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THE PUBLIC UTILITY COMMISSION OF OHIO

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PUCO

Gregory Peck
3268 US Highway 52
Felicity, Ohio 45120

Complainant

vs.

Duke Energy Ohio, Inc.

Respondent

Case No. 16-2338-EL-CSS

Complainant's Response to Respondent's Motion to Dismiss (A) and Answer (B)

Now comes the Complainant, Gregory Peck, appearing on his own behalf and pursuant to his complaint against Duke Energy Ohio, Inc. regarding their attempt to collect private information through the use of a "Smart" Meter. Support for this response is set forth in the Memorandum below.

MEMORANDUM

(A) Respondent's Motion to Dismiss

1. The Complainant's allegation of the ability, ease and potential for a "Smart" meter to invade his privacy is provided within the documents submitted with the formal complaint. Generally, PUCO has failed to regulate the information that can be collected from a "Smart" meter without the consent of the home owner. In *Griswold v. Connecticut*, 381 U.S. 484 (1965) it is spelled out that the Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Respondent refuses to supply a letter assuring the "Smart" meter will be used solely to collect information of electric usage in the home. Therefore, Complainant's request for a letter to insure privacy is reasonable. Hence, there are no grounds to dismiss the complaint.

2. Respondent has erred in the heading of its Motion to Dismiss. Complainant's address in the formal complaint is Felicity, not Ripley.

(B) Answer

1. The allegation of Complainant not following form for filing a formal complaint lacks merit. Complainant followed the formal complaint requirements and guidelines provided to him by the Public

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Utility Commission of Ohio (PUCO).

2. Respondent states it is denying allegations without specifying what allegation is being denied. The Complainant's allegation is there exists an ease, ability and potential, with a "Smart" meter to invade the privacy of his home. Any denial of this an allegation is without merit.

3. The Complainant's request for a letter stipulating Respondent will only use the "Smart" meter for purposes specified in their marketing material, sent to him in 2014, to determine the amount of electricity used within a given month through wireless technology is reasonable.

4. The Respondent's defense is without merit since the Respondent has, by their own volition, refused the installation of a "Smart" meter under conditions outlined in the complaint. The Complainant has given the Respondent the opportunity to install a "Smart" meter so long as the Respondent addresses Complainant's concerns of an ability to invade his privacy. As a result, the Respondent is unlawfully billing Complainant \$30.00/month for not having a "Smart" meter installed.

5. PUCO has not addressed the issue of "Smart" meters invading privacy and is allowing the Respondent to place a "Smart" meter on his private house having the ability to unlawfully invade his privacy. The failure to address the privacy issue raised by the Complainant has resulted in the imposition of a PUCO sanctioned penalty fee for non installation. Consideration of protecting Complainant's private home from a possible invasion of his privacy against "Smart" meter technology with the ability, ease and potential for such an invasion must be addressed before a penalty fee can be charged to the Complainant.

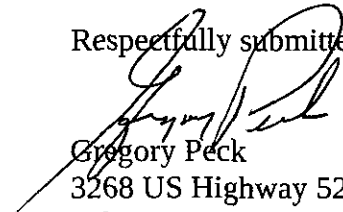
6. In 2014 Complainant offered to call in meter readings to Respondent on a monthly basis with Respondent physically checking the meter on a quarterly basis.

7. Complainant demands relief by having the Respondent provide the requested letter stipulating the purpose and use of a "Smart" meter on his private house. Or, if such a letter is not provided to cease charging Complainant for not having a "Smart" meter installed. Further, Complainant demands full refund of all charges assessed for not having a "Smart" meter installed.

Conclusion

Based on the Complaint Duke Energy needs to provide a letter identifying specific use of the meter or cease charging a \$30/month tax for not having a "Smart" meter installed.

Respectfully submitted,



Gregory Peck
3268 US Highway 52
Felicity, Ohio 45120

MEMORANDUM IN SUPPORT

In *Griswold v. Connecticut*, 381 U.S. 484 (1965) it is spelled out that the Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." With "Smart" meter technology having the ability, ease, and potential to invade a person's privacy it is reasonable to insure the meter will not be unlawfully employed at sometime in the future. *Griswold* further states, "The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment."

Further, *Griswold* supports the concept that all God given fundamental rights, if not enumerated in the Constitution, are protected. *Griswold* states, "The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'"

Griswold references *Boyd v. United States*, 116 U.S. 630 (1886) where it states there is a "sanctity of a man's home and privacies of life" that shall not be invaded. This refers to the government, any of its agents, or any other entity that is not invited into the privacy of a man's home. The Complainant does not wish to forfeit his privacy to technology that can easily violate the "invasion of his indefeasible right of personal security, personal liberty, and private property, where that right has never been forfeited by his conviction."

**BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO**

Gregory Peck
3268 US Highway 52
Felicity, Ohio 45120

Complainant

vs.

Duke Energy Ohio, Inc.

Respondent

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Case No. 16-2338-EL-CSS

Motion for 15 day Extension of Time

The extension is not to be construed as a delay.

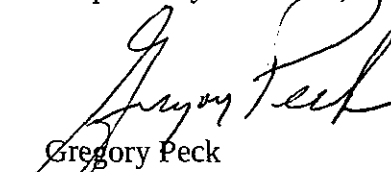
The extension for time is based on the following reasons:

The Complainant received the Answer and Motion for Dismissal on Friday, December 23, 2016. Complainant needed procedural clarification based on Respondent's statement. Complainant made phone calls to the number listed in the formal procedure pamphlet for procedural clarifications everyday during the week of December 26 leaving voice messages with no return phone call until Friday December 30.

Complainant made contact with an agent who stated the case would be handled by Greg Price who was not available on that day. Complainant was attempting to acquire procedural information not provided in its procedural pamphlet. Complainant received a phone call from Dan Fullin, an attorney examiner, on January 3, 2017 to assist in the procedural steps whereby he explained the procedure for me to answer Respondent's claims was limited to 15 days. Because of the holiday delays, Dan told me to file an extension for time along with my answer.

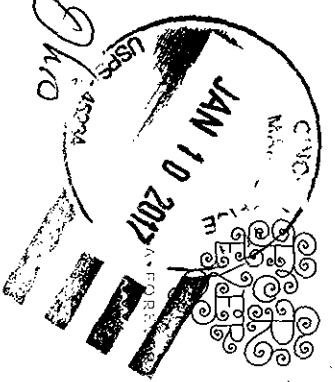
Wherefore, Complainant requests time in order to properly answer Respondent's Motion to Dismiss and Answer.

Respectfully submitted,


Gregory Peck
3268 US Highway 52
Felicity Ohio, 45120

Greg Pearl
3268 US Hwy 52
Felicity, Ohio 45120

Public Utilities Commission of Ohio
180 E. Broad St.
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