

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke     )   Case No. 16-1096-EL-WVR  
Energy Ohio, Inc. for a Waiver.             )

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**REPLY TO DUKE’S REQUEST TO STRIKE OBJECTIONS  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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**I. INTRODUCTION**

This case involves the rights of Ohioans regarding disconnection of their electric service for nonpayment. Duke Energy Ohio, Inc. (“Duke”) seeks a waiver of Ohio Adm. Code 4901:1-18-06(A)(2).<sup>1</sup> That rule requires electric utilities to attempt in-person notice to residential consumers on the day their service is to be disconnected for nonpayment.

On June 17, 2016, the Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of Duke’s 615,000 residential electric utility customers, filed a Motion to Intervene in this case. OCC also filed Objections to Duke’s proposed waiver.

On June 29, 2016, Duke filed a reply to OCC’s objections.<sup>2</sup> In its reply, Duke asked the Public Utilities Commission of Ohio (“PUCO”) to strike OCC’s Objections in their entirety. Duke claims that the PUCO did not authorize the filing of objections and thus, according to Duke, OCC’s Objections were procedurally flawed.<sup>3</sup>

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<sup>1</sup> Application (May 13, 2016).

<sup>2</sup> Duke’s reply did not oppose OCC’s Motion to Intervene.

<sup>3</sup> Duke’s Reply at 1.

Although Duke's request to strike OCC's Objections was not made in a formal motion, the request nonetheless raises an important legal issue in this case. OCC should have an opportunity to reply to Duke's request.<sup>4</sup>

## **II. DUKE'S REQUEST TO STRIKE OCC'S OBJECTIONS SHOULD BE DENIED.**

Duke claims that OCC's Objections were procedurally flawed because the Objections "were not authorized" by the PUCO.<sup>5</sup> But Duke cites no law, rule, or case to support its position. That's because there is none. Hence, Duke has nothing to validate its assertion regarding the propriety of OCC's Objections.

On the other hand, the PUCO has repeatedly permitted parties to file comments and objections in PUCO proceedings, without first setting a procedural schedule. For example, in Duke's previous disconnection waiver case, both OCC and Ohio Partners for Affordable Energy ("OPAE") filed objections to Duke's waiver application before a procedural schedule was established.<sup>6</sup> In fact, there was never an Entry in that case setting a procedural schedule. Duke did not file a motion to strike the pleadings by OCC and OPAE, and Duke's memoranda contra did not suggest that the pleadings should be

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<sup>4</sup> Other than taking exception to Duke's comment that OCC has an "ongoing, seeming indifference" to all residential customers in Duke's service territory (*id.*) OCC will not at this time offer a response to Duke's reply. OCC continues to advocate for the rights of all residential consumers in Duke's service territory, especially those who are more likely to be disconnected under Duke's proposed waiver. Eliminating the in-person visit on the day of disconnection is not likely to reduce disconnections for nonpayment; to the contrary, such disconnections are likely to increase. Duke's filing in no way diminishes OCC's objections to the waiver request.

<sup>5</sup> *Id.*

<sup>6</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver of Certain Sections of the Ohio Administrative Code for Smart Grid Pilot Programs*, Case No. 10-249-EL-WVR, OPAE Motion to Intervene and Protest (March 9, 2010); *id.*, OCC Motion to Intervene, Objections and Comments (March 10, 2010).

stricken.<sup>7</sup> Despite the absence of a procedural schedule, the PUCO addressed OCC's and OPAE's objections in the Entry in that case.<sup>8</sup>

Further, Duke recently made a similar request that unsolicited comments be stricken in another waiver case. The PUCO rejected Duke's request in that case.<sup>9</sup>

Requiring parties to file comments or objections only after a procedural schedule is issued would unduly prejudice parties who object to an application. The PUCO often will rule on a case without setting a procedural schedule.<sup>10</sup> Further, when the requested start date for the waiver is rapidly approaching (as is the situation here<sup>11</sup>), parties must out of necessity file comments and objections before a procedural schedule is issued. Parties who object to or have comments on an application might never be heard if they cannot docket their positions until after the PUCO issues a procedural schedule.

Finally, the filing of OCC's Objections does not disadvantage Duke in any respect. Duke – despite the absence of a procedural schedule – has responded to OCC's Objections, and thus has presented its position to the PUCO.

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<sup>7</sup> See *id.*, Duke's Memorandum Contra OCC's Objections and Comments (March 24, 2010); *id.*, Duke's Memorandum Contra OPAE's Protest (March 24, 2010).

<sup>8</sup> *Id.*, Entry (June 2, 2010).

<sup>9</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for a Waiver*, Case No. 16-1017-EL-WVR, Entry (June 13, 2016) at 2.

<sup>10</sup> See, e.g., *In the Matter of the Application of The Dayton Power and Light Company to Update Its Transmission Cost Recovery Rider - Non-Bypassable and Request for Waiver of Certain Commission Rules*, Case No. 14-358-EL-RDR, et al.; *In the Matter of the Application of Interstate Gas Supply, Inc., for a Waiver of Ohio Adm. Code 4901:1-10-29(D)(6)(b) and 4901:1-21-06(D)(1)(h)*, Case No. 14-1740-EL-WVR, et al.

<sup>11</sup> Duke has proposed that its "pilot" program to implement its requested waiver would begin "no later than August 1, 2016...." See Application at 7.

### III. CONCLUSION

Duke should not be permitted to suppress a party's right to be heard before the PUCO. The PUCO should deny Duke's request to strike OCC's Objections. The PUCO should also deny Duke's waiver request.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the persons stated below via electric transmission this 8<sup>th</sup> day of July 2016.

*/s/ Terry L Etter*

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