

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2010 JUL 20 AM 9:30

PUCO

Michael K. Smith
1989 Bethel Hygiene Road
Bethel, OH 45106

Complainant,

v.

Duke Energy Ohio, Inc.

Respondent.

Case No. 10-919-EL-CSS

ANSWER OF DUKE ENERGY OHIO, INC.

For its Answer to the Complaint of Michael K. Smith (Complainant), Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) states as follows:

1. Duke Energy Ohio denies all allegations of the Complaint.

AFFIRMATIVE DEFENSES

2. The Complaint fails to state a claim against Duke Energy Ohio upon which relief may be granted.
3. Duke Energy 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.
4. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, Duke Energy Ohio has provided reasonable and adequate service and has billed the Complainant according to all applicable provisions of Title 49 of the

3
This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business. Technician MM Date Processed 7/20/10

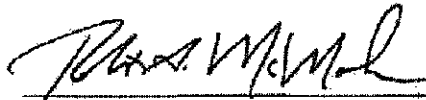
Ohio Revised Code and regulations promulgated thereunder, and in accordance with all of Duke Energy Ohio's filed tariffs.

5. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, the Company acted in conformance with O.A.C. 4901:1-10-22-23 and R.C. 4933.28 with respect to the Company's billings to Complainant.
6. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, the Company acted in conformance with O.A.C. 4901:1-13-4 with respect to reading Complainant's meters.
7. Duke Energy Ohio asserts as an affirmative defense that at all times relevant to Complainant's claims, the Company acted in conformance with O.A.C. 4901:1-10-05 with respect to the meters installed at Complainant's property.
8. Duke Energy Ohio asserts as an affirmative defense that Complainant has not stated any request for relief, including relief which may be granted by this Commission.
9. Duke Energy Ohio asserts that to the extent Complainant is seeking monetary damages, such relief is beyond the scope of the jurisdiction of this Commission.
10. Duke Energy Ohio asserts as an affirmative defense that Complainant received and enjoyed the benefit of the electricity services provided by the Company from August 2009 through February 2010 and, therefore, should pay Duke Energy Ohio for such services regardless of any technical or alleged issues or problems associated with the meters and billings.
11. Duke Energy 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.

CONCLUSION

WHEREFORE, having fully answered, Duke Energy Ohio, Inc. respectfully moves this Commission to dismiss the Complaint of Michael K. Smith for failure to set forth reasonable grounds for the Complaint and to deny Complainant's Request for Relief, if any.

Respectfully submitted,



Robert A. McMahon (0064319)

Counsel of Record

Eberly McMahon LLC

2321 Kemper Lane, Suite 100

Cincinnati, OH 45206

tel: (513) 533-3441

fax: (513) 533-3554

email: bmcmahon@emh-law.com

Elizabeth H. Watts

Assistant General Counsel

Duke Energy Business Services Inc.

155 East Broad Street, 21st Floor

Columbus, OH 43215

tel: (614) 222-1331

fax: (614) 221-7556

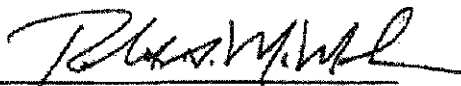
email: elizabeth.watts@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to the complaint of Michael K. Smith was served via regular US Mail, postage prepaid, this 20 day of July, 2010, upon the following:

Michael K. Smith
1989 Bethel Hygiene Road
Bethel, OH 45106



Robert A. McMahon