

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates.	)	)	Case No. 12-1685-GA-AIR
	)	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	)	Case No. 12-1686-GA-ATA
	)	)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.	)	)	Case No. 12-1687-GA-ALT
	)	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	)	Case No. 12-1688-GA-AAM
	)	)	

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**MOTION TO STRIKE DUKE’S REPLY  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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The Office of the Ohio Consumers’ Counsel (“OCC”) moves the Public Utilities Commission of Ohio (“Commission” or “PUCO”) to strike the following pleading that Duke Energy of Ohio, Inc. (“Duke” or “the Utility”) filed on April 26, 2013: Reply to the Staff Memorandum Contra Duke Motion to Clarify and the OCC Memorandum Contra Duke Motion to Clarify and Duke Motion to Strike. This OCC Motion to Strike<sup>1</sup> is made because Duke violated Ohio Adm. Code 4901-1-12(C) when it replied to two memoranda contra (from OCC and the PUCO Staff, respectively) after Duke requested an expedited ruling on its Motion. Rule 12 prohibits the movant from filing a reply memorandum when the movant sought an expedited ruling on its original motion. This Motion to

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<sup>1</sup> This Motion to Strike is made consistent with the Ohio Adm. Code 4901-1-12.

Strike should be granted for the reasons more fully explained in the attached  
Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

*/s/ Larry S. Sauer*

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Larry S. Sauer, Counsel of Record

Joseph P. Serio

Edmund Berger

Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: Sauer – (614) 466-1312

Telephone: Serio – (614) 466-9565

Telephone: Berger – (614) 466-1292

[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us)

[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)

[berger@occ.state.oh.us](mailto:berger@occ.state.oh.us)

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On April 16, 2013 Duke filed a Motion To Clarify The Scope of These Proceedings (“Duke Motion ton Clarify”) and a Motion of Duke Energy of Ohio, Inc., To Strike The Testimony of James R. Campbell (“Duke Motion to Strike”) (together “Duke Motions”). Both Duke Motions asked for an expedited ruling.<sup>2</sup> On April 19, 2013, the Staff of the Public Utilities Commission of Ohio (“Commission” or “PUCO”) (“Staff”), filed a Memorandum Contra Duke Energy Ohio, Inc.’s Motion to Clarify the Scope of These Proceedings (“Staff Memo contra”). On April 23, 2013, OCC filed a Memorandum Contra Duke’s Motion to Clarify The Scope of These Proceedings And Motion to Strike the OCC Testimony of James R. Campbell (“OCC Memo Contra”). The

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<sup>2</sup> Duke Motion to Clarify at 2, 8. Duke Motion to Strike at 2, 8.

Staff and OCC Memorandum Contra were filed pursuant to 4901-1-12 (C) Ohio Admin. Code.

On April 26, 2013, Duke filed a Reply to Memoranda Contra Filed by Staff and OCC to the Motion to Clarify the Scope of the Proceedings and OCC's Memoranda Contra the Motion to Strike the Testimony of James R. Campbell ("Duke Reply"). The Duke Reply was filed despite the fact that 4901-1-12 (C) Ohio Admin. Code prohibits a Reply when a party requests expedited consideration.<sup>3</sup> Duke's Reply is not permitted by the Commission rules and should be stricken from the record.

## II. ARGUMENT

Duke's Reply should be stricken. Duke filed its Motion to Clarify and Motion to Strike and asked for expedited consideration.<sup>4</sup> In those circumstances, where a party has requested expedited consideration and there has been no request for Reply Memorandum by the PUCO, the PUCO's rules preclude the filing of a Reply to subsequent Memoranda Contra. The Ohio Administrative Code specifically states:

Any motion may include a specific request for an expedited ruling. \* \* \*, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires. **No reply memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner.**<sup>5</sup>

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<sup>3</sup> 4901-1-12 (C) states: "No reply memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner."

<sup>4</sup> Duke Motion to Clarify at 2, 8 (April 16, 2013). Duke Motion to Strike at 2, 8 (April 16, 2013).

<sup>5</sup> Ohio Adm. Code 4901-1-12(C) (emphasis added).

Neither the Commission or the legal director nor the deputy legal director nor the attorney examiner requested Duke to file a Reply. Thus, because there is no provision in the Commission's Rules for Duke's Reply pleading, the Commission should grant the Motion to Strike.

In a recent case, the movant (FirstEnergy) sought an expedited ruling on its motion for waivers of certain Commission Rules and asked for expedited treatment.<sup>6</sup> On April 17, 2012, OCC and other interested parties filed a Joint Motion to Bifurcate Issues and a Joint Memorandum Contra to First Energy's Motion for Waiver.<sup>7</sup> FirstEnergy then filed a reply to the memorandum contra opposing its motion for waivers.<sup>8</sup> On April 23, 2012, OCC and other interested parties moved to strike FirstEnergy's Reply Pleading.<sup>9</sup> PUCO relied on Rule 4901-1-12(C) to strike portions of the FirstEnergy Pleading that

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<sup>6</sup> *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, First Energy Motion and Memorandum in Support for Waiver of Rules and Request for Expedited Treatment (April 13, 2012).

<sup>7</sup> *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Joint motion to Bifurcate Issues and Joint Memorandum Contra FirstEnergy's Motion for Waiver of Rules by the Environmental Law and Policy Center, Natural Resources Defense Council, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition and the Office of the Ohio Consumers' Counsel (April 17, 2012).

<sup>8</sup> *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Memorandum contra the Joint Movants' Motion to Bifurcate and **Reply to Movants' Memoranda Contra the Motion for Waivers** (April 18, 2013).

<sup>9</sup> *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Joint Motion to Strike and Memorandum in Support for FirstEnergy's Reply by the Environmental Law and Policy Center, Natural Resources Defense Council, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Office of the Ohio Consumers' Counsel and the Sierra Club (April 23, 2012).

constituted a reply to the Memorandum Contra filed by the OCC and other interested parties.<sup>10</sup>

In this proceeding, Duke's Reply is a violation of Ohio Adm. Code 4901-1-12(C). Therefore, the Commission should follow its precedent and grant the Motion to Strike in this case.

### **III. CONCLUSION**

Duke's Reply, filed April 26, 2013, violates Ohio Adm. Code 4901-1-12(C). Duke had asked for an expedited ruling on its Motion to Clarify and Motion to Strike, and no additional pleadings outside of those permitted by the PUCO's rule were authorized or contemplated. Rule 12 does not allow for Duke's Reply. For the reasons set forth above, the Commission should grant the Motion to Strike Duke's Reply.

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<sup>10</sup> *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Entry at 5 (April 25, 2012).

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

/s/ Larry S. Sauer

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Larry S. Sauer, Counsel of Record  
Joseph P. Serio  
Edmund Berger  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800  
Columbus, OH 43215-3485  
614-466-1312 (Telephone-Sauer)  
614-466-7964 (Telephone-Etter)  
614-466-1291 (Telephone-Yost)  
sauer@occ.state.oh.us  
serio@occ.state.oh.us  
berger@occ.state.oh.us

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served upon the persons listed below, electronically, this 26th day of April 2013.

/s/ Larry S. Sauer  
Larry S. Sauer  
Assistant Consumers' Counsel

**SERVICE LIST**

Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Olikier  
Matthew R. Pritchard  
MCNEES WALLACE & NURICK LLC  
21 East State Street, 17TH Floor  
Columbus, Ohio 43215

Amy B. Spiller  
Rocco O. D'Ascenzo  
Jeanne W. Kingery  
Elizabeth H. Watts  
Duke Energy Business Services, LLC  
139 East Fourth Street 1303 Main  
P.O. Box 961  
Cincinnati, Ohio 45201-0960

Thomas McNamee  
Devin Parram  
Attorneys General  
Public Utilities Commission of Ohio  
180 East Broad Street 6th Floor  
Columbus, Ohio 43215  
Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, Ohio 45202

A. Brian McIntosh  
McIntosh & McIntosh  
1136 Saint Gregory Street, Suite 100  
Cincinnati, Ohio 45202

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45840

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215-4291

Mark S. Yurick  
Zachary D. Kravitz  
Taft Stettinius & Hollister LLP  
65 East State Street Suite 1000  
Columbus, Ohio 43215

Kimberly W. Bojko  
Mallory M. Mohler  
Carpenter Lipps & Leland LLP  
280 North High Street  
Suite 1300  
Columbus, Ohio 43215

Vincent Parisi  
Matthew White  
Interstate Gas Supply Inc.  
6100 Emerald Parkway  
Dublin, Ohio 43016



M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
PO Box 1008  
Columbus, Ohio 43216-1008

Andrew J. Sonderman  
Kegler, Brown, Hill & Ritter LPA  
Capitol Square, suite 1800  
65 East State Street  
Columbus, Ohio 43215

Amy.spiller.com @duke-energy.com  
Elizabeth.watts@duke-energy.com  
Jeanne.kingery@duke-energy.com  
Rocco.dascenzo@duke-energy.com  
sam@mwncmh.com  
fdarr@mwncmh.com  
joliker@mwncmh.com  
mpritchard@mwncmh.com  
Thomas.mcnamee@puc.state.oh.us  
Devin.parram@puc.state.oh.us  
brian@mcintoshlaw.com  
dhart@douglasehart.com  
cmooney2@columbus.rr.com  
tobrien@bricker.com  
myurick@taftlaw.com  
zkravitz@taftlaw.com  
bojko@carpenterlipps.com  
mohler@carpenterlipps.com  
vparisi@igsenergy.com  
mswhite@igsenergy.com  
mhpeticoff@vorys.com  
smhoward@vorys.com  
asonderman@keglerbrown

AEs: chris.pirik@puc.state.oh.us  
Katie.stenman@puc.state.oh.us

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Summary: Motion Motion to Strike Duke's Reply by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.