**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Adjust its Power Future Initiatives Rider. | ))) | Case No. 20-0666-EL-RDR |

**MEMORANDUM CONTRA DUKE’S MOTION FOR A PROCEDURAL SCHEDULE AND REQUEST FOR EXPEDITED RULING**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

1. **INTRODUCTION**

The Office of the Ohio Consumers’ Counsel (“OCC”) opposes Duke’s Corrected Motion for a Procedural Schedule and Request for Expedited Ruling filed Thursday, May 27, 2021 because the time frames proposed do not allow for parties to adequately prepare for this case. Additionally, there is no new urgency that would warrant a change in the procedural schedule that the PUCO already established.[[1]](#footnote-2)

The Public Utilities Commission of Ohio (“PUCO”) should deny Duke’s motion and allow parties to discuss remaining issues and potential dates on terms that are agreeable to all parties to resolve this case. In the alternative, if the PUCO determines that an evidentiary hearing is now necessary to address unresolved matters, a prehearing conference should be scheduled where parties can raise issues and propose a reasonable schedule that enables sufficient time for parties to prepare for litigation. OCC proposes a procedural schedule that would be acceptable to other parties to this proceeding.[[2]](#footnote-3)

1. **RECOMMENDATIONS**

Duke’s Motion wants to modify the Attorney Examiner’s current procedural schedule issued February 3, 2021,[[3]](#footnote-4) which established deadlines for intervention motions, comments, and reply comments. Duke seeks a ruling on an expedited basis to “facilitate review of its Application” by proposing settlement, testimony, and hearing dates. Duke provides no rationale for why a change in the current procedural schedule is even necessary.

Given there have been extensive comments and reply comments already filed by the parties, sufficient information is available for the PUCO to evaluate the application and render a decision or schedule a hearing. The issues associated with Duke’s application are complicated and a thorough judicious review by the PUCO is important given Duke’s track record of deploying smart meters that do not work. Duke is proposing a schedule that is unwarranted, unrealistic, and unfair.

First, Duke suggests parties file a “Stipulation and Recommendation” by June 17, 2021. This is an ambitious time frame given that there have been no settlement discussions scheduled to-date. Further, Duke has not approached the issue of settlement with OCC and potentially has not approached any of the other parties. Even if settlement discussions were somehow to be initiated next week (and there is no indication this is the case), that allows only two weeks to file the settlement under Duke’s proposal, which is simply unrealistic.

Second, Duke’s schedule contemplates that if a settlement is not reached, then “Intervenor Testimony” is to be filed June 18, 2021, a day after the proposed settlement filing date. Again, this is an unrealistic and unfair time frame. However, should a settlement be reached, then discovery rights on the settlement are necessary for any party that opposes the settlement.

Furthermore, independent of any settlement, the time frame Duke proposes for “Intervenor Testimony” --essentially three weeks from its Motion date--is way too short. And Duke’s proposed schedule calls for “Intervenor Testimony” before the filing of Staff Testimony. While early in the case the Staff filed a review and recommendation,[[4]](#footnote-5) there has not been an updated PUCO Staff report based on comments and replies filed by the parties. If a hearing is necessary, Staff should be filing testimony first so that Intervenors know which issues have been addressed agreeably with Staff and which issues remain unresolved.

The original Staff report was filed in November. Comments and reply comments were then filed pursuant to the Attorney Examiner’s Entry. Some of the issues that were raised in the filed comments were factually different from the original recommendations that Staff made, which may impact Staff’s current recommendations. It would be helpful for Staff to file testimony first, if testimony is necessitated at all in this case.

Also troubling is the fact that counsel for Duke did not reach out to other parties’ counsel at any point to discuss changing the procedural schedule, as is often the practice—one that the PUCO encourages. If the PUCO agrees that a hearing may be necessary for it to amicably resolve this case, a prehearing conference would be an appropriate forum to discuss the issues and schedule proposals. There is no downside to proceeding informally this way since it avoids dueling motions that can waste the PUCO’s time.

If the PUCO determines that a hearing is necessary, OCC proposes the following more reasonable procedural schedule:

* Prehearing conference (if necessary) by June 30, 2021.
* Potential Settlement –filed any time before July 30. If Settlement fails:
* Should Settlement be reached, minimum seven day expedited discovery rights on the Settlement (July 30 – August 21).
* Staff Testimony to be filed no earlier than August 30, 2021.
* Intervenor Testimony to be filed no earlier than September 7, 2021.
* Company Rebuttal Testimony to be filed by September 13, 2021.
* Hearing to commence September 30, 2021.

OCC has conferred with counsel for IGS, OEG and Mission:Data regarding these dates, and the dates proposed are acceptable.

**III. CONCLUSION**

 For the reasons stated herein, OCC respectfully requests that the PUCO deny Duke Energy’s Motion and establish a procedural schedule as set forth above.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ Amy Botschner O’Brien*

Amy Botschner O’Brien (0074423)

Counsel of Record

Ambrosia E. Wilson (0096598)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, 7th Floor

Columbus, Ohio 43215

Telephone [Botschner O’Brien]: (614) 466-9575

Telephone [Wilson]: (614) 466-1292

amy.botschner.obrien@occ.ohio.gov

ambrosia.wilson@occ.ohio.gov

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Memorandum Contra was served on the persons stated below via electronic transmission, this 28th day of May 2021.

 */s/ Amy Botschner O’Brien*

 Amy Botschner O’Brien

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
|  |  |
| Thomas.lindgren@ohioAGO.govbethany.allen@igs.comjoe.oliker@igs.commichael.nugent@igs.com | Rocco.DAscenzo@duke-energy.comJeanne.Kingery@duke-energy.comLarisa.Vaysman@duke-energy.commkurtz@BKLlawfirm.comkboehm@BKLlawfirm.comjkylercohn@BKLlawfirm.com |
| Attorney Examiners:Lauren.augostini@puco.ohio.govNicholas.walstgra@puco.ohio.gov |  |

1. 20-666-EL-RDR, Entry (Feb. 3, 2021). [↑](#footnote-ref-2)
2. Counsel for IGS, OEG and Mission:Data have been contacted and support OCC’s proposed schedule. [↑](#footnote-ref-3)
3. Case No. 20-0666, Entry at 2 (Feb. 3, 2021). [↑](#footnote-ref-4)
4. Case No. 20-0666, Staff Review and Recommendation, Nov. 17, 2021 and Nov. 20, 2021. [↑](#footnote-ref-5)