

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|                           |   |                         |
|---------------------------|---|-------------------------|
| KAREN PIERCE              | ) |                         |
|                           | ) |                         |
| Complainant,              | ) |                         |
|                           | ) |                         |
| v.                        | ) | Case No. 21-0833-EL-CSS |
|                           | ) |                         |
| SMARTENERGY HOLDINGS, LLC | ) |                         |
|                           | ) |                         |
| Respondent.               | ) |                         |
|                           | ) |                         |

**ANSWER**

In accordance with Ohio Adm.Code 4901-9-01(D), Respondent SmartEnergy Holdings, LLC (SmartEnergy), for its answer to the complaint of Karen Pierce (Complainant), states:

**FIRST DEFENSE**

1. SmartEnergy generally denies the allegations in the Complaint.
2. SmartEnergy avers that it followed all applicable rules and regulations in relation to Complainant's electric account. Specifically:
  - a. Anderw Nichting, who represented being the spouse of Karen Pierce and an authorized decisionmaker for the electric account at the residence, called SmartEnergy in response to SmartEnergy's direct marketing regarding generation supply service at the residence.
  - b. Mr. Nichting verbally agreed to enroll in SmartEnergy's six-month fixed-rate plan for 100% renewable electricity supply at a rate of \$0.0580 per kWh, with a contract start date of November 10, 2020.
  - c. All other applicable requirements for enrollment were followed.

- d. SmartEnergy terminated the supply contract on February 14, 2021 for non-payment.
- e. Complainant was returned to Duke Energy Ohio, Inc.'s standard service offer after SmartEnergy terminated the supply contract.
- f. SmartEnergy's charges for electric supply during the contract period (Nov. 2020-Feb. 2021) were \$58.99.

3. SmartEnergy is without sufficient knowledge or information to admit or deny the remaining allegations in the complaint, and generally denies any allegations not specifically admitted or denied in this Answer in accordance with Ohio Adm. Code 4901-9-01(D).

### **AFFIRMATIVE DEFENSES**

#### **SECOND DEFENSE**

4. The complaint does not comply with the Commission's rules requiring "a statement which clearly explains the facts." Ohio Adm.Code 4901-9-01(B). Many of the allegations are not in numbered-paragraph, but narrative, form; many of the allegations and statements in the complaint are compound; and many of the allegations omit numerous details necessary to answer them. SmartEnergy has attempted, to the best of its ability, to answer the allegations, but reserves the right to amend its answer in the event it has incorrectly understood the allegations.

#### **THIRD DEFENSE**

5. The complaint fails to set forth reasonable grounds for complaint, as required by R.C. 4905.26.

#### **FOURTH DEFENSE**

6. The complaint does not set forth a claim for which relief may be granted.

**FIFTH DEFENSE**

7. The complaint is barred by Complainants' breach of contract

**SIXTH DEFENSE**

8. SmartEnergy at all times complied with the Ohio Revised Code Title 49; the applicable rules, regulations, and orders of the Public Utilities Commission of Ohio; and the Company's tariffs. These statutes, rules, regulations, orders and tariff provisions bar Mr. Miller's claims.

**SEVENTH DEFENSE**

9. SmartEnergy avers that the complaint is barred by waiver and estoppel.

**EIGHTH DEFENSE**

10. SmartEnergy reserves the right to raise other defenses as warranted by discovery in this matter.

WHEREFORE, SmartEnergy respectfully requests an Order dismissing the complaint and granting it all other necessary and proper relief.

Dated: August 27, 2021

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)

Lucas A. Fykes (0098471)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3912

whitt@whitt-sturtevant.com

fykes@whitt-sturtevant.com

(All counsel willing to accept service by email)

*Attorneys for SmartEnergy Holdings, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer was served by mail to the following persons this 27th day of August 2021:

Karen Pierce  
3918 N. Clearose Circle  
Cincinnati, Ohio 45205

/s/ Lucas A. Fykes  
One of the Attorneys for SmartEnergy  
Holdings, LLC

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

**Commission of Ohio Docketing Information System on**

**8/27/2021 5:29:10 PM**

**in**

**Case No(s). 21-0833-EL-CSS**

Summary: Answer electronically filed by Mr. Lucas A. Fykes on behalf of SmartEnergy Holdings, LLC