

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke       )  
Energy Ohio, Inc. for Tariff Approval       ) Case No. 14-2209-EL-ATA  
Regarding Customer Energy Usage Data.    )

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**MOTION TO HOLD THE CASE IN ABEYANCE AND  
REQUEST FOR EXPEDITED REVIEW  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
AND OHIO PARTNERS FOR AFFORDABLE ENERGY**

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In this proceeding the PUCO will be evaluating many new and complex issues<sup>1</sup> associated with Duke providing customer energy usage data to marketers. In the interests of administrative efficiency, the Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") move the Public Utilities Commission of Ohio ("PUCO") to hold this case in abeyance until the PUCO resolves these issues that are being significantly addressed in Duke's filed distribution rate case,<sup>2</sup> Case No. 17-32-EL-AIR ("Duke Rate Case").

OCC and OPAE request expedited review of this motion.<sup>3</sup> Additionally, consistent with the request to hold the case in abeyance, OCC and OPAE requests that intervenor testimony filing dates be suspended accordingly. The following parties have indicated that they do not oppose this motion: Ohio Environmental Council and the Staff of the PUCO. However, OCC and OPAE are unable to certify that all parties do not

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<sup>1</sup> See Attorney Examiner Entry at ¶8 (Oct. 3, 2016).

<sup>2</sup> See Motion of Duke for Extension at 3 (Mar. 3, 2017): Entry at ¶5 (Mar. 14, 2017).

<sup>3</sup> This motion is made under Ohio Adm. Code 4901-1-12 and 4901-1-13.

oppose this motion. OCC and OPAE's motion should be granted for good cause shown, as fully explained in the following memorandum.

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

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**MEMORANDUM IN SUPPORT**

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**I. RECOMMENDATION**

OCC and OPAE request that the PUCO (a) hold this case in abeyance until an Opinion and Order is issued in the Duke Rate Case and (b) suspend the deadline for intervenor testimony. Under the PUCO’s rules, continuances and extensions of time may be granted upon motion of any party “for good cause shown.”<sup>4</sup> This motion meets this standard.

On December 16, 2015, the PUCO issued an Entry requiring Duke to answer four questions regarding the data that is currently provided to customers and marketers, the data that can be provided, the estimated costs of providing certain data, and the timeframe for providing that data from its advanced metering infrastructure (“AMI”).<sup>5</sup> On July 1, 2016, OCC filed correspondence in this docket explaining that because Duke is seeking only tariff approval, the PUCO may not increase charges to consumers in this case.<sup>6</sup>

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<sup>4</sup> Ohio Adm. Code 4901-1-13(A); see also Ohio Admin. Code 4901-1-12(A) generally permitting motions to be filed, accompanied by memorandum in support.

<sup>5</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval Regarding Customer Energy Usage Data*, Case No. 14-2209-EL-ATA, Entry at ¶16 (Dec. 16, 2015).

<sup>6</sup> If the PUCO seeks to allow Duke to recover any costs, it must be reflected in a test year under an application to increase rates or approved through an electric security plan filing. R.C. 4909.18 (application to establish or change a rate); R.C. 4928.143 (application for approval of an electric security plan).

On April 26, 2017, Duke filed testimony in this case.<sup>7</sup> Duke's testimony purported to answer only one of the PUCO's four questions from the December 15, 2015 Entry. With respect to the other three (what type of customer data should be provided to marketers, the costs of providing this data, and the timeframe for providing this data), Duke simply referred to testimony in the Duke Rate Case.<sup>8</sup>

As the Attorney Examiner acknowledged, there are very complex and detailed issues raised in this proceeding.<sup>9</sup> In the electric distribution rate case Duke is seeking approval of mechanisms to collect costs from customers for system changes necessary to enable customer usage data to be provided to marketers. The rate case, according to Duke “will enable parties to fully evaluate, on a holistic level, the current system and appropriate modifications,” while the “present proceeding does not allow such an opportunity.”<sup>10</sup>

Indeed, in a March 2, 2017 filing in this case, Duke asked the PUCO to delay the filing of testimony in this case or to hold this proceeding in abeyance pending resolution of the Duke Rate Case.<sup>11</sup> The Attorney Examiner granted Duke's motion and set the current procedural schedule, pursuant to which Duke filed its April 26, 2017 testimony.

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<sup>7</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval Regarding Customer Energy Usage Data*, Case No. 14-2209-EL-ATA, Direct Testimony of Scott B. Nicholson (April 26, 2017).

<sup>8</sup> See *In the Matter of the Application of Duke Energy Ohio for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, Direct Testimony of Scott B. Nicholson at 2 (March 16, 2017) (addressing the “customer energy usage data (CEUD) that is currently available to CRES providers and the modifications necessary to appropriately expand the availability and exchange of such data.”); *In the Matter of the Application of Duke Energy Ohio for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, Direct Testimony of Donald L. Schneider, Jr. at 2 (March 16, 2017)(addressing “the benefits and costs associated with the Company’s AMI Proposal.”).

<sup>9</sup> See Attorney Examiner Entry at ¶8 (Oct. 3, 2016).

<sup>10</sup> Motion of Duke Energy Ohio, Inc. for Extension of Procedural Schedule and Request for Expedited Treatment at 3 (Mar. 2, 2017).

<sup>11</sup> See *Id.*

In the meantime (on March 16, 2017), Duke also filed its testimony in the Duke Rate Case.

Now that Duke has filed its testimony in both the Duke Rate Case and in this Case, it is clear that many of the issues raised in this case will ultimately need to be resolved in the rate case. Duke's rate case testimony includes extensive discussion of AMI metering programs, and any issues dealing with recovery of those costs or additional costs to provide data to marketers should be dealt in a rate increase proceeding.<sup>12</sup> Only after those issues have been dealt with would it be appropriate to determine what data can be provided to marketers. Rather than duplicate efforts the Duke Rate Case should be resolved before this customer energy usage data case continues.

## **II. CONCLUSION**

To avoid a duplication of effort and to facilitate administrative efficiency, the PUCO should hold this case in abeyance until after the issues are fully resolved in Duke's rate case. Good cause exists to for this motion. With intervenor testimony scheduled for filing by May 10, 2017; OCC and OP&E request expedited treatment for this motion.

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<sup>12</sup> OCC takes no position in this motion on the prudence or appropriateness of the application in Duke's Rate Case through this Motion.

Respectfully submitted,

BRUCE WESTON (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Jodi Bair

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion has been served upon the below-named persons via electronic transmission this 4<sup>th</sup> day of May, 2017.

/s/ Jodi Bair  
Jodi Bair  
Assistant Consumers' Counsel

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Summary: Motion Motion to Hold the Case in Abeyance and Request for Expedited Review by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy electronically filed by Ms. Deb J. Bingham on behalf of Bair, Jodi Ms.