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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke )  
Energy Ohio for Approval of an Electric ) Case No. 08-0920-EL-SSP  
Security Plan. ) **PUCO**

In the Matter of the Application of Duke )  
Energy Ohio for Approval to Amend ) Case No. 08-0921-EL-AAM  
Accounting Methods. )

In the Matter of the Application of Duke )  
Energy Ohio for Approval of a Certificate )  
of Public Convenience and Necessity to ) Case No. 08-0922-EL-UNC  
Establish an Unavoidable Capacity )  
Charge. )

In the Matter of the Application of Duke )  
Energy Ohio for Approval to Amend its ) Case No. 08-0923-EL-ATA  
Tariff. )

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JOINT MOTION FOR LOCAL PUBLIC HEARINGS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,  
THE OHIO ENVIRONMENTAL COUNCIL  
AND OHIO PARTNERS FOR AFFORDABLE ENERGY

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The Office of the Ohio Consumers' Counsel ("OCC"), Ohio Environmental Council ("OEC"), and Ohio Partners for Affordable Energy ("OPAE")<sup>1</sup>, (collectively "Movant") on behalf of the electric utility customers of Duke Energy ("Duke" or "the Company"), move for three local public hearings to provide the Company's customers

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<sup>1</sup> OPAE is a nonprofit organization representing the interests of over sixty nonprofits providing energy assistance to low income families throughout the State of Ohio. Its members operate bill assistance, weatherization, energy efficiency, and consumer education programs throughout Ohio. OPAE's corporate purpose is to promote affordable energy policies and preserve access to essential energy services for all Ohioans.

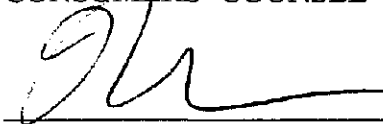
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with the opportunity to testify in the above-captioned proceedings that relate to Duke's electric security plan, as well as other matters raised in these cases. The Public Utilities Commission of Ohio ("Commission" or "PUCO") stated that it would schedule local public hearings;<sup>2</sup> the hearings should be scheduled for Cincinnati, Mason and Middletown during the month of November or early December. These hearings should be scheduled and noticed in an Entry thirty days in advance of the hearings to allow customers and the public adequate time to plan to attend.

The reasons for granting Movant's Motion are further set forth in the attached Memorandum in Support.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



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<sup>2</sup> Applications, July 31, 2008 at 17, 18.



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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |   |                         |
|--|---|-------------------------|
| In the Matter of the Application of Duke | ) |                         |
| Energy Ohio for Approval of an Electric  | ) | Case No. 08-0920-EL-SSO |
| Security Plan.                           | ) |                         |

|  |   |                         |
|--|---|-------------------------|
| In the Matter of the Application of Duke | ) |                         |
| Energy Ohio for Approval to Amend        | ) | Case No. 08-0921-EL-AAM |
| Accounting Methods.                      | ) |                         |

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Application of Duke  | ) |                         |
| Energy Ohio for Approval of a Certificate | ) | Case No. 08-0922-EL-UNC |
| of Public Convenience and Necessity to    | ) |                         |
| Establish an Unavoidable Capacity         | ) |                         |
| Charge.                                   | ) |                         |

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| In the Matter of the Application of Duke | ) |                         |
| Energy Ohio for Approval to Amend its    | ) | Case No. 08-0923-EL-ATA |
| Tariff.                                  | ) |                         |

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On July 31, 2008, Duke filed its applications in Case Nos. 08-0920-EL-SSO (seeking approval of an Electric Security Plan ("ESP")), 08-0921-EL-AAM (seeking approval to amend accounting methods), 08-0922-EL-UNC (seeking approval of a certificate of public convenience and necessity to establish a capacity charge), and 08-0923-EL-ATA (seeking approval to amend its tariff) ("Applications"). Each of these Applications affect all of Duke's electric service customers in Ohio, including approximately 600,000 residential customers.

If granted by the PUCO, these Applications, and in particular, Duke's proposed ESP, will result in a significant changes in the terms and conditions of service provided by Duke to its customers, as more specifically identified, *infra*. Therefore, Movant is requesting the Commission to schedule three public hearings on these matters.

## **II. TRANSPARENCY AND STATUTORY REQUIREMENTS ENCOURAGE PUBLIC PARTICIPATION.**

The Commission has already determined that "local public hearings will be scheduled and publication of notice required, by subsequent entry."<sup>3</sup> Because the ESP process will significantly impact customers, the Movant is requesting that the Commission schedule several local public hearings in order to provide Duke's electric utility customers a chance to participate in the ESP process. Announced principles ("Principles") and statutory language, both general to the ratemaking process and specific to the ESP process, support this request by Movant for local public hearings. In addition, the request is supported by Commission precedent.

In August 2007, the Administration announced seven Principles that would guide the development of energy policies, in particular with regard to electricity and electric rates.<sup>4</sup> One of the announced Principles was transparency:

"...The electricity market must feature accountability and transparency. Quite simply, customers should be able to understand what they pay for and what they get."<sup>5</sup>

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<sup>3</sup> Entry (August 5, 2008), at 3, paragraph 5.

<sup>4</sup> T. Strickland, *Energy, Jobs, and Progress Proposal*, (2007), <http://www.governor.ohio.gov/News/PressReleases/2007/August2007/News82907/tabid/750/Default.aspx>

<sup>5</sup> Id.

A good way to ensure that residential customers “understand what they pay for and what they get” is to allow them the opportunity to fully participate in the process. Local public hearings will provide this opportunity to customers. In the Administration’s Principles it was noted how important it is to include consumers in the process:

“...Consumers deserve equal footing with utilities. Electricity is vital in the lives of every Ohioan and every Ohio company. Therefore, the needs and preferences of our utilities cannot be the PUCO’s sole concern.”<sup>6</sup>

Toward implementing this Principle of transparency, the Commission should allow residential consumers a convenient and important way to learn more about the Applications and to express their opinions directly to the Commission as part of the overall record. The Commission should schedule several local public hearings

In addition to the announced Principles guiding Ohio’s overall approach to ensuring affordable and stable electric rates, existing general statutory language also encourages public participation. A specific statute notes that all proceedings and records of the Commission are public records.<sup>7</sup> The plain language of this statute conveys that public scrutiny and involvement in Commission hearings and decisions are encouraged and expected.

In fact, the General Assembly has directed that “All hearings shall be open to the public.”<sup>8</sup> In this case, local hearings will help ensure that the hearing is “open to the public.” ESP proceedings, in order to truly be open to the public, should include several local public hearings as part of the evidentiary record, thereby providing residential

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<sup>6</sup> Id.

<sup>7</sup> R.C. 4901.12.

<sup>8</sup> Id.

consumers who might be unable to reasonably attend proceedings in Columbus an opportunity to participate in the hearing process.

### **III. THE PUCO'S PAST SCHEDULING OF LOCAL PUBLIC HEARINGS FOR ELECTRIC TRANSITION PLANS AND RATE STABILIZATION PLANS PROVIDES PRECEDENT FOR LOCAL PUBLIC HEARINGS IN THIS CASE.**

During periods of statutory change and transition, the PUCO has scheduled and held several local public hearings in order to provide the opportunity for public comment:

Pursuant to recently adopted rules, the Commission has scheduled public hearings on each of the utilities' transition plan applications. The Commission also wishes to hold local public hearings in each of the utilities' service territories to provide the public the opportunity to comment on the transition plans for the utilities' provision of retail electric service in Ohio.<sup>9</sup>

Thus in the electric transition plan cases, in 2000, the Commission gave the public an opportunity to comment on each company's plan. The Movant appreciates that the PUCO intends to provide the same opportunity to Ohio consumers in these Duke cases and all SSO cases.<sup>10</sup>

Several local public hearings were scheduled in the rate stabilization plan cases that preceded the end of the market development period. Again, the Commission scheduled the local public hearings to provide the public an opportunity to comment:

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<sup>9</sup> *In the Matter of the Application of First Energy Corp. on Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1313-EL-ETP et al, Entry at 2 (May 2, 2000). Note: This Entry lists all local public hearings for each of the companies that filed transition plans.

<sup>10</sup> Entry (August 5, 2008) at 3, paragraph 5.

“...The Commission believes that [...] a hearing on the application is warranted to provide affected parties an opportunity to express their views on the applications.”<sup>11</sup>

In both the transitional period after the passage of Senate Bill 3, and later in advance of the rate stabilization plans, the Commission found it necessary to allow consumers affected by changes in their electric service and rates to voice comments at several local public hearings. Ohio is again entering another transitional period where electric service could change and prices increase.

**IV. MOVANT RECOMMENDS THAT THE PUCO HOLD LOCAL HEARINGS IN AT LEAST THREE LOCATIONS AND PUBLISH NOTICE IN ADVANCE THAT INCLUDES A SUMMARY OF MAJOR ISSUES.**

In keeping with the intent behind R.C. 4903.083 that is applicable to traditional rate cases, it has been the Commission’s practice to schedule public hearings within a close proximity of the Company’s customers and require state officials and applicant utilities to travel to the location of the affected public to offer them the opportunity to be heard on the issues.<sup>12</sup> Movant has reviewed Duke’s customer base, both in terms of population density and geographic location, as indicated in Duke’s past filings with the PUCO. As a result, Movant requests that the Commission schedule local public hearings

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<sup>11</sup> *In the Matter of the Applications of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Continue and Modify Certain Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case No. 03-2144-EL-ATA et al, Entry at 3 (October 28, 2003).

<sup>12</sup> See *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 06-433-WS-AIR, Entry at 1-2 (November 14, 2006). (The attorney examiner found it appropriate to add an additional local public hearing in response to an OCC motion for an additional local public hearing because of the number of customers that would have to travel more than 100 miles to testify at one of the other local public hearings.)



in Cincinnati, Middletown, and Mason, Ohio.

These three locations constitute population centers throughout Duke's customer service area. Due to its size and location, Movant believes that three public hearings are appropriate to provide Duke's customers an opportunity to be heard and learn more about the cases.

The notice to customers should include a listing of major issues, as in various other cases before the Commission. The major issues affecting residential customers in these cases are numerous:

- What is a fair case process and timeline that should be used for the parties and the public to participate in the development of the electric utility's rate plan?
- Based on Ohio's new electric policy law, what rates are reasonable for the electric utility to charge customers?
- Should the electric utility's proposed "straight-fixed variable rate" structure be approved, denied or changed? As proposed by Duke, this new rate structure would result in an increase in the flat-rate monthly customer charge and a decrease in those monthly distribution charges that vary according to a customer's actual usage.
- How do the rates proposed by the electric utility compare to other rates in the broader market for electricity?
- Before the PUCO accepts any proposal for customers to be required to pay for electric rate discounts that are provided to businesses in order to promote economic development, what eligibility criteria should be used to ensure that discounts are in the public interest and what standards should be used to measure whether the economic development benefits are achieved?
- What will be the process for determining whether an electric utility's profits are significantly in excess of the profits of comparable companies?
- Are improvements needed in the quality of the electric utility's service to customers?
- What new or advanced technologies should be implemented for meters and other portions of the electric system to help consumers manage their usage and assist the utility in identifying reliability concerns?
- How will the utility meet the requirement in the new state law to use renewable energy?
- What energy efficiency programs should be implemented by the electric utility and how should those programs be made available for customers?

Further, in order to provide sufficient notice to the public, Movant requests that the PUCO provide at least 30 days notice prior to the public hearings. Such notice would allow Duke's customers to adapt their schedules and plan their travel to the hearings. Without such sufficient notice, the effectiveness of the public hearings will be diminished.

## **V. CONCLUSION**

The Commission should hold public hearings in these three separate locations where many of the customers who face rate increases as a result of the Applications reside. Moreover, because the Company's service territory is spread out across a large geographic area, scheduling these three sites for the public hearings provides Duke's customers a reasonable opportunity to participate in these cases that may significantly affect customer rates.

WHEREFORE, Movant's motion should be granted.

Respectfully submitted,

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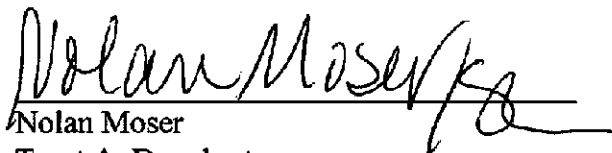
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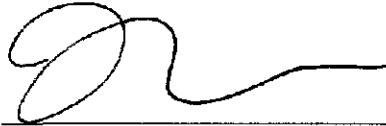
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Local Public Hearings was served by first class United States Mail, postage prepaid, to the persons listed below, on this 26<sup>th</sup> day of August 2008.



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