

**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.)	

**JOINT MOTION FOR A PREHEARING CONFERENCE TO ADDRESS
PENDING MOTIONS**

AND

REQUEST FOR EXPEDITED RULING

BY

**THE CITY OF CINCINNATI,
CONSTELLATION NEWENERGY INC.,
ENVIRONMENTAL LAW AND POLICY CENTER,
EXELON GENERATION COMPANY LLC,
INDUSTRIAL ENERGY USERS OF OHIO,
INTERSTATE GAS SUPPLY, INC.,
THE KROGER COMPANY,
NATURAL RESOURCES DEFENSE COUNCIL,
OFFICE OF THE OHIO CONSUMERS' COUNSEL,
OHIO ENVIRONMENTAL COUNCIL,
OHIO PARTNERS FOR AFFORDABLE ENERGY,
PEOPLE WORKING COOPERATIVELY,
RETAIL ENERGY SUPPLY ASSOCIATION,
AND
SIERRA CLUB**

This case is about Duke Energy Ohio (“Duke” or “Utility”) seeking to establish an electric security plan (“ESP”) that may increase the electric rates its customers will pay starting in June 2015. The City of Cincinnati (“City”), Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (“Constellation/Exelon”), the Environmental

Law and Policy Center (“ELPC”), the Industrial Energy Users of Ohio (“IEU-Ohio”), Interstate Gas Supply, Inc. (“IGS Energy”), The Kroger Company (“Kroger”), the Natural Resources Defense Council (“NRDC”), the Office of the Ohio Consumers’ Counsel (“OCC”), the Ohio Environmental Council (“OEC”), Ohio Partners for Affordable Energy (“OPAE”), People Working Cooperatively (“PWC”), the Retail Energy Supply Association (“RESA”), and the Sierra Club (“Sierra”) (collectively “Joint Movants”) move for a prehearing conference in this case to address the pending Motions in this proceeding. There are five pending Motions before the PUCO in this proceeding.

Currently, intervenor testimony is due on August 26, 2014 and hearing is scheduled to commence on September 8, 2014.¹ Accordingly, the prehearing conference should be held at the earliest possible time. The PUCO should grant this Joint Motion on an expedited basis. The reasons supporting this Joint Motion for a prehearing conference and request for expedited ruling are contained in the following Memorandum in Support.

Respectfully submitted,

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¹ See Attorney Examiner Entry (June 6, 2014).

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Under the current schedule in this case, intervening parties to this proceeding must file their testimony by August 26, 2014 with a hearing scheduled to commence September 8, 2014. But a number of Motions are outstanding that will impact on the ability of the parties to present testimony and prepare for hearings in this proceeding.

The five outstanding Motions include the Joint Motion for Continuance filed by IGS Energy ("IGS"), Ohio Energy Group ("OEG"), OMA, OP&E and OCC on June 18, 2014; the Joint Motion to Reject Duke Energy Ohio's May 29, 2014 Application and Request to Vacate Procedural Schedule filed by Kroger, OMA, OP&E, and the OCC on July 9, 2014; the Motion to Compel Responses to Discovery filed by OCC on July 18, 2014; Duke's Motion for a Protective Order filed on July 8, 2014, and the Motion to Hold in Abeyance a Ruling on Duke's Motion for Protection filed by OCC on July 18,

2014. Each of these pleadings is at the end of its pleading cycle, i.e. Memoranda Contra and Reply to Memoranda Contra have been filed with respect to each Motion.

First and foremost is the Joint Motion for Continuance filed on June 18, 2014. That Motion sought 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.

Also pending is the Joint Motion to Reject Duke's Application, which addresses the sufficiency of Duke's filing. In that Joint Motion, the joint movants contend that there are several areas where Duke failed to comply with the standard filing requirements and failed to provide sufficient notice to customers.

A number of the other motions address the issue of an appropriate and reasonable protective agreement.² The disposition of each of these Motions will impact on the intervening parties' ability to present testimony and prepare for hearings. Specifically, the signatory parties to these Motions and most other intervenors have been unable to execute a protective agreement with Duke.³ As a result, these parties have not been permitted to review portions of testimony, including important filing requirements, and discovery responses in this proceeding that Duke alleges contain confidential information. Additionally, parties have been also unable to challenge the confidential designation made by Duke in the absence of a review of such information.

OCC's Motion to hold Duke's May 29, 2014 Motion for protection in abeyance addresses the fact that since there is no executed protective agreement, most of the

² OCC Motion to Compel Responses to Discovery, filed on July 18, 2014; Duke's Motion for Protective Order, filed on July 8, 2014.

³ OEG alone has been able to reach a protective agreement with Duke.

intervenors have not been able to view the materials that are subject to the Motion for Protective Order. Duke has refused to provide most intervenors with information that it alone has determined deserves confidential treatment. The PUCO's rules were promulgated to prevent such actions. The PUCO's granting of this Joint Motion should further the public's interest in having the rates that they pay for electric service established in an open and transparent process.

As matters now stand, because of Duke's efforts to change the way that protective agreements are structured, many parties in this proceeding have not been provided with portions of testimony, including important filing requirements, and discovery responses that Duke alleges contain confidential information. Such information is critical to understanding and evaluating Duke's ESP Application. The delay in receipt of this information has impacted the filing of testimony and the upcoming hearing on the matter. This situation is untenable for customers. The PUCO should resolve this issue now.

II. THE PUCO SHOULD PROMPTLY CONVENE A PREHEARING CONFERENCE.

First, the requested prehearing conference is allowed by the PUCO's rules. Ohio Adm. Code 4901-1-26(A)(1) allows the PUCO to hold a prehearing conference to resolve discovery matters. Ohio Adm. Code 4901-1-26(A)(1)(a) allows the PUCO to hold a prehearing conference to rule on motions to compel and protective orders. Ohio Adm. Code 4901-1-26(A)(2) allows the PUCO to hold a prehearing conference on "any other pending procedural motions." And 4901-1-26(A)(7) allows the PUCO to hold a prehearing conference to discuss or rule on "any other procedural matter which the commission or the presiding hearing officer considers appropriate."

Second, there are a number of impasses that require resolution by the PUCO. These include whether filing requirements have been met, the terms of notice to be published to customers, and the terms under which information alleged to be trade secret by Duke can reasonably be provided to intervening parties. These impasses prevent intervenors from adequate preparation for hearing and customers receiving notice of what Duke is requesting in this case and the impact on their electric bills. The importance of these issues is magnified under the compressed time frame adopted for this proceeding. That compressed time frame is also the subject of a motion – the Joint Motion for a Continuance.

Third, the prehearing conference will serve administrative efficiency. The requested prehearing may resolve some or all of the outstanding motions.

Moreover, Duke has presented issues of confidentiality. Those issues could be addressed at the prehearing conference.

Fourth, there is precedent for resolving discovery disputes through the hearing of oral arguments. For example, a group of parties sought oral argument in a case on FirstEnergy’s proposed generation rates where FirstEnergy had failed to respond to certain discovery requests. The PUCO granted the motion, scheduling a conference for the PUCO to hear and resolve the issues.⁴ Similarly, in DP&L’s most recent ESP proceeding, the Attorney Examiners held a prehearing conference for the purpose of resolving outstanding discovery disputes, directing that “all pending discovery disputes should be presented to the attorney examiners” and that “[t]o the extent that any discovery disputes involve privilege

⁴ *In the Matter of the Applications of FirstEnergy*, Case Nos. 03-2144-EL-ATA et al., Entry at paragraph 9 (November 25, 2003).

claims, the parties are directed to bring to the conference privilege logs and copies of the disputed documents for in-camera review, if necessary.”⁵

Regarding other procedural issues in the current proceeding, including scheduling issues, they can be addressed at the same time to the extent they are not able to be resolved sooner.

III. REQUEST FOR EXPEDITED RULING

Joint Movants also respectfully request an expedited ruling, pursuant to Ohio Adm. Code 4901-1-12(C). The PUCO should rule on an expedited basis so that the prehearing conference can be scheduled as soon as possible and well before the due date for intervenor testimony. The scheduling of the prehearing conference now is an important step in providing the parties adequate time to analyze the information sought for inclusion in testimony that must be filed by August 26, 2014. Joint Movants are not in a position to certify that no party objects to this request.

IV. CONCLUSION

This Motion for Prehearing Conference should be granted in furtherance of a fair and transparent process for intervening parties and those that represent them. For the foregoing reasons, a prehearing conference should be held during the week of July 28, 2014.

⁵ *In the Matter of the Application of The Dayton Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 12-0426-EL-SSO, Entry of February 28, 2013 at 2-3.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Joint Motion* was served on the persons listed below, via electronic service, this 28th day of July 2014.

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