

**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 Administrative Code.	)	Case No. 16-1602-EL-ESS
	)	

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**MOTION OF DUKE ENERGY OHIO, INC., TO STRIKE  
IMPROPERLY FILED APPLICATION FOR REHEARING  
AND  
REQUEST FOR EXPEDITED TREATMENT**

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Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and hereby moves the Public Utilities Commission of Ohio (Commission) for an order striking a purported Application for Rehearing filed by the Office of the Ohio Consumers' Counsel. Said filing was procedurally improper and not allowed for under Ohio law. The Commission should strike the filing in its entirety.

Duke Energy Ohio submits the following memorandum in support of its motion.

Respectfully submitted,

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## MEMORANDUM IN SUPPORT

The filing of a “Second Application for Rehearing,” by the Office of the Ohio Consumers’ Counsel (OCC) was procedurally improper. The filing should be stricken from the docket.

The Public Utilities Commission of Ohio (Commission) issued its Opinion and Order, approving and adopting the stipulation in these consolidated cases, on December 19, 2018. Ohio law allows any party in a proceeding “to apply for rehearing in respect to any matters determined in the proceeding.”<sup>1</sup> Pursuant to that statute, four parties in these proceedings, including OCC, filed applications for rehearing on January 18, 2019. The Commission initially granted the applications for rehearing for further consideration of the issues<sup>2</sup> and then, subsequently, in a substantive determination, denied all of the issues raised in all of the four applications for rehearing.<sup>3</sup>

OCC filed a purported Second Application for Rehearing on August 16, 2019. OCC asserts that its Second Application for Rehearing is allowed under R.C. 4903.10. As a careful reading of the law will demonstrate, OCC is wrong.

Critically important is the fact that the statute states that “[a]n order made after such rehearing, abrogating or modifying the original order, shall have the same effect as an original order . . . .”<sup>4</sup> The statute, by these words, makes it clear that an entry on rehearing that makes changes to the original opinion and order shall be treated just like an opinion and order, thus making it subject to a further application for rehearing. On the other hand, an entry on rehearing that makes no changes to the order—simply denying the application for rehearing—would not,

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<sup>1</sup> R.C. 4903.10.

<sup>2</sup> Entry on Rehearing (Feb. 6, 2019).

<sup>3</sup> Second Entry on Rehearing (July 17, 2019).

<sup>4</sup> R.C. 4903.10.

under this statutory language, be treated in the same manner as an opinion and order. Thus, such an order on rehearing would not be subject to a further application for rehearing.

This reading of the law has been confirmed by the Ohio Supreme Court. The jurisdictional question before the Court related to a situation in which an initial entry on rehearing issued by the Commission substantively altered the opinion and order. After the utility in that case applied for rehearing of the entry on rehearing, the case was appealed to the Court. Opponents of the utility's position claimed that the utility had failed to preserve the issue, as the utility did not raise the issue on rehearing of the opinion and order. The Court found that the issue had been preserved, as the initial entry on rehearing, which changed the opinion and order, had to be treated in the same manner as the opinion and order. Therefore, the utility had the right to raise a new claimed error.

Pursuant to R.C. 4903.10, a party "may apply for a rehearing in respect to any matters determined in the proceeding." Applications for rehearing must be filed within 30 days after the entry of the initial order. *Id.* The statute, however, provides that "[a]n order made after such rehearing, abrogating or modifying the original order, shall have the same effect as an original order." *Id.* *Parties thus receive a new 30-day period to challenge entries on rehearing that modify earlier orders.*<sup>5</sup>

The entry on rehearing issued by the Commission in the present proceedings made no changes to the original order; it simply denied rehearing. Therefore, it does *not* have the same effect as the original order and does *not* provide parties with a new 30-day period in which to file for rehearing. For this reason, Duke Energy Ohio respectfully requests that the Commission strike the application for rehearing filed by OCC in these proceedings on August 16, 2019.

Duke Energy Ohio also requests expedited treatment of this motion, pursuant to O.A.C. 4901-1-12(C). The Company has not contacted other parties to confirm whether or not they object to the issuance of such a ruling.

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<sup>5</sup> *In re Columbus S. Power Co.*, 2011-Ohio-958, 128 Ohio St.3d 402, ¶ 12 (emphasis added).

Respectfully submitted,

/s/ Jeanne W. Kingery

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*Attorneys for Duke Energy Ohio, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 20th day of August 2019, to the parties listed below.

/s/ Jeanne W. Kingery  
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Summary: Motion Motion of Duke Energy Ohio, Inc. To Strike Improperly Filed Application for Rehearing and Request For Expedited Treatment electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Kinergy, Jean and Watts, Elizabeth