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VIA OVERNIGHT MAIL

PUCO

March 16, 2007

Public Utilities Commission of Ohio
Docketing Division
13th Floor
180 East Broad Street
Columbus, OH 43215-3716

RE: In the Matter of the Complaint:
James Byerly, Jr.; Benjamin F. Wissel; Shirley J. Newman; Daniel J. Ledford; and
Patricia B. Ingram v. Duke Energy Ohio, Inc.
Case Nos. 07-196-EL-CSS; 07-197-EL-CSS; 07-198-EL-CSS; 07-263-EL-CSS;
and 07-265-EL-CSS

Dear Sir or Madam:

Enclosed please find an original and 12 copies of Duke Energy Ohio's Answer in each of the following cases:

1. PUCO Case No. 07-196-EL-CSS James Byerly, Jr. v. Duke Energy Ohio, Inc.;
2. PUCO Case No. 07-197-EL-CSS Benjamin F. Wissel v. Duke Energy Ohio, Inc.;
3. PUCO Case No. 07-198-EL-CSS Shirley J. Newman v. Duke Energy Ohio, Inc.;
4. PUCO Case No. 07-263-EL-CSS Daniel J. Ledford v. Duke Energy Ohio, Inc.; and
5. PUCO Case No. 07-265-EL-CSS Patricia B. Ingram v. Duke Energy Ohio, Inc.

Please return two (2) file-stamped copies of each filing to me in the overnight mail envelope provided.


If you have any questions, please feel free to contact me at (513) 287-4326.

Sincerely,


Rocco O. D'Ascenzo
Counsel

ROD/sew
Enclosures

cc: All parties of record (w/encl.)

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FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

**In the Matter of the Complaint of
Benjamin F. Wissel
30 E. Central Parkway #501
Cincinnati, OH 45202**

Case No. 07-197-EL-CSS

Plaintiff,

v.

Duke Energy Ohio, Inc.,

Respondent.

ANSWER OF RESPONDENT DUKE ENERGY OHIO, INC.

For its answer to the complaint of Plaintiff Benjamin F. Wissel ("Complainant"), Duke Energy Ohio, Inc., (DE-Ohio) states as follows:

FIRST DEFENSE

1. DE-Ohio admits that Benjamin F. Wissel is a consumer of DE-Ohio.
2. DE-Ohio is without sufficient information to either admit or deny Complainant's statement that "[m]y wife, Melanie, and I own and reside in a condominium." DE-Ohio admits that the billing address is 30 E. Central Parkway, #501, Cincinnati, Ohio 45202. DE-Ohio also admits that it is a renovated office building.
3. DE-Ohio denies that it charges rates that are "unjust and unreasonable." DE-is charging its appropriate tariffed rate.
4. DE-Ohio admits that Complainant is charged pursuant to the Company's Secondary Distribution Service - Small (Rate DM), and not Residential Service (Rate RS) because

Complainant receives three phase (3ph) electric service to the meter. Rate RS by its Commission approved terms, expressly excludes 3ph service. DE-Ohio admits that its Rates DM and DS could result in greater charges than under Rate RS.

5. DE-Ohio is without sufficient knowledge or information to either admit or deny that “many residents in our building have reached peak demand which has placed them at an even higher rate.” DE-Ohio admits that it is required to charge its tariffed rates and that the building in question receives 3ph electrical service.
6. DE-Ohio admits that the building was a former office building. DE-Ohio is without sufficient information or knowledge to admit or deny that the “developer for practical reasons chose to extend this 3 phase power to each residential unit and at that point tap each leg of that power to service each unit.” DE-Ohio admits that the building is wired for 3ph service and that each tenant’s meter receives 3ph service. This wiring was done by the developer and against the recommendation of DE-Ohio.
7. DE-Ohio is without sufficient knowledge or belief to admit or deny Complainant’s allegation that the “individual units do not require 3 phase usage.” Regardless of what the units may or may not require, they are wired for and do in fact receive 3 ph service.
8. DE-Ohio is without sufficient knowledge or belief to admit or deny Complainant’s allegation that its representatives said that there are no other residential buildings in the same situation. DE-Ohio admits that the Company explained to the residents that it must charge its applicable tariffed rates according to the terms of the tariffs.

AFFIRMATIVE DEFENSES

In addition to the foregoing specific answers to the allegations raised by Complainant, DE-Ohio raises the following defenses:

9. DE-Ohio asserts as an affirmative defense that pursuant to R. C. 4905.26 and O. A. C. 4901-9-01(B)(3), Complainant has failed to set forth reasonable grounds for complaint.
10. DE-Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, DE-Ohio has provided reasonable and adequate service under applicable tariffed rates to Complainant in accordance with all applicable provisions of Title 49 of the Ohio Revised Code and regulations promulgated thereunder, and in accordance with DE-Ohio's filed tariffs, and all applicable state and federal laws and industry standards.
11. DE-Ohio asserts as an affirmative defense that it does not have a Commission approved tariff for residential 3ph electric service. DE-Ohio charges rates for all consumers according to the appropriate tariff for the installed electrical service.
12. DE-Ohio asserts as an affirmative defense that it breached no legal duty owed to Complainant.
13. DE-Ohio asserts as an affirmative defense that to the extent that Respondent violated any applicable statute, regulation, industry standard, reliability guidelines or tariff provision, which is expressly denied, such violation was not the proximate cause of any injury alleged by Complainant.
14. DE-Ohio asserts that the Complainant is requesting this Commission award monetary damages or adjusts bills back to the time of the purchase of the condominium, that service has been rendered and billed according to the metered service and that such a remedy is outside the jurisdiction of this Commission.

15. DE-Ohio asserts as an affirmative defense that the Company did not perform the actual wiring of the building. DE-Ohio did what it could to prevent the installation of 3ph service to the residential units. In October 2003 DE-Ohio was contacted concerning service availability for the subject address. DE-Ohio representatives met with the building owners and their consulting agent on June 14, 2004. DE-Ohio was provided load calculations, and a one line wiring diagram from the electrician which showed 3ph 4W meters being installed for the residential condominium units. DE-Ohio advised against this course. DE-Ohio met with the electrician who referred them to the consultant on the project to advise against installation of 3ph wiring. DE-Ohio's last conversation with consultants was in March 2005. It was expressed to DE-Ohio by the building consultant that they understood the cost difference and were still pursuing the installation of 3 ph metering due to the size of the units.
16. DE-Ohio reserves the right to raise additional affirmative defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

WHEREFORE, having fully answered, Duke Energy Ohio, Inc., respectfully moves this Commission to dismiss the Complaint of Benjamin F. Wissel, for failure to set forth reasonable grounds for complaint and to deny Complainant's Requests for Relief.

Respectfully submitted,



Reeco D'Ascenzo (Trial Attorney)

Counsel

Paul A. Colbert

Associate General Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was sent via regular U.S. Mail, postage prepaid to the following party of record this 16th day of March 2007.

Benjamin F. Wissel
30 E. Central Parkway #501
Cincinnati, OH 45202



Rocco O. D'Ascenzo
Counsel