

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Shawn Anderson)	
3766 E. Mason Morrow Rd.)	
Morrow, Ohio 45152)	
)	
Complainant)	
)	Case No. 16-1564-EL-CSS
vs.)	
)	
Duke Energy Ohio, Inc.)	
)	
Respondent)	

**DUKE ENERGY OHIO, INC.'S
MEMORANDUM CONTRA MOTION OF SHAWN ANDERSON
AND SECOND MOTION TO COMPEL**

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and submits the following memorandum in opposition to the correspondence of Shawn and Karen Anderson submitted to the Commission on December 6, 2016, in these proceedings.

I. Procedural History

Complainant Shawn Anderson (Complainant) initiated his complaint against the Company on July 13, 2016. The Company answered the complaint and moved to dismiss this case on July 27, 2016. Thereafter, a settlement conference was held on September 1, 2016. A hearing was scheduled for November 10 and continued at the Company's request to November 18, 2016.

On October 24, 2016, the Company filed a notice to take the deposition of Shawn Anderson on November 4, 2016. On November 4, the Company and the Court Reporter were

present for the noticed deposition, but Complainant did not appear. A copy of the transcript of the deposition is attached hereto as Exhibit A. Five days after the Complainant failed to appear, the Company filed a motion to compel and a motion to continue the hearing date. On November 14, 2016, the Attorney Examiner granted the Company's motion and continued the hearing to January 20, 2016. Thereafter, the Company submitted a second notice of deposition to Complainant. Said deposition is to take place on January 4, 2016. In response to this notice, Complainant has filed correspondence inappropriately restating his complaint and stating that he "will not take time off work and drive to Duke's office..."

Although not denominated as such, Duke Energy Ohio understands this correspondence, in essence, to constitute a motion for a protective order to which complainant is not entitled and will respond accordingly.

II. Discussion

The Commission's Rule 4901-1-16, Ohio Administrative Code (O.A.C.), provides that "any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding," and that "discovery may be obtained through interrogatories, requests for production of documents and things or permission to enter upon land or other property, depositions, and requests for admission."

Rule 4901-1-21 further provides that "[a]ny party to a pending commission proceeding may take the testimony of any other party or person, other than a member of the commission staff, by deposition upon oral examination with respect to any matter within the scope of discovery..."

Complainant, in his correspondence, seeks to avoid compliance with the Commission's procedures while at the same time continuing to denigrate the Company for various reasons that

do not constitute any violation of rule or law. The Commission, presumably in its effort to make accommodations for a party unfamiliar with the rules, has already given this Complainant a great deal of latitude with respect to his frivolous claims. In fairness to the Company and its customers, who bear the costs of such vexatious claims, the Commission should require Complainant to prosecute his case or be dismissed.

In response to the Company's previous motion to compel, the attorney examiner observed that the Company's motion to compel and motion to continue were not filed until after Complainant failed to appear. In compliance with the attorney examiner's reminder, the Company is submitting a second motion to compel, in anticipation of Complainant refusing to appear for deposition.

If Complainant again refuses to appear for deposition, the Company respectfully submits that this complaint is ripe for dismissal for failure to prosecute. For the reasons stated herein, Duke Energy Ohio respectfully requests that the Commission deny Complainant's request to be excused from appearing for deposition or otherwise dismiss this complaint.

Respectfully submitted,

Duke Energy Ohio, Inc.

A handwritten signature in blue ink that reads "Elizabeth H. Watts" followed by a date "06/10".

Amy B. Spiller (0047277)

Deputy General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Duke Energy Business Services LLC

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P.O. Box 960

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elizabeth.watts@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 7th day of December, 2016, to the following parties.


Elizabeth H. Watts

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

SHAWN ANDERSON, :
Complainant, :
vs. : CASE NO. 16-1564-EL-CSS
DUKE ENERGY OHIO, INC., :
Respondent. : ORIGINAL

The deposition of SHAWN ANDERSON, the
complainant herein, taken as on cross-examination by
the respondent pursuant to the Ohio Administrative
Code 4901-1-21(B) and Notice to Take Deposition at
the corporate offices of Duke Energy Ohio
139 E. Fourth Street, Cincinnati, Ohio on Friday,
November 4, 2016 at 10:00 a.m. before Katherine H.
Depperman, Registered Professional Reporter and
Notary Public.

1 APPEARANCES:

2 On behalf of the Respondent:

3 ELIZABETH H. WATTS, ESQ.
4 Associate General Counsel
5 Duke Energy Business Services
6 139 E. Fourth Street, 1303-Main
7 P.O. Box 960
8 Cincinnati, Ohio 45202

9 Also Present: James Ziolkowski

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1 MS. WATTS: Okay. Thank you. We are
2 here in Duke Energy corporate headquarters at
3 139 East Fourth Street, and we were here for the
4 deposition of Shawn Anderson.

5 Mr. Anderson received a notice of a
6 deposition, which was docketed with the
7 commission, and has not appeared for deposition
8 today. So we've waited approximately 30 minutes
9 for him. We've checked. The front desk has
10 been alerted to let us know when he arrives and
11 he hasn't arrived, so we're going to adjourn the
12 deposition for a later date.

13 Thank you.

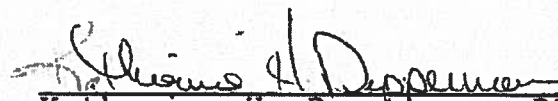
14 (Deposition adjourned at 10:30 a.m.)
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C E R T I F I C A T E

I, Katherine H. Depperman, a Notary Public
in and for the State of Ohio, do hereby certify that
the foregoing pages consisting of a true and correct
transcript of the proceedings in the foregoing
captioned matter, taken by me at the time and place
so stated and transcribed from my stenographic notes.

My commission expires:
January 1, 2018


Katherine H. Depperman, RPR
Notary Public-State of Ohio

This foregoing document was electronically filed with the Public Utilities

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12/7/2016 4:11:59 PM

in

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

Summary: Memorandum Duke Energy Ohio's Memorandum Contra Motion of Shawn Anderson and Second Motion to Compel electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.