

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

Marilyn J. Rhodes)	
9846 Arvin Avenue)	
Cincinnati, OH 45236)	
)	
Complainant,)	Case No. 14-834-GA-CSS
)	
v.)	
)	
Duke Energy Ohio, Inc.)	
)	
Respondent)	

MOTION OF RESPONDENT DUKE ENERGY OHIO, INC.
TO DISMISS AMENDED COMPLAINT
AND REQUEST FOR EXPEDITED RULING ON
RESPONDENT’S RIGHT TO DISCONNECT SERVICE FOR NONPAYMENT

Now comes Duke Energy Ohio, Inc. (the “Company” or “Duke Energy Ohio”) and, pursuant to Ohio Adm.Code §4901-1-12 and 4901-9-01-(C)(3), hereby moves to dismiss the Amended Complaint with prejudice on the grounds that the Amended Complaint fails to set forth reasonable grounds for complaint against Duke Energy Ohio. Respondent further requests an expedited ruling on its right to disconnect Complainant’s services for nonpayment in accordance with its tariffs on file with the Commission and Ohio Adm.Code 4901-9-01(E). A memorandum of law in support of this motion is attached.

Respectfully submitted,

/s/ Robert A. McMahon

Robert A. McMahon (0064319)

Counsel of Record

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Attorneys for Respondent

Duke Energy Ohio, Inc.

MEMORANDUM OF LAW

Introduction

The Commission should dismiss this action once and for all. The Attorney Examiner gave Complainant ample opportunity to identify the grounds for her complaint against Duke Energy Ohio. Having taken two bites at the apple, Complainant still has not explained what portion of her usage and bills are in dispute and how the Company allegedly violated a statute, rule or regulation of the Commission. In addition, Complainant has not agreed to pay Duke Energy Ohio for the amounts not in dispute as required by Ohio Adm.Code 4901-9-01(E). Accordingly, Complainant's Amended Complaint must be dismissed. Should the Commission deny or delay the dismissal of this action contrary to the law, Duke Energy Ohio requests an expedited ruling which allows the Company to enforce its filed tariffs by disconnecting Complainant's services for nonpayment as it is authorized by law.

Complainant's Legally and Factually Deficient Amended Complaint

For the reasons stated in Duke Energy Ohio's original motion to dismiss, Complainant's Complaint should have been dismissed at the outset because nothing contained within the four corners of the Complaint sets forth any factual or legal basis for a complaint against Duke Energy Ohio. The Attorney Examiner decided, over the Company's objections, to give Complainant an opportunity to amend her complaint by providing specific information in response to Duke Energy Ohio's supplemental filing regarding Complainant's billing and payment history, Complainant's unpaid bills, and the payment options available to Complainant for the amounts not in dispute.

In the amendment to her Complaint dated June 19, 2014,¹ Complainant completely ignored the Attorney Examiner's order in every possible manner:

a) Complainant's disputed usage, bills and payments

It is difficult to follow Complainant's filing but, from what the Company can gather, Complainant now may believe that a grand total of \$210 is in dispute. That is the **only** charge identified by Complainant in her amended filing in this case. Notably, that charge is from May 2003, more than 11 years ago! But, even Complainant's dispute of this charge is based on a fundamental misunderstanding of the facts and her account history. As referenced in the original bill issued by Duke Energy Ohio back in February 2003 and the spreadsheet attached to Duke Energy Ohio's recent filing on June 16th, the \$210 charge was the security deposit required for Complainant's new service. That sum was **not** transferred from another account, plain and simple. Duke Energy Ohio was entitled to obtain a security deposit from this new customer. Considering that Complainant has never disputed that lawful charge in 11 years and still cannot dispute the charge based on any legitimate legal grounds, Complainant's Complaint fails as a matter of law.

b) Duke Energy Ohio's alleged violation of law

Even though the Attorney Examiner instructed Complainant to explain "what actions taken by Duke that are involved in this complaint violated a statute, rule, or regulation of the Commission," Complainant has not done so. The reason is clear: Duke Energy Ohio has not violated any statute, rule, or regulation of the Commission, whether with respect to the only possible charge in dispute (the \$210 security deposit from

¹ As of June 26, 2014, Complainant's amended filing has not been docketed with the Commission. A copy is attached as Exhibit A to avoid further delay in this case.

February 2003) or in any other manner. Complainant's refusal and inability to comply with the Attorney Examiner's mandate merits the Commission's immediate dismissal of her Complaint and Amended Complaint.

- c) Relevance of Complainant's miscellaneous attachments to and information in to her Complaint

Notably, Complainant once again ignored the Attorney Examiner's order to explain the possible relevancy to this proceeding of any of the documents and information which Complainant included with her complaint. Complainant cannot do the impossible or explain the inexplicable. The Commission does not have jurisdiction to entertain Complainant's allegations or claims relating to some unexplained fraud, mail diversion or actions taken by others (not Duke Energy Ohio) with her credit history.

- d) Complainant's calculation of amount not in dispute

Even when given another chance by the Attorney Examiner to identify what amount is not in dispute—and to pay that amount as required by Ohio Adm.Code 4901-9-01(E)—Complainant flatly disregards that portion of the entry. In fact, the **entire** balance due of \$3,063.20 as of June 3rd is undisputed. Complainant cannot plausibly claim otherwise, nor has she bothered to try.

Expedited Ruling on Duke Energy Ohio's Disconnection of Services

The Commission now has before it a detailed record regarding Complainant's account and payment history with Duke Energy Ohio, the undisputed amount owed by Complainant to the Complainant, and Complainant's complete and utter inability to articulate how Duke Energy Ohio somehow violated a statute, rule or regulation of the Commission. Duke Energy Ohio must be allowed without further delay to disconnect Complainant's services for nonpayment in accordance with its filed tariffs. At this point,

Duke Energy Ohio will read Complainant's meters on July 1st and then issue her next bill two weeks later. Considering that Complainant has not made a payment of any undisputed bills since February 19, 2014, the Commission must put an immediate end to Complainant's disregard of the law and Duke Energy Ohio's right to be paid for the gas and electric services which she has used. Both the Company and its rate payers (who actually pay their bills) will be prejudiced if the Commission continues to prevent Duke Energy Ohio from lawfully disconnecting Complainant's services for nonpayment as authorized by law and its tariffs filed with the Commission.

WHEREFORE, Respondent Duke Energy Ohio, Inc. respectfully moves this Commission to dismiss the Complaint (as amended) of Marilyn J. Rhodes with prejudice for failure to set forth reasonable grounds for the Complaint; issue an expedited ruling on Duke Energy Ohio's right to disconnect Complainant's services for nonpayment; and grant the Company such other, further and different relief as is just and proper.

Respectfully submitted,

/s/ Robert A. McMahon
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served via regular US Mail, postage prepaid, on the 26th day of June, 2014, upon the following:

Marilyn J. Rhodes
9846 Arvin Avenue
Cincinnati, OH 45236

/s/ Robert A. McMahon

6-19-2014 Marilyn J Rhodes
copies sent to
Cherly McMahon LLC 9846 Arvin Ave
2321 Kemper Lane Cincinnati, Ohio 45231
Cincinnati Ohio 45206

Case no-14-834-6A-CSS

EXHIBIT A

attention Public Utilities Commission
of Ohio - In Reference To The
Letter I Marilyn J Rhodes Received
Mon-6-16-2014 From Cherly
McMahon LLC 2321 Kemper Lane
Suite 100 Cincinnati, Ohio 45206

I Still Stand by and Requesting

Not to be disconnected of My Service
at 9846 Arvin Ave Cincinnati Ohio 45231

I Never Started Service on 2-1-2003
which Ex Spouse William B. Rhodes
was responsible for all Service at
9846 Arvin Ave Cincinnati, Ohio 45231
which was always in His Name
Only I lived at 9846 Arvin Ave
Cincinnati Ohio 45231 Since 1971 and
no where else nor did I Never lived
at 2505 Vera Ave apt 4 Cincinnati Ohio
45237 or any where else. Nor did I
as stated in letter for a 3 months Installment
plan of \$70.00 of a Bal. \$210.00 Beginning at 2-1-03
I was still in House Court Review Court
which was final on 2-25-2003, My
Service at 9846 Arvin Ave Cincinnati, Ohio 45231
which a new acct. no. and My Meter Reading Showed
be paid After The new acct. Showed have been

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6-19-2014 Marilyn J Rhodes
9846 Arvon Ave Cincinnati, Ohio 45231

after The End of 2-2003 and Nor
I was Responsible for any Past due
Bills at 9846 Arvon Ave Cincinnati, Ohio
45231 nor any Else, which I never
lied any Else Nor Responsible for any
Bills anywhere else where I spoke
William B Rhodes lived at nor did
I never lived at 6126 Belmont St
College Hill where I spoke Brother
Arthur Rhodes and Marion Rhodes lived
at ~~6126~~ Rhode no not minor
which they used 513-731-0989 also
513-541-6305 also 513-376-8450
using my address 9846 Arvon Ave
Cincinnati, Ohio 45231, which were
associated with 9846 Arvon Ave
Cincinnati, Ohio 45231 as well as
Time Warner where they used
associated with 9846 ~~Arvon~~ Arvon
Cincinnati Ohio 45231. They like
Haven't Given all copies on
Bills at 9846 Arvon Ave Cincinnati
Ohio 45231 which my service started
in my Name Marilyn J Rhodes after
The End of 2-2003, Not Before, also
I never lied any where Else Nor
did I never have a Duke nor any
service in my Name Marilyn J Rhodes
Before 3-1-2003 and Not Responsible
for any Bills anywhere Else nor any
Bills ~~associated~~ associated with nor any
Past Bills which William B Rhodes anywhere.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/26/2014 10:50:53 AM

in

Case No(s). 14-0834-GA-CSS

Summary: Motion Motion of Respondent Duke Energy Ohio, Inc. to Dismiss Amended Complaint and Request for Expedited Ruling on Respondent's Right to Disconnect for Nonpayment. electronically filed by Mr. Robert A. McMahon on behalf of Duke Energy Ohio, Inc.