

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio for Authority to Establish a ) Case No. 14-841-EL-SSO  
Standard Service Offer Pursuant to )  
Section 4928.143, Revised Code, in the )  
Form of 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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**REPLY TO DUKE ENERGY’S MEMORANDUM CONTRA MOTION TO HOLD  
RULING IN ABEYANCE  
BY  
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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This case is about Duke Energy Ohio (“Duke” or “Utility”) seeking to establish an electric security plan that may increase the electric rates its customers will pay starting in June 2015. The Office of the Ohio Consumers’ Counsel (“OCC”), on behalf of all of the residential utility consumers of Duke, submits this Reply to Duke Energy’s Memorandum Contra Motion to Hold Ruling in Abeyance (“Duke Memo Contra”). Duke’s Memo Contra claims that OCC’s Motion is duplicative, unnecessary, and belated.<sup>1</sup> But Duke is wrong. OCC’s Motion is necessary and does not duplicate other relief requested from the Public Utilities Commission of Ohio (“PUCO” or “Commission”). Nor is it belated.

OCC’s Motion is about transparency for these regulatory proceedings. In its Motion, OCC requested the PUCO to hold Duke’s May 29, 2014 Motion for Protection in abeyance until such time that Duke provides the alleged confidential information to

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<sup>1</sup> Duke Memorandum Contra at 2.

parties pursuant to a *reasonable* protective agreement. If OCC's Motion is granted, and once a reasonable protective agreement is ordered by the PUCO, then OCC will be able to review the information and appropriately respond to the Duke's May 29, 2014 Motion for Protection. OCC will then be able to assess whether the information Duke seeks to shield from the public constitutes a trade secret under Ohio law. OCC will also be able to decipher whether non-disclosure of the materials will be consistent with the purposes of Title 49, Revised Code. Additionally, OCC will be able to weigh in on whether the alleged confidential materials can be reasonably redacted. Input from OCC should assist the PUCO in its determination as to whether Duke's Motion for Protection should be granted.

But input from OCC can only be given after it has access to the alleged protected information consistent with the terms of a protective agreement. There lies the rub. Duke will not provide the OCC with an un-redacted version of its Application unless OCC signs Duke's proposed agreement. Without being able to see the specific information sought to be kept from the public, OCC has not been able to respond to the merits of Duke's request. Thus, OCC filed a motion requesting that the PUCO hold its ruling on Duke's May 29, 2014 Motion for Protection in abeyance until OCC has access to all of the information that Duke seeks to conceal from the public.

Duke argues that OCC's Motion to Hold in Abeyance is duplicative of OCC's July 18, 2014 Motion to Compel.<sup>2</sup> Although granting OCC's Motion to Compel would allow OCC access to the information, it does not remedy the fact that the PUCO may issue a ruling on Duke's Motion for Protection in the meantime, prior to OCC being able

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<sup>2</sup> Duke Memo Contra at 3-5 (July 23, 2014).

to address Duke's Motion. OCC's Motion for Abeyance is targeted to do just that—give OCC an opportunity—once a protective agreement is executed—to review the alleged protected information in Duke's application.

And while Duke claims that the PUCO is aware of the ongoing dispute and thus OCC need not raise the issue, OCC's Motion addresses this important issue as formal matter for the PUCO to consider. This is a right that every party has under the rules that govern PUCO proceedings—any party may file a motion under Ohio Admin. Code 4901:1-12.

Duke argues that under the PUCO's rules, OCC's right to oppose the Motion for Protection has expired.<sup>3</sup> Duke argues that if OCC needed access to the confidential information in order oppose the Utility's Motion for Protection, it could have sought an abeyance and extension of time prior to June 13, 2014.<sup>4</sup> In making this argument, Duke is confusing pleadings. A party may oppose a motion through a Memorandum Contra. Parties also may file motions under Ohio Admin. Code 4901:1-12. OCC filed a Motion. It did not file a Memorandum Contra as it could not review the alleged confidential information that would have enabled it to formulate a Memorandum Contra. OCC's Motion to Hold in Abeyance stands on its own, apart from a Memorandum Contra. Both pleadings are permitted by the PUCO rules and the filing, or not filing of one, does not preclude the filing of the other.

The PUCO's rules permit OCC (and other parties) to file motions to address issues that arise in matters before the PUCO. (Rule 4901-1-12, Motions). The PUCO

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<sup>3</sup> Duke Memo Contra at 2-3.

<sup>4</sup> Duke Memo Contra at 3 (July 23, 2014).

has not yet ruled on Duke's Motion for Protection. Thus, OCC or any other party has the right and opportunity to submit other pleadings, including a Motion to Hold in Abeyance.

The PUCO should not rule on Duke's Motion for Protection until such time as OCC has access to all of the information which Duke seeks to conceal from the public. The PUCO should thereafter make its determination, but only after providing the OCC and any other interested party an opportunity to comment upon Duke's Motion for Protection—after reviewing the information at issue. The PUCO's determination should consider the objective of assuring the public that the process is open and transparent concerning the means by which their utility rates are determined.

Respectfully submitted,

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*/s/ Maureen R. Grady*

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply has been served electronically upon those persons listed below this 28th day of July 2014.

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Summary: Reply Reply to Duke Energy's Memorandum Contra Motion to Hold Ruling in Abeyance by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.