

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for the Establishment of a	)	Case No. 12-2400-EL-UNC
Charge Pursuant to Revised Code Section	)	
4909.18.	)	

In the Matter of the Application of Duke	)	Case No. 12-2401-EL-AAM
Energy Ohio, Inc., for Approval to Change	)	
Accounting Methods.	)	

In the Matter of the Application of Duke	)	Case No. 12-2402-EL-ATA
Energy Ohio, Inc. , for the Approval of a	)	
Tariff for a New Service.	)	

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**JOINT REPLY TO MEMORANDUM CONTRA  
MOTION TO STRIKE  
BY  
SIGNATORY PARTIES**

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The Signatory Parties,<sup>1</sup> including consumer advocates representing the approximately 611,000 residential utility consumers of Duke Energy Ohio, Inc. (“Duke”), file this Reply to Duke’s Memorandum Contra the Joint Motion to strike filed on November 2, 2012. In this pleading the Signatory Parties address Duke’s turnabout claims that the Signatory Parties (not itself) “ignored the rules” under the Ohio Administrative Code and that the Signatory Parties unreasonably relied upon Duke’s request for an expedited ruling.

As explained in the Signatory Parties’ Joint Motion to Strike, Duke’s Reply should be stricken under Ohio Adm. Code 4901-1-12 because Duke has failed to comply with the Ohio Administrative Code. Under the Code, when a party seeks an expedited

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<sup>1</sup> Office of the Ohio Consumers’ Counsel, the Ohio Energy Group, the City of Cincinnati, the Ohio Partners for Affordable Energy, Greater Cincinnati Health Council, Ohio Manufacturers’ Association, The Kroger Company, Cincinnati Bell, Inc. and Wal-Mart Stores East LP and Sam’s East Inc. (“Signatory Parties”)

ruling (inadvertently or otherwise) it is not entitled to a reply.<sup>2</sup> If Duke’s reply stands, the Signatory Parties will have been prejudiced because they were not afforded the additional response time (8 more days) that they were entitled to under Ohio Admin. Code 4901-1-12(B). Instead, the Signatory Parties relied upon the statement in Duke’s pleading that it was requesting an expedited ruling and responded within the shorter seven day time period allotted under Ohio Admin. Code 4901-1-12(C).<sup>3</sup>

Although admitting that the Signatory Parties are “superficially correct” and appear to make a “reasonable request” in their arguments,<sup>4</sup> Duke asserts that the arguments are “not supportable in this instance.”<sup>5</sup> In an ironic twist, Duke claims that while the Signatory Parties seek to uphold the procedural rules “with precision” they (not Duke) ignore the terms of the very same rule. Duke asserts that the Signatory Parties “knew—from the face of the document –that the one-sentence mention of expedited treatment should be denied under the terms of the applicable rule.”<sup>6</sup> Thus, Duke believes that the Signatory Parties should have treated the pleading as deficient and responded within the more elongated response period allotted under the rules for motions not seeking expedited relief. Duke then implies that any other reaction to the pleading was unreasonable and that it is the Signatory Parties who are at fault, not Duke, for relying on

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<sup>2</sup> Ohio Admin. Code 4901-1-12(C).

<sup>3</sup> Otherwise a memorandum contra may be filed within 15 days after service of a motion. See Ohio Admin. Code 4901-1-12(B)(1).

<sup>4</sup> Duke Memorandum Contra Motion to Strike at 2 (Nov. 13, 2012).

<sup>5</sup> Id.

<sup>6</sup> Id. at 3.

Duke's pleading. Duke further seeks to disparage the Signatory Parties for not contacting Duke to inquire as to whether expedited treatment was being requested.<sup>7</sup>

Duke's arguments are absurd. Duke filed a pleading where in the very first paragraph of its motion it requested an expedited ruling: "Duke Energy Ohio further seeks an expedited ruling on its motion pursuant to O.A.C. 4901-1-12(C)." The Signatory Parties relied upon Duke's request for an expedited ruling, and filed a Memorandum Contra complying with the shortened seven-day response period. Duke filed a Reply to the Joint Memorandum Contra. On that same day, OCC's attorney contacted Duke's Attorney indicating that OCC intended to move to strike Duke's Reply unless Duke withdrew it.

Duke has failed to comply with the Commission's rules. No amount of finger-pointing can change that fact. The merits of a pleading—whether it has complied with the rules or not -- do not change the response time required under the rules. The rules speak to whether a request is made—they do not differentiate between a legitimate or illegitimate request. Nor is there any "Did you really mean it?" duty imposed by the Commission rules. The rules do not require an opposing party to inquire of the moving party whether they really meant what they said in their pleading.

Accordingly, the Commission should follow the rules set forth in the Ohio Administrative Code instead of the rules which Duke manufactures to remedy its error. The Joint Motion to Strike Duke's Reply should be denied, unquestionably.

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<sup>7</sup> Id. at 3.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Reply to Memo Contra Motion to Strike* was served on the persons stated below via electronic transmission this 20th day of November 2012.

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Summary: Reply Joint Reply to Memorandum Contra Motion to Strike by Signatory Parties electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.