

**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. 21-887-EL-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 21-888-EL-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 21-889-EL-AIR

**MOTION FOR LEAVE TO FILE A MEMORANDUM CONTRA THE JOINT
MOTION TO STRIKE OF THE OHIO MANUFACTURERS' ASSOCIATION
ENERGY GROUP AND THE KROGER CO.**

**BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel ("OCC") hereby moves the Public Utilities Commission of Ohio ("PUCO") to seek leave to file a Memorandum Contra the Joint Motion to Strike of the Ohio Manufacturers' Association Energy Group ("OMAEG") and the Kroger Co. two business days out of time. Under O.A.C. 4901-1-12 and 4901-1-13, the PUCO rules provide for an extension of time to file pleadings for good cause shown. There is good cause to grant OCC leave to file the Memorandum Contra two business days out of time. No party will be prejudiced by OCC's filing two business days out of time.

On November 14, 2022, OMAEG and Kroger filed a Joint Motion to Strike portions of OCC's initial brief in addition to their reply brief. Under the compressed procedural schedule set by the Attorney Examiners in the September 20, 2022 Entry,

OCC's Memoranda Contra OMAEG/Kroger's Joint Motion was due to be filed within three business days, by November 17, 2022.¹

Good cause exists to permit OCC to file its Memoranda Contra two business days out of time. The press of OCC's consumer advocacy in other matters, including counsel's preparation for participation in the Columbia rate case (Case No. 21-637-GA-AIR, *et al.*) evidentiary hearings on November 16, 2022, stressed OCC's limited resources. Further the rationale for a compressed schedule prior to the evidentiary hearing is not as compelling after the evidentiary hearing has concluded.

Finally, all parties wishing to do so have already filed initial and reply briefs. Thus, no party will be prejudiced by granting the requested two business day extension.

The grounds for this Motion are more fully described in the accompanying Memorandum in Support.

¹ Entry (September 20, 2022), at ¶ 8.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela D. O'Brien
Angela D. O'Brien (0097579)
Counsel of Record
Ambrosia E. Wilson (0096598)
John Finnigan (0018689)
Connor D. Semple (0101102)
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
Telephone [Finnigan]: (614) 466-9585
Telephone [Semple]: (614) 466-9565
william.michael@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
john.finnigan@occ.ohio.gov
connor.semples@occ.ohio.gov
(willing to accept service by e-mail)

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MEMORANDUM IN SUPPORT

OCC seeks the PUCO’s permission to file, two business days out of time, its Memorandum Contra the Joint Motion to Strike of the Ohio Manufacturers’ Association Energy Group and the Kroger Co. (“Joint Motion”). On November 14, 2022, parties in this case including OMAEG/Kroger and OCC filed reply briefs regarding the settlement among Duke, the PUCO Staff, and other parties. On the same day, OMA-EG/Kroger also filed its Joint Motion seeking to strike certain portions of OCC’s initial brief.

Under the procedural schedule set by the Attorney Examiners in the September 20 Entry, OCC’s Memoranda Contra OMAEG/Kroger’s Joint Motion was due to be filed within three (3) business days, by November 17, 2022.² OCC opposed the aggressive procedural schedule adopted by the Attorney Examiners in the September 20 Entry.³

² Entry (September 20, 2022), at ¶ 8.

³ See OCC’s Interlocutory Appeal, Request for Certification to the PUCO Commissioners and Application for Review (September 26, 2022); *see also* OCC’s Initial Brief for Consumer Protection (October 31, 2022), at 42-46.

There is good cause to permit OCC to file its Memorandum Contra two business days out of time. The press of OCC's consumer advocacy, including counsel's preparation for participation in the Columbia rate case (Case No. 21-637-GA-AIR, *et al.*) evidentiary hearings that took place on November 16, 2022, stressed OCC's limited resources to timely prepare the Memorandum Contra. Indeed, counsel for OCC participating in this case are also participating in the Columbia rate case.

On November 14, 2022, in addition to OMAEG/Kroger's Motion to Strike, nine parties filed reply briefs opposing OCC's positions in this case. Also on November 14, 2022, parties opposing the settlement in the Columbia rate case filed four pieces of testimony late in the afternoon and less than 48 hours prior to the beginning of the evidentiary hearing. During the interim, counsel for OCC had to prepare for the Columbia rate case hearing including the cross-examination of opposing parties' witnesses. Moreover, between November 14, 2022 and November 16, 2022, counsel for OCC also had to negotiate a separate Joint Stipulation of Facts with settling parties in the Columbia rate case at OMAEG/Kroger's request.

For the reasons discussed above, good cause exists to permit OCC to file its Memoranda Contra two business days out of time. The press of OCC's consumer advocacy in other matters, including counsel's preparation for participation in the Columbia rate case (Case No. 21-637-GA-AIR, *et al.*) evidentiary hearings on November 16, 2022, stressed OCC's limited resources.

Importantly, OMAEG/Kroger and other parties to this proceeding will not be prejudiced by OCC filing its Memorandum Contra two business days out of time. The evidentiary hearings in this case concluded weeks ago. In addition, the case has been

fully briefed, so no party is waiting on an expedited ruling on OMAEG/Kroger's Motion to Strike. Further the rationale for a compressed schedule prior to the evidentiary hearing is not as compelling after the evidentiary hearing has concluded.

Based on the foregoing, OCC respectfully requests that the PUCO find good cause and accept OCC's Memorandum Contra OMAEG/Kroger's Motion to Strike two business days out of time.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Angela D. O'Brien
Angela D. O'Brien (0097579)
Counsel of Record
Ambrosia E. Wilson (0096598)
John Finnigan (0018689)
Connor D. Semple (0101102)
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
Telephone [Finnigan]: (614) 466-9585
Telephone [Semple]: (614) 466-9565
william.michael@occ.ohio.gov
ambrosia.wilson@occ.ohio.gov
john.finnigan@occ.ohio.gov
connor.semples@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to File a Memorandum Contra has been served electronically upon those persons listed below this 21st day of November 2022.

/s/ Angela D. O'Brien
Angela D. 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@BKLawfirm.com
kboehm@BKLawfirm.com
jkylern@BKLawfirm.com
mwarnock@bricker.com
kherrnstein@bricker.com
ktreadway@oneenergylc.com
jdunn@oneenergylc.com
dborchers@bricker.com
kherrnstein@bricker.com
Fdarr2019@gmail.com
paul@carpenterlipps.com
rdove@keglerbrown.com
nbobb@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
ebrama@taftlaw.com
kverhalen@taftlaw.com
Bethany.allen@igs.com
Joe.oliker@igs.com
Evan.betterton@igs.com
Stacie.cathcart@igs.com
michael.nugent@igs.com
jlang@calfee.com
gjewell@calfee.com
gwhaling@calfee.com
sfranson@calfee.com
dromig@nationwideenergypartners.com
Bojko@carpenterlipps.com
Wygonski@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: Motion Motion for Leave to File a Memorandum Contra the Joint Motion to Strike of the Ohio Manufacturers' Association Energy Group and the Kroger Co. by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela D.