

FILE FAX

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Krist Bussart,

Complainant,

v.

Ohio Power Company,

Respondent.

Case No: 16-2149-EL-CSS

PUCO

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ANSWER AND MOTION TO DISMISS OF OHIO POWER COMPANY

Ohio Power Company d/b/a AEP Ohio ("AEP Ohio" or the "Company")¹ hereby responds to the complaint filed in this proceeding by Krist Bussart ("Complainant") on October 31, 2016 ("Complaint") through this Answer and Motion to Dismiss.

ANSWER TO ALLEGATIONS

1. AEP Ohio admits on information and belief that Complainant is a customer of AEP Ohio.
2. AEP Ohio admits on information and belief that during Complainant's time as a customer of AEP Ohio, Complainant was on the Percentage of Income Payment Plan ("PIPP") at some point.
3. AEP Ohio denies any and all remaining 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.

¹ Complainant names AEP as the Respondent. Ohio Power Company is the correct entity.

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2. Pursuant to Ohio Administrative Code Rule § 4901-9-01(B), Complainants have failed to clearly explain the facts which constitute the basis of their Complaint.
3. AEP Ohio, at all times, complied with Ohio Revised Title 49; Commission rules, regulations and orders; and the applicable Tariff.
4. Complainant has failed to name a necessary party in that AEP Ohio is not the party responsible for re-evaluating Complainant's PIPP amount.
5. The Public Utilities Commission of Ohio does not have subject matter jurisdiction over the allegation that AEP Ohio broke a lock on the building described in the Complaint, which AEP Ohio denies, because it is an allegation of pure tort and is not electric-service related.
6. 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 WITH PREJUDICE

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 R.C. 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.

Complainant is alleging that his PIPP amount was not re-evaluated. AEP Ohio has no control over re-evaluating a customer's PIPP amount. Thus, Complainant has failed to state reasonable grounds upon which relief can be granted from AEP Ohio.

Complainant further alleges that AEP Ohio damaged a lock to the utility closet in the building that he resides in. This claim is purely grounded in tort law, is not electric-service related, and therefore the Commission does not have subject matter jurisdiction over it.

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/ Ryan F.M. Aguiar

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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 18th day of November, 2016.

/s/ Ryan F.M. Aguiar
Ryan F.M. Aguiar

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