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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

POST-HEARING BRIEF OF DUKE ENERGY OHIO, INC.

I. INTRODUCTION

No one can dispute that some of the facts in this proceeding are extremely unfortunate. Dorothy Easterling and her adult son were found in their home in November 2011, deceased, weeks after electric service had been properly disconnected for nonpayment. It is nevertheless regrettable that the Complainant now insists, years later, that Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) caused the deaths of these two individuals by failing to conform to applicable regulations and orders issued by the Public Utilities Commission of Ohio (Commission). But the evidence in this case does not support the Complainant's allegations that are subject to the Commission's jurisdiction. The Complainant did not even testify in support of his own case, presumably because he has no evidence to offer.

Quite simply, the only affirmative evidence in this proceeding has come from Duke Energy Ohio – evidence establishing its business practices and adherence to those practices during 2011; evidence from which it must be concluded that the required notices were given and that Duke Energy Ohio fully complied with all applicable regulations. Neither the Complainant, through his lone witness, nor the Office of the Ohio Consumers' Counsel (OCC) has offered any evidence to refute the undeniable conclusion that the account at issue was in arrears and properly disconnected. These witnesses did not live at the property on Orchard Street in 2011; they did not receive the mail; they did not pay the bills; they were not present at the property on the day the electric service was disconnected for nonpayment. Importantly, they never contacted Duke Energy Ohio, on behalf of Dorothy Easterling, to inquire into any one of the four documents that clearly identified the pending or actual disconnection and lack of payment. Mrs. Easterling's daughter did nothing after the electric service was disconnected on November 4, 2011, claiming not to have known for weeks that there was no electricity in her mother's home. And the family

waited years to blame Duke Energy Ohio for violating Commission regulations. There are indeed very unfortunate aspects of this complaint case. But Duke Energy Ohio is not the cause of them.

In addition to the Complainant's baseless allegations is the OCC's feigned interest in the 2011 events, which is obvious. Indeed, although the OCC intervened in this case and participated in the hearing, the OCC has not asserted any affirmative claims against Duke Energy Ohio. Rather, the OCC strived to make this case about anything other than the amended complaint actually at issue in this proceeding. But, at the end of the day, at best, the OCC's only witness claimed that perhaps Duke Energy Ohio should do more than is required by law for public utilities, even though he conceded that there are no rules or regulations supporting that assertion.

The complaint against Duke Energy Ohio must be denied.

II. PROCEDURAL BACKGROUND

More than four years after electric service had been disconnected at the Orchard Street home due to admitted nonpayment, the original Complainant, Gail Lykins, instituted this complaint proceeding.[1] Shortly thereafter, Jeffrey Pitzer was substituted as the Complainant[2] and, on November 12, 2015, filed an amended complaint. The amended complaint, which Duke Energy Ohio timely answered, supersedes the original filing[3] and it is thus the allegations in the amended complaint that determine the scope of this proceeding. Those allegations undeniably relate only to specific notifications as set forth under four discrete provisions of O.A.C. 4901:1-18-06 and to procedures set forth in the Winter Reconnect Order effective as of October 17, 2011

[1] Tr. I, at pg. 33.
[2] See Entry (July 10, 2015).
[3] See, *e.g.*, *Carlock v. Coleman*, 1990 Ohio App. LEXIS 3625, *4-5 (Mahoning Cty. 1990)(relying on Civ.R. 15, court reiterated that "it is hornbook law that an amended pleading supersedes the original, the latter being treated thereafter as nonexistent")(internal citations omitted); *Yakov Re, LCC v. Rhodes*, 2014-Ohio-2025, 2014 Ohio App. LEXIS 1974, ¶6 ("It is well settled that an amended pleading supersedes the original pleading.")(Internal citations omitted).

(hereinafter the Winter Reconnect Order).[4] As to the former, the allegations pertain to: (1) O.A.C. 4901:1-18-06(A) and the "requisite 14 day notice" discussed therein; (2) O.A.C. 4901:1-18-06(A)(5) and the contents of the notice discussed therein; (3) O.A.C. 4901:1-18-06(A)(5) and the day-of-disconnection notice discussed therein; and (4) O.A.C. 4901:1-18-06(B) and the notice discussed therein, as applicable during the winter heating season.[5] Significantly, therefore, this case does not concern allegations that Duke Energy Ohio failed to provide notice to an authorized third party under O.A.C. 4901:1-18-06(A)(3)(a) or that it failed to comply with the provisions of O.A.C. 4901:1-18-09 relating to separation of service. This proceeding also does not concern the initial answer of Duke Energy Ohio.

As discussed herein, the Complainant cannot prevail on the allegations in his amended complaint.

III. FACTUAL BACKGROUND

As a public utility with approximately 650,000 residential electric customers in 2011, Duke Energy Ohio maintained a customer management system (CMS) that contains references to activities or actions taken on customers' accounts.[6] This comprehensive system captures account activity, including charges, payments and account notes, applicable to that account.[7] The CMS also records contact from customers, including contacts regarding disconnection for nonpayment and options for avoiding such a result.[8] It also contains a summary of work orders pertaining to an account, including the date on which an order would be generated, the actions taken on that order, and the employee who performed those actions.[9] In short, the CMS is a database that

[4] Amended Complaint, ¶¶ 5 and 7 (November 12, 2015).
[5] Id, at ¶ 5.
[6] Tr. I, at pp. 71, 76, 81-82.
[7] Tr. I, at pg. 86.
[8] Tr. I, at pg. 82.
[9] Tr. I, at pg. 97. See also, Complainant Exhibit C.

confirms activity on accounts for utility service provided by Duke Energy Ohio and it was, and remains, a database consistently used by the Company to record such activity as it occurs.[10]

In addition to the CMS, Duke Energy Ohio also relied, in 2011, upon a work order management system specific to work orders. This system provided further detail on work orders and, like the CMS, served as a database confirming the actions taken in respect of such orders.[11]

Given the sheer volume of residential utility bills generated on a monthly basis, Duke Energy Ohio engaged with an outside print vendor in 2011, RR Donnelly, to insert into mailing envelopes and mail utility bills, including associated bill inserts, to Duke Energy Ohio's customers.[12] RR Donnelly confirmed mailings, including the content thereof, on a monthly basis and reported any discrepancies with its print vendor services on daily basis.[13] RR Donnelly also processed other customer mailings, with confirmation of same appearing in the CMS records.[14]

As reflected in the CMS and work management databases, Duke Energy Ohio performed certain disconnection activities through its employees. And these employees were trained in the appropriate disconnection procedures, both in terms of what was required under Commission regulation and Company policy.[15]

The Company's business records, which reflect the only legitimate evidence in this case, confirm that, long ago, Estill Easterling became a customer of Duke Energy Ohio in respect of a home located at 11312 Orchard Street in Cincinnati, Ohio. Mr. Easterling resided at this home with his family until he passed in 1991.[16] Remaining in the home were his wife, Dorothy Easterling, and their son, Estill Easterling. After Mr. Easterling passed, his wife did not change

[10] Tr. I, at pg. 83.
[11] Tr. I, at pp. 74-75. See also, OCC Exhibit H.
[12] Duke Energy Ohio Exhibit K, at pg. 2.
[13] Duke Energy Ohio Exhibit K, at pg. 7.
[14] Duke Energy Ohio Exhibit K, at pg. 5, See also, Duke Energy Ohio Exhibit M, Attachment MAC-6 at pg. 2.
[15] Duke Energy Ohio Exhibit J, at pp. 6-8.
[16] Tr. I, at pg. 10.

the Duke Energy Ohio account into her name and, as a result, the residential utility bills for the Orchard Street home remained in Estill Easterling's name until 2013, when Dorothy Easterling's daughter, Gail Lykins, moved into the home with her family.[17] [redacted][18]

Notably, when the account was in Mr. Easterling's name, it was not an online billing account.[19]

In August 2011, just as it had done for decades prior, Duke Energy Ohio mailed a utility bill, addressed to Estill Easterling, at the Orchard Street home. But that bill was not paid.[20] And because the account was then delinquent, it became subject to the Company's disconnection procedures, which included, for this account, sending a Reminder Notice with the next on-cycle bill.[21] Despite the Reminder Notice on the September 2, 2011 utility bill, it also went unpaid.[22] Consequently, the next utility bill prepared on October 4, 2011, addressed to Estill Easterling and mailed to the Orchard Street home, was a disconnection notice – a notice comprised of both the utility bill and the accompanying pink disconnection bill insert.[23] This notice appropriately informed Duke Energy Ohio's customer of record of the pending disconnection, the options available to avoid disconnection, the payment amount needed to avoid disconnection and the date for such payment, and pertinent contact information.[24]

The October 2011 disconnection notice was also ignored and the payment needed to avoid disconnection was not paid by October 28, 2011, the identified date on the disconnection notice.[25] Because the account remained in a delinquent status, Duke Energy Ohio mailed a final

[17] Tr. I, at pg. 9.
[18] Conf. Tr. I, at pg. 158.
[19] Tr. I, at pp. 48-49.
[20] Duke Energy Ohio Exhibit M, Attachment MAC-5.
[21] Duke Energy Ohio Exhibit M, at pp. 5-6.
[22] Duke Energy Ohio Exhibit B
[23] Duke Energy Ohio Exhibit M, at pg. 12.
[24] Duke Energy Ohio Exhibit M, at pg. 7. See also, Duke Energy Ohio Exhibit D.
[25] Duke Energy Ohio Exhibit M at pg. 13. See also, Attachment MAC-6 at pg. 1.

notice to its customer of record on October 19, 2011, as confirmed by the Company's CMS records.[26] Like the disconnection notice mailed earlier in the month, the content of the final notice complied with Commission regulation and, in fact, provided more information than required.[27] But unlike the prior disconnection notice, Duke Energy Ohio was not obligated to send a final notice to its customer of record at the Orchard Street home because the winter heating season, which compels the final notice, was not in effect.[28]

When the account remained delinquent, with the amount necessary to avoid disconnection unpaid, and given the confirmed lack of contact from anyone regarding the account or the pending disconnection, Duke Energy Ohio completed the disconnection of electric service for nonpayment on November 4, 2011.[29] And this disconnection was completed consistent with Commission regulation and pursuant to Company practice by Duke Energy Ohio employee Joshua Danzinger, who physically appeared at the Orchard Street home and left a day-of-disconnection notice at the front door.[30]

The Company's records and practices provide the only credible history of activities related to the Estill Easterling account in 2011. Indeed, no witness in this proceeding rebutted the conclusions that must be reached from these records and practices – no one even questioned the Company's mailings and postings and the subsequent receipt by Dorothy Easterling. Thus, although the Complainant and the OCC protest, today, the lack of recall of specific events that occurred more than four years prior, they cannot ignore the inescapable conclusions reflected in the Company's records and established by its practices.

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[26] Duke Energy Ohio Exhibit M at pg. 14. See also, Attachment MAC-6 at pg. 2.
[27] Duke Energy Ohio Exhibit M at pg. 9. See also, Attachment MAC-4.
[28] Tr. II, at pp. 460-461.
[29] Complainant Exhibit C.
[30] Complainant Exhibit C. See also, Complainant Exhibit I, at pg. 9.

IV. DISCUSSION

A. The Complainant Has Not Sustained His Burden of Proof in This Complaint Proceeding.

It is undeniable that the Complainant has the burden of proof in this proceeding.[31] And where the burden is not met, such as here, the complaint must be denied.[32] As demonstrated herein, through the lone witness to testify on his behalf, the Complainant has admitted that the Duke Energy Ohio account was past due. But he has not presented any evidence tending to indicate that the required notifications were not received at the Orchard Street home in October or November 2011. He has not presented any evidence tending to prove that Duke Energy Ohio failed to adhere to the Winter Reconnect Order. He simply has not proven that the electric service was improperly disconnected. And the Complainant did not refute the overwhelming evidence in this proceeding that no one contacted Duke Energy Ohio in respect of either the pending or completed disconnection of electric service to exercise their rights, inquire into payment plans, seek assistance to avoid the disconnection, or pursue options for restoring service. And with this evidentiary failure, the complaint must be denied.

B. Duke Energy Ohio Provided the Requisite Notices Prior to Disconnecting a Utility Account in Admitted Arrears.

There is no dispute in this proceeding that a utility company such as Duke Energy Ohio is authorized, under Commission regulation, to disconnect residential accounts for nonpayment.[33] Indeed, the Commission's regulations in effect in 2011 provided:

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[31] *Grossman v. Public Utilities Commission of Ohio*, (1966), 5 Ohio St.2d 189, 190, 214 N.E.2d 666. See also, *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, (1984), 14 Ohio St.3d 49, 50, 471 N.E.2d 475 (reiterating that burden of proof upon the complainant in a complaint proceeding) and *Luntz Corporation v. Public Utilities Commission of Ohio*, (1997), 79 Ohio St.3d 509, 513, 684 N.E.2d 43, 1997-Ohio-342 (same).

[32] See, *e.g.*, *Corrigan v. Cleveland Electric Illuminating Company*, Case No. 09-492-EL-CSS, Opinion and Order, at pp. 13 and 15 (March 26, 2014)(denying complaint where lone witness for complainants rendered unsubstantiated conclusions and lacked the necessary qualifications to provide probative evidence).

[33] Tr. I, at pg. 215.

> Individually metered residential service accounts will be considered delinquent and subject to the utility company's disconnection procedures for nonpayment if the account meets one the following criteria:
>
> (1) The customer has not made full payment or payment arrangements by the due date, for any given bill containing a previous balance for regulated services provided by the utility company. ...[34]

Pursuant to this authorization, Duke Energy Ohio has implemented disconnection policies and procedures applicable to its residential customers. Significantly, these disconnection policies and procedures have been subject to audit, at the request of the Commission, and thus have undergone thorough, independent review. Relevant to the time at issue in this proceeding, a Commission-appointed auditor found, in 2010, that Duke Energy Ohio provided customers "with proper disconnect notices, and more than ample opportunity to avoid disconnection."[35] The auditor also recommended that Duke Energy Ohio accelerate the collections process, with terminations of service occurring earlier than under the Company's then-existing practice, and that it increase the aggressiveness of its disconnection program.[36] The Company's policies and procedures in effect during that audit were such that residential customers with arrears in excess of $100 that were sixty days past due would receive a disconnection notice. However, based upon the auditor's 2010 recommendation, Duke Energy Ohio modified its policies and practices in 2011 and, although the monetary threshold remained unchanged, the applicable time period was shortened to thirty days.[37] Notably, the monetary threshold applied to every residential account.[38]

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[34] O.A.C. 4901:1-18-04(A)(1).
[35] *In the Matter of the Five-Year Review of Natural Gas Company Uncollectible Riders*, Case No. 08-1229-GA-COI, Report of Northstar Consulting Group, at pg. I-14 (December 9, 2010). See also, OCC Exhibit A, at pg. 8 and Tr. I, at pp. 217-219. (confirming that OCC witness Williams relied upon this report for purposes of his direct testimony in this proceeding).
[36] *In the Matter of the Five-Year Review of Natural Gas Company Uncollectible Riders*, Case No. 08-1229-GA-COI, Report of Northstar Consulting Group, at pg. I-15 (December 9, 2010).
[37] Tr. II, at pg. 482. See also, Duke Energy Ohio Exhibit M, at pg. 5.
[38] Tr. II, at pg. 487.

And it is these revised policies and procedures that are applicable to the Easterling account. Accordingly, when the August 2011 bill went unpaid, the account became past due, or delinquent, and thus subject to Duke Energy Ohio's disconnection procedures. Importantly, the account was delinquent the day after due date of the August 2011 bill.

Although the Complainant does not dispute these facts, the OCC disagrees, hoping to fix the date on which the Easterling account first became delinquent as October 4, 2011, and convince the Commission that an outdated policy is relevant. But, as explained below, the OCC's efforts must fail.

As an initial matter, there can be no dispute as to when Duke Energy Ohio implemented changes to its disconnection procedures. Thus, although the OCC seeks to create doubt, Company witness Mitchell A. Carmosino clearly described the Company's revised disconnection procedures that went into effect in August 2011 and which decreased the time period from sixty to thirty days.[39] Further, well before Mr. Carmosino provided any testimony in this proceeding, the applicable disconnection procedures were described in Company documents provided to the parties in discovery and, as OCC witness James Williams admitted, available for his review.[40] The OCC cannot not now legitimately claim that the Company's disconnection policies and procedures relevant to the Easterling account continued to incorporate a sixty-day timeline.

Here, the Easterling account first became delinquent when the August due date passed and payment had not been made. As Duke Energy Ohio witness Carmosino succinctly, but repeatedly, explained his interpretation of O.A.C. 4901:1-18-04(A): "A bill has a due date. When that due date is past, that bill carries a past due balance that is delinquent. That is subject to

[39] Tr. II, at pg. 482. See also, Duke Energy Ohio Exhibit M, at pg. 5.
[40] Tr. I, at pg. 204. See also, OCC Exhibit U.

disconnection."[41] "I believe that you are rendered a bill. That bill had a due date. When that due date passes, your bill has a past due balance that is subject to disconnect."[42] Consistent with this logical interpretation, the Complainant's one witness also admitted that the account had a past due balance by the time the September 2, 2011, utility bill was prepared.[43]

The OCC refuses to accept the fact that a utility bill, once it is not paid by the due date, is delinquent and subject to a public utility's disconnection procedures. Its refusal is predicated upon the erroneous notion that there is a distinction between a past due balance and an arrears.[44] Such a contention, however, cannot be substantiated. The Commission's regulations under O.A.C. 4901:1-18 do not define "arrears"[45] and, given this void, the word must be given its plain and ordinary meaning.[46] "Arrears" simply means an unpaid or an overdue debt.[47] And when the August bill was not paid by the due date, it became an overdue debt or an arrears.

Notably, whereas the OCC wants to engage in meaningless arguments about the definition of arrears, its only witness readily admitted the subject account was, in fact, past due. As OCC witness Williams testified: "The September 2, 2011 combined bill also included a balance of $145.64 forwarded from the August 4, 2011 bill ($143.49) and a late payment charge of $2.15."[48] Mr. Williams further admitted that "[t]he October 4 bill also included a $252.55 balance forwarded, consisting of the August 4, 2011 bill of $143.49 plus a late payment charge of $2.15 and the September 4, 2011 bill of $103.18 plus a late payment charge of $3.73."[49]

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[41] Tr. II, at pg. 410.
[42] Tr. II, at pg. 411.
[43] Tr. I, at pg. 54.
[44] Tr. I, at pg. 228.
[45] O.A.C. 4901:1-18-01(B) defines "arrearage" for purposes of percentage of income payment plan customers but such definition has no relevance to this proceeding.
[46] *Ohio Association of Public School Employees v. Twin Valley Local School District Board of Education*, (1983), 6 Ohio St. 3d 178, 181, 451 N.E.2d 1211.
[47] Merriam-Webster online dictionary (www.merriam-webster.com/dictionary/arrear).
[48] OCC Exhibit A, at pg. 5.
[49] OCC Exhibit A, at pp. 5-6.

Further damaging to the OCC's attempt to establish an arbitrary date of delinquency for the Easterling account are the auditor's findings from 2010. At that time, the auditor clearly found that a utility bill is past due when not paid by the due date.[50]

After the Easterling account became delinquent in August 2011, Duke Energy Ohio was authorized, under Commission regulation, to subject the account to its disconnection procedures.[51] Consistent with those procedures [redacted], Duke Energy did not issue a disconnection notice with the next on-cycle utility bill. Rather, that September 2, 2011, bill contained a Reminder Notice, which clearly and unambiguously informed the recipient that a payment had not been made on the account.

There is no requirement for Duke Energy Ohio to issue such a reminder notice,[52] which extended the disconnection process and afforded both an additional communication and an additional opportunity to cure the account's delinquent status. But such a reminder notice reflected the Company's effort to assist customers and potentially exclude them from the disconnection process. But the September bill addressed to Estill Easterling was not paid by its due date, as confirmed by the utility bills admitted into evidence and further conceded by the Complainant's witness in this proceeding.[53] Thus, the account remained subject to the Company's disconnection procedures and, with the next on-cycle bill, Duke Energy Ohio prepared and mailed to its customer of record at the Orchard Street home a disconnect notice, as required under O.A.C. 4901:1-18-06(A).

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[50] *In the Matter of the Five-Year Review of Natural Gas Company Uncollectible Riders*, Case No. 08-1229-GA-COI, Report of Northstar Consulting Group, at Exhibit III-2 (December 9, 2010).
[51] O.A.C. 4901:1-18-04.
[52] Tr. I, at pg. 216.
[53] Tr. I, at pg. 57. See also, Duke Energy Ohio Exhibit C and Duke Energy Ohio Exhibit M, Attachment MAC-6 at pg. 1.

1. Duke Energy Ohio Provided a Disconnection Notice as Required Under O.A.C. 4901:1-18-06(A).

The Complainant alleges that Duke Energy Ohio failed to provide a disconnection notice as required under O.A.C. 4901:1-18-06(A).[54] But, as the evidence in this case confirms, he cannot prevail on this claim.

As Duke Energy Ohio witness Carmosino explained, the disconnect notice required under O.A.C. 4901:1-18-06(A) includes both the utility bill and the accompanying pink disconnect bill insert.[55] Those two documents collectively constitute the disconnection notice that Duke Energy Ohio provides to its residential customers in compliance with O.A.C. 4901:1-18-06(A).

The fact that Duke Energy Ohio actually sent the notice to its customer of record at the Orchard Street property is firmly established by the Company's business records. First, Duke Energy Ohio has a copy of the October 2011 bill that was mailed to the customer. Second, the Company's business records and, in particular, the CMS records relating to the account in the name of Estill Easterling at the Orchard Street property, further reflect that the October 2011 bill was sent to the customer and that it contained a disconnection notice. Third, as both Duke Energy Ohio witnesses Carmosino and Melissa Porter explained, it was Duke Energy Ohio's practice and procedure to send the pink disconnect bill insert along with every utility bill containing a notice to a residential customer in Ohio that the services were subject to disconnection for nonpayment.[56]

Finally, there also was evidence that Duke Energy Ohio's prior bills were sent to and received by its customer of record at the Orchard Street property: not only was the account in [redacted] as of August 2011 – meaning, as Duke Energy Ohio witness Carmosino

[54] Amended Complaint, ¶ 5(a).
[55] Duke Energy Ohio Exhibit M, at pg. 6. See also, Tr. II, at pg. 444.
[56] Tr. II, at pgs. 450 and 332.

explained, that the customer [redacted] – but a payment of $143.49 was received on the account on or about October 12, 2011. That specific dollar amount is reflected in both the August 2011 and September 2011 bills mailed to the Orchard Street property by Duke Energy Ohio, meaning the customer or someone else acting on behalf of the customer had to possess one or both of those bills to know the precise amount due in connection with the August 2011 bill. Furthermore, the exact amount of the November 2, 2011, utility bill was paid on November 21, 2011, before any contact with Duke Energy Ohio as to the restoration of the electric service.[57] As such, it is entirely illogical for the Complainant to suggest, without any supporting evidence, that the Company's October 2011 bill was never delivered and that it suddenly was the first and only bill in months that was not sent to the customer of record at the Orchard Street property.

Moreover, even though Duke Energy Ohio does not have the burden of proof in this case, the Company presented evidence that the disconnection notice was sent to its customer of record at the Orchard Street property during October 2011. Duke Energy Ohio witness Porter explained the processes and procedures used by the Company and its outside print vendor to confirm that the bills containing disconnection notices would be printed and mailed to the Company's customers in Ohio whose services were subject to disconnection for nonpayment. Ms. Porter explained how the print vendor ensured that its system was properly set up at the end of September 2011 to print the bills with the disconnection notice and the various inserts that were mailed with those bills, including the pink disconnection notice. Ms. Porter explained the print vendor's report proving that its system was properly configured to print and mail the bill and bill inserts, and that report was identified and admitted into evidence. As Ms. Porter further explained, there was no evidence of any problems or errors when the print vendor printed and

[57] OCC Exhibit V, at pg. 6. See also, OCC Exhibit A, Attachment JDW-10, at pp. 7-9.

mailed the bills, pink disconnection notices and other bill inserts to the Company's customers in Ohio (including the account in the name of Estill Easterling) whose services were subject to disconnection for nonpayment in October 2011. Any such errors would have been tracked in an error log that also was introduced into evidence.[58] The collective oral and documentary evidence provided by Duke Energy Ohio through witnesses Carmosino, Marion Byndon, and Porter proves beyond doubt that the Company mailed the October 2011 bill and pink disconnection notice to its customer of record at the Orchard Street property.

That fact is further supported by well-established Ohio law, including the practice and procedure before the Commission. Not only does the Commission expressly allow public utilities to mail bills and notices to its customers,[59] but Ohio courts also recognize that delivery of documents through the mail is a proper and legally effective means of delivery as a matter of law. Under the "mailbox rule," courts regularly find that "a rebuttable presumption exists that a letter mailed is presumed to be received in due course."[60] Similarly, when there is proof that ordinary mail was sent and properly addressed to the recipient, as in this case, "the law presumes it was received, so long as it was not returned to the sender."[61] The use of ordinary mail is so trusted that it is an authorized means of obtaining service of process of a summons and complaint under Ohio law when a person refuses to accept service via certified mail.[62]

In contrast to the Company's evidence and the law, the Complainant offered nothing even suggesting that the October bill and associated pink disconnection bill insert were not delivered

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[58] OCC Exhibit L

[59] See, *e.g.*, O.A.C. 4901:1-10-22 (establishing bill due date with reference to postmark and providing that online billing is not mandatory) and O.A.C. 4901:1-18-06(B)(1)(authorizing mailing of final notice).

[60] *Cantrell v. Celotex Corp.* (1995), 105 Ohio App. 3d 90, 663 N.E.2d 708.

[61] *Dobbins v. Kalson*, 2008-Ohio-395, ¶13.

[62] See, Civil Rule 4.6(D); *Denittis v. Aaron Constr., Inc.*, 2012-Ohio-6213, ¶48 ("when the mailing of an envelope sent by ordinary mail service of process is recorded by the clerk and the ordinary envelope is not returned for failure of delivery, service is deemed complete and, under the rule, the defendant is considered to have notice of the proceeding for purposes of conferring personal jurisdiction").

to the Orchard Street property. As the Complainant's only witness with any connection to the home testified, her mother, Dorothy Easterling, received and read the mail that was delivered to the Orchard Street home, handled all of the finances, and paid the bills, including the Duke Energy Ohio bill.[63] Further, Ms. Lykins admitted that her mother did not talk with her about the Duke Energy Ohio account.[64] And Ms. Lykins did not dispute that the October bill, including the pink disconnection bill insert, were delivered by the postal service.[65]

The OCC's witness cannot assist the Complainant with this allegation, having never been to the Orchard Street home or talked with Dorothy Easterling. The OCC's witness cannot refute that the October bill was mailed and delivered to the property in October 2011 or that the October bill was accompanied by a pink disconnection bill insert.[66] Unsubstantiated conjecture by the OCC's witness is hardly sufficient evidence to rebut the Company's business records, as reflected within CMS, that Duke Energy Ohio did, in fact, provide proper notice to its customer of record that its services were subject to disconnection for nonpayment.

The OCC hopes to convince the Commission that, even if the October bill and bill insert were received, an individual with whom it has never interacted would have been confused by the contents. This suggestion, however, is baseless. Indeed, Dorothy Easterling's daughter admitted that the disconnect notice and pink disconnect bill insert were not in any way, inaccurate or incomprehensible.[67] Further, Ms. Lykins admitted that her mother would have understood the pink disconnection bill insert.[68] This testimony was not contradicted at the hearing. OCC witness Williams could not dispute Mrs. Easterling's level of competence or the fact that she was able to

[63] Tr. I, at pp. 48 and 59.
[64] Tr. I, at pg. 49.
[65] Tr. I, at pg. 57.
[66] Tr. I, at pg. 211.
[67] Tr. I, at pg. 57.
[68] Tr. I, at pg. 59.

read and comprehend documents that Duke Energy Ohio sent to the Orchard Street home.[69] Thus, although the OCC has attempted to imply that Mrs. Easterling would have been confused by the contents of the envelope that included both the October utility bill and pink disconnection bill insert, there is no evidence whatsoever in this proceeding that calls into doubt Mrs. Easterling's keen mental acumen as described by her daughter.

2. The Disconnection Notice Provided by Duke Energy Ohio Complied with the Requirements of O.A.C. 4901:1-18-06(A)(5).

The Complainant next alleges that the notice provided by Duke Energy Ohio was deficient; that it did not comply with O.A.C. 4901:1-18-06(A)(5).[70] But the Complainant failed to prove this allegation.

Again, the disconnect notice required under O.A.C. 4901:1-18-06(A) is comprised of both the utility bill and the accompanying pink disconnect bill insert. It is these two documents, therefore, that must be reviewed for purposes of ascertaining Duke Energy Ohio's compliance with O.A.C. 4901:1-18-06(A).

O.A.C. 4901:1-18-06(A)(5) pertains to the disconnection notice identified under O.A.C. 4901:1-18-06(A), detailing how the notification may be made and the required content of same. The Commission, through its regulations, authorized Duke Energy Ohio to use both the utility bill and accompanying pink bill insert for purposes of this required notice. Specifically, the Commission's regulation delineates the specific information that must be included either "on the disconnection notice or in documents accompanying the disconnection notice."[71] Oddly, both the Complainant and the OCC seemingly argue in vain that all of the required information must

[69] Tr. I, at pp. 211-212.
[70] Amended Complaint, at ¶ 5(b).
[71] O.A.C. 4901:1-18-06(A)(5).

be set forth only in the bill. The Commission must reject that baseless argument, which contradicts the unambiguous language of the regulation.

A review of the disconnection notice and pink bill insert mailed to the Orchard Street home in October 2011 confirms that the required information was, in fact, provided.

The utility bill prepared on October 4, 2011, contained the following information:

- Repeated use of prominent labeling as a disconnection notice.[72]
- The delinquent account number and total amount required to prevent disconnection of regulated services.[73]
- The earliest date on which disconnection may occur.[74]
- The Company's address for customers to contact about their account.[75]
- The amount of the security deposit, as well as the fact that a reconnection charge would be required, if payment is not made by the identified date and services are disconnected.[76]

The pink bill insert contained the following information:

- The Company's phone number for customers to contact about their account.[77]
- Language taken directly out of the rule concerning the customer's ability to contact either the Commission or the OCC should they have a complaint regarding the disconnection notice.[78]
- A statement that both a reconnection charge and a security deposit will be required if service was disconnected.[79]
- A statement that failure to pay for non-tariffed products or service may result in the loss of those products or services.[80]
- Identification of extended payment plans, including PIPP plans, as well as those available when the customer elects to retain or reconnect just one service.[81]
- Information on medical certifications.[82]
- The telephone number (and website) to use to obtain a listing of authorized payment agents.[83]

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[72] O.A.C. 4901:1-18-06(A)(5).
[73] O.A.C. 4901:1-18-06(A)(5)(a). A security deposit would have been required only after service was disconnected and no security deposit was required as of October 4, 2011.
[74] O.A.C. 4901:1-18-06(A)(5)(b).
[75] O.A.C. 4901:1-18-06(A)(5)(c).
[76] O.A.C. 4901:1-18-06(A)(5)(e).
[77] O.A.C. 4901:1-18-06(A)(5)(c).
[78] O.A.C. 4901:1-18-06(A)(5)(d)
[79] O.A.C. 4901:1-18-06(A)(5)(e).
[80] O.A.C. 4901:1-18-06(A)(5)(f)
[81] O.A.C. 4901:1-18-06(A)(5)(g).
[82] O.A.C. 4901:1-18-06(A)(5)(h).
[83] O.A.C. 4901:1-18-06(A)(5)(i).

The October bill and pink bill insert also contained the following additional information, which is not prescribed under the rule:

- The telephone number to call to discuss the option of retaining either gas or electric service.
- Information on energy assistance.
- Information on the Winter Rule, including the ability to pay $175 to avoid disconnection or have service restored.

Notably, even the OCC's witness readily admits that the October bill "included disconnection notice and a message titled 'Important' advising that services may be disconnected if the past due balance of $248.82 was not paid before October 28, 2011."[84] The OCC cannot argue otherwise in light of those admissions regarding the content of Duke Energy Ohio's bill and disconnection notice.

The disconnection notice – comprised of the bill and bill insert – complies with O.A.C. 4901:1-18-06(A)(5). All the information that must be in the disconnection notice is, in fact, reflected in these documents. And the Commission, through its Staff and independent auditors, has confirmed the correctness of both the structure used by the Duke Energy Ohio to provide the disconnection notice and the content of same.[85] The Complainant has offered no evidence whatsoever to refute these established facts and thus cannot prevail on his claim that the contents of Duke Energy Ohio's notice ran afoul of O.A.C. 4901:1-18-06(A)(5).[86]

[84] OCC Exhibit A, at pg. 6.
[85] Tr. II, at pp. 504-505. See also, *In the Matter of the Five-Year Review of Natural Gas Company Uncollectible Riders*, Case No. 08-1229-GA-COI, Report of Northstar Consulting Group, at I-14 (December 9, 2010)(finding that Duke Energy Ohio provides customers with proper disconnect notices).
[86] Amended Complaint, at ¶ 5(b).

3. Duke Energy Ohio Provided Notice of Disconnection on November 4, 2011, as Required Under 4901:1-18-06(A)(2).

In his third claim under the Commission's regulations, the Complainant alleges that Duke Energy Ohio failed to provide personal notice as required under O.A.C. 4901:18-06(A)(2).[87] But, as demonstrated below, he offered no evidence refuting the oral and documentary evidence provided by the Company; evidence confirming that the required notice was provided.

O.A.C. 4901:1-18-06(A)(2) requires a utility company, such as Duke Energy Ohio, to provide notice on the day of disconnection, with such notice accomplished by a personal visit to the premises. As the rule further requires, this notice must be provided to the customer or another adult consumer at the premises. Alternatively, the rule allows for notice to be left in a conspicuous location if neither the customer nor an adult consumer is at the premises.

The rule does not further elaborate on what a utility company must do to determine whether the customer or another adult consumer is not at home such the notice may be left at the premises. But common sense must prevail here. That is, a utility company employee cannot first be required to confirm whether the premises are occupied by peering in windows, circling the property onto which they have not been invited, and opening doors. Similarly, where a customer or other adult is in plain view in the home but refuses to come to the door, the utility company employee cannot enter the home for purposes of effectuating personal notice. Such an expectation would undeniably invite allegations of trespass and invasion of privacy. Thus, to the extent the Complainant and the OCC urge an interpretation of the rule that can only be accomplished by resorting to criminal or otherwise offensive activity, it must be rejected in favor of an interpretation that is logical and maintains fundamental rights. And it is this logical and

[87] Amended Complaint, at ¶ 5(c).

lawful interpretation that Duke Energy Ohio, through its employee, followed on November 4, 2011.

Understandably, Duke Energy Ohio witness Danzinger does not have personal recollection today of a disconnection he completed in November 2011. However, he knew the procedures for completing disconnections for nonpayment and followed those procedures in every instance, including that involving the Orchard Street home.

As Mr. Danzinger explained, the procedure that he is certain he would have followed at 11312 Orchard Street involved the following: upon arrival, he would have parked on the street, directly in front of the home and a few steps from the front door; he would have pressed a key on his laptop to confirm that he was onsite and then exited his truck with all necessary tools and materials in his tool belt; he next would have rung the doorbell and knocked on the door because doorbells can be nonfunctioning; and he then would have waited what he believed, in his professional opinion, to be sufficient time for someone to answer the door. Where there is no response, Mr. Danzinger then would have affixed the day-of-disconnection notice to the property, proceeded to read the electric meter, disconnect the service, and return to his vehicle.[88]

There can be no dispute in this case that Mr. Danzinger physically appeared at the Orchard Street home on November 4, 2011. The Company's records detail the completion of the work order to disconnect the electric service, the sealing of the electric meter, and the reading of the electric meter.[89] And no witness refuted these business records, or even attempted to do so.

And there can be no dispute that Mr. Danzinger allowed sufficient time for an adult to come to the door on November 4. As Mr. Danzinger explained, the amount of time he waited

[88] Duke Energy Ohio Exhibit J, at pp. 6-7 and Tr. II, at pg. 286.
[89] Complainant Exhibit C. See also, OCC Exhibit H at pg. 4.

would depend on the home, as "each and every house is different."[90] Thus, there was no pre-determined period of time that he waited. Rather, as Mr. Danzinger recounted his habit:

> I would knock and ring the doorbell. Sometimes doorbells wouldn't work. You would knock and do both and you would give, I guess the best way to answer is, in one's opinion, a fair amount of time. Some houses are mansions, some houses are literally 10-feet long and 10-feet deep. If you hear no movement in the house, nothing is happening at all, you are standing there and nobody comes to the door, then nobody comes to the door.[91]

With regard to the Orchard Street home, the Company records confirm that Mr. Danzinger was at the property for four minutes, only one of which would have been consumed by reading the electric meter and disconnecting service.[92] And, as both the photos and oral testimony prove, the electric meter was at the base of the front porch steps and its location would have been observed by Mr. Danzinger as he first approached the home and ascended the few front porch steps. Alighting his truck, ascending the porch steps, and returning to a vehicle parked just steps away is not a time-consuming proposition. Thus, there was ample time for Mr. Danzinger to wait at the door. And just as he always did, Mr. Danzinger would have waited sufficient time for someone to answer the door on November 4. Significantly, he would have affixed the day-of-disconnection notice at the property's front door, which is the door that Dorothy Easterling would have regularly used to get her mail from the mailbox hanging on the front wall of the house.[93]

The only evidence in this case concerning the activities of November 4, 2011, was provided by Duke Energy Ohio. Ms. Lykins, on behalf of the Complainant, offered no testimony as to the events of that day or any of the days that immediately followed. She admittedly was not at the Orchard Street home on November 4 and could not identify when the electricity had been

[90] Tr. II, at pg. 283.
[91] Tr. II, at pg. 278.
[92] Duke Energy Ohio Exhibit J, at pg. 6.
[93] Duke Energy Ohio Exhibit J, at pp. 6-8; Tr. II, at pg. 268; and Duke Energy Ohio Exhibit A.

disconnected for nonpayment relative to when she last visited the property. Indeed, she did not know until September 16, 2015, that the electricity had been disconnected for nonpayment on November 4, 2011.[94] Hoping to cure this temporal deficiency, the Complainant's sole witness maintains that she did not see the day-of-disconnection notice at the premises on November 20, 2011. But this purported observation is without consequence. The notice was left on November 4, some sixteen days prior, and the Complainant produced no evidence tending to suggest that Mrs. Easterling did not receive the notice and remove it from the door. Rather, the only evidence offered by the Complainant about any activity at the home during the following sixteen days was that Ms. Lykins was not the first person to arrive at the Orchard Street home on November 20. The Complainant failed, through this evidence, to demonstrate that it is more probable than not that the day-of-disconnection notice was not left at the property in a conspicuous location.

The OCC also failed to offer any evidence tending to establish this claim on the Complainant's behalf. Again, its lone witness had no knowledge as to Mrs. Easterling's daily routine, her activities on November 4, 2011, the level of caution she took around strangers, or her receipt and subsequent handling of the day-of-disconnection notice.[95] He simply cannot, and does not, offer any evidence to refute that which has been established by Duke Energy Ohio.

The Complainant and the OCC claim, in error, that a gas meter reading instruction from January 2011 somehow related to the Company's disconnection of the electric service on November 4, 2011. [redacted][96] and who, as Company witness Danzinger explained, are invited into the premises for that purpose.[97] Neither the Complainant nor the OCC presented any evidence that a

[94] Tr. I, at pp. 40 and 63.
[95] Tr. I, at pg. 231.
[96] Confidential Tr. I, at pp. 126-127
[97] Tr. II, at pg. 281.

gas meter reading instruction would have been known to or seen by Duke Energy Ohio witness Danzinger when he visited the Orchard Street property for purposes of disconnecting services for nonpayment. Instead, the only evidence on this point is that that instruction was not meant for Mr. Danzinger.[98] Moreover, as further evidenced by the testimony of Duke Energy Ohio witness Byndon, the analog gas meter at the Orchard Street property had been replaced with a new AMR meter as of January 2011.[99] As a result, but for the need to get annual access to the gas meter as required by Commission regulation, the meter reading instruction essentially became obsolete at that time because the Duke Energy Ohio meter reader could get the gas meter read from the sidewalk in front of the property.[100] The meter reader no longer needed to physically read the gas meter, which meant the meter reader no longer needed to knock and wait at the side door for Mrs. Easterling to answer and provide the most direct access to the meter in the basement. And, as of January 2011, Mrs. Easterling had no reason to expect monthly visits by a Duke Energy Ohio employee.

Arguably a concession that notice was provided on November 4, 2011, the OCC suggests that the content of the day-of-disconnection notice left by Mr. Danzinger at the Orchard Street home was deficiently "generic."[101] But even the OCC's one witness in this proceeding admitted that there is no rule prescribing the content of that notice[102] and the Company cannot now be found to have violated a rule that does not exist.

Alarmingly, the OCC believes that the day-of-disconnection notice used by Duke Energy Ohio should contain the customer's name and account number, although the OCC knows that

[98] Tr. II, at pp. 281-282.
[99] Tr. I, at pg. 99 and Complainant Exhibit D.
[100] Tr. II, at pg. 309.
[101] Tr. I, at pg. 242; See also OCC Exhibit A, at pp. 11-12.
[102] Tr. I, at pg. 232.

this notice may be posted in plain view at a customer's home.[103] In other words, the OCC is urging the Commission to compel the public display of customers' account numbers without their express consent, in contravention of long-standing regulation. The Commission, in not imposing such a requirement through O.A.C. 4901:1-18-06(A)(2), has already rejected such a careless proposal and should similarly disregard it here.

Although the Commission has not dictated the content of the day-of-disconnection notice left by Mr. Danzinger on November 4, 2011, it is important to appreciate the information provided by Duke Energy Ohio through that notice. Specifically, with this notice, Duke Energy Ohio informed the consumers at the Orchard Street home of the following on November 4, 2011:

- Instructions for restoring service and the time associated with same.
- The existence of payment options, including payment plans.
- Avenues for financial assistance.
- The Winter Reconnect Order, also referred to by Duke Energy Ohio as the Winter Rule.
- Contact information, including that for the Commission and the OCC, should additional questions or a complaint arise regarding the disconnection and other utility issues.

After this notice was left at the property, no one called Duke Energy Ohio for the next sixteen days. No one sought to restore the electric service, make payment arrangements, or invoke the provisions of the Winter Reconnect Order.[104] Incredibly, Ms. Lykins contends that her mother never told her that the electricity had been disconnected.[105] And when the first contact was made sixteen days later, it was not from any member of the Easterling family, who had ready access to the home. Rather, the first contact on November 20, 2011, came from emergency personnel who had requested [redacted].[106] The Complainant has offered no reliable or probative evidence that can refute the procedures

[103] Tr. I, at pg. 242.
[104] Tr. I, at pp. 38-39.
[105] Tr. I, at pg. 41.
[106] OCC Conf. Exhibit H, at pg. 3.

Duke Energy Ohio witness Danzinger knew he would have followed on November 4, 2011, or that the notice he would have left at the property was proper. Quite simply, the Complainant has not met his burden in respect of proving this claim.

4. The Winter Heating Season Requirements Are Not Implicated in this Proceeding; However, Duke Energy Ohio Did Provide a Final Notice to Estill Easterling.

In his final claim relative to the Commission's regulations, the Complainant alleges that Duke Energy Ohio failed to adhere to the provisions applicable to the winter heating season, as described in O.A.C. 4901:1-18-06(B).[107] The Complainant's lone witness in this proceeding is not versed in Commission regulation and offered no testimony as to how Duke Energy Ohio failed to adhere to the requirements of O.A.C. 4901:18-06(B). Further, she admitted that she has no knowledge as to whether a final notice was delivered to the Orchard Street home and received by Dorothy Easterling.[108] The OCC also cannot dispute that the final notice was delivered to and received by Mrs. Easterling.[109] Rather, the OCC's criticism is that the notice was "generic"; that it did not state the amount needed to avoid disconnection and failed to inform of separation of services. And without any substantiation whatsoever, the OCC contends that the final notice was potentially confusing to an individual it never met and who, based on the uncontroverted evidence, suffered from no mental or intellectual impairments.[110]

It is undeniable that the provisions of O.A.C. 4901:1-18-06(B) apply only during the winter heating season – a period defined by Commission regulation as between November 1 of

[107] Amended Complaint, at ¶ 5(d).
[108] Tr. I, at pg. 63
[109] Tr. I, at pg. 211.
[110] OCC Exhibit A, at pp. 11-12.

one year and April 15 of the following year. Indeed, as even the OCC admitted, the rules specific to the winter heating season do not apply outside of that period.[111]

Importantly, the rule is triggered only where the date of disconnection as stated on the disconnection notice falls between November 1 and April 15. As the introductory language of the rule unambiguously provides:

> During the period of November first through April 15, if payment or payment arrangements are not made to prevent disconnection before the disconnection date stated in the fourteen-day disconnection notice, the utility company shall not disconnect service to residential customers for nonpayment unless the utility company completes each of the following[.][112]

Here, it is indisputable that the date of disconnection stated on the October 4, 2011, utility bill was October 28, 2011.[113] Thus, the disconnection of the Easterling account was not subject to the rule's requirements for the winter heating season and Duke Energy Ohio was not required to send a final notice. As Company witness Carmosino repeatedly explained to the OCC:

> Well, as I read the rule, it says November 1 through April 15, if payment or payment arrangements are not made to prevent the disconnection before the disconnection date stated on the 14-day disconnection notice, the utility company shall not disconnect service, and it goes on. So, to me, it has to do with the date on the bill.[114]
>
> I think that if the date on the bill is prior to November 1, that it's not a requirement that somebody get a 10-day notice.[115]
>
> I think we are talking about one particular account. Their disconnection date was October 28. I don't think they were required to get the additional 10-day notice, although they did, they did get one, I don't think it's required.[116]
>
> Ma'am, what I'm telling you is if the date on the bill is prior to November 1, we are not required to send an additional 10 days[.][117]

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[111] Tr. I, at pg. 209.
[112] O.A.C. 4901:1-18-06(B).
[113] Duke Energy Ohio Exhibit C and Duke Energy Ohio Exhibit M, Attachment MAC-2.
[114] Tr. II, at pg. 459.
[115] Tr. II, at pg. 459.
[116] Tr. II, at pg. 460.
[117] Tr. II, at pg. 461.

Duke Energy Ohio's application of O.A.C. 4901:1-18-06(B) is consistent with well-established rules of statutory interpretation, which provide, in part, that "[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply rules of statutory interpretation."[118] Only where a statute is ambiguous is there any need to resort to interpretation and, in that event, modifying words only apply to the words or phrases immediately preceding or subsequent to the word unless the intent of the legislature clearly required otherwise.[119] Importantly, "[i]n the absence of clear legislative intent to the contrary, words and phrases in a statute shall be read in context and construed according to their plain, ordinary meaning."[120] And [c]ourts may not delete words used or insert words not used."[121] "There is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of a statute to meet a situation not provided for."[122]

The language in O.A.C. 4901:1-18-06(B) clearly and unambiguously invokes the provisions of the winter heating season only where the date of disconnection on the fourteen-day notice provided under O.A.C. 4901:1-18-06(A) is between November 1 and April 15. There is thus no need to engage in statutory interpretation.[123] But, if such an exercise were undertaken, it follows that the words in this provision must be given their plain and ordinary meaning and words cannot be deleted or added. Critically, contrary to the OCC's insistence, one cannot ignore the language that reads, "if payment or payment arrangements are not made to prevent

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[118] *Cline v. Ohio Bureau of Motor Vehicles*, 61 Ohio St.3d 93, 96, 573 N.E.2d 77 (1991) (internal citations omitted).
[119] *In re Shaffer*, 228 B.R. 892, 894 (Bankr. N.D. Ohio 1998); *see also Hedges v. Nationwide Mut. Ins. Co.*, 109 Ohio St.3d 70, 2006-Ohio-1926, 846 N.E.2d 16 ¶ 24 ("referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent").
[120] *Kunkler v. Goodyear Tire & Rubber Co.*, (1988), 36 Ohio St.3d 135, 137, 522 N.E.2d 477.
[121] *Cline v. Ohio Bureau of Motor Vehicles*, (1991), 61 Ohio St.3d 93, 97, 573 N.E.2d 77.
[122] *Vought Industries, Inc. v. Tracy, Tax Comm'r.*, (1995), 72 Ohio St.3d 261, 265, 648 N.E.2d 1364.
[123] *In the Matter of the Complaint of WorldCom, Inc.; AT&T Corp.; KMC Telecom III, LLC; and LDMI Telecommunications, Inc.*, Case No. 02-3207-AU-PWC, Opinion and Order, at pp. 11-13 (May 14, 2003)(adopting rules of statutory construction).

disconnection before the disconnection date stated on the fourteen-day disconnection notice. ..." And this clause is modified by the introductory language of this provision, thereby yielding the conclusion that the disconnection date on the disconnection notice must occur within the winter heating season for O.A.C. 4901:1-18-06(B) to apply.

Indeed, had the Commission desired a contrary result, it would have worded this provision differently. There would have been no need to refer to the disconnection date on the notice, which, by Commission regulation, simply reflects the earliest date on which disconnection may occur. Rather, the Commission would have referred to the date on which the disconnection was scheduled to actually occur. But the Commission did not use such language and it cannot be injected into the regulation now. Consequently, it must be concluded that, where the date of disconnection is outside of the winter heating season, a final notice simply is not required.

There is no dispute in this proceeding that the date of disconnection on the disconnection bill was October 28, before the start of the winter heating season. Thus, Duke Energy Ohio was not obligated to send a final notice to its customer, Estill Easterling, or any consumer at the Orchard Street home. But it did. And it did so in order to "err on the side of caution and benefit the customer."[124] And there is no dispute that the notice was mailed. Indeed, the Complainant did not refute the entries in the Company's CMS that the notice was generated and mailed on October 19. And he did not offer any evidence tending to rebut the presumption under the aforementioned "mailbox rule" that the final notice was delivered to the Orchard Street home and received by Dorothy Easterling.

Desperately, the Complainant argues that the Company did not produce an exact copy of the final notice addressed to Estill Easterling in October 2011 and, given that it has an addressed

[124] Tr. II, at pg. 506.

copy of another customer's notice, there is something amiss with the Easterling account. This is a ruse. As Duke Energy Ohio witness Carmosino explained, the other notice was pulled from production for purposes of a quality check, which cannot appropriately be completed without all fields in the letter being fully populated.[125] The Company's records, which are complete and accurate, confirm that the final notice was generated and mailed to the property on October 19, 2011.

As confirmed by auditors just the year prior, the final notice provided by Duke Energy Ohio to the Orchard Street home in October 2011 was proper under Commission regulation. The notice provided sufficient information related to the availability of federal, state, and local governmental aid and further identified the various payment options, including extended payment plans, that were available. And because these are the only pieces of information to be included in the final notice under O.A.C. 4901:18-06(B), the OCC's attempts to portray the final notice as deficient necessarily fail. But beyond the required information, the Company's final notice also advised the consumers at the Orchard Street home of the Winter Reconnect Order, additional payment options and how to locate pay stations, and how to contact the Company, the Commission, and the OCC.

Although the winter heating season does not apply to the facts of this case, the OCC notably fails to appreciate that Commission Staff and auditors have known of, and not taken issue with, Duke Energy Ohio's billing and disconnection practices, practices which include providing customers, year-round, with twenty-four days' notice of the earliest date on which services may be disconnected for nonpayment.[126] This policy and procedure necessarily includes both the fourteen days prescribed by O.A.C. 4901:1-18-06(A) and the additional ten days allotted

[125] Tr. II, at pg. 503.
[126] Tr. II, at pp. 455-457.

by O.A.C. 4901:1-18-06(B)(1), and is designed for the benefit of customers.[127] Duke Energy Ohio witness Carmosino repeatedly explained how the Company, when sending any residential disconnection notice under O.A.C. 4901:1-18-06(A), includes an additional ten days, thereby clearly informing customers, at the onset of the disconnection process, of the earliest date on which they may be disconnected. Further, ten days prior to that date, the Company will send a final notice even when (a) such a notice is not required by rule or regulation and (b) before any such notice is required.[128] And Duke Energy Ohio does this in order to better serve customers, inform them about the Winter Reconnect Order, and give them every opportunity possible to avoid disconnection of their gas or electric services. Whereas Duke Energy Ohio provides more notice and time than are required, the OCC seemingly would have the Company disconnect its customers' services after only fourteen days' notice outside the winter heating season and then provide the additional ten days only during the winter heating season. Clearly Duke Energy Ohio's interpretation and application of the rule is far more advantageous to its residential customers than the interpretation of the rules sought by the OCC.

C. Duke Energy Ohio Did Not Violate the Winter Reconnect Order.

The Complainant's second cause of action relates to the Winter Reconnect Order, with the Complainant alleging that Duke Energy Ohio failed to adhere to the requirements of that order.[129] Importantly, the Complainant's sole witness was not familiar with the Winter Reconnect Order and the OCC is not claiming here that Dorothy Easterling or anyone else on her behalf attempted to invoke its provisions. Indeed, there is no evidence that anyone contacted the Company between November 4 and November 20 or otherwise paid, or even attempted to pay,

[127] Tr. II, at pg. 457.
[128] Duke Energy Ohio Exhibit M, at pp. 9-10.
[129] Amended Complaint, at ¶ 7.

$175 on or after October 17, 2011, to avoid the November 4 disconnection or to have service restored. The Winter Reconnect Order has no relevance to this case.

As an initial matter, the Winter Reconnection Order details the rights and responsibilities of customers,[130] who are defined as those persons who enter "into an agreement, whether by contract or under a tariff, to purchase: electric, gas, or natural gas utility service."[131] In this case, Dorothy Easterling was not a Duke Energy Ohio customer. As Ms. Lykins admitted, the Duke Energy Ohio account had always been in her father's name and remained in his name until 2013. Ms. Lykins further admitted that Mrs. Easterling never had the account changed into her name and that neither Ms. Lykins nor Mrs. Easterling asked for such a transfer to occur.[132] This testimony is consistent with that of Company witness Carmosino, who testified that Estill Easterling was the Company's customer of record on the account throughout 2011, and that both Dorothy Easterling and her son would have been consumers at the Orchard Street property.[133]

That Mrs. Easterling paid the Duke Energy Ohio bill prior to September 2011 does not alter her status as a consumer, or "ultimate user of electric, gas, or natural gas utility service."[134] Indeed, if payment alone were enough to transform the customer relationship, then Ms. Lykins would be a customer on her father's account as she occasionally paid the bill.[135] And, taking the Complainant's argument to its logical conclusion, any entity providing financial assistance toward a utility account would be labeled as a customer on that account, positioned to remain liable for future utility bills.

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[130] See *e.g.*, *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pg. 9 (September 14, 2011)(confirming that customers can only use the special procedures once during the period between October 17, 2011, and April 13, 2012).
[131] O.A.C. 4901:1-18-01(G).
[132] Tr. I, at pg. 38.
[133] See Duke Energy Ohio Exhibit M, at pg. 16.
[134] O.A.C. 4901:1-18-01(F).
[135] Tr. I, at pp. 14-15.

The Commission's regulations intentionally distinguish between customers and consumers, setting forth the rights and responsibilities of each. And this distinction is important to utility companies, such as Duke Energy Ohio, as certain protections are available only to customers and policies and procedures are predicated upon an individual's status. For example, a customer seeking service is subject to credit inquiries and must disclose certain information about themselves. This individual is identifiable by and responsible to the utility company. Consumers, on the other hand, are not known by the utility company and their status changes. To transform the customer/Company relationship, as the Complainant urges here without any proof, would impose impractical obligations upon utility companies to discover the identity of every person or entity that pays a utility bill and obtain information from them necessary to establish a formal customer relationship. And, importantly, this ill-advised exercise would have to be financed through customers, but which customers? Those to whom utility bills with tariffed rates are addressed or those intending only to provide temporary financial assistance to another? The Commission should reject the Complainant's efforts to redefine Dorothy Easterling's relationship with Duke Energy Ohio in order to serve some ill-fated purpose in these proceedings.

Assuming, *arguendo*, the Commission accepts the Complainant's unreasonably expansive definition of a customer and finds the provisions of the Winter Reconnect Order relevant here, it remains that Duke Energy Ohio complied.

1. The Company Rightfully Disconnected Service as There Was No Doubt Regarding the Disconnection Notices Applicable to an Account in Admitted Arrears.

Both the Complainant and the OCC advance a tortured reading of the Winter Reconnection Order, hoping to create doubt where none exists; hoping to convince the

Commission that there was uncertainty with regard to whether the Easterling account was in arrears and subject to disconnection. Their efforts must fail.

Through the Winter Reconnect Order, the Commission expressed its expectation of utility companies – that they would assist customers in every way possible to maintain service; that they would advertise the existence of the PIPP program and other payment options; that they would maintain service only where there was doubt "as to the applicability or the interpretation of a rule."[136] The Complainant and the OCC focus solely on the final expectation, as they do not contend Dorothy Easterling ever sought assistance to maintain the utility service or that the Company did not advertise the existence of payment plans, including PIPP. But there was no doubt, on the part of Duke Energy Ohio, as to the applicability or interpretation of any rule. It knew then, as the Complainant concedes now, that the account was in arrears and subject to disconnection. It knew then, as the OCC concedes now, that it was authorized to disconnect the account for nonpayment, provided the required notices were sent. It knew then, as its business records still confirm, that this account was not subject to the winter heating season requirements, but it nonetheless provided a final notice. It knew then, as Company records prove here, that the final notice was mailed and that its employee was at the property on November 4 for a period of time sufficient to attempt contact, post a notice, and complete the disconnection.

Notably, the OCC does not rely upon any of the specific requirements created by the Winter Reconnect Order in criticizing Duke Energy Ohio. Rather, in addition to the above policy statement, it refers only to the underlying premise of the order, which is to prevent injury to affected residential customers.[137] But it is not the premise of the Winter Reconnect Order, which

[136] *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pg. 2 (September 14, 2011).
[137] OCC Exhibit A, at pg. 13 and Tr. I, at pp. 197-198.

Duke Energy Ohio firmly supports, that determines its adherence to that order. The pivotal question, which the OCC did not address, is whether the Company adhered to the specific requirements imposed upon it under the Winter Reconnect Order. And as the evidence in this case confirms, that question must be answered in the affirmative.

2. A Partial and Insufficient Payment Did Not Suspend the Company's Right to Disconnect an Account in Admitted Arrears.

The Complainant also alleges, without any basis in fact or law, that a partial payment received on October 12, 2011, implicated the Winter Reconnect Order and that such payment should have suspended the disconnection.[138] The OCC attempts, but fails, to substantiate this claim through speculation as to the intentions of an individual with whom neither the OCC nor its witness has ever interacted.

The evidence on this issue is undisputed: (1) the only payment in October 2011 was in the amount of $143.49; (2) the only payment in October 2011 was made on or about October 12; and (3) the amount needed to avoid disconnection was not paid by October 28. The partial payment before the period subject to the Winter Reconnect Order does not implicate that order.

Both the Complainant and the OCC also ignore the burdens imposed upon customers under the Winter Reconnection Order. But the Commission's order is unambiguous. Utility companies must reconnect service or maintain service, provided a customer fulfills certain obligations. Simply stated, to avail themselves of rights under the Winter Reconnect Order, a customer must affirmatively engage with their utility company. They must contact the Company. They must pay the lesser of their arrearages, the defaulted amount under a payment plan, should

[138] Amended Complaint, at ¶ 7(b).

one exist, or $175.[139] They must apply for financial assistance.[140] Non-PIPP customers must enroll in a payment plan.[141] There is no indicia of proof that Dorothy Easterling did any of these things. On the contrary, the only evidence in this case is that she did none of them.

The OCC further suggests that, because of a partial and insufficient payment, Duke Energy Ohio was required, under the Winter Reconnect Order, to re-evaluate the Easterling account.[142] But even the OCC failed to identify any regulation compelling such an affirmative obligation. And, again, the Company cannot violate an illusory regulation. Further, the OCC's suggestion is irresponsible, as it would (a) arbitrarily advance the period governing the Winter Reconnect Order contrary to its express provisions and (b) undeniably impose unnecessary costs upon Duke Energy Ohio's customers as the Company would need to substantially reform its business model to conduct further evaluation and inquiry in response to every partial payment. In contrast to the OCC's unwise proposition, the Commission has rightfully imposed certain obligations upon customers in respect of the utility service they receive. These obligations include affirmatively engaging with their utility company in order to avail themselves of options for avoiding disconnection. And where such efforts are made, they will be reciprocated. As Company witness Carmosino stressed here, if a customer is confused about their rights or efforts to avoid disconnection, all they have to do is pick up the phone and call, but neither Dorothy Easterling nor anyone else on her behalf ever bothered to do so.[143]

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[139] *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pg. 3 (September 14, 2011).
[140] *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pg. 5 (September 14, 2011).
[141] *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pp. 5-6 (September 14, 2011).
[142] OCC Exhibit A, at pg. 18.
[143] Tr. II, at pp. 470 and 477.

3. The Company Provided Notice of the Winter Reconnection Order, Including Reconnection Rights and Payment Plan Options.

Through his final two claims, the Complainant alleges that Duke Energy Ohio violated the Winter Reconnect Order by failing to provide Dorothy Easterling with information about reconnection rights and the availability of payment plan options under that order.[144] But given the overwhelming evidence to the contrary, the Complainant has not proven this claim.

Significantly, through the Winter Reconnect Order, the Commission imposed upon public utilities, including Duke Energy Ohio, the obligation to notify customers of the following: (1) "special reconnection procedures and the fact that customers can have their service restored...," and (2) payment plan options available under Commission regulation and options for financial assistance."[145] Although ignored by the Complainant, this second notification requirement is prompted only "when the customer contacts the utility concerning the disconnection of service or payment arrangements."[146]

As no one contacted Duke Energy Ohio between October 17 and November 20, 2011, regarding the electric service at the Orchard Street home, Duke Energy Ohio was not required, under the Winter Reconnect Order, to share information about payment plans or financial assistance. But it did. And it did so on three separate occasions – through the pink disconnection bill insert delivered in early October; through the final notice generated on October 19; and through the day-of-disconnection notice left at the property on November 4. And through these notices, Duke Energy Ohio informed its customer at the Orchard Street home about the Winter Reconnect Order, the availability of payment options, and the identity of resources for financial

[144] Amended Complaint, at ¶¶ 7(c) and (d).
[145] *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pp. 6-7 (September 14, 2011).
[146] *In the Matter of the Commission's Consideration of Solutions Concerning the Disconnection of Gas and Electric Service in Winter Emergencies for the 2011-2012 Winter Heating Season*, Case No. 11-4913-GE-UNC, Finding and Order, at pp. 7-8 (September 14, 2011).

aid. As such, Duke Energy Ohio more than satisfied its obligations under the Winter Reconnect Order.

D. Duke Energy Ohio Did Not Violate the Provisions of O.A.C. 4901:1-18-06(A)(3).

In a final effort to cast blame on Duke Energy Ohio, the Complainant now contends that Ms. Lykins was to have received copies of utility bills addressed to her father and mailed to the Orchard Street home.[147] Significantly, Ms. Lykins explained the manner in which she, alone, made this request. Specifically, she claims to have talked with a service technician, who was working in the basement where the gas meter was located, a couple of months prior to November 4, 2011, and that she informed him that "she would like a copy of the bill sent to [her] house."[148] Ms. Lykins admitted that Dorothy Easterling did not contact Duke Energy Ohio in September nor October of 2011 to have Ms. Lykins added to the account.[149] Ms. Lykins further admitted that she never provided the Company with her social security number. And she never contacted Duke Energy Ohio after November 20, 2011, to inquire into why she had not received, at her home, copies of the utility bills mailed to her father.[150] Now, however, based upon this questionable testimony and without having affirmatively plead it in his amended complaint, the Complainant seeks to convince the Commission that Duke Energy Ohio violated O.A.C. 4901:1-18-06(3)(a). But his final effort must fail.

O.A.C. 4901:1-18-06(3)(a) is very specific in terms of its scope. This rule allows "a residential customer to designate a third party to receive notice of the pending disconnection of the customer's service or other credit notices sent to the customer."[151] The rule does not address

[147] Tr. I, at pg. 16.
[148] Tr. I, at pp. 16, 39, and 40.
[149] Tr. I, at pg. 40.
[150] Tr. I, at pg. 41.
[151] O.A.C. 4901:1-18-06(A)(3)(a).

the provision of a utility bill that is not delinquent, as allegedly requested by Ms. Lykins, and thus her baseless allegations cannot give rise to any claim against the Company. Further, as discussed above, Dorothy Easterling was not a Duke Energy Ohio customer and, as such, she had no right to designate third parties to receive notices of disconnection related to the account in her husband's name. But even assuming the Commission were to deem her a customer for purposes of this proceeding, Dorothy Easterling never invoked the right described here. As Ms. Lykins admitted, her mother did not contact Duke Energy Ohio and request that her daughter be added to the account for purposes of receiving disconnection notices. And the Company's processes and records confirm this fact.

As Company witness Byndon explained, the status of an individual relative to a utility account for which they are contacting the Company determines the amount of information they may receive. Customers are authorized to speak freely about their own account.[152] But a third party, to be added to an account in order to receive notifications about it, is subject to specific procedures that commence with the customer of record contacting Duke Energy Ohio and authorizing the addition of a third party to their account.[153] Subsequent to this initial contact by the customer, Duke Energy Ohio would mail the customer a form for their signature and after the executed document is returned to Duke Energy Ohio, the account would be coded as having a third-party notifier and that third party's address would be noted on the customer's account.[154] All of these events are recorded in the Company's CMS,[155] as are service orders.[156]

And with regard to service orders, Ms. Byndon explained that, based upon her experience, "there would always be a corresponding entry indicating why the technician was

[152] Tr. I, at pg. 102.
[153] Tr. I, at pg. 102.
[154] Tr. I, at pg. 106.
[155] Tr. I, at pp. 82.
[156] Tr. I, at pg. 98.

there."[157] Indeed, Ms. Byndon affirmatively dispelled any suggestion that service technicians randomly appear at customers' homes, testifying that "technicians go based on the request that we submit to them. So if there is not a request to go to the property, they are not just going to show up."[158]

As the Company's records confirm, there were no calls by anyone regarding the Easterling account between August and November 19, 2011. And as Ms. Byndon explained, this meant that there was no contact, no questions about the account.[159] Further, unlike the three entries in November 2011, there were no entries indicating that a service technician was dispatched to the Orchard Street home in the few months prior to November or identifying who he may have been.[160] Ms. Byndon, also testified that there were no entries in CMS that the customer had initiated the process for adding a third party to their account.[161] And as Duke Energy Ohio witness Carmosino confirmed through his own review of the CMS records, there was no second address on the Estill Easterling account in 2011.[162] The Complainant cannot refute the overwhelming evidence here that no third party, including Gail Lykins, was added to the account in 2011. And the OCC's attempt to rehabilitate the Complainant's claim with a reference to a December 21, 2012, entry in CMS is unavailing. As Duke Energy Ohio witness Byndon confirmed, [redacted].[163]

E. Duke Energy Ohio Did Not Violate the Provisions of O.A.C. 4901:1-18-09.

Although it filed no causes of action against Duke Energy Ohio in this proceeding, the OCC alone argues that the Company violated O.A.C. 4901:1-18-09 when it disconnected electric

[157] Tr. I, at pg. 98.
[158] Tr. I, at pg. 99.
[159] Tr. I, at pp. 84-85.
[160] Tr. I, at pg. 101. See also, Complainant Exhibit C; OCC Exhibit H, at pg. 3; OCC Exhibit M.
[161] Tr. I, at pg. 108.
[162] Tr. II, at pg. 504.
[163] Conf. Tr. I, at pg. 146.

service at the Orchard Street home on November 4, 2011.[164] But the OCC fails to acknowledge the requirements of that administrative provision or the undisputed evidence in this case that Duke Energy Ohio complied with them.

To be clear, O.A.C. 4901:1-18-09 is designed to ensure that customers of a combination utility receive the same rights under O.A.C. 4901:1-18 as customers who are served by separate natural gas and electric companies. As even the OCC admits, O.A.C. 4901:1-18 relates to disconnection for nonpayment and the notification process associated with same.[165] The rule does not dictate, or even address, the disconnection policies and practices of individual utility companies and it does not create any special or unique rights for combination customers. With regard to the specific scope of this rule, the evidence confirms that Duke Energy Ohio was in compliance.

O.A.C. 4901:18-09(F) does not prescribe the specific notice through which information about separation of services must be provided and this is understandable given that certain notices are required only during the winter heating season. But in conformance with the rule, Duke Energy Ohio provided notice to the Easterlings of the right to retain either gas or electric service on the October 4, 2011, disconnection bill, which clearly explained: "You also have the option to retain or have reconnected one of your services, either gas or electric. Please contact us at the number above to discuss this option."[166] And, as Ms. Lykins confirmed, this language would not have been confusing to her mother. In addition to this written notice, Company witness Danzinger confirmed that had he received a request to separate services, he would have instructed the customer or consumer to contact Duke Energy Ohio's call center to discuss that

[164] OCC Exhibit A, at pg. 14.
[165] OCC Exhibit A, at pg. 14.
[166] Duke Energy Ohio Exhibit C.

request as he could not process it.[167] In addition, all of the Company's communications to the Easterlings in October 2011 and on November 4, 2011, clearly identified the existence of payment plans. Thus, had anyone contacted the Company in October or November regarding the delinquent account or the disconnected electric service or to exercise their right to separate services, they would have been advised of the ability to enter into payment plans for both services or just one, as required under O.A.C. 4901:1-18-09(C). On this point, Duke Energy Ohio would be remiss if it did not address the fallacy in the OCC's argument that the notice of disconnection must detail these specific payment plan options.[168] The rule contains no such requirement and instead addresses the obligations of the Company after a customer receives a disconnection notice and, as mandated under O.A.C. 4901:18-05(A), after the customer contacts the Company.

V. CONCLUSION

The events of November 20, 2011, at the Orchard Street home are unsettling. But as the evidence in this case undeniably confirms, Duke Energy Ohio is not responsible for them. Prior to disconnecting electric service on November 4, 2011, Duke Energy Ohio complied with Commission regulation and it followed its practice and procedures. The Company was available, throughout October and November 2011, to assist so that disconnection of the electric service at the Orchard Street home could have been avoided or service restored. But the Company's actions, as confirmed by its business records, were ignored. The Complainant has not proven otherwise.

Recognizing the evidentiary failures in the Complainant's case, the OCC urges the Commission to find fault with the Company because it did not do more than required under

[167] Tr. II, at pp. 283-284
[168] OCC Exhibit A, at pg. 14.

Commission regulation. But that it is not the test for a complaint proceeding. And even if it were, Duke Energy Ohio would pass the test. Indeed, the Company's policies and procedures were intended to benefit customers – to give them more time and more notice during the disconnection process; to err on the side of caution; to aid customers; and to repeatedly inform. Duke Energy Ohio did that which it is required to do (and more) prior to disconnecting an admittedly delinquent account and the baseless allegations against it must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 11th day of February, 2016 by regular U. S. Mail, overnight delivery or electronic delivery.

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