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Office of the Ohio Consumers' Counsel

Your Residential Utility Consumer Advocate

Janine L. Migden-Ostrander
Consumers' Counsel

HAND DELIVERED

March 26, 2010

Honorable Christine M.T. Pirik
Honorable Katie L. Stenman
Attorney Examiners
Public Utilities commission of Ohio
180 East Broad Street, 12th Floor
Columbus, Ohio 43215

RECEIVED-DOCKETING DIV
2010 MAR 26 PM 5:12
PUCO

Re: *In the Matter of the Application of Duke Energy Ohio, Inc., to Establish and Adjust the Initial Level of its Distribution Reliability Rider,*
Case No. 09-1946-EL-RDR

Honorable Attorney Examiners Pirik and Stenman:

With this letter the Office of the Ohio Consumers' Counsel ("OCC") responds to the letter Duke Energy Ohio Inc. ("Duke") filed on March 25, 2010, to inform the Public Utilities Commission of Ohio ("Commission" or "PUCO") as to whether or not all of the issues raised in the comments have been resolved. Duke was required to file the letter by the Stipulation approved by the Commission in Case No. 08-709-EL-AIR. Additionally, the PUCO directed Duke to file the letter, by the Entry issued in this case on February 9.

In Duke's letter, Duke accurately reported that some issues raised by OCC in its objections remain unresolved. Duke also stated that it had produced substantial information to OCC. Duke has produced substantial information to OCC. But Duke did not provide the bulk of the information requested by OCC until March 18, 2010. It was three months earlier, on December 18, 2009, that OCC sent to Duke the requests for the information. And the late timing of the information became additionally problematic as it arrived by that time when OCC's expert had scheduled a vacation.

OCC had requested that information as "a copy of all formal and informal requests related to costs associated with the September 14, 2008 windstorm made by the PUCO and its Staff in this case, and in any other related cases to the Company and to any Company affiliate, and the responses to those requests." In response to that data request Duke stated that "This Document Request is intended to harass and unduly burden Duke Energy Ohio * * * Furthermore, this Document Requests seeks to elicit information that would have already been provided to the OCC given its status as an intervening party in Case No. 08-709-EL-AIR."¹

¹ See Attachment A.

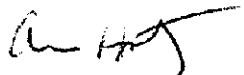
This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
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In addition, OCC requested expedited discovery on December 18, 2009 and Duke filed a memorandum in opposition arguing that the discovery period was not to begin until "after the parties have attempted to resolve the issues and it is determined that a hearing is necessary."² Accordingly, Duke implied that it intended to give interested parties a sufficient time for full discovery after the March 25, 2010 letter was filed. Now, "after the parties have attempted to resolve the issues and it is determined that a hearing is necessary," Duke wants to expedite the hearing process only one week after OCC received the bulk of the information OCC requested on December 18, 2009. Duke thus would constrain OCC on both ends of the preparation time—at the beginning by objecting to discovery until a later date and now at the end by claiming that there need be little additional time before the hearing. It's not fair.

Through the discovery responses that OCC has recently received, OCC has been identifying specific issues in which it intends to continue to conduct discovery. OCC would like to continue to conduct discovery on Duke's categorization of storm restoration costs as expenses versus capital. OCC will continue discovery on Duke's categorization of labor costs with regard to overtime versus straight-time of their own employees and of their affiliated employees. Additionally, OCC needs more information as to how Duke and its affiliates reimburse each other for emergency situations versus non-emergency situations. OCC will seek additional discovery on extra payments made to salaried employees during the storm restoration.

OCC will need two months to ensure that it will obtain sufficient information to adequately pursue important issues in this case. Since Duke stated repeatedly in this docket that it did not expect discovery to begin until after its March 25, 2010 report to the Commission and because Duke delayed in responding to OCC's December discovery requests and objected to OCC's request for expedited discovery, the Commission should take Duke at its word and begin a two month period for discovery leading up to the hearing which will reflect the General Assembly's requirement in R.C. 4903.082 for "full and reasonable discovery" and this Honorable Commission's intention in Ohio Adm. Code 4901-1-16 that discovery allow for the parties' preparation for hearing. Toward this objective, OCC recommends the PUCO order that responses to discovery be made within seven days of service and that discovery requests and responses be made by email.

Respectfully submitted,



Ann Hotz
Assistant Consumers' Counsel

cc: Parties of Record

² Memorandum Contra (December 23, 2009).

Attachment A

Duke Energy Ohio, Inc.
Case No. 09-1946-EL-ATA
OCC First Set Production of Documents
Date Received: December 18, 2009

OCC-POD-01-001

REQUEST:

Please provide a copy of all formal and informal requests (e.g. interrogatories, data requests) related to costs associated with the September 14, 2008 windstorm made by the PUCO and its Staff in this case, and in any other related cases to the Company and to any Company affiliate, and the responses to those requests.

RESPONSE:

Objection. This Document Request is intended to harass and unduly burden Duke Energy Ohio. Furthermore, it is not reasonably calculated to lead to the discovery of admissible evidence. Requests related to events occurring outside of Duke Energy Ohio's service territory are immaterial to the issues in this proceeding. Furthermore, this Document Request seeks to elicit information that would have already been provided to the OCC given its status as an intervening party in Case No. 08-709-EL-AIR.

PERSON RESPONSIBLE: N/A