

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Shawn Anderson

3766 E. Mason Morrow Rd.

Morrow, Ohio 45152

Complainant

vs.

Duke Energy Ohio, Inc.

Respondent

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Case No. 16-1564-EL-CSS

MOTION TO DISMISS OF RESPONDENT DUKE ENERGY OHIO, INC.

Pursuant to Ohio Administrative Code 4901-9-01(C)(1) and (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. As further set forth herein, Duke Energy Ohio respectfully submits that the Public Utilities Commission of Ohio should dismiss the Complaint.

Respectfully Submitted,



Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street, 1303-Main

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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.

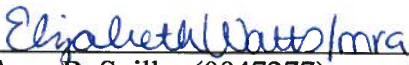
Moreover, Complainant in this proceeding fails to allege that service provided by Duke Energy Ohio, Inc., (Duke Energy Ohio) is unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law. Indeed, Complainant’s merely alleges that a check was received later than anticipated. Complainant has not alleged that Respondent failed to properly apply its tariffs on file with the Commission and has failed to complaint as to any cognizable matter in this frivolous complaint. The Complaint is so lacking in substance 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.

Complainant has failed to state reasonable grounds upon which relief may be granted. Dismissal with prejudice of this Complaint is appropriate.

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

Respectfully Submitted,


Amy B. Spiller (0047277)
Deputy General Counsel
Elizabeth H. Watts (0031092)
Associate General Counsel
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to the complaint of Shawn Anderson was served via regular US Mail postage prepaid, this 27th day of July 2016, upon the following:

Shawn Anderson
3766 E. Mason Morrow Road
Morrow, Ohio 45152


Elizabeth H. Watts

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/27/2016 10:41:08 AM

in

Case No(s). 16-1564-EL-CSS

Summary: Motion Motion to Dismiss of Respondent Duke Energy Ohio, Inc. electronically filed by Ms. E Minna Rolfes on behalf of Amy B. Spiller and Elizabeth H. Watts and Duke Energy Ohio, Inc.