

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Derryn Jones)	
)	Case No. 22-778-EL-CSS
Complainant,)	
v.)	
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

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

Pursuant to Ohio Administrative Code 4901-9-01(C)(1) and (3), Respondent Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) by and through the undersigned counsel, hereby moves to dismiss the above-referenced complaint proceeding for failure to set forth reasonable grounds for the Complaint. As set forth further herein, Duke Energy Ohio respectfully submits that the Public Utilities Commission of Ohio (the Commission) should dismiss the Complaint as to Duke Energy Ohio.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Elyse H. Akhbari

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MEMORANDUM OF LAW

I. INTRODUCTION

The Complainant in this case outlines issues that she has been having with the cost of service associated with her or her husband's decision to enroll their electric supply with a Competitive Retail Electric Service (CRES) Provider—North American Power Company (North American Power). Because the Company is not actually implicated in the Complaint, beyond mention that they provide her a bill each month with the CRES provider identified, the Company should not have been named as a Respondent, and it is not appropriate for the Complaint to continue as to Duke Energy Ohio. The Complaint sets forth no fact pattern under which Duke Energy Ohio could be accused of providing unjust, unreasonable, or discriminatory service. Indeed, the Complainant focuses every paragraph on the actions of North American Power, its rates, her enrollment with that Company, verification of her enrollment, and so on. Because the Complaint sets forth no grounds under which Duke Energy Ohio could possibly be liable for the acts complained of, the Complaint fails to set forth any reasonable grounds for a cognizable action against Duke Energy Ohio and, therefore, must be dismissed with prejudice as to Duke Energy Ohio.

II. LAW AND ARGUMENT

O.R.C. 4905.26 requires a complainant to state reasonable grounds for a complaint before a case may go forward.¹ In the absence of a clear statement of the mandatory reasonable grounds, a complaint should be dismissed.² It is well settled that the burden of proof in a complaint

¹ See, e.g., *Ohio Utilities Co. v. Public Utilities Com.*, 58 Ohio St. 2d 153, 156-157 (1979).

² See, e.g., *In the Matter of the Complaint of Diana Williams v. Ohio Edison Co.*, Case No. 08-1230-EL-CSS, 2009 Ohio PUC LEXIS 918, *11 (holding that a complaint must stand on its own and cannot proceed forward without a clear statement of reasonable grounds); *In the Matter of the Complaint of Richard Powell, d.b.a. Scioto Lumber Company, Complainant, v. The Cincinnati*

proceeding is on the complainant—generalities and vague references to one party do not an action make. Ohio 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.” The Complainant in this case fails to meet that burden of proof.

Complainant, Ms. Jones, alleges that she called Duke Energy Ohio on April 6, 2022 due to a bill that she had received that was, in her opinion, unreasonably high. At that time, the Company advised her that she was enrolled with a CRES provider, North American Power. As the Complainant states, and as would be expected, Duke Energy Ohio pointed the Complainant, at that time, to the CRES provider identified and informed her that additional information regarding enrollment, charges, and her account would need to be discussed with the provider. In fact, the Complainant then outlines how she did contact North American Power, and details all of the various issues raises in the Complaint, for example, her alleged enrollment in 2012, whether or not her husband had authorized such enrollment, the maintenance of her account by North American Power, etc. None of the allegations of which Ms. Jones complains in the remainder of her Complaint, beyond mentioning that Duke Energy Ohio identified the CRES provider in question, implicate Duke Energy Ohio as providing unlawful service, or taking or failing to take any action upon which a Complaint against Duke Energy Ohio could be based.

Moreover, the Complainant in this proceeding fails to allege that the service provided to her by the Company was unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in

Gas & Electric Company, 88-916-GE-CSS, 1988 Ohio PUC LEXIS 674, *4 (dismissing complaint because, among other reasons, it does not involve a service rendered to the complainant or any regulation affecting the complainant).

violation of law. Complainant levels various allegations against North American Power associated with the CRES-provided power that her household has been receiving since apparently 2012, i.e. “fraudulent enrollment,” over-charging, and so on. None of these allegations implicate the service or business of Duke Energy Ohio, however. For example, the Complainant has not alleged that the Company has failed to properly apply its tariffs on file with the Commission in regards to the service provided to her, and the Complainant has failed to complain as to any cognizable matter related to the Company. The Complaint is lacking in substance as to Duke Energy Ohio so much so that it is non-justiciable as to the Company.

As the Commission is aware, simply because a customer files a complaint does not mean that the complaint should go forward against the Company or be scheduled for hearing. The Complainant’s statements in this case against Duke Energy Ohio are (1) nearly non-existent, (2) if they are identifiable, they do not represent a cognizable complaint, and (3) fail to allege any violation of any Commission rule or statute by the Company. Accordingly, the Commission should dismiss the Complaint as to Duke Energy Ohio with prejudice.³

III. CONCLUSION

For all of the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission grant its motion and dismiss the Complaint and the claims of the Complainant as to Duke Energy Ohio, with prejudice.

³ See, e.g., *Lane v. Columbia Gas of Ohio, Inc.* (May 9, 2012), Case No. 12-744-GA-CSS, 212 Ohio PUC LEXIS 451; *Sekta v. The East Ohio Gas Co.* (August 9, 2006) Case No. 06-549-GA-CSS, 2006 Ohio PUC LEXIS 447.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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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 regular US mail, this 31st day of August, 2022, upon the following:

Ms. Derryn Jones
3548 Larkspur Avenue
Cincinnati, Ohio 45208

/s/ Elyse H. Akhbari
Elyse H. Akhbari

**This foregoing document was electronically filed with the Public Utilities
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Summary: Motion Motion To Dismiss of Respondent Duke Energy Ohio, Inc.
electronically filed by Mrs. Tammy M. Meyer on behalf of Duke Energy Ohio Inc.
and D'Ascenzo, Rocco and Akhbari, Elyse Hanson and Vaysman, Larisa