

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Establish a	)	Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to	)	
Section 4928.143, Revised Code, in the	)	
Form of an Electric Security Plan,	)	
Accounting Modifications and Tariffs for	)	
Generation Service.	)	

In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Amend its	)	Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O.	)	
No. 20.	)	

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**JOINT MOTION FOR CONTINUANCE  
BY  
IGS ENERGY,  
OHIO ENERGY GROUP,  
OHIO MANUFACTURERS' ASSOCIATION,  
OHIO PARTNERS FOR AFFORDABLE ENERGY,  
AND  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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The proceeding involves Duke Energy Ohio's ("Duke" or "Utility") request for the Public Utilities Commission of Ohio ("PUCO" or "Commission") to approve its proposed Electric Security Plan ("ESP") that affects the rates that its customers pay for electric service beginning June 1, 2015. IGS Energy, the Ohio Energy Group ("OEG"), Ohio Manufacturers' Association ("OMA"), the Ohio Partners For Affordable Energy ("OPAE"), and the Office of the Ohio Consumers' Counsel ("OCC") (together "Joint Movants"), jointly file this Motion<sup>1</sup> to continue the evidentiary hearing scheduled to

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<sup>1</sup> Pursuant to Ohio Adm. Code 4901-1-13 and 4901-1-12.

commence on September 8, 2014.<sup>2</sup> This Motion seeks a two month continuance of the hearing (and related dates for intervenor and PUCO Staff testimony and discovery cut-off) in order to allow the PUCO Staff and interested parties sufficient time to review and analyze Duke's ESP proposal.

Specifically, the Joint Movants request that the Attorney Examiner continue the hearing until November 10, 2014. Along with the request to continue the hearing, the Joint Movants request that the other deadlines set by the Attorney Examiner be reset (including testimony of intervenors and the PUCO Staff and the discovery cut-off), consistent with a later hearing date of November 10, 2014. Joint Movants urge the Attorney Examiner to maintain the 10 calendar day shortened response time for discovery.

The reasons supporting this Joint Motion are set forth in the attached Memorandum in Support.

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<sup>2</sup> See Entry at ¶4 (June 6, 2014).

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

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**MEMORANDUM IN SUPPORT**

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On May 29, 2014, Duke Energy Ohio (“Duke” or “Utility”) filed an Application seeking approval of a new electric security plan that begins June 1, 2015. The Utility’s Application was supported by the testimony of ten witnesses, totaling close to 1,200 pages, including schedules and workpapers. Within its Application, Duke proposed, inter alia, an aggressive procedural schedule, calling for intervenor testimony to be filed by July 24, 2014, and an evidentiary hearing to commence on August 19, 2014. Under Duke’s proposed schedule, the PUCO Staff and intervenors would have had only 56 days (from the date that the ESP Application was filed) to conduct an investigation of Duke’s claims and the terms of the proposed ESP, and to present their positions in written testimony. It is presumed that the reason Duke sought such a truncated procedural

schedule is because it is proposing to conduct two auctions prior to the first delivery year of June 1, 2015, with auctions scheduled for January 2015 and April 2015.<sup>3</sup>

The Attorney Examiner recently rejected Duke's s proposed schedule. Instead the Attorney Examiner extended the due date for intervenor testimony by 32 days from the date requested by the Utility.<sup>4</sup> Specifically, the Attorney Examiner ordered, inter alia, that testimony of intervenors is to be filed by August 26, 2014; PUCO Staff testimony is to be filed September 3, 2014; the last discovery request is to be served by August 22, 2014; and that an evidentiary hearing is to begin September 8, 2014.<sup>5</sup> The Attorney Examiner also ordered a shortened response time for discovery and a shortened pleading schedule.<sup>6</sup>

Joint Movants represent a wide array of customers including residential, commercial, industrial, and low income customers and a CRES provider that will be impacted by the outcome of this proceeding. The Joint Movants are filing this Motion, as permitted under Ohio Adm. Code 4901-1-12 and 4901-1-13, to request that the Attorney Examiner continue the hearing until November 10, 2014. Under these provisions of the Ohio Administrative Code, an Attorney Examiner may, for good cause shown, grant such a motion. Good cause is present to justify continuation of the evidentiary hearing, as explained below.

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<sup>3</sup> See Application, Attachment B.

<sup>4</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-4810-EL-SSO et al., Entry at ¶3 (June 6, 2014).

<sup>5</sup> Id.

<sup>6</sup> Id.

The three month period for discovery, submission of testimony and an evidentiary hearing as established in the June 6, 2014 Entry is too short of a time-period to enable parties to fully analyze the Utility's ESP filing. Indeed the General Assembly in its wisdom supported a much longer time frame to resolve utilities' electric security plans. Under R.C. 4928.143(C)(1) the General Assembly imposed a 275 day statutory deadline for the PUCO to issue an Order in all utilities' ESP applications beyond the initial application (to which a 150 day deadline applied). The statutory deadline for a PUCO decision in an ESP case reflects the General Assembly's intention to "effectuate[] 'the proper, orderly, and prompt' resolution" of ESP cases.<sup>7</sup> Based on the May 29, 2014 filing date, under the applicable law (R.C. 4928.143(C)(1)), a Commission decision is not statutorily required to be rendered until February 28, 2015.

The 275 day time frame under R.C. 4928.143(C)(1) is consistent with the general timeline for a rate case established under R.C. 4909.42. That statute permits a utility to put rates into effect if the PUCO has not concluded the rate proceeding and issued an order within 275 days of the filing of the application. Generally, this has led to a seven month period in which to conduct discovery and proceed to an evidentiary hearing. A seven month period of time is more than double the amount of time established in the procedural schedule adopted by the Attorney Examiner in this case.

And yet, Joint Movants in this case will have to engage in significant discovery in order to fully analyze the Utility's rate proposals and determine how customers' electric rates will be impacted. The Ohio Revised Code mandates that "[a]ll parties and

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<sup>7</sup> *In re: Application of Columbus Southern Power C.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶42, quoting *State ex rel. Jones v. Farrar* (1946), 146 Ohio St. 467, 472.

intervenors shall be granted ample rights of discovery.”<sup>8</sup> Such discovery cannot be accomplished in the less than three month period (May 29, 2014 through August 22, 2014) allotted for discovery by the Attorney Examiner. Even with a shortened discovery response time (10 calendar days), the period for discovery is inadequate. If the recent experience of parties trying to negotiate a protective agreement with Duke is any indication of how discovery will proceed, much valuable time will be consumed by discovery disputes.<sup>9</sup> And, without adequate discovery, effective testimony cannot be presented, and this may result in the PUCO not being presented with adequate information upon which to base its decision.

Moreover, there are no compelling reasons why this procedural schedule could not be extended. Although Duke has indicated its preference for an earlier schedule to facilitate an earlier auction process under the proposed ESP,<sup>10</sup> it has not shown that an earlier auction process is either necessary or warranted. Even so, under the Joint Movants proposed schedule (see below) two auctions for the Standard Service Offer (“SSO”) load could be held prior to the delivery period starting June 1, 2015. Past experience shows that Duke was able to prepare an SSO auction a mere three weeks after the PUCO’s decision in its last ESP case.<sup>11</sup> There is no reason to conclude that these next

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<sup>8</sup> R.C. 4903.082.

<sup>9</sup> See for example OEG’s Motion to Establish a Protect Agreement (June 14, 2014).

<sup>10</sup> See Direct Testimony of Robert J. Lee at 22, 34.

<sup>11</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, Opinion and Order (Nov. 22, 2011). The SSO auction was held on December 14, 2011.



auctions for the delivery period starting June 2015 could not be conducted in a similar time frame after the PUCO issues its Opinion and Order.

Further it should be noted that Duke controlled the timing of its filing, as only an electric distribution utility can file an ESP application. If Duke preferred to conduct its SSO auctions in the fall and winter of 2014,<sup>12</sup> then it should have filed its ESP application much earlier in this year. Instead Duke waited, and now it wants to deprive other parties of their opportunity to conduct thorough discovery and evaluate Duke's claims and the terms of its proposed ESP. Duke should not now be able to take advantage of its own delay in filing by forcing the intervening parties to participate in an unnecessarily expedited proceeding.

Duke's Application will have a significant impact on customers' bills. The Utility's Application addresses a myriad of issues, including but not limited to corporate separation,<sup>13</sup> a Significantly Excessive Earnings Test,<sup>14</sup> governmental aggregation,<sup>15</sup> use of full auction-based pricing for SSO customers,<sup>16</sup> and the continuation, modification, and/or addition of a number of riders that customers pay as part of electric service.<sup>17</sup> Some of the new costs that Duke seeks to collect from its customers include charges for: Distribution Capital Investment, Distribution Storm Costs, and generation related costs arising from Duke retaining an interest in Ohio Valley Electric Corporation ("OVEC").

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<sup>12</sup> See Direct Testimony of Robert J. Lee at 34.

<sup>13</sup> Duke Application at 18; Direct Testimony of Mark E. Hollis.

<sup>14</sup> Duke Application at 16; Direct Testimony of Peggy A. Laub.

<sup>15</sup> Duke Application at 19; Direct Testimony of William Don Wathen, Jr.

<sup>16</sup> Duke Application at 5-7; Direct Testimony of Robert J. Lee.

<sup>17</sup> Duke Application at 10-14.

Duke also maintains that it has the sole discretion to terminate its ESP after two years “in the event there is a substantive change in Ohio or federal law that affect SSOs or rate plans concerning same.”<sup>18</sup>

These rate proposals are complex. Even a full 275 day review is a demanding timeframe to investigate the factual claims and ESP proposals and for the PUCO to properly evaluate them. The expedited timeframe reflected in the Attorney Examiner’s Entry would unnecessarily shorten the timeframe provided by the General Assembly and present an obstacle to the full and fair evaluation of the ESP plan.

Accordingly, the Joint Movants propose the following procedural schedule to allow parties time to prepare testimony, and otherwise adequately review the ESP filing:

- Discovery: Served by October 13, 2014
- Intervenor Testimony: October 17, 2014
- Staff Testimony: October 24, 2014
- Evidentiary Hearing: November 10, 2014

The PUCO should grant the Joint Motion for the reasons set forth above.

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<sup>18</sup> Duke Application at 16-17.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Joint Motion has been served electronically upon those persons listed below this 18th day of June 2014.

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Summary: Motion Joint Motion for Continuance by IGS Energy, Ohio Energy Group, Ohio Manufacturers' Association, Ohio Partners for Affordable Energy and the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.