

In the Matter of the Application of the Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.))	Case No. 21-887-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.))	Case No. 21-888-EL-ATA
In the Matter of the Application of Duke Energy Inc., for Approval to Change Accounting Methods.))	Case No. 21-889-EL-AAM

Duke filed what it titled an “unopposed” motion last evening with various asks of the PUCO for the procedural schedule in this rate case affecting 640,000 Cincinnati-area electric consumers. The Ohio Consumers’ Counsel opposes Duke’s motion.

Duke again wants to delay the PUCO's filing deadline for intervenor testimony. OCC has devoted considerable resources to meeting the PUCO's deadline for non-settlement testimony and is prepared to file it. OCC's testimony would support a rate *decrease* for Duke consumers of at least \$1.45 million and that supports other protections for Duke consumers.

More significantly, Duke wants to proceed with the existing filing deadlines and hearing date, premised on an unsettled case. That is despite Duke's expectation to soon file a partial settlement.

To protect Duke’s consumers in these times of soaring energy costs and high inflation, the PUCO should reject Duke’s patently unfair motion, which is most decidedly *opposed* by OCC. Rejecting Duke’s motion is needed for due process and fairness for residential consumers.

In a move that is highly favorable to Duke and its settlement partners, it seeks an extension of only one of the currently existing procedural schedule deadlines, the due date for intervenor testimony. But under Duke’s proposal, “[r]ebuttal testimony by all parties would remain due on September 9, 2022.”¹ Duke’s Motion also states that it “intends to proceed with the evidentiary hearing as currently scheduled to commence on September 19, 2022.”²

What is very favorable to Duke is highly prejudicial to OCC and the consumers it represents. This schedule, which Duke misrepresents as “unopposed,” would provide OCC no time to conduct any discovery on Duke and its settlement partners. And that is very limiting to OCC for preparing testimony in opposition to a settlement, which is expressly permitted by O.A.C. 4901-1-30(D). It is wrong.

Duke communicated to parties its proposal to extend only the intervenor testimony due date via e-mail at 2:45 PM on August 30, 2022. Duke did not attach a draft motion to the email or communicate to parties that it intended to request in the Motion that the September 9 rebuttal testimony and September 19 evidentiary hearing dates would remain as set. (Those dates were not set in contemplation of a partial settlement.)

¹ Motion, at 3.

² Motion, at 1.

Nor did Duke ask parties if they objected to an expedited ruling on the Motion (which would allow objecting parties seven days to file a memorandum contra under O.A.C. 4901-1-12(C)).

In the event Duke reaches a partial settlement with parties on the issues in this case, opposing parties should have adequate time to conduct discovery,³ prepare settlement-standard testimony,⁴ and to prepare for the evidentiary hearing. If parties file a settlement in this case, the PUCO should set a procedural schedule that allows testimony in opposition to the settlement to be filed four weeks after the settlement is filed, or three weeks from the filing of supporting testimony, whichever is later. The PUCO should also require discovery responses to be due within seven calendar days to OCC. Finally, the PUCO should set an evidentiary hearing date for at least three weeks after the filing of testimony in opposition to the settlement, depending on party availability.

Ohio residential consumers are financially struggling to make ends meet for their families in these difficult economic times. Duke's tactical view of due process in this proceeding will disserve energy justice for consumers regarding their rates for essential electric utility service. Accordingly, the PUCO should deny Duke's Motion, and set an appropriate procedural schedule consistent with OCC's above recommendations.

³ 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, Entry (Jan. 14, 2015); and *In the Matter of the Application of Dayton Power and Light Company for Approval of its Plan to Modernize the Distribution Grid*, Case No. 18-1875-EL-GRD et al., Entry (Oct. 27, 2020).

⁴ O.A.C. 4901-1-30 (D) Unless otherwise ordered, parties who file a full or partial written stipulation or make an oral stipulation must file or provide the testimony of at least one signatory party that supports the stipulation. Parties that do not join the stipulation may offer evidence and/or argument in opposition.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela O'Brien

Angela D. O'Brien (0097579)
Counsel of Record
Ambrosia E. Wilson (0096598)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [O'Brien]: (614) 466-9531
Telephone [Wilson]: (614) 466-1292
angela.obrien@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
(willing to accept service via email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra has been served upon those persons listed below via electronic service this 31st day of August 2022.

/s/ Angela O'Brien
Angela O'Brien
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

robert.eubanks@ohioAGO.gov
shaun.lyons@ohioAGO.gov
werner.margard@ohioAGO.gov
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylern@BKLlawfirm.com
mwarnock@bricker.com
ktreadway@oneenergylc.com
jdunn@oneenergylc.com
dborchers@bricker.com
kherrnstein@bricker.com
Fdarr2019@gmail.com
paul@carpenterlipps.com
rdove@keglerbrown.com
trent@hubaydougherty.com

Attorney Examiners:

matthew.sandor@puco.ohio.gov
nicholas.walstra@puco.ohio.gov

Rocco.dascenzo@duke-energy.com
Jeanne.kingery@duke-energy.com
Larisa.vaysman@duke-energy.com
elyse.akhbari@duke-energy.com
eborama@taftlaw.com
Bethany.allen@igs.com
Joe.oliker@igs.com
Evan.betterton@igs.com
Stacie.e.cathcart@igs.com
michael.Nugent@igs.com
jang@calfee.com
gjewell@calfee.com
gwhaling@calfee.com
sfranson@calfee.com
dromig@nationwideenergypartners.com
Bojko@carpenterlipps.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
cpirik@dickinsonwright.com
todonnell@dickinsonwright.com
mmcdonnell@dickinsonwright.com

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Case No(s). 21-0887-EL-AIR, 21-0888-EL-ATA, 21-0889-EL-AAM

Summary: Memorandum Memorandum Contra Duke's "Unopposed" Motion to
Modify the Procedural Schedule by Office of the Ohio Consumers' Counsel
electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela D.