

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke) Case No. 16-1017-EL-WVR
Energy Ohio, Inc. for a Waiver.)

**MEMORANDUM CONTRA
DUKE ENERGY OHIO, INC.'S MOTION TO STRIKE COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

In this case, Duke Energy Ohio, Inc. ("Duke") seeks an opportunity to delay filing its energy efficiency market potential study. The market potential study is an important tool for analyzing Duke's energy efficiency portfolio case. Any delay in filing its market potential study has adverse impacts on parties interested in Duke's portfolio case.

II. RECOMMENDATIONS

The Public Utilities Commission of Ohio (the "PUCO") should deny Duke Energy Ohio, Inc.'s ("Duke") Motion to Strike Comments of the Office of the Ohio Consumers' Counsel (the "Motion to Strike") because (i) it is moot, and (ii) it seeks to suppress parties' the opportunity to be heard before the PUCO in contrast with longstanding PUCO practice and basic principles of justice.

**A. The Motion to Strike is moot because the PUCO has already
approved the relief Duke sought in its application.**

Duke filed its application in this case on May 9, 2016. In its application, Duke asks for a waiver of the requirement that it file its energy efficiency market potential study by June 15, 2016 and instead asks that it be permitted to file the market potential

study in October 2016. The Office of the Ohio Consumers' Counsel ("OCC") filed comments in response to the application on June 1, 2016, arguing that there is no good cause to grant the waiver request.. On June 13, 2016, the PUCO Attorney Examiner issued an entry granting Duke's Application. Duke filed a Motion to Strike OCC's comments in their entirety on June 14, 2016, a day after the Attorney Examiner granted Duke's Application. Because OCC's comments pertain to whether the Application should be granted, Duke's Motion to Strike OCC's comments is moot.

B. The Motion to Strike is meritless because principles of justice demand that parties have the opportunity to be heard, and accordingly, the PUCO routinely permits parties to file comments in PUCO proceedings without a procedural schedule.

The Motion to Strike is meritless because the PUCO has permitted parties to file comments in PUCO proceedings for years, including numerous proceedings in which Duke has participated.¹ Duke has not cited a single instance in which the PUCO struck comments or refused to consider them on the grounds that they were filed without a procedural schedule. Duke's claim that it is prejudiced by the filing of OCC's comments is without support because Duke had an opportunity to respond to OCC's comments and chose not to.

The Ohio Manufacturers' Association ("OMA") and The Kroger Co. also filed comments in this case. Duke moved to strike OMA's and Kroger's comments. The Motion to Strike OCC's comments is identical in substance to Duke's motions to strike

¹ See Memorandum Contra Motion to Strike on Behalf of the Kroger Co., Case No. 16-1017-EL-WVR (June 13, 2016) (citing an examples where the PUCO explicitly relied on party comments in deciding the merits of a utility's application); Memorandum Contra Duke Energy Ohio, Inc.'s Motion to Strike Comments of the Ohio Manufacturers' Association, Case No. 16-1017-EL-WVR (June 13, 2016) (same).

OMA's and Kroger's comments. The Attorney Examiner rejected Duke's motions to strike OMA's and Kroger's comments.

III. CONCLUSION

Duke should not be permitted to suppress a party's right to be heard before the PUCO. Therefore, the Motion to Strike should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra were served on the persons stated below via electric transmission this 29th day of June 2016.

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Summary: Memorandum Memorandum Contra Duke Energy Ohio Inc.'s Motion to Strike
Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J.
Bingham on behalf of Healey, Christopher Mr.