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In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan.) Case No. 08-0920-EL-SSO)

In the Matter of the Application of Duke)
Energy Ohio for Approval to Amend) Case No. 08-0921-EL-AAM
Accounting Methods.)

In the Matter of the Application of Duke)
Energy Ohio for Approval of a Certificate)
of Public Convenience and Necessity to) Case No. 08-0922-EL-UNC
Establish an Unavoidable Capacity)
Charge.)

In the Matter of the Application of Duke)
Energy Ohio for Approval to Amend its) Case No. 08-0923-EL-ATA
Tariff.)

PUCCO

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the electric utility customers of Duke Energy-Ohio ("Duke" or the "Company"), files this reply to Duke's Memorandum in Opposition filed on September 24, 2008. Duke opposed OCC's Motion for a Continuance and Extension of time, or in the Alternative, Motion to Compel ("Motion"), that OCC filed on September 19, 2008. Duke's argument that it has no

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Technician TK Date Processed SEP 30 2008

outstanding discovery or had no outstanding discovery on the date OCC filed the Motion is false. And in fact, since the time that OCC has filed the Motion OCC has identified additional problems with Duke's discovery responses and has contacted Duke about those problems with little resolution.

Ohio Adm. Code 4901-1-13(A) provides for extensions and "continuances of public hearings" upon a showing of good cause. There is good cause for granting this continuance and extension of time, which is provided for under Ohio Adm. Code 4901-1-13(A).

As OCC pointed out in the Motion, R.C. 4903.082 requires that "[a]ll parties and intervenors shall be granted ample rights of discovery." That statute also requires the PUCO to regularly review its rules "to aid full and reasonable discovery by all parties." With respect to the rules referenced in R.C. 4903.082, Ohio Adm. Code 4901-1-16(A) provides that the purpose of discovery rules in PUCO proceedings is to "facilitate thorough and adequate preparation for participation in commission proceedings." In these cases that involve highly technical issues and profound public impact, OCC needs timely and complete discovery responses from Duke to adequately prepare for the hearing, as contemplated by the PUCO's Rule.

The circumstances underlying this Motion show good cause. Accordingly, the PUCO should extend the hearing date for thirty days until December 3, 2008, and similarly extend the filing of testimony and discovery deadlines by thirty days.

II. ARGUMENT

A. OCC Continues to Have Discovery Problems with Duke and There is A Significant Amount of Discovery to Compel.

Duke claims¹ that it had no discovery responses overdue on the date OCC filed its Motion. That is incorrect. Even if one were to accept Duke's claim that the discovery responses were not due until the day the Motion was filed, what Duke neglects to explain is that many of the responses were inadequate. Five of Duke's responses simply stated "Will Supplement."²

In response to OCC's request that Duke provide responses to these questions, Duke stated:

DE-Ohio believes it has accurately answered the questions. DE-Ohio will supplement answers as required, as soon as it possesses additional information. While I am happy to discuss any reasonable accommodation you may suggest that might allow OCC to accept DE-Ohio's discovery, DE-Ohio is not in a position to answer the discovery in writing and then explain each answer and objection again through e-mail or by phone. DE-Ohio will stand by its discovery answers.³

Some of the questions left unanswered by Duke (with "Will Supplement") relate to Duke's interpretation of various provisions of SB 221⁴ regarding what issues Duke would have to address in its standard service offer application. Duke would have had to consider the meaning of those provisions before it filed its application. There is thus no reason that Duke should not possess the answer to those questions.

Another of the questions to which Duke responded with "Will supplement" related to how much money Duke has already committed to home energy and

¹ Memo Contra at 2.

² See Attachment 1.

³ See Attachment 2.

⁴ OCC Int-05-213, OCC Int-05-215, and OCC Int-05-216.

weatherization contracts.⁵ This is certainly information Duke possesses but simply declined to provide to OCC. Duke has no excuse to not respond to that interrogatory with its answer of “Will supplement.”

The other question to which Duke refused to respond was “Does Duke know who will be the prime contractor it references in its response to OCC Interrogatory No. 01-041?”⁶ The appropriate response to this question is either a “Yes” or a “No.” If Duke does not know who will be the prime contractor, than Duke would simply have to say “No.” If Duke does know who will be the prime contractor Duke would have to say “Yes.” The answer to this question has to be in Duke’s possession. Duke’s response “Will supplement” seems to mean that Duke does not want OCC to know the answer to this question. Duke refusal to answer the question cannot be related to concerns about proprietary information because OCC has a protective agreement with Duke and Duke could have responded confidentially. Again Duke has no legitimate excuse for refusing to answer this question when it was received.

OCC Discovery Set 5 also included sixteen discovery requests to which Duke objected and refused to respond and that related to whether Duke or any of its affiliates have contracts or agreements with parties, consumers, electric services companies, or political subdivisions related to charges in this case. To each request Duke responded:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that It or any affiliate has entered with “a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding. . .” If and when DE-Ohio enters any such contract it will update its

⁵ OCC Int-06-232.

⁶ OCC Int-06-233.

discovery response subject to protection for confidential material as may be determined by the Commission.⁷

One problem with Duke's response is it clearly indicates that Duke does not believe it is responsible for knowing if any of its affiliates are contracting with parties, consumers, electric service companies, or political subdivisions related to charges in this case. But Duke is expected, under R.C. 4928.145, to have such knowledge.

R.C. 4928.145, which OCC cited to Duke by email, provides as follows:

During a proceeding under sections 4928.141 to 4928.144 of the Revised Code and upon submission of an appropriate discovery request, an electric distribution utility shall make available to the requesting party every contract or agreement that is between the utility or any of its affiliates and a party to the proceeding, consumer, electric service Company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the public utilities commission.

In response, Duke denied that it had a responsibility to know if its affiliates are contracting with parties, consumers, electric service companies or political subdivisions in relation to charges in this case. Duke did state that neither it nor any of its affiliates currently have such contracts. But when Duke added that it would supplement the response to those questions, Duke stated:

If DE-Ohio or an affiliate enters a contract in the future, and DE-Ohio becomes aware of the contract, we will supplement our interrogatory response.

Duke is obviously implying in that statement that it does not have a duty to "become aware" of contracts between DE-Ohio or its affiliates with parties, consumers, electric service companies or political subdivisions in relation to charges in this case. But Duke

⁷ See Attachment 3.

has a duty to know and respond to discovery responses about such contracts or agreements under R.C. 4928.145 and Duke's denial of that duty is obstructing the discovery process.

Five years after the events of Duke's nondisclosure of secret deals⁸ that led to a reversal of a PUCO order by the Supreme Court of Ohio⁹ and contributed to the creation of a law requiring disclosure of utility contracts with customers, Duke is returning to a course for less transparency in the state's regulatory process. Duke is again off course, this time with the state's policy and law that chart a course for more transparency in the PUCO's regulatory process that is to be conducted in the public light for Ohioans. This is another reason that the Commission should grant OCC a continuance of the hearing and an extension of time, and should grant OCC's motion to compel.

Another discovery request that Duke unreasonably objected to in the sixth set was: "Under Duke's currently approved corporate separation plan, which of Duke's fuel, purchased power and emission allowance procurement employees are shared with any of Duke's affiliates?"¹⁰ Duke objected to this OCC request with the claim that it is "irrelevant and seeks information that is not calculated to lead to discovery of admissible evidence." OCC then sought a resolution by e-mailing Duke about this objection:

That objection is not a sufficient basis to refuse to provide OCC discovery. Duke's corporate separation plan is very much an issue in this case, as are Duke's fuel procurement practices because Duke is requesting to use Active Management of its fuel supplies and purchased power. I do not see how you can possibl[y] [sic] state that the question is not calculated to lead to discovery of admissible evidence. Please respond.

⁸ Duke's nondisclosures occurred in its rate stabilization plan case. Case No. 03-93-EL-UNC

⁹ *OCC v. Pub. Util. Comm.* 111 Ohio St. 3d 300 (November 22, 2006).

¹⁰ OCC Int. 06-240, Attachment 4.

Duke declined to specifically address OCC's point but stated:

While I am happy to discuss any reasonable accommodation you may suggest that might allow OCC to accept DE-Ohio's discovery, **DE-Ohio is not in a position to answer the discovery in writing and then explain each answer and objection again through e-mail or by phone.**¹¹

Duke's statement is a demonstration of its intention to not answer an OCC discovery request, which it cloaks with a reference to "reasonable accommodation" that is belied by its declining to "explain ... [the] objection" despite the requirement to discuss a resolution under 4901-1-23(C).

B. The Commission Should Grant a Continuance and An Extension of Time In This Case Due to the Time Constraints Affecting Case Preparation.

Duke inaccurately characterizes OCC's motion as a "thinly veiled attempt to request an additional delay." A better characterization is an urgent request for a continuance and an extension of time that is needed for this case to be transparent to the Ohio public and allow for the state's consumer advocate to prepare its case.

Duke argues that OCC should have no problem meeting the schedule the Commission has established for this case because OCC and Duke have both previously:

Participated in a similar regulatory shift in 1999 after Senate Bill 3 was passed and signed into law. Despite the advantage of having seasoned and experienced utility counsel and despite past experience with regulatory changes, OCC asserts that it simply cannot keep pace with the rest of the legal and regulatory communities.¹²

Of course Duke fails to acknowledge that during the regulatory shift after Senate Bill 3 was passed, **parties had over twice the amount of time, or a year rather than five months**, to address rules and transition plans. OCC has a responsibility that it will fulfill

¹¹ Attachment 2.

¹² Duke Memo Contra at 2.

to investigate the application and prepare for hearing, or possible settlement, toward ensuring that the PUCO has before it the “complete record” for making “findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact,” as required by R.C. 4903.09.

R.C. 4928.141 requires the Commission to hold a hearing in this case. Because of that requirement the Commission must ensure that parties have “ample rights of discovery” under R.C. 4903.082. Under the current schedule, OCC will not have ample rights of discovery. Although Duke complains that it has had to answer 252 interrogatories and 52 requests for production of documents, that number of discovery requests is little compared to the discovery requests completed in recent rate cases.¹³

Duke also stated that it is troubled that OCC filed this Motion during a time when Duke “as well as other Ohio utilities, were experiencing the worst storm outages in the history of their companies.”¹⁴ First, a number of the discovery problems began before the storm. Second, OCC appreciates the need for utilities to devote resources toward assisting consumers in the aftermath of the storm. However, the need to devote resources to storm recovery efforts contributes to there being “good cause” for the Commission to provide a continuance and extension of the schedule, which Duke should support under the circumstances. It does not constitute cause for OCC to be denied “ample rights of discovery.”

Moreover, R.C. 4928.143 provides for alternatives to implementing the electric security plan before January 1, 2008. First, the Commission is permitted under R.C. 4928.143(C)(1) to modify and approve an electric security plan rather than to just

¹³ Dominion East Ohio responded to 898 OCC discovery requests in its recent rate case 07-829-GA-AIR and Vectren Energy Ohio responded to 757 discovery requests in its recent rate case, 07-1080-GA-AIR.

¹⁴ Duke Memo Contra at 4.

approve or disapprove an electric security plan. For example, instead of addressing all of the many complex issues Duke has proposed in its application, the Commission can modify the plan by deferring the resolution of many of the issues into the future. Or the Commission can disapprove the plan if it does not perceive that Duke has provided sufficient information in its application to meet the statutory requirement. The PUCO should find that Duke has not provided sufficient information.

R.C. 4928.143(C)(2)(b) allows the Commission to disapprove an application and provides for alternative pricing after January 1, 2009, under these circumstances:

If the Commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent off is authorized pursuant to this section or section 4928.141 of the Revised Code.

Moreover, Duke has a proposal to continue its rate stabilization plan if the Commission is unable to complete its review by January 1, 2009.¹⁵

On the other hand, the Commission must issue an order under this division for an initial application not later than one hundred fifty days after the application's filing date under R.C. 4928.141(C)(1). Under that same section, the Commission may approve, may modify and approve an application or may disapprove an application. The Commission decision must be based on whether it finds that the electric security plan is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 and if any surcharges are reserved and made available to those that bear the cost of the surcharge.

¹⁵ Direct Testimony of Paul G. Smith at 19.

For the reasons stated above the Commission should grant the Motion for a continuance and extension of the hearing schedule for 30 days.

C. The Commission Should Grant OCC's Motion to Compel Because OCC Has Exhausted All Reasonable Means of Resolving Discovery Disputes As Required Under Ohio Adm. Code 4901-1-23 And Duke Is Chronically Late In Responding to Discovery, Duke's Objections To Discovery Are Unreasonable And Many of Duke's Responses Are Evasive.

Duke claims that OCC's September 16, 2008 communication to Duke's counsel was OCC's only attempt to resolve late discovery.¹⁶ As OCC pointed out in its Motion¹⁷ OCC had sent four previous e-mails to Duke's paralegal who is responsible for coordinating discovery. OCC's Counsel of Record left a voice mail to Duke's Counsel of Record on September 10, 2008 about late discovery responses. OCC both e-mailed and spoke to Duke's Counsel of Record on September 11, 2008. Then, on September 16, 2008, OCC again called Duke's Counsel of Record. In most cases Duke's Counsel of Record has denied that many discovery responses were due and made no assurance that Duke would attempt to respond to discovery in a timelier manner. The only statement that Duke made other than denying it was late in providing discovery was that Duke was having difficulties due to storm damages on September 16, 2008.

Since OCC filed its Motion, Duke continues to deny that there are any discovery problems despite all the discovery problems OCC identified above. Rather, as indicated by Duke's last communication, Duke seems to believe that the only resolution to the problem is for "OCC to accept DE-Ohio's discovery." Although Duke cloaks its non-

¹⁶ Duke Memo Contra at 3.

¹⁷ OCC Motion, Attachment 3, Affidavit of Ann M. Hotz.

responsiveness in a sentence that includes the word "accommodation," that word has not been the result. Duke states:

DE-Ohio is not in a position to answer the discovery in writing and then explain each answer and objection again through e-mail or by phone. DE-Ohio will stand by its discovery answers.

The PUCO should compel answers.

III. CONCLUSION

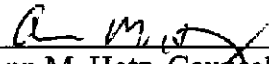
The Commission should grant the Motion for a continuance and extension of the procedural schedule as provided for under Ohio Adm. Code 4901-1-13(A) upon a showing of good cause. Also, due to Duke's continuing unwillingness to respond to discovery on a reasonable basis, the Commission should grant OCC's Motion to Compel as provided for under Ohio Adm. Code under Ohio Adm. Code 4901-1-23. The Commission will be unable to meet its hearing requirements under R.C. 4928.143 and discovery requirement under R.C. 4903.082, as well as exercise the decision-making contemplated by R.C. 4903.09, if it does not grant this continuance and extension, and compel Duke to respond to discovery.

Moreover, the Commission has the flexibility under R.C. 4928.143 to continue other rates after January 1, 2009, if it is unable to finish the hearing before January 1, 2009. For those reasons, the PUCO should extend the hearing date for thirty days until December 3, 2008, and similarly extend the filing of testimony and discovery deadlines by thirty days. If the Motion is granted, the discovery deadline will become November 20, 2008. The deadline for intervenor testimony will become November 16, 2008, consistent with the continuance of the hearing and Ohio Adm. Code 4901-1-29(A)(1)(h). The new testimony due date would meet the requirement under Ohio Adm. Code 4901-1-

29(A)(1)(d) that all direct testimony by intervenors must be filed no later than seven days prior to the commencement of the hearing.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel

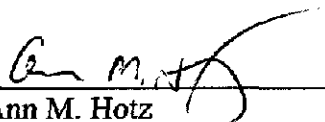


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Reply has been served upon the following parties via regular U.S. Mail this 29th day of September, 2008.


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Assistant Consumers' Counsel

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Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Interrogatories
Date Received: September 8, 2008

OCC-INT-05-213

REQUEST:

Referring to Senate Bill 221, section 4928.02 (A):

- a) How does the company define "adequate and reliable service?"
- b) What measurements and standards are used to determine what constitutes adequate and reliable service?
- c) What is an acceptable margin of error when it comes to outages and/or momentary power surges?
- d) What contingency plans, if any, do you have in place to handle extreme winter weather in Ohio?
- e) How can you plan ahead in order to restore winter-weather related outages more quickly? Does the company have plans to hire temporary/ seasonal workers to assist with this process? If so, how many temporary/seasonal workers does the company anticipate it will employ to respond and restore winter-weather related outages in a timely fashion?

RESPONSE:

Will supplement.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Interrogatories
Date Received: September 8, 2008

OCC-INT-05-215

REQUEST:

Referring to Senate Bill 221, section 4928.02 (I), what are the company's plans to protect residential consumers against:

- a) Unreasonable sales practices?
- b) Market deficiencies?
- c) Market Power?

RESPONSE:

Will supplement.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Interrogatories
Date Received: September 8, 2008

OCC-INT-05-216

REQUEST:

Referring to Senate Bill 221, section 4928.02 (L), what is the company's interpretation for "at risk populations"?

RESPONSE:

Will supplement.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Sixth Set Interrogatories
Date Received: September 8, 2008

OCC-INT-06-232

REQUEST:

For each of the entities identified in response to OCC Interrogatory No. 01-040 how much of the \$850,000 per annum in home energy and weatherization contracts does Duke currently have committed?

RESPONSE:

Will supplement.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Sixth Set Interrogatories
Date Received: September 8, 2008

OCC-INT-06-233

REQUEST:

Does Duke know who will be the prime contractor it references in its response to OCC Interrogatory No. 01-041?

RESPONSE:

Will supplement.

PERSON RESPONSIBLE: N/A

From: "Colbert, Paul" <paul.colbert@duke-energy.com>
To: HOTZ@occ.state.oh.us
Date: 9/26/2008 5:06:47 PM
Subject: RE: RE: Responses to OCC Interrogatories 05-206 through 05-212- and OCC POD-05-041 through 05-048

Ann, we are sorry that OCC is disappointed with our response to its discovery questions. DE-Ohio believes it has accurately answered the questions. DE-Ohio will supplement answers as required, as soon as it possesses additional information. While I am happy to discuss any reasonable accommodation you may suggest that might allow OCC to accept DE-Ohio's discovery, DE-Ohio is not in a position to answer the discovery in writing and then explain each answer and objection again through e-mail or by phone. DE-Ohio will stand by its discovery answers. Thank you.

-----Original Message-----

From: ANN HOTZ [mailto:HOTZ@occ.state.oh.us]
Sent: Friday, September 26, 2008 11:14 AM
To: Colbert, Paul
Subject: Fwd: RE: Responses to OCC Interrogatories 05-206 through 05-212- and OCC POD-05-041 through 05-048

Paul, I am writing to ask you about formal responses to 05-206 through 05-212 and POD 05-041 through 05-048. You have not yet responded to my e-mail of September 24, 2008. We need formal discovery responses rather than just your e-mail claiming that neither DE-Ohio or an affiliate has entered into a contract with any other party. And you continue to imply that if you do not know about such a contract, you do not have to supplement this discovery response. That is not an appropriate response. You need to provide OCC a formal discovery response stating that if an affiliate enters a contract in the future DE-Ohio will supplement the interrogatory response.

Additionally, OCC believes that your refusal to respond to Interrogatory 06-240 on the basis that "This interrogatroy is irrelevant and seeks information that is not calculated to lead to discovery of admissible evidence" is inappropriate. That objection is not a sufficient basis to refuse to provide OCC discovery. Duke's corporate separation plan is very much an issue in this case, as are Duke's fuel procurement practices because Duke is requesting to use Active Management of its fuel supplies and purchased power. I do not see how you can possible state that the question is not calculated to lead to discovery of admissible evidence. Please respond.

Moreover, 5 of the discovery responses in sets 5 and 6 read simply "Will supplement" without giving any information. The responses to OCC Int-232; OCC Int-06-233; OCC Int-05-215; OCC Int-05-216; OCC Int-05-213 gave no information and simply stated "will supplement". Currently these responses are eight days late. Please give OCC the responses as soon as possible.

Thanks. Ann

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and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender at (614) 466-8574 and destroy all copies of this communication.

>>> ANN HOTZ 9/24/2008 2:20 PM >>>

Paul, The presentations that you refer to are not the same as responses to discovery. They are prepared by Duke and not controlled by the attendees. Nor are they recorded. With regard to having a meeting with us regarding SmartGrid, I have not been informed. We need formal discovery responses from you about Ohio Interrogatories 05-206 through 05-212 and OCC POD 05-041 through 05-048. As I have stated previously R.C. 4928.145 requires that you respond.

I also do not know what your are talking about having twice explained the nature of DE-Ohio's objections to OCC's discovery. This is the first time we have discussed your responses to the Interrogatories I previously mentioned in this e-mail. You must be referring to different discovery responses that we have previously addressed. I do not know why you believe you are under no obligation to cooperate. In any case, we need formal responses to Interrogatories 05-206 through 05-212 and OCC POD 05-041 through 05-048. Thanks. Ann

CONFIDENTIALITY NOTICE: This communication is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender at (614) 466-8574 and destroy all copies of this communication.

>>> "Colbert, Paul" <paul.colbert@duke-energy.com> 9/23/2008 3:20 PM >>>

Ann, DE-Ohio has properly answered your discovery request. Your question is vague because it leaves to DE-Ohio's interpretation which contracts OCC is requesting. For example, if we purchase soap from Proctor and gamble for the company restrooms pursuant to a contract; DE-Ohio takes the position that such contract is not relevant to these proceedings. In addition, nowhere in 4928.45 does it say that DE-Ohio must report information it does not have and knows nothing about. DE-Ohio will represent that neither it, nor an affiliate has entered any contract with any party, as a result of filing, or attempting to settle the ESP case. If DE-Ohio or an affiliate enters a contract in the future, and DE-Ohio becomes aware of the contract, we will supplement our interrogatory response.

I would also remind you that OCC has made no attempt to resolve differences with DE-Ohio before filing a Motion to Compel. A demand accompanied by a threat to file is not an attempt to resolve as required by 4901-1-23(C). Despite your failure to attempt to resolve DE-Ohio has offered to provide OCC additional information (indeed we are meeting with OCC regarding SmartGrid tomorrow), we have offered to meet with OCC to discuss settlement or provide information at any time convenient to OCC, we have answered every OCC interrogatory, and we have twice explained the nature of DE-Ohio's objections to OCC's discovery and amended the answers in an attempt to satisfy OCC. DE-Ohio is under no obligation to cooperate in such a manner but continues to do so in an attempt to discuss reasonable resolutions to issues in these

proceedings. If we can be of further help please contact me. Thank you.

-----Original Message-----

From: ANN HOTZ [mailto:HOTZ@occ.state.oh.us]

Sent: Monday, September 22, 2008 3:21 PM

To: Colbert, Paul

Subject: Responses to OCC Interrogatories 05-206 through 05-212- and OCC POD-05-041 through 05-048

Paul,

DE-Ohio responded to these questions as if it does not have the responsibility to know whether its affiliates have entered into contracts with a party to the proceeding, a consumer, an electric services company or political subdivision. R.C. 4928.145 requires DE-Ohio to know and to make available to OCC every such contract or agreement:

"During a proceeding under sections 4928.141 to 4928.144 of the Revised Code and upon submission of an appropriate discovery request, an electric distribution utility shall make available to the requesting party every contract or agreement that is between the utility or any of its affiliates an a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the public utilities commission."

Despite DE-Ohio's objection that the question is vague, the interrogatories made it very clear what OCC is requesting. Additionally, despite DE-Ohio's statement that it "knows of no contract that it or any affiliate has entered with a party etc," DE-Ohio has the responsibility to know under 4928.145. Therefore if DE-Ohio will not state that DE-Ohio or any of its affiliates has not entered into a contract with a party to the proceeding, consumer, electric service company, or political subdivision that is relevant to the proceeding, it must provide OCC the contracts or agreements that DE-Ohio or its affiliates have entered into. OCC will file a motion to compel to enforce R.C. 4928.145 if necessary.

Thanks. Ann

CONFIDENTIALITY NOTICE: This communication is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender at (614) 466-8574 and destroy all copies of this communication.

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Interrogatories
Date Received: September 8, 2008

OCC-INT-05-205

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

- Improve regional economic development marketing efforts through, but not limited to, marketing research studies, direct business recruitment and development.
- Support competitiveness initiatives outlined in state and regional job attraction plans.
- Prepare the work force to support targeted industries.

Green Infrastructure Grants:

- Positively impact the environment and carbon footprint of the region
- Increase awareness and education of renewable energy applications and technologies
- Encourage private investment and sustainable growth through mass transit investment

Ability to meet proposed tariff qualifications including established in Rider EC.

Specific criteria include:

- Qualification for state or regional job creation or retention incentives
- Capital investment
- Number of jobs created
- Increased electric usage
- Affirmation that the creation or retention of jobs within the region is dependent upon reduced electric prices

- e. DE-Ohio has not budgeted additional funds for Economic Competitiveness Grants.
- f. Recipient's eligibility will depend on the type of grant for which they apply. Recipients may include but are not limited to:

Job Creation Grants: regional economic development partnerships and alliances, chambers of commerce, local economic development organizations and educational institutions within the Duke Energy Ohio certified territory.

Green Infrastructure Grants: Local governments, educational institutions and non-profit public service organizations within the Duke Energy Ohio service area.

Price Discounts: Non-residential consumers not classified as Retail Trade or Public Administration.

PERSON RESPONSIBLE: Barry W. Wood, Jr.

OCC-INT-05-206

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a consumer, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

OCC-INT-05-207

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date or which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

OCC-INT-05-208

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a political subdivision, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

OCC-INT-05-209

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between any affiliate of the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

OCC-INT-05-210

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between any affiliate of the electric utility and a consumer, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

OCC-INT-05-211

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between any affiliate of the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application)

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

OCC-INT-05-212

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, what is the identity of each contract or agreement between the electric utility and a political subdivision, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Objection. DE-Ohio objects to the question as vague and no more difficult for OCC to gather than DE-Ohio. DE-Ohio also objects on the grounds that the question is not calculated to lead to the discovery of relevant evidence. Without waiving its objection DE-Ohio knows of no contract that it or any affiliate has entered with "a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding..." If and when DE-Ohio enters any such contract it will update its discovery response subject to protection for confidential material as may be determined by the Commission.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Production of Documents
Date Received: September 8, 2008

OCC-POD-05-041

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in the response to OCC Interrogatory No. 205 between the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-205.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Production of Documents
Date Received: September 8, 2008

OCC-POD-05-042

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 206 between the electric utility and a consumer, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-206.

PERSON RESPONSIBLE: N/A

OCC-POD-05-043

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 207 between the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-207.

PERSON RESPONSIBLE: N/A

OCC-POD-05-044

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 208 between the electric utility and a political subdivision, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-208.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Production of Documents
Date Received: September 8, 2008

OCC-POD-05-045

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 209 between any affiliate of the electric utility and a party to this proceeding, including members of groups that are parties to this proceeding, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-209.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Production of Documents
Date Received: September 8, 2008

OCC-POD-05-046

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 210 between any affiliate of the electric utility and a consumer, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-210.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Production of Documents
Date Received: September 8, 2008

OCC-POD-05-047

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 211 are between any affiliate of the electric utility and an electric services company, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-211.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Fifth Set Production of Documents
Date Received: September 8, 2008

OCC-POD-05-048

REQUEST:

Pursuant to ORC 4928.145 and proposed OAC 4901:1-35-07, please provide copies of the contracts or agreements provided in response to OCC Interrogatory No. 212 between the electric utility and a political subdivision, related to:

- a) The provision, sale and/or purchase of electric services (including, but not limited to generation service, distribution service and transmission services) for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- b) Any electric service-related services for any period that includes January 1, 2009 and for any period that includes dates subsequent to January 1, 2009 through the latest date for which the electric utility seeks recovery of any charges in its ESP Application (e.g. recovery of deferrals);
- c) The current proceeding (e.g. support of the electric utility's positions and/or application).

RESPONSE:

Please see the response to OCC-INT-05-212.

PERSON RESPONSIBLE: N/A

Duke Energy Ohio
Case No. 08-920-EL-SSO
OCC Sixth Set Interrogatories
Date Received: September 8, 2008

OCC-INT-06-240

REQUEST:

Under Duke's currently approved corporate separation plan, which of Duke's fuel, purchased power and emission allowance procurement employees are shared with any of Duke's affiliates?

RESPONSE:

Objection. This interrogatory is irrelevant and seeks information that is not calculated to lead to discovery of admissible evidence.

PERSON RESPONSIBLE: N/A