

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Emmanuel J. Black)	
9411 Stonecrest Court)	
Cincinnati, Ohio 45249)	
)	
Complainant)	Case No. 17-2322-EL-CSS
)	
v.)	
)	
)	
Duke Energy Ohio, Inc.)	
)	
Respondent)	
)	

**MOTION TO DISMISS OF
RESPONDENT DUKE ENERGY OHIO, INC.**

Now Comes Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) and respectfully moves, pursuant to O.R.C. 4905.26, O.A.C. 4901-1-12 and 4901-9-01(C), to dismiss the Complaint filed by Emmanuel J. Black (Complainant). This Complaint should be dismissed with prejudice because it fails to set forth reasonable grounds for complaint against Duke Energy Ohio. A memorandum in support of this motion is attached.

Respectfully submitted,

/s/ Elizabeth H. Watts

Amy B. Spiller (0047277) (Counsel of Record)
Deputy General Counsel
Elizabeth H. Watts (0031092)
Associate General Counsel
Duke Energy Business Services LLC
139 East Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45201-0960
(513) 419-1810 (telephone)
(513) 419-1846 (fax)
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

/s/ Robert A. McMahon

Robert A. McMahon (0064319)
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206
(513) 533-3441 (telephone)
(513) 533-3554 (fax)
bcmahon@emclawyers.com

Attorneys for Respondent Duke Energy Ohio, Inc.

MEMORANDUM OF LAW

O.R.C. 4905.26 requires a complainant to state reasonable grounds for a complaint before a case may go forward.¹ In the absence of a clear statement of the mandatory reasonable grounds, a complaint should be dismissed.² O.A.C. 4901-9-01(C) includes failure to set forth reasonable grounds as a defense or assertion which may be raised by motion.

In this case, Complainant filed a Complaint that does not contain a single allegation against Duke Energy Ohio. His Complaint consists solely of the Public Utilities Commission of Ohio (the Commission) Formal Complaint Form that identifies the parties' names, Complainant's address, and his account number with Duke Energy Ohio, along with a copy of an unidentified easement. That is the extent of the Complaint in this case. Because the Complaint does not set forth reasonable grounds for complaint against Duke Energy Ohio, it must be dismissed with prejudice.

For all of the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission grant its motion and dismiss the Complaint filed by Complainant Emmanuel J. Black with prejudice.

¹ See, e.g., *Ohio Utilities Co. v. Public Utilities Com.*, 58 Ohio St. 2d 153, 156-157 (1979)

² See, e.g., *In the Matter of the Complaint of Diana Williams v. Ohio Edison Co.*, Case No. 08-1230-EL-CSS, 2009 Ohio PUC LEXIS 918, *11 (holding that a complaint must stand on its own and cannot proceed forward without a clear statement of reasonable grounds); *In the Matter of the Complaint of Richard Powell, d.b.a. Scioto Lumber Company, Complainant, v. The Cincinnati Gas & Electric Company*, 88-916-GE-CSS, 1988 Ohio PUC LEXIS 674, *4 (dismissing complaint because, among other reasons, it does not involve a service rendered to the complainant or any regulation affecting the complainant)

Respectfully submitted,

/s/ Elizabeth H. Watts

Amy B. Spiller (0047277) (Counsel of Record)
Deputy General Counsel
Elizabeth H. Watts (0031092)
Associate General Counsel
Duke Energy Business Services LLC
139 East Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45201-0960
(513) 419-1810 (telephone)
(513) 419-1846 (fax)
amy.spiller@duke-energy.com
elizabeth.watts@duke-energy.com

/s/ Robert A. McMahon

Robert A. McMahon (0064319)
Eberly McMahon Copetas LLC
2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206
(513) 533-3441 (telephone)
(513) 533-3554 (fax)
bcmahon@emclawyers.com

Attorneys for Respondent Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss of Respondent Duke Energy Ohio, Inc., was served via regular US Mail postage prepaid, or by electronic mail service, this 22nd day of November 2017, upon the following:

Emmanuel J. Black
9411 Stonecrest Court
Cincinnati, OH 45249

/s/ Elizabeth H. Watts

Elizabeth H. Watts