

**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 Admin. Code.	)	Case No. 16-1602-EL-ESS
	)	

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**MEMORANDUM CONTRA MOTION FOR THE EXTENSION OF THE  
PROCEDURAL SCHEDULE BY THE ENVIRONMENTAL LAW & POLICY  
CENTER, ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES  
DEFENSE COUNCIL, OHIO ENVIRONMENTAL COUNCIL, SIERRA CLUB,  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, AND INTERSTATE  
GAS SUPPLY, INC.**

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**I. INTRODUCTION**

On April 13, 2018, a Stipulation and Recommendation ("Settlement") was filed with the Public Utilities Commission of Ohio ("PUCO"). Among the parties that reached agreement in the Settlement was the Staff of the PUCO ("Staff"). Intervenors the Environmental Law & Policy Center, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, Sierra Club, the Office of the Ohio Consumers' Counsel, and Interstate Gas Supply, Inc. (collectively, "non-settling parties") oppose the Settlement.

On May 15, 2018, the Staff filed a motion to modify the procedural schedule in the above-captioned cases. Under the Staff's proposed schedule, Duke Energy Ohio, Inc. ("Duke") is given more time to file testimony (in support of the Settlement) than it asked for, and the non-settling parties are not given a corresponding extension for the filing of testimony opposing the Settlement. Additionally, under the proposed schedule the Staff would be permitted to file testimony in support of the Settlement nearly two weeks after the non-settling parties' testimony, essentially affording the Staff an opportunity to rebut the non-settling parties' testimony.

Because the motion would unreasonably prejudice the non-settling parties, the PUCO should deny the motion. While the non-settling parties oppose the proposed

procedural schedule requested by the Staff, they are willing to agree to provide Staff with additional time to prepare for trial. But the fair and reasonable way to do so is to extend *all* of the original deadlines, including those related to the non-settling parties' testimony, not to rearrange the due date for one signatory party, the Staff. Non-settling parties would not oppose such an extension that applies on an equal basis to all parties in this proceeding.

## **II. BACKGROUND AND ARGUMENT**

On April 13, 2018, Duke and certain parties to the above-captioned proceedings filed a Settlement. Duke subsequently filed a motion to consolidate each of the cases as well as a proposed procedural schedule. Specifically, Duke requested the following schedule:

- Company Testimony Supporting Stipulation and Company Testimony Supporting Rate Case Objections to be filed May 25, 2018.
- Intervenor Testimony to be filed June 11, 2018.
- Staff Testimony to be filed June 22, 2018.
- Hearing to commence June 25, 2018.

Non-settling parties opposed the proposed schedule. It provided insufficient opportunity to evaluate testimony in support of the Settlement and to prepare opposing testimony. It also provided Staff the opportunity to file its testimony last, even though when the Staff joins a settlement, it is PUCO practice for the Staff to file its testimony in support simultaneously with other settling parties.<sup>1</sup>

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<sup>1</sup> See *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 §4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Testimony of Staff Witnesses (Sep. 13, 2011) (filed in support of stipulation and recommendation simultaneously with other stipulating parties); see also *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 Nos. 16-1852-

Although the motion to consolidate was granted, the Attorney Examiner modified Duke's proposed procedural schedule as follows:

- All testimony in support of the Stipulation and rate case objections to be filed on May 25, 2018.
- Staff testimony responding to Objections to the Staff Report should be filed by May 25, 2018.
- Intervenor testimony to be filed by June 20, 2018.
- Evidentiary hearing on July 9, 2018.<sup>2</sup>

Despite this entry, on May 15, 2018, the Staff sought to modify the schedule again in a manner that is in some ways even less favorable to non-settling parties than originally proposed by Duke:

- Testimony in support of the Stipulation, with the exception of Staff, and Company testimony supporting Rate Case objections is to be filed June 6, 2018.
- Intervenor testimony in opposition to the Stipulation and intervener testimony supporting Rate Case objections is to be filed by June 20, 2018.
- Staff testimony in Support of the Stipulation and Staff Testimony responding to Objections to the Staff Report is to be filed by July 2, 2018.
- Evidentiary hearing on July 9, 2018.

While non-settling parties do not object to providing all parties additional time to prepare for trial, the proposed modification is unjust and unreasonable for several reasons.

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EL-SSO, *et al.*, Testimony of Staff Witnesses (Sep. 13, 2017) (filed in support of Stipulation simultaneously with other stipulating parties).

<sup>2</sup> Entry at 5 (May 9, 2018).

First, Staff requests that the PUCO extend the deadline for Duke (and any other party supporting the Settlement) to file testimony by 11 days without providing a basis for doing so. This is especially troubling given that Duke itself did not ask for that amount of time when it originally proposed a procedural schedule. Duke proposed to file its testimony on May 25. Staff's proposal would compress the time period for non-settling parties to evaluate testimony in support of the Settlement by 11 days because there is no related extension of the deadline for non-settling parties to file testimony or of the date for the evidentiary hearing. This is unjust and unreasonable and will not provide sufficient time for discovery, depositions, and trial preparation.

Second, the motion requests that Staff be permitted to file all testimony after non-settling parties' testimony, and only days before the hearing (with the July 4<sup>th</sup> holiday in between). Staff alleges that "[h]aving access to testimony supporting objections to the Staff Report would allow Staff to respond fully to the objections."<sup>3</sup> But the objections already contain sufficient specificity for Staff to respond. Regardless, as non-settling parties previously identified, it is PUCO practice for the Staff to file its testimony in support of a settlement simultaneously with other settling parties. The motion would skirt that requirement and effectively give Staff the opportunity to file rebuttal testimony when it is a party to the Settlement, which is prejudicial to non-settling parties as we would have no ability to respond to Staff's positions in our own testimony. The PUCO already rejected this proposal when it denied the procedural schedule originally proposed by Duke. Accordingly, the PUCO should deny the motion.

### **III. CONCLUSION**

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<sup>3</sup> Memorandum in Support of Staff's Motion at 2.

For the reasons stated herein, non-settling parties oppose the proposed asymmetrical modification to the procedural schedule. While non-settling parties oppose this modification, they do not oppose a blanket two week extension of all dates to ensure that Staff (and other parties) has sufficient time to prepare for trial. This balanced approach would ensure that all parties have the opportunity to prepare for the complex and unique proceeding before the PUCO.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra Motion for Extension of the Procedural Schedule was served via regular electronic transmission to the persons listed below, on May 22, 2018.

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/s/ Joseph Olikier

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Summary: Memorandum Contra Motion for the Extension of the Procedural Schedule electronically filed by Mr. Joseph E. Olikier on behalf of IGS Energy and Environmental Law & Policy Center and Environmental Defense Fund and Natural Resources Defense Council and Office of Ohio Consumers' Counsel and Ohio Environmental Council and Sierra Club