**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

Donald Anderson )

8700 E. Kemper Road )

Cincinnati, OH 45249 )

)

Complainant, ) Case No. 16-256-EL-CSS

)

v. ) )

Duke Energy Ohio, Inc. )

)

Respondent )

**REPLY BRIEF OF DUKE ENERGY OHIO, INC.**

1. **INTRODUCTION**

The post-hearing brief filed by Complainant Donald Anderson is not based on, and does not cite to, any evidence actually introduced into the record during the hearing on October 20, 2017. If Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) did not know better, Complainant’s reply brief almost seems to relate to a different case and hearing entirely. Notwithstanding Complainant’s strained effort to make something out of nothing, the Public Utilities Commission of Ohio (Commission) must conclude that Complainant failed to sustain his burden of proof and, therefore, deny his Complaint.

**II. THE COMMISSION MUST DENY COMPLAINANT’S COMPLAINT**

Complainant attempts to address three issues in his post-hearing brief relating to his properties at 6259 Corbly, 85 Red Bud and 2474 Sir Douglas Road. Of those issues, Complainant failed to present adequate evidence to support his claims relating to 6259 Corbly, and did not even argue, much less introduce admissible evidence into the record, regarding his claims relating to 85 Red Bud and 2474 Sir Douglas Road.

6259 Corbly

The first paragraph of Complainant’s post-hearing brief is nothing more than a narrative totally wanting of any connection to the evidentiary record developed during the October 20th hearing. In fact, as the Commission considers pertinent sentences in that paragraph, it becomes readily apparent that Complainant did not prove a single “fact:”

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| Sentence in Paragraph | Actual Evidence in the Record |
| When Duke did a “so called estimate” for 6259 Corbly, the records and testimony showed they did not do that in that they put on an initial charge which was the equivalent of many months of previous history. | Complainant did not offer or introduce his billing records for the disputed estimated charges at 6259 Corbly. Those disputed charges were incurred and billed before any of the monthly bills included in Anderson Ex. 1, which are dated on and after February 2013. Complainant also did not testify about the specific dollar amount of the disputed estimated charges, how that amount allegedly equaled “many months of previous history,” or how Duke Energy Ohio allegedly failed to calculate those estimated charges based on the relevant usage on the account. In sum, the record is silent on all of these matters. |
| Duke new (sic) or should have known that these were fraudulent charges. | Complainant did not introduce a shred of evidence to support this accusation, including the amount of the estimated charges, the history of usage on his account, how the estimate should have been calculated, etc. |
| A reading that was arranged by the PUCO and agreed to by Duke Energy and Mr. Anderson resulted in Duke giving Mr. Anderson a credit of over $1000 for their fraudulent over charging. | Again, the record is devoid of any evidence to support Complainant’s false accusations about “fraudulent overcharging” or any errors or discrepancies with Duke Energy Ohio’s estimated charges on his account at 6259 Corbly. Instead, Duke Energy Ohio’s witness Melissa Coffman explained how and why that credit arose once Complainant finally provided the Company with access to its meters after the initial settlement conference. |
| Although the PUCO had ordered Duke to provide Mr. Anderson with recalculated billings for all the properties through which the charges went, Duke failed to provide Mr. Anderson with that information. | The Commission never ordered any such thing. Complainant may be referring to the parties’ discovery dispute and the Attorney Examiner’s Entry dated March 3, 2017, on the motion to compel. Duke Energy Ohio fully complied with that Entry by producing three years of monthly statements for the referenced accounts and filing proof thereof with the Commission on March 10, 2017. Complainant admittedly did not even review that document production until two days before the hearing.[[1]](#footnote-1) |
| On cross examination, Duke’s representative stated that they had only given Mr. Anderson credit for utility usage, but had not recalculated late charges. | As Duke Energy Ohio’s witness Melissa Coffman testified, Complainant was not entitled to any additional credit. The Company previously billed Complainant for estimated charges in accordance with its tariffs and applicable rules and regulations because Complainant failed to give Duke Energy Ohio access to its meters, as required by law. Once the Company finally was able to read those meters, it billed Complainant for his actual usage. Complainant was not entitled to any additional credits, nor did he prove otherwise. |
| These false late charges appear to have resulted in the remainder of the charges Duke has charged Mr. Anderson. | Complainant did not offer any evidence about “false late charges.” Nor did he offer any evidence about a specific dollar amount of late charges or how that amount related to his disputed charges at any specific property or account. As noted in Duke Energy Ohio’s post-hearing brief, Complainant argued that he may be owed $100-200,[[2]](#footnote-2) but he did not offer any admissible evidence to support that contention. Complainant’s failure to offer documents or testimony to support his conclusion about “false late charges” necessarily precludes the Commission from finding that Complainant sustained his burden of proof on this issue. |

The second issue raised in Complainant’s post-hearing brief relates to “three disconnections” that allegedly happened at 85 Red Bud. Complainant did not offer any evidence about those disconnections during the hearing. Nor did Complainant offer evidence of “12 months payments” that supposedly should not have been made by Complainant to Duke Energy Ohio, the amount of those payments, the time period and monthly bills at issue, etc. Moreover, the Complaint filed in this case does not contain any claim or allegations of fact regarding “three disconnections” at 85 Red Bed or Complainant’s allegations regarding apparent overpayments at 85 Red Bud. As such, it is not an exaggeration to indicate that Complainant’s second issue in his post-hearing brief has nothing whatsoever to do with this case, his Complaint, or the evidentiary record developed at the October 20th hearing.

The last issue raised in Complainant’s brief relates to his wife Carol Anderson’s alleged efforts to have service placed in her name at 2474 Sir Douglas. Carol Anderson is not a party to these proceedings, nor does Complainant’s Complaint state any claim relating to this alleged issue. In addition, Complainant did not offer any evidence at the hearing to support this non-existent claim. As such, Complainant may not use a post-hearing brief to seek relief that falls far outside the purview of the Complaint and evidentiary record.

**III. CONCLUSION**

From the beginning this case has been about Complainant’s claim that Duke Energy Ohio was not allowed to transfer unpaid gas and electric bills from one account in Complainant’s name to other accounts in his name. Duke Energy Ohio easily rebutted that claim at the October 20th hearing through uncontested (and sometimes admitted) evidence that Complainant was the Company’s customer of record on every account; Duke Energy Ohio’s charges were billed in the name of Complainant and sent to him for months/years; and Complainant put service in his name and never asked the Company to put the accounts in any other name. Having disproved the claims actually set forth in the Complaint, the Commission should find that Complainant has not sustained his burden of proof and, therefore, his Complaint against Duke Energy Ohio must be denied.

Respectfully submitted,

/s/ Robert A. McMahon

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was served on Complainant by first class U.S. Mail, postage prepaid, on this 20th day of December, 2017:

|  |  |
| --- | --- |
| Donald Anderson  P.O. Box 342  Loveland, OH 45140 |  |

/s/ Robert A. McMahon

1. Tr. at 37 [↑](#footnote-ref-1)
2. Tr. at 86-87 [↑](#footnote-ref-2)