

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.)	

**MEMORANDUM CONTRA MOTION TO COMPEL
OF DUKE ENERGY OHIO, INC.**

I. INTRODUCTION

On the eve of hearing, the Office of the Ohio Consumers' Counsel (OCC) seeks irrelevant responses to data requests that were first submitted on June 6, 2014. These requests were contained in the first interrogatories issued by OCC, and eighteen more sets followed. The lack of follow-up with respect to these interrogatories may be demonstrative of their relative significance in the proceeding.

Duke Energy Ohio, Inc., (Duke Energy Ohio) responded in timely fashion to the request and indicated that such information was not within the possession, custody or control of Duke Energy Ohio. Additionally, the Company responded that such information is irrelevant and not likely to lead to the discovery of admissible evidence. While OCC may wish that there was information at hand to support an erstwhile argument of some description, the Company is not in possession of any such information. OCC's motion must be denied.

II. ARGUMENT

The OCC seeks to compel responses to three interrogatories that it submitted more than four months ago. These three interrogatories ask Duke Energy Ohio to identify each contract and/or agreement between any affiliate of Duke and 1) a party to this proceeding, 2) an electric services company, or 3) a political subdivision. In support of its claim that it is entitled to this information, OCC argues that the law permits discovery of “side deals between, inter alia, Duke’s affiliates and third parties.” However, OCC liberally misquotes the law.

The OCC seeks to compel Duke Energy Ohio to identify documents about which it has no knowledge. Although the statute may require the Company to make available contracts or agreements between the utility or any of its affiliates and certain third parties, Duke Energy Ohio can only do so to the extent it either has knowledge or possession of any such agreements. In response to the request, Duke Energy Ohio stated that the interrogatory seeks to elicit information that is not within the possession, custody or control of Duke Energy Ohio. Indeed, the instructions for answering the discovery requested direct the Company as follows: “All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.” Instructions further provide that “Your organization(s) is requested to produce responsive materials”. “Your organization” is not a defined term in the instructions, but since the recipient of the document is Duke Energy Ohio, the Company understand its “organization” to be Duke Energy Ohio.

The OCC neglects to mention that the Company did respond to OCC interrogatories that were similar in nature. In two other interrogatories in the same set, OCC requested the Company to identify contracts or agreements between Duke Energy Ohio and third parties. In response,

Duke Energy Ohio stated that “other than standard contracts with competitive retail electric service providers with regard to their operations in Duke Energy Ohio’s certified territory, there are no current contracts and/or agreements in place between it and an electric services company for the period of the proposed SSO, which is to take effect on June 1, 2015.” A second, identical response was provided with respect to political subdivisions. The OCC is seeking to compel further response despite the fact that no such additional response is available.

R.C. 4928.145 states that certain information must be made available “upon submission of an appropriate discovery request.” However, Duke Energy Ohio objected initially to this request as it was completely unlimited as to time, place or relevance. Also, R.C. 4928.145 specifies that information to be made available must be “relevant to the proceeding.” At no time did the OCC make its request sufficiently narrow to conform to the requirements of the statute.

III. Conclusion

As noted by the Company in response, no such information is in the possession, custody or control of Duke Energy Ohio. And the Company is not aware of the existence of any such contracts or agreements as were requested. Thus, the Company has nothing to identify or produce in response to the OCC’s last-minute motion to compel.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail or by hand delivery this 17th day of October, 2014.



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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/17/2014 4:26:27 PM

in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

Summary: Memorandum Memorandum Contra Motion to Compel of Duke Energy Ohio, Inc. electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H. and Kingery, Jeanne W. and Rocco D'Ascenzo