance of a party's witness is routinely accomplished via a notice of deposition, thus eliminating the need to submit, to the presiding attorney examiner or Commission, unnecessary motions for subpoena. There is nothing to compel in this regard.

IV. The Commission should deny Complainant's motion to compel.

The record before the Commission firmly establishes that Complainant's motion should be denied. Once the Commission reviews Complainant's discovery requests and Duke Energy Ohio's responses and objections (including the record of documents produced), the Commission will conclude that Complainant's motion is utterly void of legal and factual merit.

Through overbroad, burdensome and irrelevant discovery requests, Complainant apparently wants to turn reasonable discovery relating to the simple and straight-forward facts and issues in this case into a fishing expedition worthy of *Moby Dick* itself. Complainant cannot think that the law entitles him to, for example, records and information about customers throughout the State of Ohio for a 5 ½ year period whose gas and electric service either was or was not disconnected by Duke Energy Ohio. Yet Complainant actually comes before the Commission in

an effort to compel the Company's production of that mountain of irrelevant and confidential information. The one and only issue before the Commission in this case is this: did Duke Energy Ohio unlawfully disconnect the electric service to the Account on November 4, 2011?

Contrary to Complainant's accusations, Duke Energy Ohio remains ready, willing and able to produce relevant information and documents relating to that issue. But the Company will not countenance efforts by Complainant to abuse the discovery process in such a simple case, especially when Duke Energy Ohio possesses evidence proving that the Company provided all required notices to its customer and the consumers living at the subject Property in advance of disconnecting the electric service at the Property for non-payment on November 4, 2011. Duke Energy Ohio has produced all such information and documents in discovery, and stands ready to make two employees available for their deposition. Accordingly, Complainant's motion to compel must be denied.

WHEREFORE, Respondent Duke Energy Ohio, Inc. requests that the Commission deny the motion to compel filed by Complainant Jeffrey Pitzer in its entirety; and enter an appropriate protective order under OAC 4901-1-23(D) providing that Complainant is not entitled to the requested information and documents beyond that already provided by Duke Energy Ohio, Inc.

Respectfully submitted,

/s/ Robert A. McMahon
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on this 27th day of August, 2015, upon the following counsel of record:

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/s/ Robert A. McMahon

Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set of Interrogatories
Date Received: May 4, 2015

PITZER-INT-01-003

REQUEST:

State the names, addresses and telephone numbers of each and every person whom you will or may call as a non-expert witness at hearing of this matter. With respect to each person listed, briefly state the subject matter of his/her testimony.

RESPONSE:

Objection. This Interrogatory exposes Duke Energy Ohio to speculation and guesswork in that it seeks information about persons who have not been identified. Answering further, this interrogatory seeks to elicit privileged and confidential information that is protected by the attorney work product doctrine or the attorney client privilege. See, generally, O.A.C. 4901-1-29, which establishes deadlines for the submission of testimony in complaint proceedings, and response to PITZER-INT-01-004.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set of Interrogatories
Date Received: May 4, 2015**

PITZER-INT-01-010

REQUEST:

Identify any and all payments made on the Account by Decedents, Plaintiff, or any person acting on their behalf, between August 1, 2011 and December 1, 2011.

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome. Furthermore, it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Additionally, this Interrogatory also seeks to elicit information in the possession of the decedents or complainant. Without waiving said objection, to the extent discoverable, in the spirit of discovery, and with regard to the period between August 3, 2011, and November 20, 2011, a late payment of \$143.49 was received on October 12, 2011. No other payments for utility service were received during the period identified herein.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set of Interrogatories
Date Received: May 4, 2015**

PITZER-INT-01-011

REQUEST:

Identify any and all persons who were aware of any payments made on the Account identified in your answer to Interrogatory No. 10.

RESPONSE:

Objection. This Interrogatory is overly broad and unduly burdensome given that it fails to contain relevant time periods pursuant to which it is to be answered. It also seeks to elicit information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible evidence. Furthermore, this Interrogatory impermissibly exposes Duke Energy Ohio to speculation and guesswork in that it seeks information regarding what persons "were aware of". Duke Energy Ohio cannot possibly know of all persons with knowledge of any payments made at any time.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set of Interrogatories
Date Received: May 4, 2015**

PITZER-INT-01-014 PUBLIC

REQUEST:

Identify any and all records, transcripts, notes, entries, and/or any other form of documentation that you have in your possession relating to the disconnection of utility services at the Residence on or about November 4, 2011.

RESPONSE:

See October bill, October bill insert, and 10-day letter, and on premises notice attached hereto as ATTACHMENT PITZER-INT-01-014 (a).

The Confidential response and Attachment PITZER-INT-01-0-14(b) will be provided to all parties in this case upon the execution of a Confidentiality Agreement.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set of Interrogatories
Date Received: May 4, 2015**

PITZER-INT-01-018

REQUEST:

Identify any and all complaints and/or lawsuits that have been charged or filed against you which allege your liability for the Wrongful Death of a customer(s) whose service you disconnected, including the disposition of each complaint and/or lawsuit.

RESPONSE:

Objection. This Interrogatory seeks to elicit information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible information. This Interrogatory fails to contain any reasonable time parameters pursuant to which it is to be answered, thereby rendering it overly broad, unduly burdensome, and vague. Furthermore, this Interrogatory seeks to elicit information that is of public record and thus readily available to and equally accessible to the complainant.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set of Interrogatories
Date Received: May 4, 2015

PITZER-INT-01-019

REQUEST:

Identify each and every instance of a disconnection of utility services at any residence that you serve in the State of Ohio from January 1, 2011 to the present. In connection with your response, identify any and all notices that you provided to each utility customer, concerning such disconnection, both before and after the disconnection, and the method by which such notification was provided. You are not excused from responding to this Interrogatory based on the confidentiality of customer information. You are invited to identify the involved customer accounts by assigning them a confidential identifier that you select for purposes of fully responding to this Interrogatory. Your response should include all relevant dates.

RESPONSE:

Objection. This Interrogatory seeks to elicit information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible information. Answering further, this Interrogatory is overly broad, unduly burdensome and vague and exposes Duke Energy Ohio to undue expense. This Interrogatory also impermissibly changes the law and Commission regulation insofar as discovery is concerned by claiming that a respondent must provide what is otherwise confidential and protected information.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set of Interrogatories
Date Received: May 4, 2015**

PITZER-INT-01-020

REQUEST:

Please refer to Interrogatory 12. Please identify any and all customer accounts in Ohio for which you have not disconnected utility services, despite such customer's violation of the rules you have set forth in Interrogatory 12, for the period of time from January 1, 2011 to the present. You are not excused from responding to this Interrogatory based on the confidentiality of customer information. You are invited to identify the involved customer accounts by assigning them a confidential identifier that you select for purposes of fully responding to this Interrogatory. Your response should include an explanation, if any, as to why you did not choose to disconnect utility services for such customers, despite the fact that the accounts were, by your definition, delinquent.

RESPONSE:

Objection. This Interrogatory seeks to elicit information that is irrelevant or otherwise not reasonably calculated to lead to the discovery of admissible information. Answering further, this Interrogatory is overly broad, unduly burdensome and vague and exposes Duke Energy Ohio to undue expense. This Interrogatory also impermissibly changes the law and Commission regulation insofar as discovery is concerned by claiming that a respondent must provide what is otherwise confidential and protected information.

PERSON RESPONSIBLE: Legal

**Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set Production of Documents
Date Received: May 4, 2015**

PITZER-POD-01-001

REQUEST:

Produce each and every document you intend to refer to, rely on, or admit as an exhibit at hearing of this matter.

RESPONSE:

Objection. This Document Request impermissibly seeks information protected by the work product doctrine. It further runs afoul of Commission regulation. See, *e.g.*, O.A.C. 4901-1-29, which sets forth the deadline for the submission of testimony in complaint proceedings.

PERSON RESPONSIBLE: Legal

Duke Energy Ohio
Case No. 15-298-GE-CSS
PITZER First Set Production of Documents
Date Received: May 4, 2015

PITZER-POD-01-007 PUBLIC

REQUEST:

Produce any and all documents that in any way relate to your Response to Interrogatory No. 10.

RESPONSE:

The Attachment will be produced to parties to this proceeding upon the execution of an confidentiality agreement acceptable to Duke Energy Ohio.

PERSON RESPONSIBLE: Legal

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/27/2015 2:56:09 PM

in

Case No(s). 15-0298-GE-CSS

Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum in Opposition to Complainant Jeffrey Pitzer's Second Motion to Compel electronically filed by Mr. Robert A. McMahon on behalf of Duke Energy Ohio, Inc.