

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio for Authority to Establish a )  
Standard Service Offer Pursuant to Section )  
4928.143, Revised Code, in the Form of ) Case No. 14-841-EL-SSO  
an Electric Security Plan, Accounting )  
Modifications and Tariffs for Generation )  
Service. )

In the Matter of the Application of Duke )  
Energy Ohio for Authority to Amend its ) Case No. 14-842-EL-ATA  
Certified Supplier Tariff, P.U.C.O. No. 20. )

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**DUKE ENERGY OHIO'S  
MEMORANDUM CONTRA  
MOTION FOR CONTINUANCE**

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Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company), and for its response to the Joint Motion for Continuance (Motion to Continue) filed by IGS Energy, Ohio Energy Group, Ohio Manufacturers' Association, Ohio Partners for Affordable Energy, and the Office of the Ohio Consumers' Counsel (Joint Movants), states as follows.

Joint Movants contend that good cause exists to alter the procedural schedule established for these proceedings by the attorney examiner. But as demonstrated herein, the arguments on which Joint Movants rely do not warrant any revision of the existing schedule.

Joint Movants first state that the Public Utilities Commission of Ohio (Commission) is not statutorily required to issue a decision in these proceedings until February 28, 2015, arguing that such a deadline is necessary to enable the "proper, orderly, and prompt resolution of ESP

cases.”<sup>1</sup> But this deadline is only directory in nature,<sup>2</sup> with the Commission authorized to determine its case management. Thus, Joint Movants cannot reasonably point to a 275-day deadline as compelling a revision to the procedural schedule. Joint Movants attempt to buttress their reliance on a 275-day period with reference to the average duration of base rate proceedings.<sup>3</sup> But the duration of a base rate proceeding is not informative here. Rather, to discern the time period over which Joint Movants have been able to complete discovery, prepare testimony, and resolve ESP proceedings in a proper, orderly, and prompt manner, consideration must be given to similar proceedings. If history is any measure – as Joint Movants contend it must be – a hearing on an application for a standard service offer (SSO) can commence as early as 28 days after filing. The table below demonstrates that the average time between the filing of an ESP application and the hearing is not 210 days, the number on which Joint Movants rely. Rather, the average time is 134 days.

<u>Company</u>	<u>Case No.</u>	<u>Days from Application to Hearing</u>
AEP Ohio	08-917-EL-SSO, <i>et al.</i>	109
AEP Ohio	11-346-EL-SSO, <i>et al.</i>	223
DPL	08-935-EL-SSO, <i>et al.</i>	124
DPL	12-426-EL-SSO, <i>et al.</i>	353
Duke Energy Ohio	08-920-EL-SSO, <i>et al.</i>	102
Duke Energy Ohio	11-3549-EL-SSO, <i>et al.</i>	136
FirstEnergy	08-935-EL-SSO, <i>et al.</i>	77
FirstEnergy	10-388-EL-SSO	28
FirstEnergy	12-1230-EL-SSO	53

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<sup>1</sup> Motion to Continue, at pg. 3.

<sup>2</sup> *In re Application of Columbus Southern Power Company*, 128 Ohio St.3d 512, 2011-Ohio-1788 at ¶ 37.

<sup>3</sup> *Id.*, citing R.C. 4909.42.

With the past as a barometer, the existing procedural schedule, as determined by the Attorney Examiner, is appropriate and enables sufficient time for proper, orderly, and prompt resolution.

In the Motion to Continue, Joint Movants also contend that there is no reason to complete these proceedings consistent with the schedule selected by the Attorney Examiner because wholesale load auctions are easily conducted with three weeks' preparation time.<sup>4</sup> The auction process involves various steps, as detailed in the Direct Testimony of Robert J. Lee. These steps include submission and review of a two-part application process and satisfaction of credit requirements. But more importantly, the process involves the decision by prospective bidders to participate. With all of Ohio electric distribution utilities adopting competitive procurement processes, prospective bidders must determine their tolerance (administratively and financially) to seek to qualify for and participate in multiple auctions. The auction schedule proposed by the Company takes this fact, as well as the auction schedules for other utilities, into consideration. Joint Movants undeniably have not considered these factors. Indeed, under their proposal, the post-hearing briefing phase of these proceedings likely would not be complete until the end of December 2014, leaving the Company, the Commission's auction consultant, and prospective bidding participants virtually no meaningful time to engage in procurement-related activities for the first of two auctions to be conducted between January 1 and May 31, 2015.

Oddly, Joint Movants contend that Duke Energy Ohio alone controlled when its next SSO filing would be made.<sup>5</sup> They then criticize the Company for making its filing when it did. But Duke Energy Ohio did not unilaterally determine when its filing would be made. Rather, its filing date was guided – and dictated – by the very terms to which Joint Movants agreed.

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<sup>4</sup> Id., at pg. 4.

<sup>5</sup> Id., at pg. 5.

Significantly, Joint Movants agreed that Duke Energy Ohio would make application for its third SSO no later than June 1, 2014.<sup>6</sup> If Joint Movants truly believe that SSO filings need substantial time to process through the Commission's regulatory calendar, they certainly would not have agreed to a June 1, 2014, date. But they did. And they cannot now avoid that agreement with misplaced criticism.

Again without regard to the conduct of entities other than Duke Energy Ohio, Joint Movants suggest that additional time is needed because time-consuming discovery disputes must be anticipated.<sup>7</sup> But as evident from the Company's reply to the Motion for Protective Order filed by the Ohio Energy Group, any current discovery disputes are the consequence of the intervenors' refusal to accept reasonable terms and conditions for the production of confidential information – terms that should pose no real threat of financial harm if such information is properly and fairly protected.

Joint Movants further maintain that they need a longer period of time to conduct discovery and prepare for hearing because of the “myriad of issues” involved in these proceedings.<sup>8</sup> The allegedly complicated issues include: corporate separation, the significantly excessive earnings test (SEET), an auction to procure SSO load, and the continuation or modification of riders. To be clear, these issues are neither new nor cloaked in controversy. Significantly, one of the purportedly complicated issues has already been resolved with agreement of Joint Movants.<sup>9</sup> Additionally, as confirmed in the Company's Application and

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<sup>6</sup> *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section R.C. 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al*, Stipulation and Recommendation, at pg. 4 (IGS Energy was not a party to the proceeding and, as such, is viewed as not having any opinion on the filing date).

<sup>7</sup> *Id.*, at pg. 4.

<sup>8</sup> *Id.*, at pg. 5.

<sup>9</sup> *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section R.C. 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and*

supporting testimony, corporate separation relates only to applicable filing requirements. The Company is not seeking, through these proceedings, to alter or amend its existing corporate separate plan. Thus, Joint Movants should not encounter overwhelming difficulty in ascertaining whether the Company has met the filing requirements set forth in O.A.C. 4901:1-35-03(C)(4) and O.A.C. 4901:1-35-03(F). With regard to the SEET, the Company's filing confirms that it is seeking a calculation that is similar to the calculation the Commission has approved in two prior proceedings.<sup>10</sup> Finally, the changes that the Company is seeking to its existing riders are not overly complicated, as demonstrated in the Direct Testimony of James E. Ziolkowski.

Joint Movants further attempt to recast the Company's filing as complicated and thus necessitating a longer procedural schedule because of the new costs for which the Company seeks recovery. But Joint Movants have previously evaluated proposals that are very similar to the three proposals to which they now refer. Indeed, they have participated in prior proceedings in which the Commission has approved cost recovery via a distribution investment rider and a storm tracking mechanism and its Staff has recommended the tracking of storm costs through a discreet mechanism.<sup>11</sup> Most recently, Joint Movants fully participated in a hearing involving three analogous proposals, after having engaged in pre-hearing activity over an approximate five-month period.<sup>12</sup> Joint Movants are familiar with all of the proposals included in the Company's Application and cannot now legitimately claim otherwise.

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*Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, *et al.*, Stipulation and Recommendation, at pg. 5 (OCC, OP&E, OEG and OMA agreed to perpetuate the use of auctions to procure SSO supply in these proceedings).

<sup>10</sup> See Direct Testimony of Peggy Laub, at pg. 8 and footnote cited therein. See also, *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, *et al.*, Stipulation and Recommendation, at pp. 35-36 and Opinion and Order, at pp. 40-43.

<sup>11</sup> See Application, at pg. 12 and footnotes cited therein. See also, Direct Testimony of William Don Wathen Jr., at pp. 5-6 and footnotes cited therein.

<sup>12</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 13-23850EL-SSO, *et al.*, Application filed December 20, 2013, and hearing commenced June 3, 2014.

Joint Movants have failed to demonstrate any good faith reason for extending the procedural schedule determined by the Attorney Examiner. The Motion to Continue should therefore be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 23rd day of June, 2014, to the following parties.

  
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Summary: Memorandum Duke Energy Ohio's Memorandum Contra Motion for Continuance electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.