

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy)
Ohio, Inc., for Approval of its Energy Efficiency) Case No. 16-576-EL-POR
and Peak Demand Reduction Program Portfolio)
Plan.)

**DUKE ENERGY OHIO, INC.'S MEMO CONTRA
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL MOTION TO STRIKE.**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) submitted its initial post-hearing brief in this proceeding on March 31, 2017. On April 14, 2017, the Office of the Ohio Consumers' Counsel (OCC), filed a motion to strike one sentence included by Duke Energy Ohio in its initial brief and also moved to strike additional portions of a brief submitted by Ohio Partners for Affordable Energy. Duke Energy Ohio responds herein to OCC's motion to strike.

The sentence that OCC objects to, on page 8 of the Company's initial brief, simply states as follows: "It should be noted that Duke Energy Ohio's electric rates are among the lowest in the state." The source of this information, as shown in footnote 14, is the Commission's own website.

It is a well settled and often applied practice before the Public Utilities Commission of Ohio (Commission) that the Commission is not bound to strictly follows the rules of evidence.¹ Indeed, this Commission has recently affirmed that "much like other administrative agencies, [the Commission is] not strictly bound by the rules of evidence, and on occasion, finds it

¹ *Chesapeake & O.R.Co. v. Public Utilities Commission of Ohio*, 163 Ohio St. 252 at 255, 126 N.E. 2d 314, (1955). See also, *Greater Cleveland Welfare Rights Organization, Inc. v. Public Utilities Commission*, 2 Ohio St.3d 62 at pg. 68, 442 N.E.2d 1288 at pg. 1294, (1982).

‘necessary and proper to depart to some extent from the strict letter of the rules of evidence’ and [it is] granted very broad discretion in the conduct of [its] hearings.”²

OCC objects to this statement because OCC says the information was not admitted into evidence and was not subject to cross examination. In its motion to strike, OCC repeatedly refers to the fact that the information is “non-record” evidence. However, OCC neglects to recognize that the information derives from the Commission’s own website. Since, in this instance, the Commission is the source of the information, it hardly needs to be stated that the Commission may rely upon itself for information. Moreover, this is information that is easily “fact checked” by all interested parties and so not a matter that can be misrepresented. OCC makes much ado about nothing. OCC’s motion to strike should be denied.

Respectfully submitted,
DUKE ENERGY OHIO, INC.

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²In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan Pursuant to R.C.4929.05 For an Accelerated Service Line Replacement Program, Case No.14-1622-GA-ALT, Opinion and Order, October 26,2016 at pg. 20.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 28th day of April, 2017, to the following parties.

/s/ Elizabeth H. Watts

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