

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Jeffrey)	
Pitzer,)	
)	
Complainant,)	
)	
v.)	Case No. 15-298-GE-CSS
)	
Duke Energy Ohio, Inc.,)	
)	
Respondent.)	

**MOTION FOR A CONTINUANCE OF THE HEARING,
MOTION FOR A DISCOVERY CONFERENCE,
AND
MOTION FOR AN EXPEDITED RULING
FILED BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Under Ohio Adm. Code 4901-1-12, 4901-1-13, 4901-1-14, and 4901-1-26, the Office of the Ohio Consumers' Counsel (OCC) respectfully moves for an order continuing the January 14, 2016 hearing date to February 1, 2016 and for an order scheduling a discovery conference. Further, OCC respectfully requests that these motions be granted on an expedited basis in accordance with Ohio Adm. Code 4901-1-12(C). OCC can certify that the Complainant, Mr. Jeffrey Pitzer, does not oppose this request; however, OCC cannot certify that Duke Energy Ohio, Inc. (Duke) does not oppose this request.

The hearing date should be continued, and a discovery conference should be scheduled, for three reasons. First, OCC is encountering difficulties in receiving discovery responses from Duke. Without Duke's responses to discovery requests served by all parties, OCC will be unable to adequately prepare for and present its case at hearing. A discovery conference would be an appropriate setting to address and resolve these issues. Second, various pending motions remain

outstanding for resolution, including a Fourth Motion to Compel Discovery Responses that the Complainant filed against Duke on December 23, 2015 and motions regarding the confidential treatment of certain documents. Resolution of these motions should occur before this case proceeds to a hearing so that, in the event the motions to compel are granted, parties have an opportunity to retrieve, produce, and analyze the necessary information. Third, OCC's witness recently experienced a death with a close family member and it would be oppressive for this witness to prepare for and attend a deposition¹ and/or a hearing during his bereavement period. Collectively, these reasons demonstrate that good cause exists for granting these motions. Given that this case is scheduled for a hearing in less than a week, the motion should be granted on an expedited basis.

¹ Although counsel for Duke notified OCC on Saturday, January 9, 2016, that "given Mr. Williams' current absence due to his bereavement leave, we will forego deposing him this week," it is unclear the exact meaning of Duke's correspondence. Is Duke foregoing deposing Mr. Williams at all, are they foregoing deposing him the week ending Saturday, January 9, 2016, or are they only forgoing deposing him during his state bereavement leave? Importantly, Duke has not withdrawn its notice of deposition for Mr. Williams filed in the case.

WHEREFORE, for the reasons stated more fully in the Memorandum in Support attached hereto, OCC respectfully requests that the Commission grant its motions on an expedited basis.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

In a November 30, 2015 Entry, the Attorney Examiner scheduled this matter for an evidentiary hearing to be held on January 14, 2016.² OCC requests a modest continuation of this date to February 1, 2016 in order to avoid prejudicing OCC if the hearing were to proceed as scheduled. OCC also requests an order scheduling a discovery conference. For the reasons explained below, the motions should be granted.

First, OCC is still seeking responses to its discovery requests from Duke. Without responses to these discovery requests, OCC will be unable to enjoy the “ample rights of discovery” granted to it by R.C. 4903.082. Further, as stated by Commission rule, the discovery process is designed to permit parties “thorough and adequate preparation for participation in commission proceedings.”³ OCC submits that rather than burdening the Commission with yet

²*In the Matter of the Complaint of Jeffrey Pitzer v. Duke Energy Ohio, Inc.*, Case No. 15-298-EL-CSS, Entry at 2 (November 30, 2015).

³Ohio Adm. Code 4901-1-16(A).

another motion to compel,⁴ a discovery conference would be the most expeditious way to address the issue so as to ensure that OCC's discovery rights are protected.

Second, there are still several outstanding motions that OCC respectfully requests to be addressed prior to proceeding to hearing. As shown by the profusion of motions to compel in this docket, Parties are currently "embroiled in several discovery disputes."⁵ The Parties have either not been able to obtain discovery responses from Duke or have received incomplete or insufficient responses.⁶ If the Commission decides to grant these motions and/or order Parties to produce certain information and documents, adequate time must be afforded so that the party against whom the information is sought has a sufficient amount of time to retrieve and produce the information. Likewise, the party seeking the information must have adequate time to review and analyze the documents and information once they become available. Other pending motions regarding the treatment of certain information and documents alleged to be confidential will also need to be resolved. A ruling on those motions at a discovery conference prior to the hearing will assist in a more efficient and expedient hearing. A modest continuation of the hearing date, along with the scheduling of a discovery conference, should be sufficient to address these timing concerns.

Third, the OCC witness scheduled to testify in this case recently experienced a death in the family. It would be oppressive for this witness to be required to appear and offer testimony during or upon immediate return from his bereavement leave. Additionally, Duke filed a notice of deposition for this witness to appear on January 8, 2016. Although the scheduled deposition

⁴ So far, no less than five motions to compel have been collectively filed by the parties to this case.

⁵ See, e.g., Fourth Motion to Compel filed by Complainant Jeffrey Pitzer at 2 (December 23, 2015) (requesting responses from Duke).

⁶ Id. Also, OCC notes that Duke has refused to produce documents pursuant to properly noticed depositions and failed to adequately supplement discovery responses as required by the Commission's discovery rules, both of which will be the subject of a future motion to compel or discovery conference.

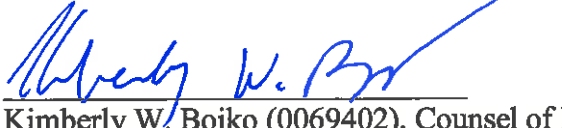
was cancelled, it would be unduly burdensome to reschedule the deposition and require the witness to prepare for and appear at a deposition upon immediate return from his bereavement leave or during his bereavement period.⁷ A modest continuation of the hearing date would give this witness the necessary and appropriate amount of time to attend to unquestionably important familial obligations, and then to prepare for and attend a hearing to offer testimony in this proceeding.

For the reasons stated herein, it would be prejudicial, unjust, and unreasonable to OCC to move forward with the hearing date as currently scheduled without the benefit of all discovery responses and without the benefit of its key witness. To avoid any unnecessary prejudice, the hearing should be continued to February 1, 2016. Given that the hearing is less than a week away, OCC respectfully requests that these motions be granted on an expedited basis. The Complainant, Mr. Jeffrey Pitzer, does not oppose the motions or the request for expedited treatment.

⁷ See *supra* n.1.

Respectfully submitted,

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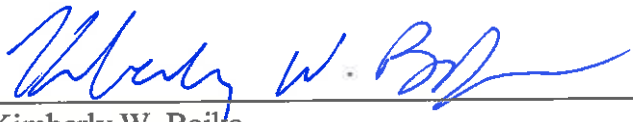
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via email on the parties identified below
on January 11, 2016.



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Summary: Motion For A Continuance Of The Hearing, Motion For A Discovery Conference, And Motion For An Expedited Ruling Filed By The Office Of The Ohio Consumers' Counsel electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Consumers' Counsel