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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Jeffrey Pitzer)	
)	
Complainant,	)	Case No. 15-298-GE-CSS
)	
v.	)	COMPLAINANT, JEFFREY
	)	PITZER'S, FOURTH MOTION
Duke Energy Ohio, Inc.	)	TO COMPEL; EXPEDITED
	)	RULING REQUESTED
Respondent)	

Pursuant to OAC 4901-1-23, Complainant, Jeffrey Pitzer, seeks an order from the Attorney Examiner requiring Respondent, Duke Energy Ohio, Inc. ("Duke"), to respond fully to Mr. Pitzer's request for account related information basic to the issues in dispute in this matter. Because of the impending hearing date of January 14, 2016, Mr. Pitzer respectfully requests that this motion be considered on an expedited basis. This Motion is supported by the memorandum set forth below. As required by OAC 4901-1-23(C), the Motion also demonstrates counsel's efforts to resolve the discovery dispute before submitting it to the Attorney Examiner.

MEMORANDUM

As the Attorney Examiner is aware, this matter involves the deaths of Dorothy Easterling and Estill Easterling III, a senior citizen and functionally disabled adult. Mrs. Easterling and Mr. Easterling perished because Duke failed to follow proper procedures in terminating electrical service at the residence that they shared.

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 JE Date Processed DEC 23 2015

Since October, 2013, members of Mrs. Easterling and Mr. Easterling's family¹ have been embroiled in discovery disputes with Duke in an attempt to obtain fundamental information about the utility account at issue ("the Account") and the circumstances of the disconnection.

By subpoena dated October 16, 2013², attached hereto as Exhibit A, the family requested the following:

copies of any utility bills, disconnect notices, or other notices, communications, information packets, waivers, letters or other electronic forms of communication that were communicated, delivered, posted, or electronically transmitted to Dorothy Easterling from August 2011 through December 2011. Please also include any additional information concerning the delivery or attempt to deliver any of the above referenced documents.

In response to this subpoena, Duke did produce some electronic documents relating to the Account, but, as the undersigned would learn during a designee deposition of Duke, this production is very incomplete.

After Ms. Lykins commenced this action, she served Duke with additional discovery on May 4, 2015, a copy of which is attached hereto as Exhibit B. A fair reading of this discovery reveals that it does require the production of all documentation relating to the Account. Mr. Pitzer calls the Attorney Examiner's attention, in particular, to Interrogatories 7, 8, 10, 14, 15, 16 and 21 and Document Requests 4, 5, 6, 7, 10, 11 and 12. After some initial discovery disputes, Duke produced additional documents on July 13, 2015, much of which duplicated what it produced in response to the 2013 subpoena. Duke finally produced additional documents relating to the Account on September 16, 2015, after forcing Mr. Pitzer to sign a confidentiality agreement.

¹ The current complainant in this matter is Jeffrey Pitzer, Mrs. Easterling's son-in-law, and Mr. Easterling's brother-in-law. Mr. Pitzer assumed these duties when his wife, Gail Lykins, Mrs. Easterling's daughter, and Mr. Easterling's sister, underwent a bone marrow transplant earlier this year.

² Ms. Lykins originally issued this subpoena in anticipation of a wrongful death action that she commenced on November 15, 2013 in the Court of Common Pleas, Hamilton County, Ohio. The Court subsequently dismissed that case in favor of the current proceedings.

On October 8, 2015, Mr. Pitzer served Duke with a deposition notice, wherein counsel sought to gain an understanding of the documents relating to the Account that Duke had produced since 2013 by deposing a corporate representative of Duke. The notice was docketed in this case on the same date that counsel served it on Duke. True to form, Duke did not cooperate with Mr. Pitzer's request, so Mr. Pitzer served Duke with an amended notice on October 21, 2015, which notice is attached as Exhibit C³. At the Prehearing Conference on November 10, 2015, the parties discussed, *inter alia*, the designee deposition that Mr. Pitzer had requested. The Attorney Examiner and the parties resolved the discovery dispute by Duke's agreement that it would produce a witness to testify about the documents Duke had produced relating to the Account, including "the abbreviations and acronyms in the account notes [Duke had produced] and how those activities related to account activities."

On December 3, 2015, Duke produced Marion Byndon as its representative⁴. During the course of the deposition, three things became apparent: First, Duke's counsel did not allow Ms. Byndon to testify about matters relating to the account documents; second, Duke has not produced all documents relating to the Account; and, third, Duke has failed to provide a witness who can testify to all matters covered by Mr. Pitzer's notice. Attached as Exhibit D is the letter written by counsel for Mr. Pitzer, outlining the issues from Duke's production and Ms. Byndon's deposition that are in dispute. The page and line numbers from the deposition that relate to each of the issues are identified in the letter and will not be repeated in this Motion. Attached as Exhibit E is a response from Duke's counsel.

³ Through inadvertence, counsel did not docket this notice with the Commission.

⁴ Mr. Pitzer is filing Ms. Byndon's transcript under seal, owing to the fact that Duke has asserted confidentiality.

Instructions To The Witness

At several points in the deposition, Duke's counsel objected to questions concerning the Account and instructed Ms. Byndon not to answer them. These questions are clearly within the scope of what the parties agreed at the Prehearing Conference, and Mr. Pitzer respectfully requests that Duke produce Ms. Byndon again to answer the questions, with the additional compromise referenced below.

As stated above, the questions are clearly within the scope of the parties' agreement, in the presence of the Attorney Examiner, at the Prehearing Conference. As quoted in Duke's letter, the agreement on the scope of the deposition concerns not only the content (abbreviations and acronyms) of the account documents but also how the document entries "relate to what occurred on the account through November 20, 2011," the date on which Mrs. Easterling and Mr. Easterling were found dead. A fair reading of the questions specifically identified in Exhibit D clearly demonstrate that they are within the agreed scope of the deposition.

Further, even if Duke believes that it has the right to invalidly limit the scope of the deposition, an instruction not to answer is not the proper course of conduct. Like Ohio Civil Rule 26, on which it is based, OAC 4901-1-16(A) permits a broad scope of discovery in proceedings before the Commission. The only true limitation to discovery is that for privileged matters. At no point during the deposition was Duke able to demonstrate that the questions posed on behalf of Mr. Pitzer were privileged. In fact, all of the matters relate to Duke's activity on the Account and are extremely relevant to a determination of the issues in dispute, especially since Mrs. Easterling⁵ is no longer here to testify as to what occurred. As such, Duke's counsel should properly have objected to the questions but should have allowed Ms. Byndon to answer them. If the Attorney

⁵ Even if he had survived, Mr. Easterling would not have had the capacity to testify about what occurred in respect of the Account.

Examiner should later have determined that the matters raised by the questions sought inadmissible evidence, which is quite unlikely, she could have precluded Mr. Pitzer from presenting the matters raised by Ms. Byndon's responses at hearing.

Documents Not Produced

What also became clear during Ms. Byndon's deposition is the fact that Duke has not produced all documents relating to the Account, despite the fact that Ms. Lykins and Mr. Pitzer have been asking for them for over two years.

First, Duke has failed to produce all documents which generate from the "customer data base system" ("the System"). According to Ms. Byndon's testimony, the System contains summary transactional data but also provides detailed information about each transaction. Ms. Byndon also testified that she could not locate much of the detailed information in the documents Duke produced, which were presented to her at deposition.

Further, Ms. Byndon also testified that Duke maintains a separate "work order" data base that may contain information relating to the Account. Most specifically, Ms. Byndon testified that such a "work order" would have been associated with the disconnection of service, at issue here, on November 3 and 4, 2011. Ms. Byndon also testified that she could not locate any "work order" information in the documents Duke produced.

As a result of the foregoing, Mr. Pitzer respectfully requests that the Attorney Examiner issue an order requiring Duke to produce all information contained in the System, all documents preceding 2011 that are contained in the "work order data base," especially that relating to the disconnection of service on November 3 and 4, and all other documents or electronic data that it maintains relating to the Account before November, 2011, inclusive.

As is evidenced by its letter, Duke's counsel first takes the position that Mr. Pitzer is tardy in raising issues relating to the 2013 subpoena. Duke misses the point. First, the documents at issue are also encompassed in requests Mr. Pitzer has made in this case. Second, Mr. Pitzer would have had no way of knowing that the additional documents existed, absent Ms. Byndon's testimony⁶.

Without confirming or denying that additional documents exist, Duke's counsel also claims that the information contained in the missing documents, identified by Ms. Byndon, can be found in other materials that Mr. Pitzer already has. See page 3 of Exhibit E, ¶2. This assertion begs the question. Perhaps the information in the System does not match Duke's billing information. Rather than waste time accusing Mr. Pitzer and his counsel of "creating discovery disputes that do not exist," Duke could simply provide Mr. Pitzer with the remainder of the documents relating to the Account.

In sum, the conclusion is growing clear that Duke failed to provide proper notice to Mrs. Easterling that it was going to terminate her service or that she had options to keep it on or re-connect it. To date, Duke has been unable to produce items like the required 14 day notice letter directed to Mrs. Easterling. Instead of trying to provide documents to support its contention that it did adequately notice Mrs. Easterling, Duke is withholding possibly damaging information and should be required to produce all that it has concerning the Account.

Witness With Knowledge

At several points in her deposition, which counsel has cited in Exhibit D, Ms. Byndon admitted that she did not know everything about the records from the System that Duke produced.

⁶ For the record, Mr. Pitzer has no concerns with respect to the forthright manner in which Ms. Byndon testified. The problems here appear to stem from the conduct of Duke's counsel.

In fact, Ms. Byndon works in a "customer complaint" capacity and concedes that she is not a custodian of the System or the information contained in it. As such, Mr. Pitzer respectfully requests that Duke produce an additional witness in response to his notice that can answer questions about the System⁷ that Ms. Byndon could not. As such, Mr. Pitzer asks for an order from the Attorney Examiner that Duke produce a witness who is knowledgeable enough about the System to testify about all the data contained therein.

Again, Duke has not denied that Ms. Byndon could not answer the questions identified by counsel. Unbelievably, Duke takes the position that its counsel could "assist" in responding to these questions at deposition, where Ms. Byndon did not know the answer⁸. Upon information and belief, Duke's counsel was not sworn and was not qualified to offer testimony. If counsel is Duke's most knowledgeable witness on these topics, then Mr. Pitzer's counsel would be happy to depose them.

Finally, by way of compromise, Mr. Pitzer is willing to forego re-calling Ms. Byndon to answer questions for which Duke's counsel gave her an instruction not to answer, so long as the additional witness is permitted to respond and is qualified to do so.

For the above stated reasons, Mr. Pitzer seeks the following relief:

1. that Ms. Byndon or another witness be produced by Duke to answer the questions for which Duke's counsel provided an instruction not to answer at deposition;
2. that Duke, once and for all, produce all documents, electronic or otherwise, relating to the Account prior to November, 2011; and


⁷ To the extent that Duke also produces "work order" information, it may also have to produce a witness that can testify about the contents of those documents as well.

⁸ The fact that Duke's counsel takes this position is particularly galling, in light of counsel's very own conduct at the depositions of Mrs. Easterling and Mr. Easterling's family members. At one point in these depositions, when their counsel offered a similar clarification, Duke's counsel rudely told counsel to "be quiet."

3. that Duke produce an additional witness or witnesses that can testify about all the account related documents that Duke has or will produce.

Respectfully submitted,

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



Donald A. Lane (0038974)
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dlane@drodermiller.com

CERTIFICATE OF SERVICE

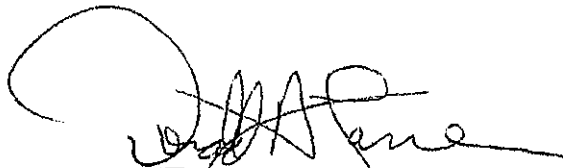
I hereby certify that a copy of the foregoing has been served upon the following by electronic mail on this 23rd day of December, 2015:

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Donald A. Lane (0038974)
Attorney for Complainant Jeffrey Pitzer

10/16/13
Case Number: Misc. Case No. M131293

THE STATE OF OHIO)

)SS:

Hamilton County,)

COURT OF COMMON PLEAS

SUBPOENA FOR WITNESS

To: Duke Energy Ohio, Inc., 139 East Fourth Street, Cincinnati, OH 45202

Duces Tecum: Please provide the following:

Copies of any utility bills, disconnect notices, or other notices, communications, information packets, waivers, letters or any other electronic forms of communication that were communicated, delivered, posted, or electronically transmitted to Dorothy Easterling from August 2011 through December 2011. Please also include any additional information concerning the delivery or attempt to deliver any of the above referenced documents.

You are required to provide on the 30th day of November A.D., 2013, at 10:00 o'clock A.M. at the law offices of Droder & Miller Co., LPA, 125 West Central Parkway, Cincinnati, OH 45202 to produce documents on behalf of Duke Energy Ohio, Inc. in the case of Lkykins, et al. v. Duke Energy Ohio, Inc. and not depart without leave. Fail not under penalty of law.

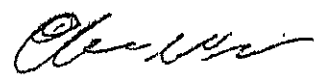
Witness my hand and seal of Court, this 16

Day of October, 2013

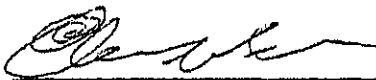
TRACY WINKLER

Clerk, Court of Common Pleas of Hamilton Co.,
Ohio

By: Deputy


Christopher J. Wise (0088490)
(513) 721-1504, Ext. 308SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the Counsel for Defendant, James E. McLean, Esq., James.McLean@duke-energy.com, by electronic mail pursuant to Civ. R. 5(B)(2)(f) on this 16th day of October, 2013.


Christopher J. Wise (0088490)

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**PLAINTIFF, JEFFREY PITZER'S, FIRST SET OF INTERROGATORIES, REQUESTS
FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED TO DEFENDANT, DUKE ENERGY OHIO, INC.**

Plaintiff, Jeffrey Pitzer ("Plaintiff"), propounds the following interrogatories and requests for production of documents to Defendant, Duke Energy Ohio, Inc., and respectfully requests that full responses to the same be made within 30 days of the date of service.

INSTRUCTIONS FOR ANSWERING

1. Please produce all information which is in your possession or control or within the possession and control of your attorneys, investigators, agents, employees or other representatives of you or your attorney or insurance company.
2. Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.
3. You are reminded that all answers must be made separately and fully and that an incomplete or evasive answer is a failure to answer.
5. You are under a continuing duty to seasonably supplement your responses with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as a fact or expert witness at hearing of this matter and the subject matter on which he or she is expected to testify and to correct any response which you know or later learn is incorrect.

DEFINITIONS

1. The words "**Defendant**", "**you**" and/or "**your**," and the possessives thereof, shall be construed to mean Defendant, Duke Energy Ohio, Inc., including any and all employees, agents, and/or representatives of Duke Energy Ohio, Inc. When Plaintiff seeks information in Defendant's control, these terms include all information which is in your possession or control or within the possession and control of your attorneys, investigators, agents, employees or other representatives of you or your attorney or insurance company.
2. The word "**Decedents**," and the possessives thereof, shall mean both Dorothy and Estill Easterling, collectively and/or individually.
3. The word "**Plaintiff**," and the possessives thereof, shall mean Jeffrey Pitzer, the personal representative of Decedents.
4. The term "**the Residence**" shall mean Decedents' home, located at 11312 Orchard Street, Cincinnati, Hamilton County, Ohio.
5. The term "**the Account**," shall mean Decedents' utility account with Defendant pertaining to the Residence, and identified as Duke Energy Account Number 0120-0420-205.
6. The term "**the Ohio Rules**," shall mean and refer to the sections of the Ohio Revised Code and/or the Ohio Administrative Code pertaining to the rules and regulations governing public utilities, including, but not limited to, the portions governing the proper and legal disconnect of utility customers, contained under § 4933.01 *et seq.* and § 4901:1-18 *et seq.*, respectively.
7. The term "**the Winter Heating Season**," shall mean and refer to the time period from November first through April fifteenth, during which you are required to adhere to heightened restrictions and notice requirements when disconnecting the service of residential customers.
8. The term "**the Complaint**" shall mean and refer to the Complaint filed by Plaintiff before the Public Utilities Commission of Ohio ("the PUCO") on February 6, 2015.

INTERROGATORIES

Interrogatory No. 1

State the names, addresses and telephone numbers of each person or entity answering these Interrogatories.

ANSWER:

Interrogatory No. 2

State the names, addresses and telephone numbers of each and every person or entity, known by you or your attorney, who possess any information or knowledge that is relevant to the subject matter of the Complaint.

ANSWER:

Interrogatory No. 3

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.

ANSWER:

Interrogatory No. 4

State the names, addresses, telephone numbers (business and home), and place of employment of each and every person known by you or your attorneys, whom you will or may call as an expert witness at hearing of this matter.

ANSWER:

Interrogatory No. 5

With respect to each expert listed in the response to Interrogatory No. 4, state each and every subject matter upon which each expert witness shall testify.

ANSWER:

Interrogatory No. 6

For each expert witness, state each and every opinion, finding and/or conclusion rendered by the expert related to each subject matter stated in the response to Interrogatory No. 5.

ANSWER:

Interrogatory No. 7

State each and every communication – written, oral or electronic - you have had with Plaintiff, Decedents and/or Decedents' daughter and sister, Gail Lykins. For each communication, state the date, place and subject matter of each communication. If an electronic communication was made, but it has been deleted or destroyed in any way, identify the electronic device from which the communication was made.

ANSWER:

Interrogatory No. 8

Identify any and all contracts or other agreements you have ever entered into with Decedents or any family members for any reason with respect to the Account at the Residence. For each alleged contract or agreement, state the date or approximate date of the agreement, any terms and conditions, the consideration for such agreement, the individual(s) present at the time the agreement was made, and the form of the agreement – whether it was in writing or oral.

ANSWER:

Interrogatory No. 9

Identify any and all persons having either direct or indirect knowledge of the disconnection of utility services at the Residence, which occurred on or about November 4, 2011.

ANSWER:

(A) Specifically identify any and all employees and/or agents who ordered the disconnection of service at the Residence.

ANSWER:

(B) Specifically identify any and all employees and/or agents who physically and/or remotely performed the disconnection of service at the Residence.

ANSWER:

Interrogatory No. 10

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.

ANSWER:

Interrogatory No. 11

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

ANSWER:

Interrogatory No. 12

Describe your internal procedure and protocol when disconnecting the utility services of a residential customer, including but not limited to, your disconnection protocol during the Winter Heating Season. This response should include any and all such procedures in place on January 1, 2011, to the present. In your response, Please provide a detailed listing of such procedures and each change made to them from January 1, 2011 to the present.

ANSWER:

Interrogatory No. 13

Identify any and all records, transcripts, notes, entries, and/or any other form of documentation that you transcribe, copy, save, and/or document during your routine course of business relating to your internal procedure and protocol for the disconnection of utility services of a residential customer, as identified in your response to Interrogatory No. 12.

ANSWER:

Interrogatory No. 14

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.

ANSWER:

Interrogatory No. 15

Identify any and all letters, communications, notices, and/or other forms of communication by which you notified Decedents of your intent to disconnect the utility services at the Residence. Your response should include the identity of any written communications delivered to the Decedents, and the manner of delivery, and the identity of any persons whom you allege visited the Residence in connection with such disconnection and the date of such visit. If you allege that any specific written communications once existed but are no longer available, indicate the circumstances under which such communication was destroyed or is not accessible.

ANSWER:

Interrogatory No. 16

Specifically identify any and all letters, communications, notices, and/or other forms of communication by which you notified Decedents of their rights during the Winter Heating Season, including but not limited to (a) extended payment plans; (b) medical certification programs; and (c) sources of federal, state, and local government aid for payment of utility bills and/or home weatherization. Your response should include the identity of any written communications delivered to the Decedents, and the manner of delivery, and the identity of any persons whom you allege visited the Residence in connection with such disconnection and the date of such visit. If you allege that any specific written communications once existed but are no longer available, indicate the circumstances under which such communication was destroyed or is not accessible.

ANSWER:

Interrogatory No. 17

Identify any and all letters, notices, and/or other forms of communication by which you notified the Hamilton County Department of Job and Family Services of your intent to disconnect the utility services at the Residence. Your response should include the identity of any written communications delivered to the Decedents, and the manner of delivery, and the identity of any persons whom you allege visited the Residence in connection with such disconnection and the date of such visit. If you allege that any specific written communications once existed but are no longer available, indicate the circumstances under which such communication was destroyed or is not accessible.

ANSWER:

Interrogatory No. 18

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.

ANSWER:

Interrogatory No. 19

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.

ANSWER:

Interrogatory No. 20

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.

ANSWER:

Interrogatory No. 21

Identify any and all documents that you believe pertain, relate, or refer to the allegations in Plaintiff's Complaint.

ANSWER:

Interrogatory No. 22

Identify any and all documents that you relied upon when answering these Interrogatories.

ANSWER:

Interrogatory No. 23

Identify any and all insurance policies that you maintain which may provide coverage for the claims asserted against you in this matter. Your answer should include the name of the insurer(s), the effective dates of the policy or policies and the amount or type of coverage involved.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS**Document Request No. 1**

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

ANSWER:

Document Request No. 2

Produce each and every document reviewed or relied upon by your expert witnesses identified in your Answer to Interrogatory No. 4.

ANSWER:

Document Request No. 3

Produce each and every report or other document prepared by your expert witnesses relating to any analysis, opinions or conclusions identified in your Answers to Interrogatory Nos. 4, 5 and 6.

ANSWER:

Document Request No. 4

Produce each and every document constituting correspondence among you and Plaintiff and/or Decedents or their family members. Such documents include, but are not limited to, letters, emails, and notes or memoranda from telephone or in-person conversations.

ANSWER:

Document Request No. 5

Produce each and every document related to any contracts or agreements between or among you and Plaintiff and/or Decedents or their family members.

ANSWER:

Document Request No. 6

Produce any and all utility bills and/or notices that were mailed and/or left at the Residence between August 2011 and December 2011.

ANSWER:

Document Request No. 7

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

ANSWER:

Document Request No. 8

Produce any and all company policy guidelines, teaching manuals, memorandums, communications, and/or any other documents that in any way relate to your Response to Interrogatory No. 12.

ANSWER:

Document Request No. 9

Produce any and all documents that in any way relate to your Response to Interrogatory No. 13.

ANSWER:

Document Request No. 10

Produce any and all documents that in any way relate to your Response to Interrogatory
No. 14.

ANSWER:

Document Request No. 11

Produce any and all documents that in any way relate to your Response to Interrogatory
No. 15.

ANSWER:

Document Request No. 12

Produce any and all documents that in any way relate to your Response to Interrogatory
No. 16.

ANSWER:

Document Request No. 13

Produce any and all documents that in any way relate to your Response to Interrogatory No. 17.

ANSWER:

Document Request No. 14

Produce any and all documents that in any way relate to your Response to Interrogatory No. 18.

ANSWER:

Document Request No. 15

Produce any and all documents that in any way relate to your Response to Interrogatory No. 19. This request includes any documentation necessary to provide, support or explain the data that Plaintiff has requested of you.

ANSWER:

Document Request No. 16

Produce any and all documents that in any way relate to your Response to Interrogatory No. 20. This request includes any documentation necessary to provide, support or explain the data that Plaintiff has requested of you.

ANSWER:

Document Request No. 17

Produce any and all documents you referred to, relied upon, or that otherwise relate to any Response provided to the foregoing Interrogatories.

ANSWER:

Document Request 18

Produce copies of any of the insurance policies identified in response to Interrogatory 23.

ANSWER:

Respectfully submitted,

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

/s/ _____
Donald A. Lane (0038974)
Attorneys for Plaintiff
125 West Central Parkway
Cincinnati, Ohio 45202-1006
Phone (513) 721-1504
Fax (513) 721-0310
dlane@drodermiller.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by electronic mail on this 4th day of May, 2015:

Robert A. McMahon
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206
brmcMahon@emclawyers.com
Attorney for Duke Energy Ohio, Inc.

Amy B. Spiller
Elizabeth H. Watts
139 East Fourth Street
Cincinnati, OH 45202
Amy.spiller@duke-energy.com
Attorneys for Duke Energy Ohio, Inc.

/s/ _____
Donald A. Lane (0038974)

VERIFICATION

STATE OF OHIO :
: SS:
COUNTY OF _____ :

I hereby verify, to the best of my knowledge, that the information provided in the foregoing responses is true and accurate.

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, 2015.

Notary Public

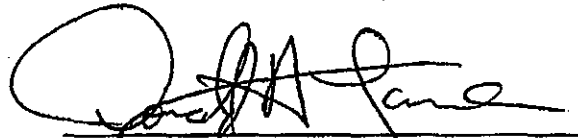
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Jeffrey Pitzer)	
)	
Complainant,	)	Case No. 15-298-GE-CSS
)	
v.	)	JEFFREY PITZER'S AMENDED
	)	NOTICE OF CORPORATE
Duke Energy Ohio, Inc.	)	DESIGNEE DEPOSITION
	)	DIRECTED TO DUKE ENERGY
Respondent	)	OHIO, INC.,
)	

Pursuant to OAC 4901-1-21(B) and (F), Complainant, Jeffrey Pitzer, requests that Respondent, Duke Energy Ohio, Inc. ("Duke"), designate one or more persons to testify concerning the documents attached to this notice and related account activities concerning the gas and electric utility account for 11312 Orchard, Cincinnati, Ohio. Such deposition shall take place at a time and place mutually convenient to all parties.

Respectfully submitted,

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



Donald A. Lane (0038974)
 Attorney for Complainant, Jeffrey Pitzer
 125 West Central Parkway
 Cincinnati, Ohio 45202
 513/721-1504 x304
 513/721-0310 fax
dlane@drodermiller.com

Exhibit C

CERTIFICATE OF SERVICE

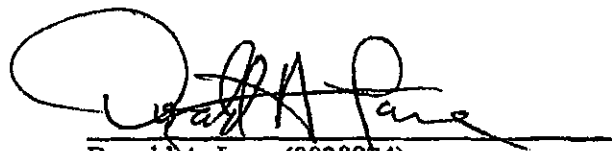
I hereby certify that a copy of the foregoing Amended Notice of Corporate Designee Deposition Directed to Duke Energy Ohio, Inc. has been served upon the following by electronic mail this 21st day of October, 2015:

Robert A. McMahon
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206
bmcmahon@emclawyers.com
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Office of the Ohio Consumers' Counsel



Donald A. Lane (0038974)
Attorney for Complainant, Jeffrey Pitzer

**CONFIDENTIAL DOCUMENTS
ATTACHED ONLY TO SERVICE COPY
ON
DUKE ENERGY OHIO, INC.**

125 West Central Parkway • Cincinnati, Ohio 45202 • 513-721-1504 • drodermiller.com

December 16, 2015

Via E-Mail

Robert A. McMahon
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206

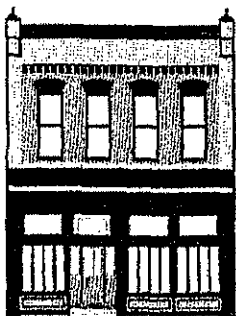
Amy B. Spiller
139 East Fourth Street
Cincinnati, Ohio 45202

Re: *Pitzer v. Duke Energy*
PUCO Case No. 15-298-GE-CSS

Dear Mr. McMahon and Ms. Spiller:

Please consider this letter to be Mr. Pitzer's good faith effort to resolve pending discovery disputes with Duke Energy Ohio, Inc. ("Duke"). Given the January 14 date for hearing on this matter, Mr. Pitzer requests Duke's immediate response to this letter. These issues arise out of the designee deposition of Duke that we took on December 3, 2015.

At several points in Ms. Byndon's deposition, Attorney McMahon objected and instructed the witness not to answer the pending question. The typical basis for Attorney McMahon's objections were that the questions exceeded the scope of the deposition notice and the agreement that the parties reached on the scope of the deposition. As you know, the parties reached this agreement after Duke's original objections to Mr. Pitzer's notice were found lacking at the prehearing conference held in this matter on November 10, 2015. All of the questions listed below are within the agreed upon scope of the deposition and were approved by the Attorney Examiner. Again, the agreed scope relates to the account documents attached to Mr. Pitzer's notice *and related activity concerning the account*, as Attorney McMahon read from the prehearing transcript during the deposition. Further, Duke is not entitled to instruct a witness not to answer a question, except on grounds of privilege. See OAC 4901-1-16(A). As a result of the foregoing, Mr. Pitzer respectfully requests that Duke produce Ms. Byndon to answer the following questions (references are to the page and line numbers in the Byndon transcript where each question begins):



Proud Neighbors in Over-the-Rhine

Exhibit D

Robert A. McMahon
Amy B. Spiller
December 16, 2015
Page 2

1. page 11, line 21
2. page 25, line 6
3. page 3, line 7
4. page 33, line 25
5. page 48, line 7

By subpoena issued on October 16, 2013 and by discovery served in the instant matter, Mr. Pitzer has asked for all account related documents. Ms. Byndon's testimony makes clear that Duke has not produced all such information, and Mr. Pitzer asks that Duke supplement its production as follows (references are to page and line numbers in the Byndon transcript):

1. page 16, lines 11 – 25; page 17, lines 1 - 18 – Ms. Byndon testified that information that would have been entered in the “customer data base system” (“the System”) does not show in the documents Duke has produced. In this case, payment information is missing, but Mr. Pitzer cannot be certain what other types of account details may have been omitted from Duke's production. Mr. Pitzer respectfully requests that Duke provide all information from the System that it has not yet produced. This same problem is apparent at the following points as well:
 - a. page 18, line 22 – page 19, line 15
 - b. page 21, line 5 – page 23, line 8 (missing account notes)
 - c. page 23, lines 9 – 17
 - d. page 24, lines 4 – 18
 - e. page 34, lines 14 – 17
 - f. page 36, lines 2 – 13
 - g. page 37, lines 3 – 10
 - h. page 44, line 15 – page 47, line 15 (missing account notes)
 - i. page 56, line 6 – page 57, line 18
 - j. page 60, lines 2 – 24
2. page 50, line 15 – page 52, line 9 – Ms. Byndon testified that Duke maintains a separate work order data base. Please provide all documents from such data base that relate to the account at issue, during the relevant time frame, and especially those that concern the work order or orders issued on November 3 – 4. This issue is also addressed on page 60 of the transcript, at lines 2 – 24.

According to her testimony, Ms. Byndon does not work in the group that manages the System. She was unable to provide details about the document marked page 13 of her deposition. See page 41, line 15 – page 42, line 8; page 47, lines 16 – 24; page 48, lines 17 – 23; page 48, line 17 – page 49, line 2; page 55, lines 2 - 5 of the transcript. Mr. Pitzer requests that Duke provide a witness from the group that actually manages the System to provide this testimony.

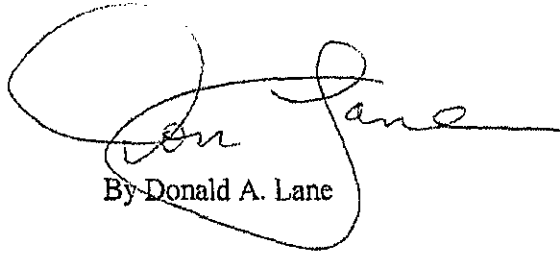
Robert A. McMahon
Amy B. Spiller
December 16, 2015
Page 3

In addition to the foregoing, Mr. Pitzer would like to take the fact witness deposition of Joshua Danzinger. Please be advised that I am available on December 28, 29, 30 and 31 for all the depositions referenced in this letter if we want to try to complete them before the end of the month.

Thank you in advance for your timely response.

Very truly yours,

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

A handwritten signature in black ink, appearing to read "Don Lane", is written over a large, loopy circular flourish. Below the signature, the text "By Donald A. Lane" is printed.

DAL/jed
cc: Kimberly Bojko, Esq. (via email)
cc: Terry Etter, Esq. (via email)



David A. Eberly**
Robert A. McMahon*
Ted Copetas

Attorneys at Law

*Also admitted in Kentucky
**Also admitted in Indiana

December 18, 2015

VIA EMAIL

Donald A. Lane, Esq.
Droder & Miller Co., L.P.A.
125 W. Central Parkway
Cincinnati, OH 45202

Re: Jeffrey Pitzer v. Duke Energy Ohio, Inc.
PUCO Case No. 15-298-GE-CSS

Dear Don:

This letter responds to your letter dated December 16, 2015.

Corporate Designee Deposition

With respect to the corporate designee deposition of Marion Byndon, your understanding of the procedural history, facts and law are fundamentally flawed. For the reasons more fully set forth in our prior letters, Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) properly objected to your original and Amended Notice of Corporate Designee Deposition because the notices failed to "designate with reasonable particularity the matters on which examination is requested," as required by OAC 4901-1-21(F). At no point in time were the Company's objections to those notices "found lacking at the prehearing conference." I went back and looked at the transcript from the prehearing conference and honestly have no idea what you're referring to in that regard. Equally confusing is your claim that your deposition questions of Ms. Byndon on December 3 somehow "were approved by the Attorney Examiner" more than three weeks earlier at the prehearing conference. That never happened, nor was it possible.

As you correctly note in your letter, the parties agreed on the record at the prehearing conference to limit the scope of the examination of Duke Energy Ohio's corporate designee "to testify with respect to the abbreviations and acronyms in the account notes that have been produced in discovery and how those activities relate to what occurred on the account through November 20, 2011." See, Prehearing Conference Transcript at 46. You chose to disregard that agreement on multiple occasions throughout Ms. Byndon's deposition. Accordingly, as counsel for the Company, I fittingly objected to the questions identified in your letter and instructed the witness not to answer those questions because they exceeded the agreed scope of examination:

Exhibit E

Donald A. Lane, Esq.
December 18, 2015
Page 2

- Page 11, line 21: your question did not relate to abbreviations and acronyms in the account notes and related activities on the subject account. Instead, you asked about the manner in which documents and data were produced in discovery.
- Page 25, line 6: this question did not inquire about any specific account note or acronym in the documents attached to the deposition notice. Also, to the extent this question was intended to inquire about the Final Disconnection Notice mailed to the property on October 19, 2011, Ms. Byndon answered questions surrounding the mailing of that notice and related acronyms in the documents. See, Byndon tr. at 24-25, 33.
- Page 3, line 7: that information does not identify a deposition question and objection.
- Page 33, line 25: this question relates to the Company's document retention practice, not acronyms or account notes and related activities.
- Page 48, line 7: I did not object to this question or instruct Ms. Byndon not to answer it. She answered this question.

OAC 4901-1-16(A) does not in any way prohibit the Company's right to enforce the agreed, lawful scope of your examination with respect to the foregoing three instances in which I objected to your deposition questions and instructed Ms. Byndon not to answer. Therefore, the Company will not produce Ms. Byndon for deposition to answer those three questions.

In addition, the Company will not produce another corporate witness to answer questions about the "customer data base system" identified at the bottom of page 2 of your letter. Ms. Byndon fully answered all relevant and substantive questions asked of her about the documents attached to the Amended Notice of Corporate Designee Deposition. It would be unnecessarily burdensome, oppressive and expensive for the Company to produce one or more additional witnesses to answer the following questions that you identified. In two of the cited instances (page 48, lines 17-23 and page 48, line 17-page 49, line 2), I actually tried to *assist* your examination of Ms. Byndon by advising you that the questioned numbers were the meter number referenced on the bill. You took issue with my assistance ("I'm not really interested in your testimony or Amy's testimony") and never bothered to look at the bill and ask any follow up question. Therefore, the Company is not obligated to produce yet another corporate witness to testify about something so readily apparent on the face of bills mailed to the property in 2011, and produced months ago in this case and more than two years ago in response to the subpoena in the trial court case (see below).

Trial court subpoena and discovery before Commission

As a preliminary matter, it is inappropriate for you to raise now, at this late stage of the proceedings before the Commission, alleged issues relating to a subpoena served on Duke Energy Ohio in October 2013 in a Miscellaneous action before the Hamilton County Court of Common Pleas. Although not relevant in this case, Duke Energy Ohio fully complied with that

Donald A. Lane, Esq.
December 18, 2015
Page 3

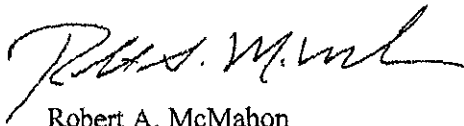
subpoena and produced exactly what was requested. More importantly, however, you should check your facts before falsely accusing the Company of not producing information and documents in response to the subpoena and discovery requests in this case. You also should review your discovery requests and identify with particularity specific interrogatories and requests for production of documents that you believe were not answered.

The cited references to Ms. Byndon's deposition do not shed any light on any alleged failure on the Company's part to respond to a specific discovery request. If anything, those references demonstrate a failure on your part to review the Company's documents and ask questions about them. For example, the first reference to the deposition (page 18, line 22-page 19, line 15) relates to questions about a late payment charge. You have information about that late payment charge—look at the bill dated September 2, 2011, attached to the Amended Notice of Corporate Designee Deposition. However, you never bothered to ask about that detail and how the information in the bill related to the account notes and acronyms in the documents, even though that was the stated purpose of your deposition of the Company's representative. Plus, payments and late payment charges are not relevant or in dispute in this case because your clients admit that the subject account was in arrears as of November 4, 2011, when the electric service was disconnected for nonpayment. Therefore, it is inappropriate for you to try to burden Duke Energy Ohio with non-existent discovery disputes.

Deposition of Josh Danzinger

You are more than welcome to depose Mr. Danzinger. However, please note that Duke Energy Ohio intends to file his written testimony by the December 30th deadline and identify Mr. Danzinger as one of its witnesses in this case. Since we do not want to produce him twice for deposition, we recommend that you depose Mr. Danzinger after you get his pre-filed testimony on December 30. Please advise of your availability at that time.

Very Truly Yours,



Robert A. McMahon

cc: Amy B. Spiller, Esq. (via email)
Terry Etter, Esq. (via email)
Kimberly W. Bojko, Esq. (via email)