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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )  
Industrial Energy Users-Ohio, ) Case No. 10-1398-EL-CSS  
Complainant, )  
v. )  
The Midwest Independent Transmission )  
System Operator, Inc., et al., )  
Respondents. )

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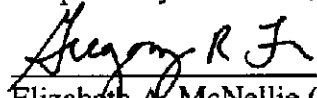
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**MOTION OF RESPONDENT DUKE ENERGY OHIO, INC. TO STAY DISCOVERY  
PENDING RESOLUTION OF ITS MOTION TO DISMISS THE COMPLAINT**

Pursuant to Rule 4901-1-24 of the Ohio Administrative Code, Respondent Duke Energy Ohio, Inc. ("Duke Energy Ohio") respectfully requests that discovery in this matter be stayed pending resolution of Duke Energy Ohio's Motion to Dismiss the Complaint of Industrial Energy Users-Ohio ("IEU-Ohio" or "Complainant"). The grounds for this Motion are more fully set forth in the attached Memorandum in Support. A copy of IEU-Ohio's Interrogatories and Requests for Production of Documents, dated September 21, 2010, are attached as Exhibit A.

Respectfully submitted,



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**BEFORE  
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The Midwest Independent Transmission	)	
System Operator, Inc., et al.,	)	
	)	
Respondents.	)	

**MEMORANDUM IN SUPPORT OF RESPONDENT DUKE ENERGY OHIO,  
INC.'S MOTION TO STAY DISCOVERY PENDING RESOLUTION OF ITS  
MOTION TO DISMISS THE COMPLAINT**

As explained in Duke Energy Ohio's Motion to Dismiss<sup>1</sup>, the Complaint filed by IEU-Ohio against Duke Energy Ohio and Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") must be dismissed because the Commission lacks jurisdiction and because IEU-Ohio fails to allege any grounds for complaint against Duke Energy Ohio. IEU-Ohio initiated the above-captioned proceeding in an improper attempt to obtain documents and information from Duke Energy Ohio concerning proceedings that are currently pending before the Federal Energy Regulatory Commission ("FERC") (the "Realignment Proceeding," FERC Docket No. ER10-1562-000). Duke Energy Ohio respectfully requests that discovery in this matter be stayed, pursuant to OAC 4901-1-24, so that Duke Energy Ohio can avoid the burden and expense of responding to discovery that will ultimately be unnecessary, since it is clear that IEU-Ohio's Complaint must be dismissed.

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<sup>1</sup> Duke Energy Ohio filed its Motion to Dismiss with the Commission today.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On June 25, 2010, Duke Energy Ohio and Duke Energy Kentucky initiated the Realignment Proceedings as the first step of their proposed realignment from Midwest ISO to PJM Interconnection, L.L.C. ("PJM"). A number of entities, including Midwest ISO and this Commission intervened and filed comments in the Realignment Proceeding. IEU-Ohio elected not to intervene in the Realignment Proceedings. Duke Energy Ohio and Duke Energy Kentucky filed an Answer and Motion for Leave to Answer in the FERC Proceeding, on August 10, 2010, that attached two pieces of correspondence: (a) a letter from John Bear of Midwest ISO to Keith Trent of Duke Energy, dated May 4, 2010 (the "Bear Letter"), and (b) a response from Mr. Trent to Mr. Bear, dated May 14, 2010 (the "Trent Letter"). *See* IEU-Ohio's Compl. at Exs. 1-A and B.

IEU-Ohio filed its Complaint in this proceeding on September 20, 2010, alleging that Midwest ISO made "offers and commitments" in the Bear Letter that cause it not to be qualified as a regional transmission organization ("RTO"). Compl. at ¶ 4. The Complaint requests that the Commission determine "that it is not in the interest of Ohio consumers for *any* owner of transmission facilities located in Ohio to participate in [Midwest ISO]." Compl. at 11 (emphasis added). IEU-Ohio named Duke Energy Ohio as a respondent in this matter solely because it is a member of Midwest ISO – and in spite of the fact that Duke Energy Ohio *rejected* the "offers and commitments" upon which IEU-Ohio's Complaint is predicated. *See* Trent Letter, IEU-Ohio's Compl. at Ex. 1-B. IEU-Ohio does not allege that it or any of its members were injured as a result of the unconsummated "offers and commitments."

On the day after it filed its Complaint, IEU-Ohio served Its Interrogatories and Requests for Production of Documents upon Duke Energy Ohio, Inc. (the "Discovery Requests," attached as Ex. A). The Discovery Requests call for Duke Energy Ohio to provide documents and

information concerning Duke Energy Ohio's business decision to withdraw from Midwest ISO and to join PJM, including Duke Energy Ohio's studies and analyses concerning: (a) revenues Duke Energy Ohio may receive if it migrates to PJM; (b) revenues Duke Energy Ohio may receive if it remains with Midwest ISO; (c) the impact on Midwest ISO of Duke Energy Ohio's proposed realignment; (d) the impact on the remaining members of Midwest ISO of Duke Energy Ohio's proposed realignment; (e) the impact on the members of PJM of Duke Energy Ohio's proposed realignment; (f) revenues that Duke Energy Ohio's affiliated companies may receive if the realignment occurs; and (g) revenues that Duke Energy Ohio's affiliated companies may receive if the realignment does not occur. *See* Discovery Requests, Interrogatory Nos. 9-12, 15-24, Request for Production Nos. 5-6, 9-13.

IEU-Ohio's Discovery Requests have little, or no, relation to the allegations in its Complaint, and expose this proceeding as an improper attempt to compel Duke Energy Ohio to provide documents and information to IEU-Ohio regarding its intent to leave Midwest ISO. IEU-Ohio made it abundantly clear in its opposition to Duke Energy Ohio's Motion for an Extension of the Answer Date and Request for Expedited Ruling, dated September 30, 2010, that obtaining discovery is its primary objective in this matter and that it will not agree to a stay of discovery. Duke Energy Ohio urges the Commission to stay discovery in this matter pending resolution of the Motion to Dismiss. IEU-Ohio should not be allowed to obtain discovery in a matter that it initiated by filing a meritless and facially defective Complaint.

### **LAW AND ARGUMENT**

The Commission should stay discovery in this matter, pending resolution of Duke Energy Ohio's Motion to Dismiss the Complaint. No valid reason exists for Duke Energy Ohio to be burdened by discovery pending disposition of Duke Energy Ohio's Motion to Dismiss.

IEU-Ohio's Discovery Requests call for the production of documents and information that have little, if anything, to do with the allegations in the Complaint.<sup>2</sup> Specifically, IEU-Ohio does *not* request that Duke Energy Ohio provide discovery concerning the impact that the "offers and commitments" might have on IEU-Ohio and its members – since the obvious answer to that question is that the unconsummated "offers and commitments" cannot have any impact on IEU-Ohio or its members. Rather, IEU-Ohio initiated the above-captioned proceeding before this Commission in an ill-conceived attempt to fish for documents and information relating to the Realignment Proceeding. It should not be rewarded for its improper filing.

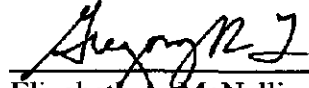
Trial courts – and this Commission – have broad discretion to limit or delay discovery in order to prevent an abuse of the discovery process. See *State ex rel. Grandview Hospital and Medical Center v. Gorman*, 51 Ohio St.3d 94, 95 (1990) (explaining that "[t]rial courts have extensive jurisdiction and power over discovery"); *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, et al. for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, 2000 Ohio PUC LEXIS 676 (explaining that "[t]he Commission and the attorney examiners necessarily have considerable discretion in the procedural management of proceedings, including discovery"). The courts – and this Commission – have exercised that discretion in order to stay discovery pending the resolution of dispositive motions. See, e.g., *Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, at ¶ 12 (upholding the lower court's decision to stay discovery pending resolution of motion to dismiss); *Wilkes v. Ohio Edison Co.*, Case No. 09-682-EL-CSS (Entry, Dec. 16, 2009), at ¶ 4 (finding that "staying discovery is in the interest of both parties should the Commission ultimately decide to grant Ohio Edison's motion to dismiss").

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<sup>2</sup> Duke Energy Ohio reserves the right to raise lack of relevance, and other appropriate objections, at such time as it may be required to respond to IEU-Ohio's Discovery Requests.

Pursuant to its broad discretion over the discovery process, and OAC 4901-1-24, the Commission should stay discovery in this proceeding pending resolution of Duke Energy Ohio's Motion to Dismiss. A stay of discovery will prevent the parties from undertaking time-consuming and costly discovery that will ultimately be unnecessary given IEU-Ohio's facially-defective Complaint and the Commission's lack of jurisdiction over this matter.

Respectfully submitted,



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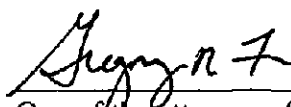
*Attorneys for Duke Energy Ohio, Inc*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Stay Discovery was served on the following, by first class U.S. Mail, postage prepaid, this 12th day of October, 2010:

Samuel C. Randazzo  
McNees Wallace & Nurick LLC  
21 East State Street, Suite 1700  
Columbus, Ohio 43215-4228

Mark A. Whitt  
Christopher Kennedy  
Carpenter Lipps & Leland LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215



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One of the attorneys for Duke Energy Ohio, Inc.



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System Operator, Inc. ("MISO"),	)	
	)	
and	)	
	)	
Duke Energy Ohio, Inc. ("DEO")	)	
	)	
Respondents.	)	

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**INDUSTRIAL ENERGY USERS-OHIO'S  
INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS UPON  
DUKE ENERGY OHIO, INC.  
FIRST SET  
SEPTEMBER 21, 2010**

---

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**Attorneys for Industrial Energy Users-Ohio**

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SEPTEMBER 21, 2010**

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Industrial Energy Users-Ohio ("IEU-Ohio") in the above-captioned proceeding before the Public Utilities Commission of Ohio ("Commission") submits the following Interrogatories and Requests for Production of Documents pursuant to Rules 4901-1-19, 4901-1-20 and 4901-1-22, Ohio Administrative Code, for response from Duke Energy Ohio ("DEO" or "Company") within 20 days, as provided for in the Commission's Rules. All responses should be directed to:

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Additionally, Company must follow the instructions provided herein in responding to the inquiries. As required by Rule 4901-1-16, Ohio Administrative Code, responses must be subsequently supplemented.

### **DEFINITIONS**

As used herein, the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punch cards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers,

agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analysis, projections, transcripts, electronic mail, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, work papers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations/publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic, mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like

shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, electronic or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.

3. The "substance" of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.

4. "And" or "or" shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.

5. "You" and "your" or "yourself" refer to the party requested to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venture of such party.

6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.

8. "Person" includes any firm, corporation, joint venture, association, entity or group of persons unless the context clearly indicates that only an individual person is referred to.

9. "Identify," or "state the identity of," or "identified" means as follows:

A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;

B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;

C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.) and its present or last known location and custodian;

D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;

E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.

#### **INSTRUCTIONS FOR ANSWERING**

1. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.

2. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu

of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.

3. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.

4. You are under a continuing duty to supplement your responses with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as a witness at trial, and the subject matter on which he or she is expected to testify and to correct any response which you know or later learn is incorrect.

### **INTERROGATORIES**

1. Has the Midwest Independent Transmission System Operator, Inc. ("MISO") offered DEO any commitments or concessions in an attempt to influence DEO to remain a member of MISO?

#### **RESPONSE:**

2. If the answer to Interrogatory No. 1 is affirmative, does DEO have any documents in its possession that discuss or reference any commitments or concessions by MISO to DEO in an attempt to influence DEO to remain a member of MISO?

#### **RESPONSE:**

3. Has DEO requested any commitments or concessions from MISO in exchange for DEO remaining a member of MISO?

#### **RESPONSE:**

4. If the answer to Interrogatory No. 3 is affirmative, does DEO have any documents in its possession that discuss or reference any commitments or concessions requested by DEO from MISO in exchange for DEO remaining a member of MISO?

#### **RESPONSE:**

5. Has MISO offered any of DEO's affiliated companies, including, but not limited to, Duke Energy's other franchised electric and gas service companies and Duke Energy's Commercial Power business, any commitments or concessions in an attempt to influence DEO to remain a member of MISO?

**RESPONSE:**

6. If the answer to Interrogatory No. 5 is affirmative, does DEO have any documents in its possession that discuss or reference any such commitments or concessions by MISO?

**RESPONSE:**

7. Have any of DEO's affiliated companies, including, but not limited to, Duke Energy's other franchised electric and gas service companies and Duke Energy's Commercial Power business, requested any commitments or concessions from MISO in exchange for DEO remaining a member of MISO?

**RESPONSE:**

8. If the answer to Interrogatory No. 7 is affirmative, does DEO have any documents in its possession that discuss or reference any commitments or concessions requested by any of DEO's affiliated companies from MISO in exchange for DEO remaining a member of MISO?

**RESPONSE:**

9. Has DEO performed any studies or conducted any analysis, or commissioned another party to conduct such studies or analysis, to identify what revenues it may receive if DEO migrates to PJM Interconnection, LLC ("PJM")?

**RESPONSE:**

10. If the response to Interrogatory No. 9 is affirmative, does DEO possess any documents that discuss or reference these studies or analysis?

**RESPONSE:**



11. Has DEO performed any studies or conducted any analysis, or commissioned another party to conduct such studies or analysis, to identify what revenues it may receive if DEO remains a member of MISO?

**RESPONSE:**

12. If the response to Interrogatory No. 11 is affirmative, does DEO possess any documents that discuss or reference these studies or analysis?

**RESPONSE:**

13. Does DEO possess any documents that establish internal protocols or guidelines for communications with the management or directors at regional transmission organizations, including MISO and PJM?

**RESPONSE:**

14. Does DEO possess any documents that were conveyed to MISO or to PJM regarding DEO's proposed move from MISO to PJM?

**RESPONSE:**

15. Has DEO performed any studies or conducted any analysis, or commissioned another party to conduct such studies or analysis, to identify the impact on MISO of DEO's proposed move from MISO to PJM?

**RESPONSE:**

16. If the response to Interrogatory No. 15 is affirmative, does DEO possess any documents that discuss or reference these studies or analysis?

**RESPONSE:**

17. Has DEO performed any studies or conducted any analysis, or commissioned another party to conduct such studies or analysis, to identify the impact on the remaining members of MISO of DEO's proposed move from MISO to PJM?

**RESPONSE:**

18. If the response to Interrogatory No. 17 is affirmative, does DEO possess any documents that discuss or reference these studies or analysis?

**RESPONSE:**

19. Has DEO performed any studies or conducted any analysis, or commissioned another party to conduct such studies or analysis, to identify the impact on any or all Members of PJM of DEO's proposed move from MISO to PJM?

**RESPONSE:**

20. If the response to Interrogatory No. 19 is affirmative, does DEO possess any documents that discuss or reference these studies or analysis?

**RESPONSE:**

21. Has DEO or any of Duke Energy's affiliated companies performed any studies or conducted any analysis, or commissioned another party to conduct such studies or analysis, to identify what revenues Duke Energy's affiliated companies may receive if DEO migrates to PJM?

**RESPONSE:**

22. If the response to Interrogatory No. 21 is affirmative, does DEO possess any documents that discuss or reference these studies or analysis?

**RESPONSE:**

23. Has DEO or any of Duke Energy's affiliated companies performed any studies or conducted any analysis, or commissioned another party to conduct such studies or analysis, to identify what revenues Duke Energy's affiliated companies may receive if DEO remains a member of MISO?

**RESPONSE:**

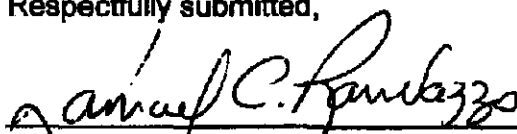
24. If the response to Interrogatory No. 23 is affirmative, does DEO possess any documents that discuss or reference these studies or analysis?

**RESPONSE:**

## **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please provide any documents identified in response to Interrogatory No. 2.
2. Please provide any documents identified in response to Interrogatory No. 4.
3. Please provide any documents identified in response to Interrogatory No. 6.
4. Please provide any documents identified in response to Interrogatory No. 8.
5. Please provide any documents identified in response to Interrogatory No. 10.
6. Please provide any documents identified in response to Interrogatory No. 12.
7. Please provide any documents identified in response to Interrogatory No. 13.
8. Please provide any documents identified in response to Interrogatory No. 14.
9. Please provide any documents identified in response to Interrogatory No. 16.
10. Please provide any documents identified in response to Interrogatory No. 18.
11. Please provide any documents identified in response to Interrogatory No. 20.
12. Please provide any documents identified in response to Interrogatory No. 22.
13. Please provide any documents identified in response to Interrogatory No. 24.

Respectfully submitted,

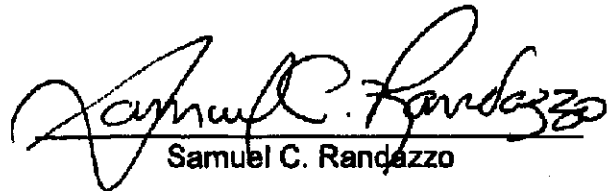


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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Interrogatories and Requests for Production of Documents upon Duke Energy Ohio, Inc., First Set*, was served upon the following parties of record this 21<sup>st</sup> day of September 2010, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.



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