

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Dave Boyd d/b/a East Sparta Recreation,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Case No: 15-1252-EL-CSS</b>
	)	
<b>Ohio Power Company</b>	)	
	)	
<b>Respondent.</b>	)	

**ANSWER AND MOTION TO DISMISS OF OHIO POWER COMPANY**

Ohio Power Company d/b/a AEP Ohio (“AEP Ohio” or the “Company”) hereby responds to the complaint filed in this proceeding by Dave Boyd d/b/a East Sparta Recreation (“Complainant”) on July 6, 2015 (“Complaint”) through this Answer and Motion to Dismiss.

**ANSWER TO ALLEGATIONS**

1. AEP Ohio denies any and all allegations of the Complaint.

**AFFIRMATIVE DEFENSES**

1. AEP Ohio asserts as an affirmative defense that under Ohio Revised Code §4905.26 and Ohio Administrative Code Rule §4901-9-01(C)(3), Complainant has failed to set forth reasonable grounds for a complaint.
2. AEP 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.

**MOTION TO DISMISS**

The Complainant’s claim against AEP Ohio should be dismissed for two reasons. First the Complainant’s fictitious name East Sparta Recreation is not registered with the Ohio

Secretary of State and therefore this action may not be sustained under Ohio Rev. Code §1329.10. Second, this complaint should be dismissed because the Complainant fails to set forth reasonable grounds for the claim. The Complainant does not claim that AEP Ohio violated any statute, regulation, Commission order, or tariff.

**I. The complaint should be dismissed because East Sparta Recreation is not a name registered with the Ohio Secretary of State**

In order for an action to be sustained under the name of East Sparta Recreation, that name must be registered with the Ohio Secretary of State. Ohio law specifies that no person is allowed to maintain an action while using a trade or fictitious name until they have complied with Ohio Rev. Code §1329.01.<sup>1</sup> In order for a person to comply with §1329.01, they must register the trade name or fictitious name with the Ohio Secretary of State's office.

A search of the Ohio Secretary of State's records reveals that "East Sparta Recreation" has not been registered with that office. However, the account with AEP Ohio is clearly in the name of East Sparta Recreation, as evidenced by the bill attached the original complaint. Compl. at 3. Since East Sparta Recreation is not registered as a trade name or fictitious name, this complaint should be dismissed pursuant to the statute.

**II. The Complaint should be dismissed for failure to set forth reasonable grounds for the complaint.**

It is axiomatic that the burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Under Ohio Rev. Code §4905.26, the Commission may hold a hearing on a complaint only "if it appears that reasonable grounds for complaint are stated." Here, Complainant has failed to carry that burden.

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<sup>1</sup> "No person doing business under a trade name or fictitious name shall commence or maintain an action in the trade name or fictitious name in any court in this state or on account of any contracts made or transactions had in the trade name or fictitious name until it has first complied with section 1329.01 of the Revised Code..." Ohio Rev. Code §1329.10.

AEP Ohio breached no legal duty owed to Complainant, and Complainant has failed to state reasonable grounds upon which relief may be granted. Complainant has not identified any Commission rule or regulation that AEP Ohio has violated. Accordingly, dismissal is appropriate on grounds that Complainant failed to state reasonable grounds upon which relief may be granted.

WHEREFORE, Ohio Power Company respectfully requests that the Complaint be dismissed with prejudice.

### **CONCLUSION**

Having fully answered, AEP Ohio respectfully moves this Commission to dismiss the Complaint with prejudice for failure to set forth reasonable grounds for the Complaint.

Respectfully submitted,

/s/ Steven T. Nourse  
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*Counsel for Ohio Power Company*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Answer and Motion to Dismiss of Ohio Power Company was served by regular mail upon the address listed below, on this 17th day of July, 2015.

/s/ Steven T. Nourse  
Steven T. Nourse

Dave Boyd d/b/a East Sparta Recreation  
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**This foregoing document was electronically filed with the Public Utilities**

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Summary: Answer and Motion to Dismiss electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company