

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy)	
Ohio for Authority to Establish a Standard)	Case No. 14-841-EL-SSO
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 Certified)	Case No. 14-842-EL-ATA
Supplier Tariff, P.U.C.O. No. 20.)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM CONTRA**

Ohio Partners for Affordable Energy ("OPAE") hereby submits to the Public Utilities Commission of Ohio ("Commission") this memorandum contra in the above-referenced applications of Duke Energy Ohio, Inc., ("Duke") for authority to establish a standard service offer in the form of an electric security plan. This memorandum contra addresses interests that are vital to OPAE. OPAE's interests were not explicitly addressed in the Interlocutory Appeal and Application for Review of the Office of the Ohio Consumers' Counsel ("OCC") filed on October 27, 2014. Because OPAE must file a responsive pleading to express its vital interest in the matter at stake, OPAE submits this pleading.

OPAE is a party to a joint defense agreement with OCC. The joint defense agreement facilitates OPAE's communications with OCC. It also allows for efficiency in OPAE's legal work. It also protects the privilege that is necessary for OPAE's legal work.

On October 22, 2014, the attorney examiner granted Duke's motion to compel discovery that required OCC to disclose all confidential e-mail communications among attorneys whose clients, including OPAE and its attorney, entered into a joint defense agreement with OCC. The ruling requires OCC to provide documents that are privileged from disclosure under attorney-client and trial preparation privileges. Although OCC's interlocutory appeal does not explicitly state so, the reversal of the attorney examiner's ruling is needed to prevent severe prejudice to OPAE.

The attorney examiner's ruling will have a chilling effect on OPAE's communications with OCC and with other intervening customer groups such as the Ohio Manufacturers' Association ("OMA"). The examiner's ruling will impede the ability of OPAE to work with OCC, OMA, and other customer intervenors who practice before the Commission. The ruling will impede coalitions of those intervenors who have common and joint interests and who wish to work together when it is in their interest to do so.

When intervenor coalitions speak jointly in one pleading, administrative efficiency is accomplished. The attorney examiner's ruling will have a chilling and adverse impact on the ability of parties with joint interests to work together. Joint pleadings have been a practice for many years in Commission proceedings and the examiner's ruling, if it stands, will prevent joint pleadings of intervenors who will no longer be able to work together efficiently to find common ground.

The ability to file joint pleadings should not be taken for granted. As OPAE's motion to intervene states, OPAE is a unique organization that

represents a group of interests: low-income residential customers, community action agencies, other non-profit agencies, and other energy efficiency service providers. This group of interests does not coincide with any other intervenor interest, including OCC, which represents all residential customers, or OMA's client interests. Negotiations to arrive at joint pleadings can be time consuming and difficult, but, up until the attorney examiner's ruling, the negotiations have been privileged. This has allowed negotiations among groups with common, if not identical, interests to proceed, to the benefit of the parties with joint interests and to the benefit of the Commission itself.

OPAЕ will be severely prejudiced if OCC is required to turn over numerous documents which contain OCC's communications with OPAЕ. These documents contain privileged information including attorney work product and trial preparation documents. The attorney examiner's ruling will create a new precedent that will fundamentally change how parties practice and participate in proceedings before the Commission. The ruling will have an adverse effect on numerous other parties besides OPAЕ in their practice before the Commission.

Attorneys who practice before the Commission should be able to make joint pleadings and to discuss joint interests among themselves without fear that their communications will be disclosed in the public record. Attorney-client privilege and trial preparation privilege exist for a reason. The examiner's ruling jeopardizes the continued ability of intervenors in Commission proceedings to work together to achieve mutually agreeable outcomes.

For these reasons, OPAE respectfully requests that the Commission accept this responsive pleading and that the Commission find that the attorney examiner's order compelling OCC to provide to Duke unredacted copies of its e-mails with OPAE be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Memorandum Contra* was served on the persons stated below via electronic transmission, this 29th day of October, 2014.

/s/ Colleen L. Mooney

Colleen L. Mooney, Attorney
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Summary: Memorandum Contra electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy