

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.	)	Case No. 17-32-EL-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 17-33-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 17-34-EL-AAM
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Modify Rider PSR.	)	Case No. 17-872-EL-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR.	)	Case No. 17-873-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 17-874-EL-AAM
)	
In the Matter of the Application of Duke Energy Ohio, Inc., 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 No. 17-1263-EL-SSO
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)	Case No. 17-1264-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Vegetation Management Costs.	)	Case No. 17-1265-EL-AAM
)	
In the Matter of the Application of Duke Energy Ohio, Inc., to Establish Minimum Reliability Performance Standards Pursuant to Chapter 4901:1-10, Ohio Administrative Code.	)	Case No. 16-1602-EL-ESS
)	

**REPLY BY DUKE ENERGY OHIO, INC.,
TO
MEMORANDUM CONTRA
MOTION TO CONSOLIDATE CASES**

Numerous parties involved in four, interrelated proceedings have spent countless hours negotiating the possible resolution of these proceedings. Those efforts resulted in the execution and filing of a Stipulation and Recommendation,¹ entered into among twelve parties. That the proceedings commenced through four separate applications should not defeat the possibility of the broad-based resolution that parties have been able to reach. The four proceedings addressed by the Stipulation must be consolidated, as requested by Duke Energy Ohio, Inc. (Duke Energy Ohio),² so that the Public Utilities Commission of Ohio (Commission) can take appropriate testimony and consider whether to approve the terms of the Stipulation.

On April 30, 2018, Interstate Gas Supply, Inc., (IGS) filed a memorandum³ opposing consolidation of the above-captioned proceedings. The Memo Contra should be either stricken from the record or rejected.

The Late-Filed Memo Contra Should Be Stricken.

The first entry issued in the electric security plan (ESP) proceeding that is sought to be consolidated (a case in which IGS is a party) set forth a procedural schedule.⁴ That entry specified that memoranda contra any motions must be filed within five calendar days after service of the underlying motion.⁵

¹ Stipulation and Recommendation, April 13, 2018 (Stipulation).

² Motion to Consolidate Cases, April 13, 2018 (Motion).

³ Memorandum Contra motion to Consolidate Cases, April 30, 2018 (Memo Contra).

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 17-1263-EL-SSO, *et al.*, Entry (July 21, 2017).

⁵ *Id.* at ¶5.

Duke Energy Ohio's Motion was filed on April 13, 2018; thus, any memorandum contra would have had to be filed by no later than April 18, 2018. IGS filed its Memo Contra on April 30, 2018, past the deadline by 12 days.

For the attorney examiner's mandate to have any meaning, the Memo Contra must be stricken from the record and ignored.

Consolidation is Appropriate, Regardless of Arguments in the Memo Contra.

In its Memo Contra, IGS correctly recites the considerations for consolidating cases, but fails to make any logical argument with regard to the application of those considerations to the facts at hand.

As indicated by IGS, there is no statute or rule dictating the standards to be applied to a possible consolidation of existing cases. In such situations, the Commission has sometimes looked to Civil Rules of Procedure for guidance.⁶ Civil Rule 42 would allow a court (or the Commission) to consolidate cases that "involve a common question of law or fact." Indeed, the Commission has cited to that rule when considering motions to consolidate.⁷

Notwithstanding its reference to a reasonable standard, IGS failed to apply that standard to the facts. The obvious "common question of law or fact" among these cases is the Stipulation – a single stipulation that many parties agreed would resolve all of the outstanding issues therein. As the Commission regularly considers stipulations on the basis of its three-pronged test, the application of the test to the Stipulation is at issue in all of the cases. IGS makes no mention of this fact.

⁶ See, e.g., *In the Matter of the Complaint of S.G. Foods, Inc., et al. v. FirstEnergy Corp., et al.*, Case No. 04-28-EL-CSS, et al., Entry, pg. 29 (March 7, 2006).

⁷ *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Revise its Exchange and Network Services Tariff, PUCO No. 1, to Establish Automatic Callback Which is a New Advanced Customer Calling Service Feature*, Case No. 93-343-TP-ATA, 1993 Ohio PUC LEXIS 419, Entry on Rehearing (April 29, 1993); *In the Matter of the Petition of Richard E. West and Numerous Other Subscribers of the Franklin Exchange of The Ohio Bell Telephone Company*, Case No. 91-1811-TP-PEX, 1992 Ohio PUC LEXIS 210, Entry (March 25, 1992).

Other commonalities, similarly ignored by IGS, are the numerous overlapping witnesses in the cases covered by the Stipulation and the Motion and certain overlapping issues in the several applications.

What IGS does argue is that the differing, mandatory procedures for some of the cases will make the consolidated case “difficult.” The Commission is more than capable of handling complex, difficult matters. Beyond that, the process requirements that IGS points to are either completed already or simple to address as the case proceeds:

- The Commission must cause an investigation to be made in a rate case. This is done.
- Staff of the Commission must file a Staff Report in a rate case. This is done.
- Intervenors in a rate case may file objections. This is done.
- Parties may file rebuttal testimony in a rate case. This can yet be done, and is only addressed by rule, not statute.
- Portions of a staff report in a rate case can be stricken. This can yet be done, and is only addressed by rule, not statute.
- An ESP must be weighed against a market rate offer. This is addressed in the Stipulation and will be addressed in the hearing and eventual order.
- IGS asserts that rebuttal testimony is “rarely” allowed in an ESP hearing. This is untrue⁸ but nevertheless would be entirely within the discretion of the attorney examiners.

Although unrelated to the Rule 42 standard, IGS also complains that the Stipulation covers a wide variety of issues – issues that IGS believes are not necessarily related. It fails to recognize, however, that many of the stipulations considered by the Commission include issues

⁸ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo 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*, Case No. 14-1297-EL-SSO; *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 No. 14-841-EL-SSO; *In the Matter of the Application of 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 No. 13-2385-EL-SSO, et al.; and *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, Ohio Rev.Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO, et al.

that, while perhaps tangential to the major focus of the underlying application(s), are nevertheless important to certain of the signatory parties.⁹ Certainly, the inclusion of such unrelated issues in a stipulation is not grounds for striking those issues from the agreement; nor does their existence in consolidated cases provide a basis for rejecting consolidation. The Commission should see, as do the signatory parties, that the issues included in the Stipulation are connected in complex and varying ways.

The Commission grants motions to consolidate liberally, recognizing the efficiencies that result from joining cases for hearing and decision purposes.¹⁰ The result should be no different here. All of the cases proposed for consolidation would be resolved by the Stipulation. The Commission should not have to consider the acceptability of the Stipulation, under the three-pronged test, more than once.

⁹ See, e.g., *In the Matter of the Application of Ohio Power Company for administration of the Significantly Excessive Earnings Test for 2015 Under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 16-1105-EL-UNC, *et al.*, Joint Stipulation and Recommendation (December 21, 2016)(stipulation resolving issues in a capacity case, two ESPs, a stability charge rider case, two fuel deferral mechanism cases, seven fuel rider dockets, and two cases considering the significantly excessive earnings tests, which stipulation was signed by IGS).

¹⁰ See, e.g., *In the Matter of the Inquiry into the 1989 Long-Term Forecast Report of the Ohio Gas Company*, Case No. 89-0874-GA-GCR, *et al.*, Opinion and Order (June 26, 1989)(“[C]onsolidation of the hearings is appropriate because common issues exist between these proceedings and the consolidation will enhance the efficiency of the proceedings...”); *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Rates*, Case No. 08-0709-EL-AIR, *et al.*, Entry (September 12, 2008)(“[N]o party would be prejudiced by this action... [C]onsolidation... would be reasonable, in the interests of efficiency and the elimination of redundancy.”).

Respectfully submitted,

DUKE ENERGY OHIO, INC.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply by Duke Energy Ohio, Inc., to Memorandum Contra Motion to Consolidate Cases was served via electronic mail or ordinary mail on the following parties this 3rd day of May, 2018.

/s/ Jeanne W. Kingery
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Summary: Reply by Duke Energy Ohio, Inc., to Memorandum Contra Motion to Consolidate Cases electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.