

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Chapters 4901-1, Rules of Practice and)
Procedure; 4901-3, Commission Meetings;)
4901-9, Complaint Proceedings; and) Case No. 11-776-AU-ORD
4901:1-1, Utility Tariffs and Underground)
Protection, of the Ohio Administrative)
Code.)

REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and respectfully submits its reply comments on proposed changes to administrative rules, as issued by the Public Utilities Commission of Ohio (Commission) on March 2, 2011. The Commission's entry issuing the proposed changes, allows for the filing of reply comments by no later than April 30, 2011. As that date was a Saturday, when the Commission's offices were closed for the entire day, the reply comments may be filed on May 2, 2011, under the terms of R.C. 1.14.¹

Duke Energy Ohio responds herein to certain of the comments submitted in this docket. The lack of a response by Duke Energy Ohio to any particular comment should not be interpreted as agreement with that comment. For ease of reading, citations to rules will omit the agency number and the reference to the Ohio Administrative Code.

¹ R.C. 1.14 provides as follows: "When a public office in which an act, required by law, is to be performed is closed to the public for the entire day that constitutes the last day for doing the act or before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Sunday or a legal holiday as defined in this section."

Rule 1-01(A): Definitions – Business Day

The Ohio Consumers' Counsel (OCC); the Advocates for Basic Legal Equality, Inc.; Citizen Power; and the Ohio Poverty Law Center (collectively, including the OCC, the Customer Parties) propose that the definition of a "business day" be altered such that any day where the Commission's docketing division closes before 5:30 p.m. would not be counted. They suggest that this change would "address weather emergencies" and other early closing circumstances.

The Customer Parties' proposal is entirely unnecessary and unworkable. Ohio law already addresses this issue comprehensively. R.C. 1.14 provides that, if a public office closes "before its usual closing time on that day," a required act may always be performed on the next succeeding day that is not a Sunday or a legal holiday. Thus, if a weather emergency causes the docketing division to close early, every filing that was due on that day may, under the terms of R.C. 1.14, be performed on the next day. No amendments of the procedural rule are required in order to "address" such a circumstance.

Indeed, the Commission has recognized and applied this provision, as the OCC is well aware. OCC cited to this statute in justifying the date on which it filed an application for rehearing, in exactly this circumstance, where the Commission's docketing division closed early, due to inclement weather, on the day when OCC's filing would otherwise have been due. In the face of concern raised by the applicant in that case, the Commission reviewed the law and facts comprehensively and determined that R.C. 1.14 controls in this situation, thereby allowing additional time to file when Commission offices close early.² Certainly the Commission does not need an additional administrative rule to govern the circumstances described by the customer parties.

² *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify its Nonresidential Generation Rates to Provide for market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, Second Entry on Rehearing (January 19, 2005), Findings 17 through 25.

Furthermore, the language proposed by the Customer Parties would needlessly require all parties and the Commission to keep track of whether there were any days during the time period being counted on which the Commission offices closed early. If a rule or order required a filing within ten business days and the third day of that period was snowy, the filing date would be delayed, for no reason. This proposal has no purpose and causes needless additional burden on both parties and the Commission itself. It should not be adopted.

Rule 1-02(B)(1): Filing of Pleadings and Other Documents – Number of Copies

Commission Staff proposes a revision that would allow the Commission to strike a document from a case file, simply because the filer failed to include the correct number of copies. In their initial comments, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy) suggest that this is unduly harsh. Duke Energy Ohio agrees. The Commission previously determined that the number of required copies would not be included in an administrative rule but, instead, could be changed at will. It is unreasonable to refuse to allow correction of a deficiency, where such correction can be made within a brief period of time, especially where the number of copies is not even set forth in an administrative rule.

Rule 1-02(C)(6): Filing of Pleadings and Other Documents – Fax Filing Timing

Staff's proposed revisions would place all of the risk of transmission failure on the filing party. The Customer Parties suggest that, if there is a technical problem such as an equipment failure or an electrical outage, the filer should be allowed to move that a document be considered timely filed. This suggestion corresponds with the analogous, new e-filing rule. Duke Energy Ohio agrees with the Customer Parties' suggestion. There is no rationale for treating unforeseen difficulties differently in the e-filing and fax-filing options.

Also in this subsection, Staff's proposed rules would deem a filing to be made the following day if any part of a fax transmission occurs after 5:30 p.m. FirstEnergy suggests that this requirement be changed such that the filing be deemed to be made on the day that it is sent, if the filer commences transmission by no later than 5:30. Duke Energy Ohio agrees with this suggestion as well. It is not always easy for a filer to guess how long a fax transmission will take to complete. In the spirit of reducing burdens on the parties, Duke Energy Ohio would suggest that the Commission adopt FirstEnergy's suggestion.

Rule 1-02(C)(8): Filing of Pleadings and Other Documents – Fax Filing Copy

As is the case in the current rules, Staff's proposal requires a filer to send paper copies by the next day if a filing is made by fax. FirstEnergy suggests, and Duke Energy Ohio agrees, that this burden should be eliminated. This is an unreasonable burden in light of the costs involved and the reliability of facsimile transmission. It should also be noted, in this regard, that pro se parties and counsel who are not familiar with the Commission's rules often ignore this requirement, generally with no repercussions from the Commission. For the sake of consistency, as well as the reduction of unnecessary burdens, this requirement should be deleted.

Rule 1-02(D): Filing of Pleadings and Other Documents – Electronic Filing - General

Commission Staff has proposed an electronic filing system that attempts to bridge the gap between the old, paper-filing system and the newer, electronic system that has been under experimentation for some years. Staff's proposal continues to allow electronic filing while broadening e-filing to all case types. Because Staff is, apparently, reluctant to assume that electronic devices are broadly available, the proposed rules are unnecessarily complicated by provisions that continue to make provision for reliance on paper.

Some of the commenters in this docket suggest a more dramatic move toward electronic media, an approach that Duke Energy Ohio supports. FirstEnergy, for example, suggests that e-

filing be the rule, not the exception. Columbia Gas of Ohio, Inc.; The East Ohio Gas Company d/b/a Dominion East Ohio; and Vectren Energy Delivery of Ohio, Inc.; (collectively, the Large Gas LDCs) propose to make electronic filing and service mandatory. Duke Energy Ohio agrees with FirstEnergy and the Large Gas LDCs that there appears to be little reason for most filers to use any system other than electronic communication. However, Duke Energy Ohio also recognizes that there may be some unrepresented parties who do not have ready access to computers or who do not use e-mail comfortably. Therefore, Duke Energy Ohio respectfully suggests that the Commission make e-filing and electronic forms of service mandatory for all filers, with an exception for unrepresented individuals and other circumstances in which e-filing may be unreasonably difficult or impossible.

Rule 1-02(D)(4): Filing of Pleadings and Other Documents – Electronic Filing - Rejection

The proposed rules address rejection of filings by the docketing division. The AT&T Entities (including several separate entities, all of which are specified in their consolidated comments) suggest that the rule include a provision to allow an opportunity to cure a technical defect within a short timeframe. Duke Energy Ohio concurs. While the Commission might not want to allow a cure if the filing in question includes inappropriate material, straightforward technical problems should be curable by the filer.

Rule 1-02(D)(5): Filing of Pleadings and Other Documents – Electronic Filing - Service

The concepts in this subsection of the proposed rule is largely duplicative of Rule 1-05. Duke Energy Ohio is providing its reply comments on this important topic under Rule 1-05, below.

Rule 1-02(D)(6): Filing of Pleadings and Other Documents – Electronic Filing – Timing

Subsection (D)(6), as proposed, recommends that parties e-file by no later than 4:00 p.m., in order to allow time for acceptance by 5:30 p.m. that same day. It is critical that acceptance

occur on the day of filing. It is also critical to the success of the system that parties know they can file electronically during the same time period that they could file by paper. Therefore, Duke Energy Ohio urges the Commission to allow e-filing until 5:30, with a guaranteed acceptance (and posting) that same day. While this may appear, on its face, to cause an irreconcilable conflict, the proposed change to allow parties to cure technical filing defects the next day may help to solve the problem.

Rule 1-02(E): Filing of Pleadings and Other Documents – Case Status

Ohio Partners for Affordable Energy (OPAE) expresses concern that cases in which stipulations are present should not be closed or archived, for fear that the stipulations will not then be able to be enforced. Therefore, OPAE suggests that any case in which a stipulation or, for that matter, an approved rate, is present be kept open until the stipulation is no longer in effect.

Duke Energy Ohio strongly disagrees with OPAE's suggestion. Such a rule change would be both unnecessary and problematic. First, if a docket has been merely closed, it takes no more than a telephone call to the legal department to allow an additional filing. This is hardly an insurmountable problem. Second, if a docket is archived, it is inconceivable that the Commission would refuse to allow litigation concerning the stipulation or rates in question to occur in a new proceeding that simply references the archived docket.

The potential problem with OPAE's plan to leave cases open interminably comes with the opportunity that would then exist for inappropriate filings in completed proceedings, potentially causing the need to spend additional time and resources in responding. It is only in closing and/or archiving cases that the Commission can prevent such unnecessary filings. That option should be left open to the Commission's discretion, as it is under the rule proposed by Commission Staff.

Rule 1-03(A): Form of Pleadings and Other Documents

The Large Gas LDCs, rightly concerned about the deletion of extended response periods following service by mail or service after 5:30, apparently attempt to solve this problem by mandating e-filing service. Thus, they suggest a change to the language of subsection (A) of this rule. While Duke Energy Ohio agrees that there is a problem, it disagrees with this solution. The service issue is discussed comprehensively under Rule 1-05, below.

Rule 1-05: Service of Pleadings and Other Documents - General

As discussed above, Duke Energy Ohio believes that the trigger for many of the comments surrounding service changes is the Commission's effort to avoid mandating e-filing for most entities. Because the Commission assumes that some parties will not receive electronic service from its system, it has developed a complex system for different types of service on different filers. Furthermore, the Commission has chosen to retain an acceptance system for filings that requires substantial intervention by Commission employees, thereby causing a delay in the distribution of electronic notices of filings. This constellation of issues results in a proposed system whereby the e-filing system would, eventually, "serve" some parties and other parties – to be identified on a case-by-case, filing-by-filing basis – are to be served more traditionally, on the day of filing.

Various parties have filed comments that propose solutions to the e-filing service timing issue and the difficulties inherent in attempting to ensure that no party has been missed, when electronic subscriptions may change from day to day. Duke Energy Ohio suggests avoiding the entire e-filing service dilemma by keeping the service obligation on the filing party, just as it is now. It appears to be impossible both to allow parties to e-file as late as 5:30 – as can be done with paper filing – and to have the docketing division electronically "serve" parties on the same day as the filing is made. To make matters worse, if there is no absolute certainty the electronic

“service” from DIS will be made on the date of filing, even if that filing occurs late in the day, the result may be an increase in the number of filings that are made at the end of the day on Fridays, thereby reducing response time for other interested parties. To avoid these problems, parties can continue to provide service themselves.

Duke Energy Ohio does agree that service by e-mail should be encouraged, although other service options should be available. Thus, in a typical case, an entity wishing to file a document in an existing case would e-file with the Commission and, knowing that the filing would either be accepted that day or would be accepted as of that day following any necessary cure, would e-mail a copy of the filing to all parties in the proceeding (or serve by another standard method, under appropriate circumstances). This procedure is simple and is familiar to most practitioners under today’s system.

Rule 1-05(C): Service of Pleadings and Other Documents – Multiple Counsel

The Customer Parties suggest that, if no “counsel of record” is designated, only the first listed attorney be served. Duke Energy Ohio agrees that the first listed attorney be served in that circumstance, but only if that attorney is not a formal representative who is clearly uninvolved. An example would be the Ohio Attorney General, whose deputies are certainly those who are participating in the proceeding. Further, Duke Energy Ohio would note that all listed attorneys should be served where service is made electronically. It takes almost no effort or cost to include additional names on an electronic distribution list, ensuring that filings immediately get to the desks of those who need to see them.

Rule 1-05(D): Service of Pleadings and Other Documents – Courtesy Copy

The Large Gas LDCs suggest that a courtesy copy be mandated. Duke Energy Ohio disagrees. If the Commission does not adopt Duke Energy Ohio’s suggestion that service remain the responsibility of the filing party and retains the system whereby the e-filing system would

“serve” subscribed parties, the “service” by the Commission should suffice. There should be no extra burden place on parties to provide a required additional copy.

Rule 1-07(B): Computation of Time – Three-Day Rule

In response to Staff’s proposed deletion of the rule allowing an additional three days to respond where a filing is served by mail, FirstEnergy and the Customer Parties note their disagreement. Duke Energy Ohio agrees with these commenters that the three-day rule should not be eliminated. There may be situations, particularly with unrepresented parties, where mail service is necessitated. The three-day rule would be critical in those proceedings.

Rule 1-07(C): Computation of Time – One-Day Rule

Similarly, Staff proposed to eliminate the rule that allowed an extra day, where service is made electronically, by facsimile transmission, or in person, and where that service is made after 5:30 p.m. As with the three-day rule, FirstEnergy and the Customer Parties disagree with this deletion and Duke Energy Ohio agrees with these entities. Where service is provided after close-of-business, the recipient should not be penalized by the loss of a day of response time. Along the same vein, Duke Energy Ohio suggests that discovery requests that are transmitted after 4:00 p.m. be allowed an additional day for response, as many client contacts cannot be reached after such hour.

Rule 1-08(A), (B), and (D): Practice Before the Commission, Representation of Corporations, and Designation of Counsel of Record – Attorneys-at-Law

Staff’s proposed rules leave in place the current requirement that parties that are not appearing *in propria persona* must be represented by an attorney who is authorized to practice in this state and, specifically, that corporations must be so represented. The Commission Staff also proposed a change to incorporate the new rules of the Supreme Court of Ohio with regard to practice by out-of-state attorneys and extended those requirements to appearances at settlement conferences. FirstEnergy agrees with these changes, as does Duke Energy Ohio.

At the same time that the Supreme Court has tightened the requirements on practice by out-of-state attorneys, however, OPAE argues that the Commission should move in the other direction. OPAE suggests that non-attorneys and out-of-state attorneys be allowed to practice law before the Commission. As OPAE provides a fall-back position of allowing such persons to represent parties in settlement conferences, prehearing conferences, and the filing of pleadings, apparently OPAE's preferred outcome is to allow unlicensed persons to represent parties at actual hearings. This would most certainly be the unauthorized practice of law and should not be condoned by this Commission.

For this reason, Duke Energy Ohio urges the Commission not to adopt the suggestions of OPAE in this regard and, in addition, the Company supports FirstEnergy's further proposal that non-attorneys not be allowed to represent corporate parties in settlement conferences.

Rule 1-11: Intervention – Standards

Commission Staff, recognizing that this rule works satisfactorily in its application, proposed no changes. The Customer Parties, however, advocate a different result. They believe that the rule, as it stands, is in conflict with the underlying statute. The Commission refused this same suggestion in the last review of these procedural rules and Duke Energy Ohio will leave this suggestion to the Commission's wisdom, with one comment. It is noteworthy, although not controlling, that the Ohio Rules of Civil Procedure to require a court, faced with a motion for intervention, to consider whether the interests of the potential intervenor are already adequately represented.³ The Commission should do no less.

Rule 1-15(D): Interlocutory Appeals – Notice Time

Commission Staff has proposed adding a new requirement to the filing of an interlocutory appeal, suggesting that special notice be provided if the notice filing falls on the

³ Civ. Pro. Rule 24.

day before the Commission offices are to be closed. The Customer Parties oppose this new provision, arguing that it is unnecessary and an undue burden. FirstEnergy, on the other hand, would require the special notice to be provided electronically.

Duke Energy Ohio agrees with the Customer Parties on this issue. Commission rules already require notice to be delivered to all parties and, as currently written, allow an extra day for responses if that notice is delivered after 5:30 p.m. Interlocutory appeals are already subject to a very brief schedule, with the decision to appeal having to be made, and the application for review having to be written, both within five days. An additional burden should not be placed on the potential appellant. Duke Energy Ohio would not, however, oppose a requirement that the appellant deliver notice of the appeal by e-mail or facsimile delivery, unless such delivery is impossible.

Duke Energy Ohio does not agree with FirstEnergy's suggestion that only electronic service is appropriate. While it makes sense to expect immediate receipt under the tight timeframes of an interlocutory appeal, facsimile delivery is just as fast as e-mail. FirstEnergy then, unexplainably, asks for an additional day in the event service was made by either of these methods. Duke Energy Ohio believes that, if service is made by an immediately accessible method (e-mail or facsimile), no additional time should be added to the process.

Rule 1-16(B): General Provisions and Scope of Discovery – Limitations

The Large Gas LDCs suggest that this rule be amended to state, expressly, that parties may agree upon discovery limits in the context of a prehearing conference. Duke Energy Ohio supports this concept. Such a rule would not, and should not, mandate any particular discovery limits, as certain cases may necessitate more discovery than others. However, such an amendment would cause parties to consider appropriate limitations and thus cut down on the costs of litigation before the Commission.

Rule 1-16(C): General Provisions and Scope of Discovery – Experts

The Customer Parties suggest, with little explanation, that experts be identified if they are expected to submit testimony, rather than having to be expected to testify. Presumably, testimony is generally submitted only for witnesses who are, at least potentially, expected to testify. Duke Energy Ohio notes that the current language is consistent with the civil rules.⁴

Rule 1-16(H): General Provisions and Scope of Discovery – Discovery and Intervention

The Large Gas LDCs make a valuable suggestion concerning intervention motions as they relate to discovery. Duke Energy Ohio supports the notion that, if intervention is opposed, discovery by or upon the potential intervenor be stayed. The change is important in order to prevent the filing of meritless motions to intervene, simply to obtain free access to information.

Rule 1-20: Production of Documents and Things; Entry upon Land or Other Property – Service

Current Rule 1-20, relating to requests for production of documents and things, is not proposed for modification. FirstEnergy suggests a clarification that such responses to such requests, whether made by supplying the documents or by making the documents or things available, would only be directed to the requesting party. Duke Energy Ohio agrees with FirstEnergy that this clarification is appropriate, in order to minimize unneeded costs and expenditures of time. In the event that another party wishes to see the same items, such a request could certainly be made.

Rule 1-21(A): Depositions – Compelling Appearance

The current rule, not proposed by Staff to be modified, indicates that parties and other persons may be deposed and that attendance may be required through the subpoena process. The Customer Parties suggest that this subsection be modified to distinguish between party deponents

⁴ Civ. Pro. Rule 26(B)(5).

and non-party deponents, as parties should be able to be compelled to appear through a simple notice of deposition. Duke Energy Ohio agrees with this approach and notes that it corresponds with standard practice under the civil rules.⁵

Duke Energy Ohio also notes its concern about the time delay that may be inherent in the process for issuing subpoenas.

Rule 1-21(B): Depositions – Timing

Commission Staff proposes to add a sentence indicating that, absent unusual circumstances, depositions should be completed prior to the start of the hearing. The Customer Parties suggest clarifying the language as to whether this is a mandate or an aspiration and as to what might constitute unusual circumstances. FirstEnergy also wants to see the language strengthened and proposes that good cause be shown in a motion or by agreement of the party to be deposed and the party seeking the deposition. AEP suggests that the attorney examiner, legal director, or deputy legal director be empowered to allow a later deposition, rather than basing the allowable delay on unusual circumstances.

Duke Energy Ohio does not object to goal of completing depositions prior to the start of a hearing. In addition, Duke Energy Ohio agrees that the proposal should be modified for easier and clearer application. AEP's suggestion is meritorious, allowing for a clear review process and appropriate exceptions. In addition, however, the parties involved (the requesting party and the party to be deposed) should be authorized to agree, between themselves, to a delayed deposition schedule, if they choose to do so, without burdening the Commission or other parties with the issue.

⁵ Civ. Pro. Rule 30(A).

Rule 1-24(F): Motions for Protective Orders – Duration

Commission Staff proposes to extend the standard duration of a protective order issued to protect the confidentiality of trade secret information from 18 to 24 months. FirstEnergy and the AT&T Entities both support further broadening of this rule to make such orders indefinite in duration. FirstEnergy points out that a rule providing for indefinite protective orders would be consistent with Ohio Rule of Civil Procedure 26(C). FirstEnergy also argues that the need for monitoring expiration dates and the repeated filing of motions to continue appropriate protection is an unnecessary burden on all persons and entities having business before the Commission.

Similarly, the AT&T Entities contend that the current rule, limiting the time of protection, does not adequately protect trade secrets and is not consistent with the gubernatorial initiative to reduce unneeded red tape in government. The AT&T Entities concisely explain their position, stating that the “Commission may not exercise discretion by failing to protect trade secrets or other information ‘the release of which is prohibited by federal or state law.’ That is what the public records law says, and the Commission should adhere to it. . . . The Commission cannot and should not limit its protection to 18 months or some other arbitrary time frame.”⁶

Duke Energy Ohio agrees wholeheartedly with both FirstEnergy and the AT&T Entities with regard to the duration of protective treatment. Parties whose confidential information is in the hands of the Commission should not be subject to the repeated obligation to prove its importance and confidentiality. If such information is not, under law, subject to release when filed and is therefore not a public record, the mere passage of time should not subsequently change its nature.

Duke Energy Ohio also agrees with the procedural recommendations made by the AT&T Entities. It may not always be clear to someone other than the owner of the confidential

⁶ Initial Comments of the AT&T Entities, April 1, 2011, at 8-9.

information whether that information is important, is treated confidentially, or is even legal advice provided by counsel to the client. It is therefore critical that the Commission grant protective orders liberally, so as not to diminish the willingness of parties to provide sensitive material. As the AT&T Entities state, there should be a presumption that a request for a protective order will be granted.

Rule 1-25: Subpoenas –Use

AEP proposes that this rule be amended to limit the use of subpoenas to compelling factual testimony. It suggests that, with regard to opinions or policy testimony, parties should have to bear the burden of producing their own witnesses. Duke Energy Ohio disagrees. Civil Rule 45(C) prohibits the use of subpoenas to require disclosure of expert opinion, but only if the expert in question was not retained by any party in anticipation of the litigation and the opinion results from a study that was not made at the request of any party. This is a substantially narrower rule than that proposed by AEP. Thus, if AEP retained an expert to perform a study for a particular proceeding, Duke Energy Ohio could, if it intervened, subpoena that expert to testify at the hearing in that case, if the civil rule were followed. However, under AEP's proposal, it could not. The civil rule properly limits expert opinion testimony to those opinions that are directly related to the case in question.

Rule 1-26(F): Prehearing Conferences – Authority to Settle

Current Rule 1-26 requires, in subsection (F), every party attending a settlement conference to have authority to settle the issues in the case. Commission Staff, appropriately, did not propose to amend this requirement. However, the Customer Parties see this differently. They point out that issues may arise at a conference, requiring further analysis. Therefore, they contend, the rule should be amended only to require settlement authority to the extent practicable. Duke Energy Ohio disagrees. The fact that new issues may arise at a settlement

conference, leading parties not to choose to settle at that time, has absolutely nothing to do with whether attending parties have the requisite authority to settle a case if settlement appears reasonable and appropriate. The Customer Parties, along with all other parties to proceedings before the Commission, should be obligated to appear at settlement conferences with authority to settle, in every case in which they are a party.

Rule 30(D): Stipulations – Testimony in Support

Commission Staff proposes revising this provision to require parties to provide testimony in support of a stipulation. However, the proposed language appears to require each and every signatory party to provide such testimony. Several parties have commented that supportive testimony should only be required from one signatory party. Duke Energy Ohio agrees. To require more than one such piece of testimony would be a needless burden and expense.

Rule 4901-9-01: Complaint Proceedings – Failure to Appear

The Large Gas LDCs raise the topic of the numerous consumer complaint proceedings at which the complainant fails to appear for a settlement conference or a hearing. While Duke Energy Ohio is happy to address such complaints as necessary to rectify concerns expressed by its customers, it is a waste of resources to be required to appear repeatedly at scheduled conferences or hearings where the complainant does not bother to attend. As a solution, the Large Gas LDCs suggest that the Commission require a complaint case to be dismissed for failure to prosecute if the complainant does not appear and did not provide prior notice to the attorney examiner. Under the Large Gas LDCs' proposal, the dismissal would be ordered without prejudice, thus leaving the complainant with the ability to re-file if he or she so chooses. Duke Energy Ohio supports this proposal. This would be a change that generates efficiencies and prevents needless expenditures of time and resources.

CONCLUSION

For the reasons stated above, Duke Energy Ohio respectfully suggests that the Commission modify the proposed rules as described.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties via electronic mail delivery or by U.S. mail, postage prepaid, as indicated, on this 2nd day of May, 2011.

/s/ Amy B. Spiller

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Summary: Comments REPLY COMMENTS OF DUKE ENERGY OHIO, INC. electronically
filed by Carys Cochern on behalf of Duke Energy