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September 3, 2015

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Public Utilities Commission of Ohio
Attn: IAD
180 East Broad Street
Columbus, Ohio 43215-3793

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PUCO

Re: **Complainant, Jeffrey Pitzer's Reply Memorandum
In Support of Motion to Compel
In the Matter of the Complaint of Jeffrey Pitzer
Case No. 15-298-GE-CSS
11312 Orchard Street
Cincinnati, Ohio 45241
Duke Energy Acct. No. 0120-0420-20-5**

To Whom It May Concern:

Enclosed please find an original and one copy of Complainant, Jeffrey Pitzer's, Reply Memorandum in Support of Motion to Compel to be placed of record with PUCO. Please return a time-stamped copy to my office in the enclosed self-addressed stamped envelope.

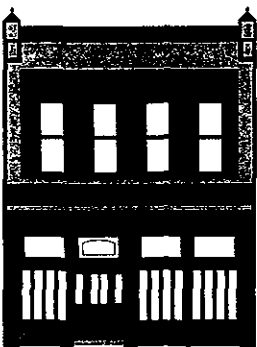
Thank you for your attention to this matter. Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

DRODER & MILLER CO., L.P.A.

Julie Denzler
By Julie Denzler

/jed
Enclosures



Proud Neighbors in Over-the-Rhine

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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|----------------------------------------------|---|------------------------|
| In the Matter of Complaint of Jeffrey Pitzer |) | |
| |) | |
| Complainant, |) | |
| |) | Case No. 15-298-GE-CSS |
| v. |) | |
| |) | |
| Duke Energy Ohio, Inc. |) | |
| |) | |
| Respondent |) | |

**COMPLAINANT, JEFFREY PITZER'S, REPLY MEMORNDUM IN
SUPPORT OF MOTION TO COMPEL**

Complainant, Jeffrey Pitzer, submits this reply memorandum in support of his motion to compel further responses to discovery he has served on Respondent, Duke Energy Ohio, Inc. ("Duke"), and in response to the August 27, 2015 memorandum in opposition to the same, submitted by Duke. Since Mr. Pitzer filed his motion, the parties have made some progress in resolving their differences. However, several issues remain in dispute.

Legal Issues

Duke spends a great deal of time discussing legal issues in its opposition, in an apparent attempt to narrow the scope of permissible discovery and to, yet again, provide the Attorney Examiner with a preview of its case. However, Duke misses the import of OAC 4901-1-16(B). A discovery request is not objectionable, simply because the information sought may not, ultimately, be admissible. Like analogous Ohio Civil Rule 26, this rule provides the following with respect to the scope of discovery:

It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

As such, Duke's recitation of the specific issues is not necessary for decision on Mr. Pitzer's motion since all of Mr. Pitzer's requests are so "reasonably calculated" as will be shown below.

Having said that, Mr. Pitzer does address two issues that Duke raises in its opposition.

First, Duke has made much of the fact that the decedents, Dorothy Easterling and Estill Easterling III¹, were not the names associated with the utility account at issue. OAC 4901:1-18-01(G) defines a “customer” as “any person who enters into an agreement, whether by contract or under a tariff, to purchase: electric, gas, or natural gas utility service.” This definition does not contain any limitation as specific as an account being formally listed in a certain name. In fact, Duke had no problem collecting utility payments from Mr. Easterling Sr.’s widow for many years, and Mr. Pitzer alleges that her continued payment for such services certainly amounts to a contract between her and Duke. As Duke admits in its opposition, it is withholding certain documents concerning the account from Mr. Pitzer, Mrs. Easterling’s personal representative, because the account was not formally in her name. Clearly, Duke is engaging in gamesmanship by taking this position.

Second, Duke alleges that it included a “bill insert” that explained Mrs. Easterling’s rights concerning her disconnection. However, one of the key issues in this matter is whether Duke actually did mail this notice to Mrs. Easterling. So far, Duke has only been able to provide a redacted version of such a notice that it sent to someone else.

With the foregoing in mind, Mr. Pitzer addresses the pending discovery issues as follows:

Depositions

After Mr. Pitzer filed his motion, Duke finally agreed to provide a date certain by which it will present the two employees it identified in its discovery responses for deposition. Mr. Pitzer withdraws this issue but reserves his right to bring to the Attorney Examiner’s attention any improper objections Duke may assert during the depositions.

¹ As it has throughout this matter, Duke continues to confuse the identities of Mr. Easterling and his father. The decedent here is Estill Easterling III. Mr. Easterling’s father either went by “Estill Easterling II” or “Estill Easterling Senior”. At page two of its opposition, Duke refers to these two individuals as “Estill Easterling IV” and “Estill Easterling III”, respectively. This error is surprising, in that Duke continues to assert that the actual name on its account records are a pivotal issue, yet it cannot even keep them straight at this juncture.

Hearing Witnesses (Interrogatory 3)

Insofar as it has failed to address the issue, Duke apparently realizes that its original objection to this discovery request, citing OAC 4901-1-29, is baseless. The request has nothing to do with the identity of expert witnesses.

Having recognized its mistake, Duke now retreats to the position that the identification of witnesses constitutes “work product.” Clearly, Mr. Pitzer has a right to know who will be testifying on Duke’s behalf at hearing of this matter in just over a month, and Duke may not hide behind “work product” arguments to spring “surprise witnesses” on Mr. Pitzer on the day of the hearing.

Duke also complains that it cannot identify its witnesses because discovery is not complete. However, Duke apparently has a very good sense of the issues it will present at hearing, owing to the 5 ½ pages it spent discussing them in its opposition. Duke could simply identify the witnesses and supplement its response, in the event it contemplates calling additional witnesses based on further discovery.

Finally, Mr. Pitzer once again notes that he has identified his trial witnesses in response to exactly the same discovery served by Duke².

Persons With Knowledge of Account (Interrogatory 11)

Mr. Pitzer has a difficult time understanding the histrionics by which Duke addresses this issue. He simply wants to know which Duke employees have knowledge of the Easterling account. Clearly, this request is very basic and is certainly essential to the issues before the PUCO. As such, the information is discoverable under OAC OAC 4901-1-16(B).

Account Documents (Interrogatory 14; Document Request 7)

² In its opposition, Duke correctly points out that Mr. Pitzer objected to these requests from Duke. However, unlike Duke, Mr. Pitzer also provided a detailed identification of his hearing witnesses.

In its opposition, Duke makes much of the fact that Mr. Pitzer did not take the time to draft a confidentiality agreement, which Duke requires as a prerequisite to obtain all the account information at issue. In the July 20, 2015 “meet and confer” letter, counsel requested that Duke provide Mr. Pitzer with such an agreement, since Duke is the party who is requesting the same. Clearly, Mr. Pitzer did not want to waste his time crafting and re-crafting a document upon which Duke insisted, only to have Duke complain that the document did not meet its confidentiality requirements.

As stated above, the need for a confidentiality agreement, at least as respects these discovery requests, is dubious. Duke has admitted in its opposition that it is not providing all account information because Mrs. Easterling was not the “account holder.” This is so, despite the fact that Mrs. Easterling was Duke’s paying customer for years after Mr. Easterling, Sr. passed.

Again, after Mr. Pitzer filed his motion, Duke has provided him with a form of confidentiality agreement upon which the parties are currently working. Should they reach an accord, and should Duke produce the documents at issue, Mr. Pitzer will agree to withdraw his motion as respects these requests.

Other Customer Information (Interrogatories 18, 19 and 20; Document Requests 15 and 16)

Duke claims that it followed certain procedures relating to the disconnection of utility service at Mrs. Easterling’s home. Contrary to Duke’s representations, Mr. Pitzer does not believe any type of uniform procedures were followed. The most glaring example of Duke’s inadvertence is its inability to produce the “bill insert” addressed above. In addition, Duke must admit that it discontinued service to the Easterling residence after Mrs. Easterling made a payment but cannot clearly articulate why it did so. Mr. Pitzer is left with the notion that Duke was hasty in its decision making process, resulting in the untimely death of two individuals. For

these reasons, Mr. Pitzer has made a reasonable request for other customer information to see if any type of pattern emerges in connection with Duke's disconnection practices and to determine if this case follows that pattern or presents an anomaly.

As a group, Mr. Pitzer's requests can be broken down as follows:

1. Mr. Pitzer wants to know if Duke has previously been involved in a wrongful death claim, similar to the case at issue. One would hope that Duke has not caused the deaths of other customers, so responding to this inquiry should be relatively easy for Duke. If a former Duke customer has died, allegedly as a result of Duke's actions, then Mr. Pitzer has a need to know the circumstances which might have caused such death and whether the same procedures as apply here were undertaken by Duke in that case.
2. Mrs. Easterling and Estill Easterling III perished in 2011, after Mrs. Easterling attempted to bring her account with Duke current. As stated above, Duke claims that it provided proper notice of disconnection to Mrs. Easterling but cannot provide the necessary documentation that it issued directly to her. As such, Duke's disconnection procedures and recordkeeping practices are in question³. Mr. Pitzer is simply seeking account records for customers who may have had their service disconnected from 2011 to the present to determine, again, whether Duke is following any sort of pattern and whether the treatment it afforded Mrs. Easterling falls within any pattern that may exist. Mr. Pitzer has agreed that customer identity can be kept confidential⁴. In response, Duke has refused to provide any responsive material but has not submitted an affidavit or any other factual evidence concerning the burden which Duke must undertake to produce the customer records.
3. Mr. Pitzer has served a similar request on Duke, covering the same time period, seeking information about customer accounts where disconnection notices have been served but for which service has not been discontinued. Again, Mr. Pitzer needs to know whether Duke has established procedures that have not been uniformly applied.

In its opposition, Duke makes much of the fact that Mr. Pitzer has not offered to work with Duke on an acceptable scope for this discovery. In fact, as stated above, Mr. Pitzer has agreed that Duke may keep customer information confidential and has explained to Duke why such discovery is important and necessary. Duke has not offered a compromise as to how it can

³ Apparently, Duke's disconnection practices are a widespread issue. See *Why Does Duke Disconnect So Many Customers?*, Cincinnati Enquirer, February 8, 2015.

⁴ Duke has already acquiesced to such a procedure. In that it failed to find a particular notice it allegedly served on Mrs. Easterling, Duke has produced a notice with the customer name redacted.

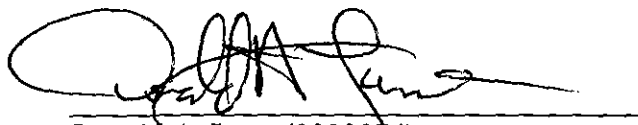
produce such information reasonably. Had Duke done so, Mr. Pitzer might have entertained such a proposal instead of being forced to bring this motion.

Hearing Exhibit (Document Request 1)

As with hearing witnesses, Mr. Pitzer also needs some idea of what documentary evidence Duke intends to present at hearing. Again, Duke claims that the identity of its hearing exhibits constitute "work product." However, the simple identification of hearing exhibits does not impinge on Duke's hearing strategies.

For the above stated reasons, Mr. Pitzer respectfully requests that his motion to compel be granted, as set forth herein.

Respectfully submitted,
DRODER & MILLER CO., L.P.A.



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CERTIFICATE OF SERVICE

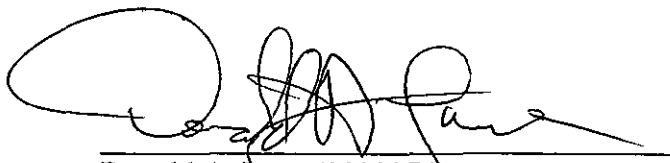
I hereby certify that a copy of the foregoing has been served upon the following by electronic mail this 3rd day of September, 2015:

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