

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates.	) ) )	Case No. 17-32-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	) )	Case No. 17-33-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	) ) )	Case No. 17-34-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.	) ) )	Case No. 17-872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.	) ) )	Case No. 17-873-EL-ATA
In the Matter of the Application of Duke Energy Ohio Inc., for Approval to Change Accounting Methods.	) ) )	Case No. 17-874-EL-AAM
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. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	) ) ) )	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Vegetation Management Costs.	) ) )	Case No. 17-1265-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Admin. Code.	) ) ) )	Case No. 16-1602-EL-ESS

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**MEMORANDUM CONTRA DUKE ENERGY OHIO, INC.’S MOTION FOR A  
PROCEDURAL SCHEDULE  
BY  
THE ENVIRONMENTAL LAW & POLICY CENTER, ENVIRONMENTAL  
DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL, OHIO  
ENVIRONMENTAL COUNCIL, SIERRA CLUB, THE OFFICE OF THE OHIO  
CONSUMERS’ COUNSEL, AND INTERSTATE GAS SUPPLY, INC.**

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On April 13, 2018, Duke Energy Ohio, Inc. (“Duke”) and certain parties to the above-captioned proceedings filed a Stipulation and Recommendation (“Stipulation”). On that same day, Duke filed a motion to consolidate each of the cases. Duke has assumed, without justification, that its motion to consolidate will be granted and has now filed a second motion proposing a compact procedural schedule as follows:

- Company Testimony Supporting Stipulation and Company Testimony Supporting Rate Case Objections to be filed May 25, 2018
- Intervenor Testimony to be filed June 11, 2018
- Staff Testimony to be filed June 22, 2018
- Hearing to commence June 25, 2018

Should these cases be consolidated, Intervenor Environmental Law & Policy Center, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, Sierra Club, the Office of the Ohio Consumers’ Counsel, and Interstate Gas Supply, Inc. (“IGS”) (collectively, “Non-Settling Intervenor”) oppose this proposed schedule because it allows only 17 days after filing of supporting testimony for Non-Settling Intervenor to conduct discovery and develop their own testimony. That is an insufficient time period that will preclude full and adequate presentation of the issues in these dockets to the Public Utilities Commission of Ohio (“PUCO”). It will prejudice Non-Settling Intervenor and potentially leave the PUCO with an inadequate record on which to decide these complex cases. Moreover, Duke’s proposed schedule is

inappropriate because it proposes an improper order of testimony. When the Staff joins a stipulation, it is PUCO practice for the Staff to file its testimony in support of a stipulation simultaneously with other stipulating parties.<sup>1</sup>

One of the Non-Settling Intervenor, IGS, has filed a memorandum contra Duke's consolidation motion. Until that pending issue is resolved, setting a combined schedule for all four dockets would be premature. Nevertheless, the Non-Settling Intervenor propose an alternative schedule in the event the Commission does grant Duke's motion to consolidate, as follows:

- Company Testimony Supporting Stipulation and Company Testimony Supporting Rate Case Objections and Staff Testimony Supporting the Stipulation and Responding to Objections to the Staff Report to be filed May 16, 2018
- Intervenor Testimony to be filed June 27, 2018
- Hearing to commence July 9, 2018

Non-Settling Intervenor also request that the PUCO order expedited discovery responses, within 7 calendar days if the PUCO adopts Non-Settling Intervenor's proposed schedule, and within 5 calendar days if the PUCO adopts Duke's proposed schedule. This would allow for at least two rounds of discovery between filing of supporting testimony and the deadline for Non-Settling Intervenor to file testimony.

Non-Settling Intervenor's alternative proposed schedule would provide Duke and other settling parties more than a month from the filing of the Stipulation (April 13) to file testimony in support as well as testimony regarding any relevant rate case objections. At the same time, unlike the schedule proposed by Duke, it would allow Non-Settling

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<sup>1</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Testimony of Staff Witnesses (Sep. 13, 2011) (filed in support of stipulation and recommendation simultaneously with other stipulating parties); *see also In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section, 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 16-1852-EL-SSO, *et al.*, Testimony of Staff Witnesses (Sep. 13, 2017) (filed in support of Stipulation simultaneously with other stipulating parties).

Intervenors a reasonable period to conduct discovery and prepare testimony opposing the Stipulation. Duke's proposed hearing date and the deadline for intervenor testimony would be delayed by only two weeks, leaving these cases on track to be resolved within the same timeframe proposed by Duke.

This Stipulation purports to address myriad, complex issues across four separate dockets. These dockets include a rate case, an Electric Security Plan case, and a rider case that relates to potential cost recovery of millions upon millions of dollars annually to support uneconomic coal generation that is also the subject of ongoing bankruptcy proceeding involving one of the OVEC owners, FirstEnergy Solutions. Moreover, Duke and the other settling parties have not even filed their supporting testimony yet—a full three weeks after the filing of the Stipulation itself. Although the Non-Settling Intervenors have begun to serve discovery requests on Duke regarding the contents of the Stipulation, a number of those remain outstanding and may well require follow-up discovery and there is the possibility of needing time for motions to compel discovery. Furthermore, the filing of supporting testimony is likely to add to the significant questions regarding the meaning of and justification for various Stipulation provisions and will thus require additional written discovery and depositions before Non-Settling Intervenors can adequately respond through testimony.

Finally, should these cases be consolidated, the Non-Settling Intervenors also respectfully request that any schedule for the consolidated proceeding specify that PUCO Staff's testimony must support the Staff Report in the rate case and any modifications to its recommendations through the Stipulation. *See* OAC 4901-1-28. As outlined in IGS's memorandum contra Duke's consolidation motion, Staff's defense of the Staff Report (as modified by the Stipulation) is a key step in a rate case to ensure there is evidentiary support for all proposals before the PUCO.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Duke Energy Ohio Inc.'s Motion for a Procedural Schedule was served via regular electronic transmission to the persons listed below, on May 4, 2018.

/s/ Tony Mendoza

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### SERVICE LIST

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Summary: Memorandum Contra Duke Energy Ohio's Motion for a Procedural Schedule electronically filed by Mr. Tony G. Mendoza on behalf of Environmental Law & Policy Center and Ohio Environmental Council and Environmental Defense Fund and Sierra Club and Office of Ohio Consumers' Counsel and Interstate Gas Supply, Inc. and Natural Resources Defense Council