

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	Case No. 14-1297-EL-SSO
Edison Company for Authority to Provide)	
for a Standard Service Offer Pursuant to)	
R.C. 4928.143 in the Form of an Electric)	
Security Plan)	

**IGS ENERGY'S RESPONSE TO DUKE ENERGY OHIO, INC'S NOTICE OF
WITHDRAWAL**

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December 30, 2014

I. INTRODUCTION

On December 18, 2014, shortly after receiving a set of discovery from Interstate Gas Supply, Inc. (“IGS”), Duke Energy Ohio, Inc. (“Duke”) filed a “Notice of Withdrawal”, which would terminate its party status in this proceeding. Duke’s request to withdraw would frustrate (deliberately) the development of the record in this proceeding. Therefore, IGS urges the Public Utilities Commission of Ohio (“Commission”) to condition Duke’s withdrawal upon it providing complete responses to IGS’s timely and relevant discovery requests. Otherwise, the Commission should reject Duke’s request to withdraw because it is not just and reasonable and would thus be contrary to Commission precedent.

II. BACKGROUND AND ARGUMENT

Duke filed a Motion to Intervene on October 1, 2014. In its Motion, Duke committed to “significantly contribute to the full development and equitable resolution of the issues”¹ On December 2, 2014, the Attorney Examiner granted Duke’s Motion to Intervene.² Therefore, Duke is a party to this proceeding, and is currently listed as a party of record on the Commission’s website.

On December 18, 2014, Duke attended a discovery conference in which the Attorney Examiner issued an oral ruling granting, in part, and denying, in part, IGS’s Motion to Compel Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company (“FirstEnergy”).³ Specifically, the Attorney Examiner required FirstEnergy to produce Judah Rose’s past forecasts of commodity (natural gas,

¹ Motion to Intervene and Memorandum in Support of Duke Energy Ohio, Inc. at 5-6 (Oct. 1, 2014).

² Entry at 1 (Dec. 2, 2014).

³ The transcript from that hearing was not publicly available at the time this pleading was filed.

electricity, and coal) prices. The Attorney Examiner, however, declined to require *FirstEnergy* to produce a forecast that witness Rose produced for Duke in its last electric security plan (“ESP”) Case Nos. 11-3549-EL-SSO, *et al.* because the information would be better obtained from another party to the case—Duke. To that end, the Attorney Examiner provided IGS with authorization to serve expedited discovery upon Duke to obtain the unredacted testimony of Judah Rose and supporting workpapers for Case Nos. 11-3549-EL-SSO, *et al.*

On that same day, IGS served discovery upon Duke. See Attachment. Shortly thereafter, Duke filed a request to withdraw from this proceeding. Duke has yet to respond to IGS discovery request, though it was propounded pursuant to an Attorney Examiner directive to respond on an expedited basis. As discussed below, Duke’s request to withdraw should be denied or conditioned.

After the Commission grants a motion to intervene, the intervenor is granted party status. As such, the party may serve discovery on other parties and must respond to discovery served upon them. Party status continues until such time as the Commission authorizes the party to withdraw from the proceeding.⁴ The Commission has authorized parties to withdraw when the request “***is reasonable and should be granted.***”⁵

⁴ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 8 (Aug. 8, 2012) (hereinafter “AEP ESP Case”). See also AEP ESP Case, Opinion and Order at 7 (Dec 11, 2011) (“The Commission finds DWEA’s and OPAE’s requests to withdraw from the applicable proceedings to be reasonable and that the requests be granted.”)

⁵ *Id.* (emphasis added).

Duke's request is not reasonable—it would work against the development of the record in this case. And it would violate Duke's intervention commitment to "significantly contribute to the full development and equitable resolution of the issues" ⁶ Thus, Duke's request should be denied or conditioned upon it providing complete responses to IGS's timely and relevant discovery.

The Commission's precedent adopts a policy that favors streamlining the discovery process. Indeed, the Commission recently ruled that parties may use confidential documents obtained in discovery in future proceedings, subject to providing the producing party reasonable notice, as well as normal evidentiary objections regarding admissibility. ⁷ Notwithstanding the Commission's ruling, Duke continues to attempt to frustrate parties' ability to use its confidential documents in future cases *even under seal*. Duke should not be rewarded for its gamesmanship.

III. CONCLUSION

For the reasons stated herein, IGS respectfully requests that the Commission deny Duke's request to withdraw or condition it upon Duke providing complete responses to IGS's discovery requests. Such an order is required to ensure that parties may fully develop the record in this proceeding.

Respectfully submitted,

/s/Joseph Olikar

⁶ Motion to Intervene and Memorandum in Support of Duke Energy Ohio, Inc. at 5-6 (Oct. 1, 2014).

⁷ *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 an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case Nos. 14-841-EL-SSO, *et al.*, Entry (Aug. 27, 2014) (hereinafter "Duke ESP III"); *Duke ESP III*, Entry at 5-7 (Oct. 22, 2014).

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CERTIFICATE OF SERVICE

I certify that IGS Energy's Response to Duke Energy Ohio, Inc.'s Notice of Withdrawal was served electronically on the following parties on this 30th day of December, 2014:

Thomas.mcnamee@puc.state.oh.us Thomas.lindgren@puc.state.oh.us Ryan.orourke@puc.state.oh.us mkurtz@BKLawfirm.com kboehm@BKLawfirm.com jkylern@BKLawfirm.com stnourse@aep.com mjsatterwhite@aep.com yalami@aep.com joseph.clark@directenergy.com ghull@eckertseamans.com myurick@taftlaw.com zkravitz@taftlaw.com Schmidt@sppgrp.com ricks@ohanet.org tobrien@bricker.com mkl@bbrslaw.com gas@bbrslaw.com ojk@bbrslaw.com wttpmlc@aol.com lhawrot@spilmanlaw.com dwilliamson@spilmanlaw.com blanghenry@city.cleveland.oh.us hmadorsky@city.cleveland.oh.us kryan@city.cleveland.oh.us jscheaf@mcdonaldhopkins.com gkrassen@bricker.com dstinson@bricker.com dborchers@bricker.com drinebolt@ohiopartners.org meissnerjoseph@yahoo.com LeslieKovacik@toledo.oh.gov trhayslaw@gmail.com Jeffrey.mayes@monitoringanalytics.com mhpeticoff@vorys.com	burkj@firstenergycorp.com cdunn@firstenergycorp.com jlang@calfee.com talexander@calfee.com dakutik@jonesday.com sam@mwncmh.com fdarr@mwncmh.com mpritchard@mwncmh.com cmooney@ohiopartners.org callwein@wamenergylaw.com mswhite@igsenergy.com Bojko@carpenterlipps.com Allison@carpenterlipps.com hussey@carpenterlipps.com barthroyer@aol.com athompson@taftlaw.com Christopher.miller@icemiller.com Gregory.dunn@icemiller.com Jeremy.grayem@icemiller.com blanghenry@city.cleveland.oh.us hmadorsky@city.cleveland.oh.us kryan@city.cleveland.oh.us tdougherty@theOEC.org finnigan@edf.org Marilyn@wflawfirm.com todonnell@dickinsonwright.com matt@matthewcoxlaw.com mfleisher@elpc.org mitch.dutton@fpl.com selisar@mwncmh.com ccunningham@akronohio.gov asonderman@keglerbrown.com sechler@carpenterlipps.com gpoulos@enernoc.com
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/s/ Joseph Olikier _____
Joseph Olikier

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Security Plan)	

**IGS ENERGY'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO DUKE ENERGY OHIO, INC.**

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Counsel of Record
Matthew White (0082859)
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IGS Energy hereby submits its interrogatories and requests for production of documents on Duke Energy Ohio, Inc. ("Duke") pursuant to Rule 4901:1-16, Ohio Administrative Code ("OAC"), Rule 4901:1-17, OAC, and Rule 4901:1-20, OAC and the Attorney Examiner's oral ruling on December 18, 2014. Please submit all responses to:

Joseph Olikier
Email: joliker@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016

DIRECTIONS

Please ensure that any responses comply with the directions provided below.

A. Definitions

The following definitions apply:

1. "Document" or "Documentation" when used in this discovery request, is used in its customary broad sense and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punch cards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments,

invoices, authorizations, budgets, analysis, projections, transcripts, electronic mail, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, work papers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations/publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic, mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request or discovery concerning documents addressing, relating or referring to or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like

shall be deemed to be distinct documents requiring separate identification or production.

Copies of documents shall be legible

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, electronic or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.

3. "Person" includes any firm, corporation, joint venture, association, entity or group of persons unless the context clearly indicates that only an individual person is referred to.

4. Singular/Plural words expressing the singular number shall be deemed to also express the plural number; those expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to also express the present tense; and vice versa.

B. Instructions for Answering

1. Where an interrogatory calls for an answer in multiple parts, each part should be separate in the answer so that the answer is clearly understandable.

2. Answer each interrogatory separately and fully in writing under oath, unless it is objected to. Clearly state objections. Answers must be signed by the person making them, and objections must be signed by the attorney asserting the objection.

3. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.

4. You are under a continuing duty to supplement your responses with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as a witness at trial, and the subject matter on which he or she is expected to testify and to correct any response which you know or later learn is incorrect or incomplete.
5. “You” and “your” or “yourself” refer to the party requested to response to discovery or to produce documents and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venture of such party.
6. “Identify,” or “state the identity of,” or “identified” means:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto.

REQUESTS FOR PRODUCTION OF DOCUMENTS

RPD 3.1. Provide a copy of Judah Rose’s unredacted testimony and workpapers from Case Nos. 11-3549-EL-SSO, *et al.*

Respectfully submitted,

/s/ Joseph Olier

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *IGS Energy's First Requests for Production of Documents to Duke Energy Ohio, Inc.* was served this 18th day of December 2014 via electronic mail upon the following:

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/s/ Joseph Olier
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Case No(s). 14-1297-EL-SSO

Summary: Response to Notice of Withdrawal of Duke Energy Ohio, Inc. electronically filed by Mr. Joseph E. Olikier on behalf of IGS Energy