

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of ) Duke Energy Ohio, Inc. for an ) Adjustment to Rider MGP Rates. )	Case No. 14-0375-GA-RDR
In the Matter of the Application of ) Duke Energy Ohio, Inc. for Tariff ) Approval. )	Case No. 14-0376-GA-ATA
In the Matter of the Application of ) Duke Energy Ohio, Inc. for an ) Adjustment to Rider MGP Rates. )	Case No. 15-452-GA-RDR
In the Matter of the Application of ) Duke Energy Ohio, Inc. for Tariff ) Approval. )	Case No. 15-453-GA-ATA
In the Matter of the Application of ) Duke Energy Ohio, Inc. for an ) Adjustment to Rider MGP Rates. )	Case No. 16-542-GA-RDR
In the Matter of the Application of ) Duke Energy Ohio, Inc. for Tariff ) Approval. )	Case No. 16-543-GA-ATA
In the Matter of the Application of ) Duke Energy Ohio, Inc. for an ) Adjustment to Rider MGP Rates. )	Case No. 17-596-GA-RDR
In the Matter of the Application of ) Duke Energy Ohio, Inc. for Tariff ) Approval. )	Case No. 17-597-GA-ATA
In the Matter of the Application of ) Duke Energy Ohio, Inc. for an ) Adjustment to Rider MGP Rates. )	Case No. 18-283-GA-RDR
In the Matter of the Application of ) Duke Energy Ohio, Inc. for Tariff ) Approval. )	Case No. 18-284-GA-ATA
In the Matter of the Application of ) Duke Energy Ohio, Inc. for ) Implementation of the Tax Cuts and )	Case No. 18-1830-GA-UNC

Jobs Act of 2017.	)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Amendments.	)	Case No. 18-1831-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	)	Case No. 19-174-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 19-175-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs.	)	Case No. 19-1085-GA-AAM
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 19-1086-GA-UNC
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.	)	Case No. 20-53-GA-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 20-54-GA-ATA

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**DUKE ENERGY OHIO, INC.’S MEMORANDUM CONTRA THE JOINT INTERLOCUTORY APPEAL AND REQUEST FOR CERTIFICATION OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND INTERSTATE GAS SUPPLY, INC.**

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**I. INTRODUCTION**

The Commission should deny the Joint Interlocutory Appeal and Request for Certification (Interlocutory Appeal) filed by the Retail Energy Supply Association (RESA) and Interstate Gas Supply, Inc. (IGS) (together, the Joint Movants) in the above-captioned proceedings. The

Interlocutory Appeal must be denied because, contrary to Joint Movants’ assertions otherwise, there is no “ambiguity” or “lack of clarity”<sup>1</sup> in the November 3, 2021 Entry that would necessitate or warrant the certification of an interlocutory appeal. Accordingly, the Commission should deny the Interlocutory Appeal and proceed consistent with the Attorney Examiner’s Entry on November 3, 2021, in the above-captioned proceedings, which is adequately supported with clear, consistent directives concerning the permissible scope of Joint Movants’ limited intervention.

## II. ARGUMENT

### A. Joint Movants Fail to Provide a Legal Basis for an Interlocutory Appeal as the November 3, 2021 Entry Is Not Ambiguous and Is Adequately Supported.

The fundamental justification undergirding the Interlocutory Appeal is that the “Attorney Examiner did not clarify if RESA and IGS can introduce evidence to challenge whether the August 31, 2021 stipulation (Stipulation) is reasonable under the Commission’s three-prong test due to the inclusion of the retail market provisions . . . .”<sup>2</sup> As a result, Joint Movants contend that this “lack of clarity . . . as to the scope of the arguments RESA and IGS can raise at hearing or in briefs” calls into question whether the Attorney Examiner is correctly interpreting and applying Ohio Adm. Code 4901-1-30.<sup>3</sup> Joint Movants are mistaken.

The underlying basis of the Interlocutory Appeal stems from Joint Movants’ misguided assumptions about how Duke Energy Ohio, Inc., (Duke Energy Ohio) interprets the Attorney Examiner’s Entry on October 15, 2021, in the above-captioned cases (October 15, 2021 Entry), which granted Joint Movants limited intervention to address three specific, carefully circumscribed competitive retail market issues (set forth below), and the November 3, 2021 Entry, which further clarified the scope of Joint Movants’ limited intervention. Despite the Attorney Examiner

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<sup>1</sup> Interlocutory Appeal, p. 4.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

explicitly addressing the scope of Joint Movants’ limited intervention in two separate Entries issued within two weeks of each other, Joint Movants now contend that *even more* clarity is needed to further define the contours of Joint Movants’ limited intervention. In truth, there is no need for yet another “clarifying” ruling from the Commission. Simply stated, there is no ambiguity with respect to the scope of Joint Movants’ limited intervention; accordingly, there is no legal justification for granting the Interlocutory Appeal.

Joint Movants incorrectly claim that Duke Energy Ohio “views the [October 15, 2021 Entry] differently than do RESA and IGS.”<sup>4</sup> Joint Movants base this mistaken contention on select statements made by Duke Energy Ohio in a motion for protective order filed in the above-captioned proceedings on October 22, 2021 (Motion for Protective Order) – *i.e.*, almost two weeks before the Attorney Examiner issued the November 3, 2021 Entry. Nevertheless, Joint Movants assume, without more, that Duke Energy Ohio’s position (as initially articulated in the Motion for Protective Order over two weeks ago) remains unchanged even after the Attorney Examiner expressly rejected Duke Energy Ohio’s arguments in the November 3, 2021 Entry.

With the issuance of the November 3, 2021 Entry, the Attorney Examiner, citing Ohio Adm. Code 4901-1-30,<sup>5</sup> clarified that Joint Movants “are being provided ample opportunity to offer evidence and/or argument in opposition...*but also within the confines of their limited intervention status.*”<sup>6</sup> Based upon this directive, Duke Energy Ohio agrees, consistent with the Attorney Examiner’s straightforward directives in the November 3, 2021 Entry, that these proceedings are providing Joint Movants an opportunity to challenge the Stipulation, but *only* if such challenge directly relates to the three carefully circumscribed areas of Joint Movants’ limited

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<sup>4</sup> *Id.*

<sup>5</sup> Ohio Adm. Code 4901-1-30(D) provides in relevant part, that Parties that do not join the stipulation may offer evidence and/or argument in opposition.

<sup>6</sup> November 3, 2021 Entry, ¶ 28 (emphasis added).

intervention: (1) Duke’s commitment to transition from the GCR mechanism to a Standard Service Offer (SSO) competitive auction format for gas supply; (2) proposed SSO price-to-compare message on gas bills; and (3) a commitment to provide OCC aggregate shadow billing data on an ongoing basis. To the extent Joint Movants seek to raise issues and arguments in opposition to the Stipulation that do not directly involve any of these three issues, Joint Movants are prohibited from doing so.

The November 3, 2021 Entry is undeniably clear on this point and, thus, does not warrant yet another “clarification” in the form of an unwarranted, time/resource-consuming interlocutory appeal. This is particularly true where, as here, the interlocutory appeal will unnecessarily delay the outcome of the above-captioned cases – the first of which has been pending at the Commission for over seven years. As the Attorney Examiner already cautioned Joint Movants, “upon being granted limited intervention, the attorney examiner will *heavily scrutinize* any requests from IGS or RESA that are perceived to unnecessarily delay the outcome of these proceedings.”<sup>7</sup> The Interlocutory Appeal filed by Joint Movants simply cannot withstand such scrutiny and must be denied.

The October 15, 2021 Entry and the November 3, 2021 Entry defined and clarified the contours of Joint Movants’ limited intervention. For example, the October 15, 2021 Entry clearly states:

Be that as it may, the attorney examiner continues to find that IGS and RESA’s interests in these proceedings are limited to the three areas discussed in their motions for leave to intervene, namely Duke’s commitment to transition from the GCR mechanism to an SSO competitive auction format for natural gas supply, the proposed SSO price-to-compare message on natural gas bills, and the commitment to provide OCC aggregate shadow billing data on an ongoing basis . . . **However, upon being granted limited intervention, IGS and RESA are entitled to inquire into these specific provisions of the Stipulation and any potential adverse impact they may have upon the competitive market in Duke’s service territory,**

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<sup>7</sup> October 15, 2021 Entry, ¶ 32 (emphasis added).

**even if Duke, OCC, and OEG believe there will be no such adverse impact.** As such, based on the very unique circumstances presented in these cases, the attorney examiner finds that the motions to intervene filed by IGS and RESA should be granted on a limited basis to address the proposed provisions related to the competitive market, as noted above.<sup>8</sup>

As the foregoing reflects, Joint Movants may challenge “these specific provisions of the Stipulation and any potential adverse impact they may have upon the competitive market” even if Duke Energy Ohio and other signatory parties to the Stipulation disagree with such challenges. Joint Movants contend that such language lacks “clarity” and raises “ambiguity” about whether (or to what extent) Joint Movants may challenge or oppose the Stipulation in any subsequent hearing or in briefs. Again, Joint Movants are mistaken as the Attorney Examiner’s plain language clearly affords Joint Movants the ability to challenge the Stipulation, provided any such challenge directly involves at least one of the three competitive retail market topics outlined above.

Indeed, as stated above, the November 3, 2021 Entry already clarified and reiterated the scope of Joint Movants’ limited intervention.<sup>9</sup> The Attorney Examiner explained:

Contrary to RESA’s arguments, RESA and IGS are being provided ample opportunity to offer evidence and/or argument in opposition, consistent with Ohio Adm. Code 4901-1-30, but also within the confines of their limited intervention status. Importantly, the attorney examiner is neither expanding nor reducing the ability of RESA or IGS to participate in these proceedings as provided in the October 15, 2021 Entry.<sup>10</sup>

In other words, consistent with the October 15, 2021 Entry, Joint Movants may offer evidence and/or argue in opposition that the Stipulation should not be approved or is not otherwise reasonable, but only to the extent such evidence or arguments fall within the “confines” of the three narrowly circumscribed areas of limited intervention outlined in the October 15, 2021 Entry.

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<sup>8</sup> October 15, 2021 Entry, ¶ 32 (emphasis added).

<sup>9</sup> November 3, 2021 Entry, ¶ 27.

<sup>10</sup> *Id.* at ¶ 28.

It is unclear what more the Attorney Examiner must “clarify” in order to assuage Joint Movants’ purported concerns.

In sum, the Interlocutory appeal should be denied. The Attorney Examiner should decline Joint Movants’ invitation to further delay these proceedings to needlessly clarify an issue that has already been thoroughly addressed by the Attorney Examiner in two separate Entries.

### **III. CONCLUSION**

For the foregoing reasons, the Commission must deny the Interlocutory Appeal and proceed, without further delay, consistent with the Attorney Examiner’s clear and straightforward directives in the October 15, 2021 Entry and November 3, 2021 Entry in the above-captioned proceedings.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ N. Trevor Alexander

Rocco O. D’Ascenzo (0077651) (Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Larisa M. Vaysman (0090290)

Senior Counsel

Duke Energy Business Services LLC

139 E. Fourth Street, 1303-Main

Cincinnati, Ohio 45201-0960

(513) 287-4320 (telephone)

Rocco.D’Ascenzo@duke-energy.com

Jeanne.Kingery@duke-energy.com

Larisa.Vaysman@duke-energy.com

*and*

N. Trevor Alexander (0080713)

Mark T. Keaney (0095318)

Kari D. Hehmeyer (0096284)

BENESCH, FRIEDLANDER, COPLAN &  
ARONOFF LLP

2600 Huntington Center

41 South High Street

Columbus, Ohio 43215

Tel: (614) 223-9363

[talexander@beneschlaw.com](mailto:talexander@beneschlaw.com)

[mkeaney@beneschlaw.com](mailto:mkeaney@beneschlaw.com)

[khehmeyer@beneschlaw.com](mailto:khehmeyer@beneschlaw.com)

*Attorneys for Duke Energy Ohio, Inc.*



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 10th day of November, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

*/s/ Mark T. Keaney*  
One of the Attorneys for Duke Energy Ohio,  
Inc.

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19-0174-GA-RDR, 19-0175-GA-ATA, 19-1085-GA-AAM, 19-1086-GA-UNC, 20-  
0053-GA-RDR, 20-0054-GA-ATA**

Summary: Memorandum Memorandum Contra the Joint Interlocutory Appeal and  
Request for Certification electronically filed by Mark T. Keaney on behalf of Duke  
Energy Ohio, Inc.