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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Complaint of

Industrial Energy Users-Ohio ("IEU-Ohio"),

Complainant,

v.

The Midwest Independent Transmission
System Operator, Inc. ("MISO"),

and

Duke Energy Ohio, Inc. ("DEO")

Respondents.

PUCO
Case No. 10-1398-EL-CSS
COMPLAINT

**INDUSTRIAL ENERGY USERS-OHIO'S
RESPONSE TO MOTION OF RESPONDENT DUKE ENERGY OHIO, INC.
FOR AN EXTENSION OF TIME AND REQUEST FOR EXPEDITED RULING**

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**INDUSTRIAL ENERGY USERS-OHIO'S
RESPONSE TO MOTION OF RESPONDENT DUKE ENERGY OHIO, INC.
FOR AN EXTENSION OF TIME AND REQUEST FOR EXPEDITED RULING**

On September 20, 2010, the Industrial Energy Users-Ohio ("IEU-Ohio") filed a complaint in this proceeding naming Duke Energy Ohio, Inc. ("DEO") as one of the Respondents. Among other things, the complaint seeks a determination from the Public Utilities Commission of Ohio ("Commission") regarding compliance with mandatory statutory requirements that DEO, as an owner of transmission assets, must satisfy. The complaint relies upon information that DEO has had in its possession; information it recently elected to make public in a proceeding before the Federal Energy Regulatory Commission ("FERC").

On September 21, 2010, the Commission issued a letter directing DEO to file an answer to the complaint "...in accordance with Rule 4901-9-01 of the Ohio

Administrative Code (revision effective April 4, 1996)." The Commission's letter also advised DEO that it could file a motion along with the required answer.

On September 29, 2010, DEO filed a motion for an extension of time to file an answer. The request indicates that DEO intends to file a motion to dismiss. DEO wants the Commission to relieve DEO of its obligation to file an answer until the Commission rules on the motion to dismiss. DEO asserts that its extension request is pursuant to Section 4901-9-01, Ohio Administrative Code ("OAC"). DEO also seeks an expedited ruling.

With respect to its request for an expedited ruling, DEO asserts that counsel for the Complainant has not consented to the issuance of a ruling on its motion without the filing of memoranda. This assertion is misleading.

While there were discussions between counsel shortly before DEO filed its motion, counsel for IEU-Ohio expressed a willingness to work with DEO to establish a procedural schedule (including a due date for an answer) if the current schedule was unreasonable provided that any delay in the answer date did not manifest itself in delayed responses to the few discovery questions that IEU-Ohio has served on DEO. At that point, DEO's counsel indicated that DEO also wanted to defer answering discovery requests until the Commission rules on a to-be-filed motion to dismiss. Counsel for IEU-Ohio's unwillingness to consent to an issuance of an expedited ruling on the motion for an extension was expressed to DEO because the motion for an extension was, at least as a practical matter, a means by which DEO wanted to proceed to do nothing to provide the information that IEU-Ohio has requested through discovery.

The information that DEO has made public through its pleadings at FERC demonstrates that DEO has information concerning "back room" negotiations between DEO and a regional transmission entity. By blocking or delaying responses to discovery, DEO can negatively affect IEU-Ohio's ability to prosecute its complaint, potentially amend the complaint and address dispositive motions. Counsel for IEU-Ohio was not unwilling to work with counsel for DEO to resolve real problems with procedural dates. However, counsel for IEU-Ohio did not agree to an expedited ruling on a request for an extension of DEO's answer date when the requested extension was, as explained to counsel for IEU-Ohio, really motivated by DEO's other goals.

In any event, DEO's motion for an extension of time to file its answer is without merit and contrary to the rule that DEO cites in support of its motion. Under Section 4901-9-01, OAC, "[a]n answer must be filed in accordance with this paragraph, whether or not the public utility files a motion to dismiss the complaint or any other motion in response to the complaint".

For the reasons expressed herein, DEO's September 29, 2010 motion seeking an extension in its answer date so that it might file a motion to dismiss is without merit and must be denied.

Respectfully submitted,

A handwritten signature in black ink, reading "Samuel C. Randazzo", is written over a horizontal line.

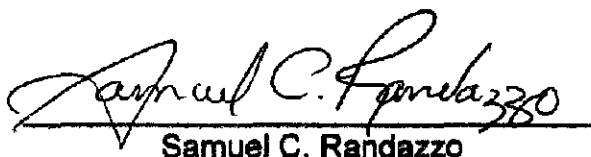
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Response to Motion of Respondent Duke Energy Ohio, Inc. for an Extension of Time and Request for Expedited Ruling*, was served upon the following parties of record this 30th day of September 2010, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.


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**ON BEHALF OF THE STAFF OF THE PUBLIC
UTILITIES COMMISSION OF OHIO**