

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates.)	Case No.12-1685-GA-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 12-1686-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.)	Case No. 12-1687-GA-ALT
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 12-1688-GA-AAM
)	

**MEMORANDUM CONTRA DUKE ENERGY'S
MOTION TO STRIKE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On June 6, 2013, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Take Administrative Notice in this proceeding, for allowing additional relevant information to be considered regarding the applicant's request to charge customers \$63 million for the clean-up of 1800's gas plants. On June 11, 2013 Duke Energy Ohio, Inc. ("Duke" or "Utility") filed its Memorandum Contra OCC Motion to Take Administrative Notice ("Memo Contra") and a Motion to Strike ("Pleading" or "Motion"). OCC responds to the arguments raised by Duke in its Motion to Strike.

II. ARGUMENT

A. Duke's Motion to Strike Does Not Conform ToThe PUCO's Rules And Should Be Denied.

Duke's Pleading does not conform to the Commission's rules on Motions. Ohio

Adm. Code 4901-1-12 (A) states:

All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and **shall be accompanied by a memorandum in support**. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon. (Emphasis added).

Duke failed to include, as part of its Motion, a Memorandum in Support of its Motion. A Memorandum in Support, as directed by the language in the rule, is a **mandatory component of a Motion**, and a component of Duke's Motion that is conspicuously absent.

In fact, Duke only mentions the request to strike in its Motion in two sentence fragments in the introduction and conclusion. In the introduction Duke states: “* * * and the Commission should strike any reference to this information from Briefs submitted by OCC.”¹ And in the conclusion Duke states: “* * * and reference to the document offered by OCC should be stricken from OCC's Initial and Reply Briefs.”² Otherwise, there is no discussion of the request to strike in Duke's Motion. There are no supporting arguments contained in the Pleading that Duke called a Motion to Strike. Most significantly, there is no specification of the grounds for the Motion to Strike or citation to any authority upon which Duke relied in submitting the Motion to Strike. Moreover, Duke is not even consistent in its request as to which Brief or Briefs the information

¹ Pleading at 2.

should be stricken from. Therefore, the Commission should deny Duke's request to Strike from OCC's Brief(s) the information that OCC has proposed for administrative notice.

B. OCC's Reasons For The PUCO To Take Administrative Notice Are Well Stated And OCC's Motion Should Be Granted, Allowing OCC To Use Noticed Information In Its Briefs.

As noted, Duke has not supported its Motion to Strike with a Memorandum in Support that specifically supports its Motion. To be comprehensive, OCC will address Duke's arguments in support of its Memorandum Contra on the related issue of its opposition to OCC's Motion for Administrative Notice. OCC has made the following points in response to Duke's opposition to OCC's Motion for Administrative Notice:

1. The Commission should grant OCC's motion to take administrative notice; therefore, such information should not be stricken from OCC's Brief(s).³
2. Duke is not prejudiced because the Utility will have a reasonable and sufficient opportunity to explain how the information on its own website is consistent with Duke's testimony, and therefore, should not be stricken from OCC's Brief(s).⁴
3. The admission of this information should be governed by Ohio Rule of Evidence 201, because the information is not subject to dispute, and therefore, should not be stricken from OCC's Brief(s).⁵

² Pleading at 7.

³ OCC Reply to Duke Memo Contra at 2-3 (June 18, 2013).

⁴ Id. at 3-4.

⁵ Id. at 4.

III. CONCLUSION

Duke has failed to file a motion that adheres to the Commission's rules. Furthermore, Duke has failed to include arguments that support its request to strike information from OCC's Brief(s). Therefore, Duke's Motion to Strike should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum Contra* by the Office of the Ohio Consumers' Counsel has been served upon those persons listed below via electronic mail this 26th day of June 2013.

/s/ Larry S. Sauer

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Summary: Memorandum Memorandum Contra Duke Energy's Motion to Strike by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.