**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**Ricardo Garnell Lee** )

1305 Ryland Avenue, Apt. 1 )

Cincinnati, Ohio 45237 )

)

Complainant ) Case No. 18-445-EL-CSS

)

)

vs. ) )

**Duke Energy Ohio, Inc.** )

)

Respondent )

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

Pursuant to Ohio Administrative Code 4901-1-12, 4901-1-26, and 4901-9-01(C)(3), Respondent Duke Energy Ohio, Inc. (Duke Energy Ohio), by and through the undersigned counsel, hereby moves to dismiss the above-referenced complaint proceeding for failure to set forth reasonable grounds for complaint and for failure to prosecute. As further set forth herein, Duke Energy Ohio respectfully submits that the Public Utilities Commission of Ohio should dismiss the Complaint with prejudice.

Respectfully submitted,

/s/ Robert A. McMahon

Robert A. McMahon (0064319)

Counsel of Record

Eberly McMahon Copetas LLC

2321 Kemper Lane, Suite 100

Cincinnati, OH 45206

(513) 533-3441

(513) 533-3554 Fax

bmcmahon@emclawyers.com

Rocco D’Ascenzo (0077651)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

Cincinnati, OH 45201-0960

(513) 287-4320

(513) 287-4385 Fax

elizabeth.watts@duke-energy.com

rocco.d’ascenzo@duke-energy.com

**MEMORANDUM IN SUPPORT**

It is well settled that the burden of proof in a complaint proceeding is on the complainant. *Grossman v. Pub. Util. Comm*., 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Revised Code 4905.26, provides that upon complaint in writing against any public utility, “if it appears that reasonable grounds for complaint are stated”… “the commission shall fix a time for hearing.” Complainant in this case fails to meet that burden of proof.

Moreover, Complainant in this proceeding fails to allege that service provided by Duke Energy Ohio, Inc., (Duke Energy Ohio) is unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law. The Complaint is so lacking in substance and coherency as to be non-justiciable in any event. As the Commission is aware, simply because a customer files a complaint does not mean that the complaint should go forward or be scheduled for hearing. The Complainant’s statement in this case fails to allege any violation of any Commission rule or statute. Accordingly, the Commission should dismiss the Complaint with prejudice. See, *Lane v. Columbia Gas of Ohio, Inc.* (May 9, 2012), Case No.12-744-GA-CSS, 212 Ohio PUC LEXIS 451; *Seketa v. The East Ohio Gas Co*. (Aug.9, 2006), Case No.06-549-GA-CSS, 2006 Ohio PUC LEXIS 447.

The Commission also should dismiss the Complaint for Complainant’s failure to prosecute his claims and his failure to attend two settlement conferences. On September 4, 2018, Duke Energy Ohio representatives traveled to Columbus from Cincinnati for the initial settlement conference, only to learn after they had arrived that Complainant would not be present. Complainant waited until the morning of that settlement conference to contact Duke Energy Ohio. While Complainant had an excuse for his late notice on that date, the Commission expressly warned that his failure to attend the second settlement conference may result in a dismissal of his case:

Complainant is hereby put on notice that, in the event that he is unable to attend the scheduled settlement conference, he must provide at least 24 hours advance notice to the attorney examiner of his inability to attend, along with the reason why he is not able to attend. Otherwise, any unexcused failure by Complainant to attend, might result in a recommendation to the Commission that this complaint be dismissed, with prejudice.[[1]](#footnote-1)

Complainant also failed to attend the October 29th settlement conference. Notwithstanding the Entry’s requirements, Complainant did not provide advance notice to the Commission or Duke Energy Ohio, nor has he provided any excusable reason since then as to why he could not be in attendance. And, once again Duke Energy Ohio’s representatives traveled from Cincinnati to Columbus for the second settlement conference, only to learn that Complainant had failed to appear.

Given Complainant’s failure to attend two settlement conferences, including one after an express warning of the consequences, Complainants’ Complaint should be dismissed for failure to prosecute. See, e.g., *In the Matter of the Complaint of H.M.T., Inc. v. The Cleveland Electric Illuminating Co.*, 2010 Ohio PUC LEXIS 1389 at \*2; *In the Matter of the Complaint of Rutherford Dawson v. The East Ohio Gas Co.*, 1993 Ohio PUC LEXIS 1041. Duke Energy Ohio should not be required to defend this baseless action when Complainant fails to attend mandatory settlement conferences.

WHEREFORE, Duke Energy Ohio respectfully requests that the Complaint be dismissed with prejudice.

Respectfully submitted,

/s/ Robert A. McMahon

Robert A. McMahon (0064319)

Counsel of Record

Eberly McMahon Copetas LLC

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rocco.d’ascenzo@duke-energy.com

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served via regular US Mail, postage prepaid, on this 14th day of November, 2018, upon the following:

Ricardo Garnell Lee

1305 Ryland Avenue, Apt. 1

Cincinnati, OH 45237

/s/ Robert A. McMahon

1. Entry ¶ 7 (September 19, 2018). [↑](#footnote-ref-1)