

Dianna Ballein)
117 Comanche Drive)
Sardinia, Ohio 45171)
)
Complainant,) Case No. 21-399-EL-CSS
)
v.)
)
Duke Energy Ohio, Inc.)
)
Respondent.)

For its Answer to the Complaint of Dianna Ballein (Complainant), Duke Energy Ohio, Inc., (Duke Energy Ohio or Respondent or the Company) states as follows:

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4. With regard to the Complainant's allegations of "Lost food spoiled," and "Pain & suffering,"¹ Duke Energy Ohio states that the Commission is, pursuant to O.A.C. 4901-9-01-(C)(1), without jurisdiction to resolve these claims.²

5. Duke Energy Ohio denies the allegations contained in each of the paragraphs of the Complaint. Answering further, Duke Energy Ohio states that, as of March 9, 2021, Complainant's service address had experienced 17 outages in the prior 24 months, 9 of which were momentary outages with durations of less than one second. Duke Energy Ohio denies all remaining allegations.

6. Duke Energy Ohio denies each and every allegation of fact and conclusion of law not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. The Complainant does not assert any allegations of fact that would give rise to a cognizable claim against Duke Energy Ohio.

2. Duke Energy Ohio asserts as an affirmative defense that pursuant to R.C. 4905.26 and O.A.C. 4901-9-01-(C)(3), Complainant has failed to set forth reasonable grounds for complaint.

3. Duke Energy Ohio asserts as an affirmative defense that Complainant has not stated any request for relief that can be granted by this Commission.

¹ Complaint, p. 2 of 10. It is not clear whether this page is part of the Complaint or an exhibit to the Complaint. Duke Energy Ohio is quoting what appear to be Complainant's handwritten annotations to this page.

² See *In the Matter of the Complaint of Evelyn and John Keller v. Ohio Power Company*, Case No. 12-2177-EL-CSS, Opinion and Order, p. 7 (December 2, 2015) ("[T]he Commission's exclusive jurisdiction over service-related matters does not diminish the basic jurisdiction of the court of common pleas in other areas of possible claims against utilities, including pure tort and contract claims.") (internal quotation marks and citation omitted); see also *In the Matter of the Complaint of Anne Eishen v. Columbia Gas of Ohio, Inc.*, Case No. 01-885-GA-CSS, Entry, p. 3 (November 20, 2001) ("[A]ny negligence which Columbia's contractor may have committed in excavating on the street in front of her residence does not fall within this Commission's purview. This complaint appears to be an action at law, not an administrative matter, and should be filed in the civil courts.").

4. Duke Energy Ohio asserts that to the extent Complainant is seeking monetary damages, such relief is beyond the scope of the Commission's jurisdiction.

5. Duke Energy Ohio asserts that to the extent the Complainant is seeking equitable relief, such relief is beyond the scope of the Commission's jurisdiction.

6. Duke Energy Ohio asserts that to the extent Complainant is seeking relief for "Lost food spoiled," and "Pain & suffering,"³ such relief is, pursuant to O.A.C. 4901-9-01-(C)(1), beyond the scope of the Commission's jurisdiction.⁴

7. Duke Energy 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.

CONCLUSION

WHEREFORE, having fully answered, Duke Energy Ohio respectfully requests that the Commission dismiss the Complaint of Dianna Ballein, for failure to set forth reasonable grounds for the Complaint and for lack of subject matter jurisdiction, and to deny Complainant's request for relief, if any.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Larisa M. Vaysman
Rocco O. D'Ascenzo (0077651)
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³ Complaint, p. 2 of 10. It is not clear whether this page is part of the Complaint or an exhibit to the Complaint. Duke Energy Ohio is quoting what appear to be Complainant's handwritten annotations to this page.

⁴ See note 2, *supra*.

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Attorneys for Respondent Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Duke Energy Ohio, Inc., was served via UPS delivery, this 30th day of April 2021, upon the following:

Dianna Ballein
117 Comanche Drive
Sardinia, Ohio 45171

/s/ Larisa M. Vaysman
Larisa M. Vaysman

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Case No(s). 21-0399-EL-CSS

Summary: Answer of Duke Energy Ohio, Inc. electronically filed by Carys Cochern on behalf of Duke Energy Ohio, Inc.