

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. to File for Tariff) Case No. 14-2209-EL-ATA
Approval)

**JOINT MEMORANDUM CONTRA OF
INTERSTATE GAS SUPPLY, INC., DIRECT ENERGY SERVICES, LLC AND DIRECT
ENERGY BUSINESS, LLC, AND THE RETAIL ENERGY SUPPLY ASSOCIATION
THE MOTION FOR EXTENSION OF THE PROCEDURAL SCHEDULE AND
REQUEST FOR EXPEDITED TREATMENT**

September 29, 2016

Joseph Olikier (0086088)
Counsel of Record
Email: joliker@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000
Facsimile: (614) 659-5073

Attorney for IGS Energy

Michael J. Settineri (0073369), Counsel
of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
614-464-5462
614-719-5146 (fax)
mjsettineri@vorys.com
glpetrucci@vorys.com

***Attorneys for the Retail Energy
Supply Association***

Mark A. Whitt (0067996)
Counsel of Record
Andrew J. Campbell (0081485)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com

***Attorney for Direct Energy Services,
LLC and Direct Energy Business,
LLC***

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. to File for Tariff) Case No. 14-2209-EL-ATA
Approval)

JOINT MEMORANDUM CONTRA

I. INTRODUCTION

The motion of Duke Energy Ohio, Inc. (“Duke”) for a six-month delay of the procedural schedule *that Duke itself asked for* should be denied. The grounds alleged for the motion are contained in a single sentence of Duke’s supporting memorandum: “The issues to be addressed in this proceeding are undeniably complex and should take into consideration the more recently stated expectation of the Commission that grid modernization plans incorporate innovation and attention to millennial customers ‘who want more control and understanding over how and what they consume’” (Motion at 4, *quoting* Case No. 14-1693-EL-RDR, Opinion and Order at 5 (March 31, 2016)). The issues are no more “complex” today than they were on August 8, 2016—the day Duke signed and submitted a joint motion to establish the current schedule. If Duke believes the Commission “should take into consideration” views expressed in a Commission order issued *six months ago* (again, well before the submission of the joint motion establishing the current schedule), Duke is perfectly free to make its case when it files its direct testimony, currently due on October 4, 2016. There are, however, no grounds to further delay the development of the competitive market in Duke’s territory and this case.

Because there should be no further delay in the development of the competitive market in Duke's territory and because Duke has not identified good cause to delay the hearing, Interstate Gas Supply, Inc. ("IGS"), Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct"), and the Retail Energy Supply Association ("RESA") jointly request that the Commission deny the motion.

II. BACKGROUND

The Commission authorized Duke to implement SmartGrid technology in its service territory in Duke's first electric security plan case.¹ In each successive year, Duke expanded its SmartGrid program: Duke has installed thousands of advanced meter infrastructure ("AMI") smart meters. In fact, Duke is the first Ohio utility to provide all of its customers with a smart meter. In the process, Duke has collected well over one hundred million dollars from its distribution customers.

At the same time, Duke has developed several time-of-use products that are available to only customers that remain on Duke's standard service offer ("SSO").² While Duke has rapidly expanded its rate base and its own time-of-use offerings, Duke has not invested in a meter data management system that would allow competitive retail electric service ("CRES") providers to access customers' interval data—information that is critically necessary to enable CRES providers to offer time-of-use products and services. Duke has failed in this regard despite its commitments to make interval data available.

¹ *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case Nos. 08-920-EL-SSO, *et al.*, Opinion and Order (Dec. 17, 2008).

² See Duke Energy Unbundled Retail Standard Tariff: Rate TD-2012 (Time-of-Day); Rate TD-13 (Time-of-Day); Rider PTR_3 (Peak Time Rebate).

In a stipulation and recommendation that Duke entered into in its second electric security plan case, Duke agreed to develop a web portal to electronically submit interval data to CRES providers:

Duke Energy Ohio agrees to work with interested CRES providers and Commission Staff to jointly develop a secure, **web-based system that will provide electronic access to key customer usage and account data that can be accessed via a secure, supplier website that presents the following data and information in a format that can be automatically retrieved** The following data and information, in a format that can be automatically retrieved, will be the subject of the web-based system:

- Account Numbers
- Meter numbers
- Names
- Service Address, including zip codes
- Billing Address, including zip code
- Email address (if available)
- Meter Reading Cycle Dates
- Meter Types
- Indicator if Customer has an Interval Meter
- Rate Code Indicator
- Load Profile Group Indicators
- PLC and NSPL values (capacity and transmission obligations)
- 24 months of consumption data (in kWh) by billing period including
- 24 months of demand data (in kW)
- **24 months of interval data**
- Indicator if SSO customer
- Identifier as to whether customer is participating in the Budget Billing Plan.³

Moreover, Duke committed in the same stipulation to provide this data through a web portal by June 1, 2014:

Duke Energy Ohio shall use commercially reasonable efforts to add to the existing web system the Load Profile Group Indicators and the customer service addresses by March 1, 2012, but shall complete such additions no later than June 1, 2012. **Duke Energy Ohio shall make a commercially reasonable effort to add the other items by June 1, 2013, but agrees**

³ *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan, Case Nos. 11-3549-EL-SSO et al., Stipulation at 33-34 (emphasis added).*

to complete the additional data items no later than June 1, 2014, and will work with Commission Staff and interested CRES providers to stage the implementation of various portions of this website, as possible

Duke Energy Ohio shall recover the actual costs to develop said web-based system, **recovery not to exceed \$500,000**, on a non-bypassable basis. Duke Energy Ohio shall be permitted to create a regulatory asset for purposes of recording said costs for future recovery through electric distribution rates.⁴

On March 26, 2014—nearly two and one-half years ago—the Commission issued a Finding and Order and policy statement to reform utility practices to enable the competitive market to provide customers time-of-use products and services that promote efficient energy usage.⁵ To that end, the Commission directed all electric distribution utilities to file a tariff specifying terms and conditions for the transfer of interval data, as well as proposed formulas for calculating customers’ individual network service peak load (“NSPL”) and peak load contribution (“PLCs”).⁶

Duke initiated this proceeding in December 2014. Following a comment period, the Commission determined that Duke’s tariff proposal may be unjust and unreasonable—finding that it would take a step backward relative to the Commission’s directive—and that a hearing should be held.

The parties spent the first half of 2016 exploring settlement. The Attorney Examiner then scheduled the hearing for September 20, 2016. On August 8, 2016, the parties—including Duke—filed a joint motion to move the hearing date to November 1, 2016. The Commission granted the motion on August 12.

⁴ Case Nos. 11-3549-EL-SSO et al., Stipulation at 34-35 (emphasis added).

⁵ *In the Matter of the Commission’s Investigation of the Retail Electric Market Market*, Case No. 12-3151-EL-COI, Finding and Order at 36 (Mar. 26, 2014), and Entry on Rehearing at 19 (May 21, 2014).

⁶ *Id.*

III ARGUMENT

A continuance of a hearing may be granted “for good cause shown.” O.A.C. 4901-1-13. Duke has not shown good cause for its motion. A delay for the sake of delay is not “good cause.”

Nowhere in its motion does Duke explain what changed between August 8 (when Duke and the other parties filed the agreed motion to establish the current schedule) and September 19, when Duke filed its motion seeking to vacate the hearing date it had just agreed to the month prior. There is no claim of witness unavailability. There is no claim of lawyer conflicts with other cases. There is no claim that settlement talks have resumed, or that Duke or anyone else intends to resume them. No reason is stated *at all* for why Duke cannot file testimony on October 4 or appear for hearing on November 1.

Duke only presents vague statements about how the issues in this case are “complex” and warrant resolution through a “holistic approach.” (Motion at 4, 5.) A “well-reasoned proposal” is promised if an extension is granted, but surely two-and-a-half years has given Duke sufficient time. (See Motion at 6.) The Commission’s policy in favor of grid modernization and time-of-use products is not a new revelation that requires additional consideration—for Duke or for any other party.

Duke likewise fails to explain how it would be prejudiced by adhering to a schedule that Duke agreed to just last month. Conversely, the prejudice to other parties of any further delay is clear. Although some interval data is finally available to CRES providers, it is not bill quality data, and Duke has not modified its PJM settlement system in accordance with the RMI Order. Therefore, any action that Duke has taken

thus far does not effectively bring the competitive market any closer to being able to offer time-of-use products. Delaying consideration of this proceeding for six months as proposed in Duke's motion will further and unnecessarily delay the deployment of time-of-use products and thus prejudice CRES providers and the customers they serve.

Simply stated, Duke has not provided good cause to extend the schedule for six months.

IV. CONCLUSION

The Commission should deny Duke's motion to delay the hearing in this case until April 2017. The undersigned parties recognize that this motion, though unfounded, cuts into everyone's time to prepare under the current schedule. Accordingly, a one- or two-week extension of existing deadlines would not be unreasonable, should the Commission be inclined to revisit the schedule at all.

Respectfully submitted,

/s/ Joseph Oliker

Joseph Oliker (0086088)
Counsel of Record
Email: joliker@igsenergy.com
IGS Energy
6100 Emerald Parkway
Dublin, Ohio 43016
Telephone: (614) 659-5000
Facsimile: (614) 659-5073

Attorney for IGS Energy

/s/ Gretchen Petrucci

Michael J. Settineri (0073369), Counsel
of Record
Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street

P.O. Box 1008
Columbus, Ohio 43216-1008
614-464-5462
614-719-5146 (fax)
mjsettineri@vorys.com
glpetrucci@vorys.com

***Attorneys for the Retail Energy
Supply Association***

/s/ Mark Whitt

Mark A. Whitt (0067996)
Andrew J. Campbell (0081485)
Rebekah J. Glover (0088798)
WHITT STURTEVANT LLP
The KeyBank Building, Suite 1590
88 East Broad Street
Columbus, Ohio 43215
Telephone: (614) 224-3946
Facsimile: (614) 224-3960
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
glover@whitt-sturtevant.com

***Attorney for Direct Energy Services,
LLC and Direct Energy Business,
LLC***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Joint Memorandum Contra of Interstate Gas Supply, Inc., Direct Energy Services, LLC and Direct Energy Business, LLC, and the Retail Energy Supply Association to the Pending Motion for Extension of the Procedural Schedule and Request for Expedited Treatment* was served this 29th day of September 2016 via electronic mail upon the following:

John.jones@puc.state.oh.us Natalia.messenger@puc.state.oh.us cmooney@ohiopartners.org joliker@igsenergy.com mswhite@igsenergy.com trent@theoec.org	Amy.spiller@duke-energy.com Elizabeth.Watts@duke-energy.com mjsettineri@vorys.com glpetrucci@vorys.com whitt@whitt-sturtevant.com
---	---

/s/ Rebekah Glover _____
Rebekah Glover

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/29/2016 4:30:15 PM

in

Case No(s). 14-2209-EL-ATA

Summary: Text Joint Memorandum Contra Motion for Extension of the Procedural Schedule electronically filed by Ms. Rebekah J. Glover on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC and Interstate Gas Supply, Inc. and Retail Energy Supply Association