

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application of)
Columbus Southern Power Company, The)
Dayton Power and Light Company, and Duke) Case No. 11-4627-EL-WVR
Energy Ohio, Inc., for a Waiver with Regard)
to Rule 4901:1-39-05(C), Ohio)
Administrative Code.)

**JOINT MOTION FOR WAIVER AND COMMENTS UPON THE APPLICATION
BY
THE ENVIRONMENTAL LAW AND POLICY CENTER,
OHIO ENVIRONMENTAL COUNCIL,
SIERRA CLUB,
NATURAL RESOURCES DEFENSE COUNCIL,
BUCKEYE FOREST COUNCIL,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
CITIZEN POWER**

On August 1, 2011, Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Columbus Southern Power Company, Ohio Power Company, The Dayton Power and Light Company and Duke Energy, Ohio, Inc. (the “Companies”) requested a waiver of Ohio Adm. Code 4901:1-39-05(C) in their joint application (“Joint Application”). Ohio Adm. Code 4901:1-39-05(C) requires every electric distribution utility (“EDU”) to file an annual portfolio status report addressing the performance of all of its approved energy efficiency and peak demand education programs by no later than March 15 of each year. The Companies requested in their Joint Application that the March 15 filing deadline be waived and extended until May 15 of each year.¹

¹ Joint Application at 2 (August 1, 2011).

The Environmental Law and Policy Center, Ohio Environmental Council, Natural Resources Defense Council, Sierra Club, Citizen Power, Buckeye Forest Council, and the Office of the Ohio Consumers' Counsel ("OCC," and collectively with the other movants, "Joint Movants") move the Public Utilities Commission of Ohio ("Commission" or "PUCO") to grant this Joint Motion for Waiver of Ohio Adm. Code 4901:1-39-06(A). Ohio Adm. Code 4901:1-39-06(A) requires that "[a]ny person may file comments regarding an electric utility's initial benchmark report or annual portfolio status report filed pursuant to this chapter within *thirty days* of the filing of such report."² Joint Movants respectfully request that interested parties be permitted *sixty days* from the filing date of any annual status report to file comments for the year 2012. Joint Movants request this waiver in accordance with Ohio Adm. Code 4901:1-39-02(B), which permits the Commission to "waive any requirement [of Chapter 39]" upon an application or motion filed by a party.³

The reasons the PUCO should grant this Joint Motion for Waiver are more fully explained in the attached Memorandum in Support.

Respectfully submitted,



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² Emphasis added.

³ This pleading is also submitted pursuant to Ohio Adm. Code 4901-1-12 ("Motions").

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Companies requested a waiver of Ohio Adm. Code 4901:1-39-05(C) that requires every EDU to file an annual portfolio status report addressing the performance of all of its approved energy efficiency and peak demand education programs by no later than March 15 of each year.⁴ The Companies specifically requested that the March 15 filing deadline be waived and be extended by two months, or until May 15 of each year.⁵ To this end, the Companies' stated that "[t]he extended deadline will provide for additional improvement of the accuracy of the data and the evaluation of program impacts, as filed in the annual report, which will also further enable the progress toward realizing statewide efficiency goals."⁶

The Joint Movants do not oppose the Companies' request for waiver on a test basis for 2012. However, Joint Movants expect full compliance with the mandates of Ohio Adm. Code 4901:1:39-05.

Joint Movants herein request that the Commission waive the requirement in Ohio

⁴ Joint Application at 2 (August 1, 2011).

⁵ Id.

⁶ Id.

Adm. Code 4901:1-39-06(A) that requires interested persons to file comments within thirty days of a Company's status report filing. Joint Movants request that interested parties be permitted sixty days to comment on the Companies' reports rather than thirty days. This request is made for 2012.

II. ARGUMENT

In April 2011, the Ohio Consumers' Counsel ("OCC") filed comments in response to Duke Energy Ohio, Inc.'s ("Duke") annual portfolio status report that described Duke's 2010 benchmark compliance efforts.⁷ The OCC's comments discussed four areas in which Duke's annual report was deficient.⁸ Although the Companies correctly state in their Joint Application that the OCC suggested "it may be necessary to extend the deadline for annual portfolio status reports,"⁹ the Companies' statement does not accurately convey the intent of OCC's position. OCC's comments responded to Duke's failure to include all of the information required under Ohio Adm. Code 4901:1-39-05, and OCC is willing to extend the deadline in order for the Companies to provide a complete record.

Joint Movants view the extension as appropriate for a test basis for the year 2012. Granting the Companies' request on a test basis will allow the Commission to evaluate the Companies' reports, assure that a two-month extension is in fact necessary, and make certain that status reports filed in 2012 are timely, accurate, comprehensive and in full compliance with the law. The Companies are required to present specific information, which includes (at a minimum) compliance demonstration and a program performance

⁷ See generally, *In re Duke Energy Portfolio Status Report*, Case No. 11-1311-EL-EEC, OCC Comments (April 14, 2011).

⁸ *Id.* at 2-3.

⁹ Joint Application at 2 (August 1, 2011).

assessment. It is expected that if provided with two extra months, the Companies will present the requisite information, and that the insufficiencies in earlier filings will not occur again.

Joint Movants respectfully request waiver of Ohio Adm. Code 4901:1-39-06(A), pursuant to Ohio Adm. Code 4901:1-39-02(B), in order to enable a more full response to the information that Joint Movants expect to receive in the Companies' annual reports.

Ohio Adm. Code 4901:1-39-02(B) states:

The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

Joint Movants request that the Commission provide interested persons with a sixty day comment period from the date of the Companies' filings for the year 2012. Currently, Ohio Adm. Code 401:1-39-06(A) provides for a comment period of thirty days from a Company's filing.¹⁰ A sixty day period from the date of a Company's filing will allow interested parties to thoroughly review the annual reports, which can total hundreds of pages. Because many programs are just starting, more time than usual may be needed to analyze the content of the reports.

Joint Movants support the waiver of deadlines for both the Companies and interested parties for only 2012. Requests for the permanent waiver of deadlines -- such as for status reports as proposed by the Companies in their Application -- is a process that ends with the submission of rules to the Joint Committee on Agency Rule Review. This public process should not be bypassed. All parties should follow the appropriate procedure for a permanent rule change if the 2012 deadline extensions prove effective.

¹⁰ Ohio Adm. Code 401:1-39-06(A).

After the filing and comment process are complete in 2012, the Commission can re-evaluate whether the extensions requested in this case -- the extension requested by the utilities as well as that requested by Joint Movants -- are both necessary and beneficial. A permanent change in the rules might thereafter be considered as part of the PUCO's periodic review of its rules.

III. CONCLUSION

For all the reasons stated above, the PUCO should grant Joint Movants' Motion for Waiver and permit interested parties to file comments within sixty days of the filing of any annual status report on a test basis for the year 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Motion for Waiver and Comments was served on the persons stated below *via* electronic mail or regular U.S. mail, postage prepaid, this 14th day of September 2011.

/s/ Tara C. Santarelli

Tara C. Santarelli

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/14/2011 2:27:33 PM

in

Case No(s). 11-4627-EL-WVR

Summary: Motion for Waiver and Comments upon the Application electronically filed by Tara Santarelli on behalf of Environmental Law & Policy Center and Ohio Environmental Council and Sierra Club and Natural Resources Defense Council and Buckeye Forest Council and Ohio Consumers' Counsel and Citizen Power