

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>Hizam Akkawi</b>	)	
<b>SO &amp; GE LLC</b>	)	Case No. 20-1818-GE-CSS
979 Hawthorne Ave.	)	
Cincinnati, Ohio 45205	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	
<b>Duke Energy Ohio, Inc.</b>	)	
	)	
Respondent.	)	

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**MOTION TO DISMISS OF RESPONDENT DUKE ENERGY OHIO, INC.**

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

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Larisa M. Vaysman

Rocco O. D'Ascenzo (0077651)

Deputy General Counsel

Larisa M. Vaysman (0090290) (Counsel of Record)

Senior Counsel

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Willing to accept service via email

**Attorneys for Respondent**

**Duke Energy Ohio, Inc.**

## 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 the service provided to him by Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company or Respondent) was unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law. Complainant has not alleged that Respondent failed to properly apply its tariffs on file with the Commission in regards to the amount of his bill and has failed to complain 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.<sup>1</sup>

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

The Commission also should dismiss the Complaint for Complainant’s failure to prosecute his claims and his failure to attend two consecutive settlement conferences. After an initial settlement conference on February 11, 2021 (for which Complainant “did not initially call

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<sup>1</sup> 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.

in . . . and was contacted by the mediating attorney from the Commission's legal department"),<sup>2</sup> the mediating attorney from the Commission's legal department orchestrated follow-up settlement discussions. Complainant failed to dial in to a settlement conference scheduled for March 16, 2021 and the mediating attorney was unable to reach him by telephone.

The Commission rescheduled the settlement conference for April 9, 2021 and expressly warned that Complainant's failure to attend this next settlement conference might result in a dismissal of his case:

Complainant is advised that Complainant's failure to attend and participate in the April 9, 2021 settlement teleconference may result in dismissal of this complaint for Complainant's lack of sufficient prosecution.<sup>3</sup>

Complainant also failed to attend the April 9<sup>th</sup> settlement conference and the mediating attorney was again unable to reach him by telephone. Notwithstanding the March Entry's requirements, Complainant did not, as far as the Company knows, provide notice to the Commission or Duke Energy Ohio, nor has he provided any excusable reason since then as to why he could not be in attendance.

Given Complainant's failure to attend two consecutive settlement conferences, including after an express warning of the consequences, Complainant's Complaint should be dismissed for failure to prosecute.<sup>4</sup> Duke Energy Ohio should not be required to defend this baseless action when Complainant fails to attend mandatory settlement conferences.

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

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<sup>2</sup> Entry, ¶5 (March 26, 2021) (March Entry).

<sup>3</sup> *Id.*, ¶7.

<sup>4</sup> See, e.g., *In the Matter of the Complaint of H.M.T., Inc. v. The Cleveland Electric Illuminating Co.*, 2010 Ohio PUC LEXIS 1389 at ¶6; *In the Matter of the Complaint of Rutherford Dawson v. The East Ohio Gas Co.*, 1993 Ohio PUC LEXIS 1041.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Larisa M. Vaysman

Rocco O. D'Ascenzo (0077651)

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Willing to accept service via email

**Attorneys for Respondent**

**Duke Energy Ohio, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was served via UPS this 14<sup>th</sup> day of April 2021, upon the following:

Hizam Akkawi  
SO & GE LLC  
979 Hawthorne Ave.  
Cincinnati, Ohio 45205

/s/ Larisa M. Vaysman  
Larisa M. Vaysman

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 20-1818-GE-CSS**

Summary: Motion to Dismiss of Respondent Duke Energy Ohio, Inc. electronically filed by Carys Cochern on behalf of Duke Energy Ohio, Inc.