

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Procurement of Standard )	
Service Offer Generation for Customers of )	Case No. 17-2391-EL-UNC
Ohio Power Company )	

In the Matter of the Procurement of Standard )	
Service Offer Generation for Customers of )	Case No. 17-0957-EL-UNC
the Dayton Power and Light Company )	

In the Matter of the Procurement of Standard )	
Service Offer Generation for Customers of )	Case No. 18-6000-EL-UNC
Duke Energy Ohio, Inc. )	

In the Matter of the Procurement of Standard )	
Service Offer Generation as Part of the )	
Fourth Electric Security Plan for Customers )	
of Ohio Edison Company, The Cleveland )	Case No. 16-0776-EL-UNC
Electric Illuminating Company, and The )	
Toledo Edison Company )	

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**MOTION FOR WAIVER OF RULE 4901-1-02(D)(4) TO PERFECT FILING OF THE  
APPLICATION FOR REHEARING  
OF  
RETAIL ENERGY SUPPLY ASSOCIATION, DIRECT ENERGY BUSINESS, LLC,  
DIRECT ENERGY SERVICES, LLC, AND INTERSTATE GAS SUPPLY, INC.**

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The Retail Energy Supply Association, Direct Energy Business, LLC, Direct Energy Services, LLC, and Interstate Gas Supply, Inc. (collectively, the Joint Movants) request a waiver of Rule 4901-1-02(D)(4) so that their Application for Rehearing submitted through the electronic filing system on August 14, 2020 at 5:47 p.m. is deemed “filed” as of that date for purposes of

R.C. 4903.10 and O.A.C. 4901-1-35. The Commission should grant this motion for the reasons set forth below.

Date: August 17, 2020

Respectfully submitted,

/s/ Lucas A. Fykes

Mark A. Whitt (0067996)  
Lucas A. Fykes (0098471)  
WHITT STURTEVANT LLP  
The KeyBank Building, Suite 1590  
88 East Broad Street  
Columbus, Ohio 43215  
Telephone: (614) 224-3946  
Facsimile: (614) 675-9448  
whitt@whitt-sturtevant.com  
fykes@whitt-sturtevant.com

*Attorneys for Retail Energy Supply  
Association, Direct Energy Business, LLC,  
and Direct Energy Services, LLC*

/s/ Joseph Olikier

Joseph Olikier (0086088)  
joe.oliker@igs.com  
Michael Nugent (0090408)  
michael.nugent@igs.com  
Bethany Allen (0093732)  
bethany.allen@igs.com  
IGS Energy  
6100 Emerald Parkway  
Dublin, Ohio 43016  
Telephone: (614) 659-5000

*Attorneys for Interstate Gas Supply, Inc.*

### **Memorandum in Support**

R.C. 4903.10 requires an application for rehearing to be filed within 30 days of the order for which rehearing is sought. R.C. 4903.10 is a jurisdictional statute, so the Commission cannot waive the 30-day deadline. The Commission may, however, waive the rule that effectively ends the last filing day at 5:30 p.m. Good cause exists to do so here.

The statutory deadline to seek rehearing of the Commission's July 15, 2020 Order was August 14, 2020. Where a statutory deadline is measured in days, a "day" means a full calendar day, and a document is "filed" when placed into the custody of the recipient. *State v. Bowman*, 108 Ohio App.3d 276, 278 (5<sup>th</sup> Dist. 1996); *Greulich v. Monnoin*, 142 Ohio St. 113, 117 (1943). The Joint Movants submitted their Application for Rehearing through the Commission's electronic filing system on August 14, 2020 at 5:47 p.m., which is within the statutory deadline.

For reasons to be explained momentarily, however, the Joint Applicants missed the 5:30 p.m. filing deadline established by Rule 4901-1-02(D)(4). Under this rule, documents submitted after 5:30 p.m. are deemed "filed" as of 7:30 a.m. on the next business day. Thus, for purposes of the Commission's rules, the Application for Rehearing was "filed" after the statutory deadline. The Joint Movants respectfully request a waiver of Rule 4901-1-02(D)(4) to deem their Application for Rehearing "filed" as of August 14, 2020.

Good cause exists to grant the requested waiver. Undersigned counsel began the filing process shortly after 5:00 p.m. on August 14. Several attempts to load a Sharepoint .pdf of the final document resulted in an error message from the electronic docketing system. (See Exhibit A.) Counsel decided to attempt to file a companion motion to the Application for Rehearing to see whether the same error occurred. It did not; counsel was able to file the Motion for Leave to Enter for Appearance on Rehearing. Believing the issue involved the Commission's systems and

that the error had resolved itself, counsel turned his attention back to the Application for Rehearing. The same problem occurred. Counsel was eventually able to track down the firm's paralegal (who works remotely due to COVID), and she was able to bypass Sharepoint and file the document. The Application for Rehearing was immediately served to all counsel of record after it was filed at 5:47 p.m.

Under normal circumstances, Counsel would have quickly walked the paper filing to the Commission's office after discovering the processing issue, but that was not a possibility in this case. Although the Commission's offices are required to be open by statute from 8:30 a.m. to 5:30 p.m. (R.C. 4901.10), the docketing office of the Commission is currently closed due to the onset of a global pandemic. Specifically, on March 12, 2020, the Commission ordered "that paper and facsimile filing of documents with the Commission's docketing division is suspended until further notice."<sup>1</sup> Therefore, good cause exists to deem this pleading timely filed.

No party will be prejudiced by granting the requested waiver. A 17 minute filing delay does not materially impact responding parties' ability to respond to the application within 10 days. Denying the waiver would be gravely prejudicial to the Joint Movants, however, as it would terminate their appellate rights.

Counsel respects the Commission's authority to establish a 5:30 p.m. filing deadline and is not challenging this rule. Counsel merely requests flexibility in this limited instance based on the situation described above. Finally, counsel regrets any inconvenience caused to the parties, the Commission, or the Attorney Examiners.

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<sup>1</sup> *In the Matter of the Proper Procedures and Process for the Commission's Operations and Proceedings During the Declared State of Emergency and Related Matters*, Case No 20-591-AU-UNC, Opinion and Order at ¶ 14 (Mar. 12, 2020).

Date: August 17, 2020

Respectfully submitted,

/s/ Lucas A. Fykes

Mark A. Whitt (0067996)

Lucas A. Fykes (0098471)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

Facsimile: (614) 675-9448

whitt@whitt-sturtevant.com

fykes@whitt-sturtevant.com

*Attorneys for Retail Energy Supply  
Association, Direct Energy Business, LLC,  
and Direct Energy Services, LLC*

/s/ Joseph Olikier

Joseph Olikier (0086088)

joe.oliker@igs.com

Michael Nugent (0090408)

michael.nugent@igs.com

Bethany Allen (0093732)

bethany.allen@igs.com

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

Telephone: (614) 659-5000

*Attorneys for Interstate Gas Supply, Inc.*

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served by electronic mail this 17<sup>th</sup> day of August, 2020 to the following:


### SERVICE LIST

[tallexander@calfee.com](mailto:tallexander@calfee.com)  
[khelmeyer@calfee.com](mailto:khelmeyer@calfee.com)  
[Jeanne.kingery@duke-energy.com](mailto:Jeanne.kingery@duke-energy.com)  
[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)  
[Larisa.vaysman@duke-energy.com](mailto:Larisa.vaysman@duke-energy.com)  
[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)  
[rendris@firstenergycorp.com](mailto:rendris@firstenergycorp.com)  
[Michael.schuler@aes.com](mailto:Michael.schuler@aes.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[kboehm@bkllawfirm.com](mailto:kboehm@bkllawfirm.com)  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[Christopher.healey@occ.ohio.gov](mailto:Christopher.healey@occ.ohio.gov)  
[William.michael@occ.ohio.gov](mailto:William.michael@occ.ohio.gov)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[Thomas.Lindgren@ohioattorneygeneral.gov](mailto:Thomas.Lindgren@ohioattorneygeneral.gov)

### Attorney Examiners:

[Megan.addison@puco.ohio.gov](mailto:Megan.addison@puco.ohio.gov)  
[Nicholas.walstra@puco.ohio.gov](mailto:Nicholas.walstra@puco.ohio.gov)  
[Lauren.augostini@puco.ohio.gov](mailto:Lauren.augostini@puco.ohio.gov)  
[Patricia.schabo@puco.ohio.gov](mailto:Patricia.schabo@puco.ohio.gov)  
[Gregory.price@puco.ohio.gov](mailto:Gregory.price@puco.ohio.gov)  
[Sarah.parrot@puco.ohio.gov](mailto:Sarah.parrot@puco.ohio.gov)  
[Greta.see@puco.ohio.gov](mailto:Greta.see@puco.ohio.gov)  
[Michael.williams@puco.ohio.gov](mailto:Michael.williams@puco.ohio.gov)  
[Matthew.sandor@puco.ohio.gov](mailto:Matthew.sandor@puco.ohio.gov)

/s/ Lucas A. Fykes  
*One of the Attorneys for Retail Energy Supply  
Association, Direct Energy Business, LLC and  
Direct Energy Services, LLC*



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Summary: Motion Motion for Waiver of Rule 4901-1-02 (D) (4) to Perfect filing of the Application for Rehearing electronically filed by Ms. Valerie A Cahill on behalf of Retail Energy Supply Association and Direct Energy, LLC and Direct Energy Business, LLC and Interstate Gas Supply Inc