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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)
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.)

PUCO

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**JOINT INTERLOCUTORY APPEAL
REQUEST FOR CERTIFICATION TO FULL COMMISSION
AND
APPLICATION FOR REVIEW
BY**

**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, THE SIERRA CLUB,
THE NATURAL RESOURCE DEFENSE COUNCIL AND
COMMUNITIES UNITED FOR ACTION**

The Joint Appellants¹ hereby submit this Interlocutory Appeal² to the Public Utilities Commission of Ohio ("PUCO" or "Commission") and respectfully request the certification of this appeal to the full Commission for review of the hearing officer's

¹ Office of the Ohio Consumers' Counsel, the Sierra Club, the Natural Resource Defense Council and Communities United for Action.

² The appeal is filed pursuant to Ohio Adm. Code 4901-1-15.

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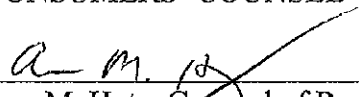
Entry scheduling local hearings,³ for an outcome that will provide the public a meaningful opportunity to learn of the local hearings in these cases, become informed on electric issues important to them and plan their schedules for attendance. The Interlocutory Appeal should be certified⁴ for an immediate determination by the Commission because it presents a new or novel question of law or policy and to prevent undue prejudice to Ohio consumers and the Joint Appellants.

Upon review,⁵ the Commission should reverse or modify the Local Hearing Entry. The Commission should establish a schedule for local hearings that affords adequate (30 days) public notice in advance of the dates of the hearings and adequate time for the public to plan for their appearances at the hearings where they can comment upon the Application by Duke Energy-Ohio ("Duke" or "Company"). The Notice should include a summary of major issues, as proposed in the Joint Motion,⁶ one of them being reliability of service, so that the public will better understand the issues for testimony.

The reasons for this Interlocutory Appeal, including the Request for Certification and the Application for Review, are explained in the attached Memorandum in Support.

Respectfully Submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



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³ Entry (September 17, 2008) (hereafter "Local Hearing Entry").

⁴ Ohio Adm. Code 4901-1-15(B).

⁵ Ohio Adm. Code 4901-1-15(C).

⁶ Joint Motion for Local Public Hearings.

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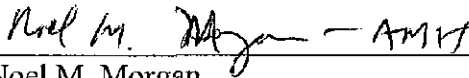
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MEMORANDUM IN SUPPORT

I. BACKGROUND

Twenty-six days after Duke filed its first-ever Application for an electric security plan (“ESP”) under Ohio’s new energy law, consumer organizations moved for local hearings that the public in the southwestern region of Ohio could attend to express their viewpoints to the PUCO regarding electric rates and service. That Motion contained-- among other requests for providing the public with a transparent state regulatory process-- a request that the local hearings be scheduled on a timeline that would allow for notice to be published at least thirty days prior to each hearing⁷. But the Local Hearing Entry—in which the consumer organization’s Motion was not even acknowledged—provided only

⁷ Joint Motion for Local Public Hearings at 6.

20 days before the first of the scheduled hearings. The Local Hearing Entry (a copy of which is attached) and the summary of major issues are the subjects of this appeal.

II. CERTIFICATION OF INTERLOCUTORY APPEAL

The full Commission will review the Attorney Examiner's ruling if the Attorney Examiner (or other PUCO personnel) certifies the Appeal. The standard applicable to certifying this appeal is that "the appeal presents a new or novel question of interpretation, law, or policy ... and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice...."⁸ That standard is met in this instance and the appeal should be certified.

First, this matter presents a new or novel question of law or policy. In proposing an Energy Policy for Ohio, the Administration adopted, as one of its principles, that there must be transparency in Ohio's regulatory process for establishing rates that utilities charge and customers pay.⁹ One primary means of ensuring transparency in the regulatory process is to hold local public hearings that provide a meaningful opportunity for customers to participate in the regulatory process. In addition, the Ohio General Assembly adopted new elements of the Ohio policy in R.C. 4928.02 applicable to this case. The limited advance notice of these hearings and the lack of adequate summary of major issues for the notice present a new or novel question of policy for this first-ever electric security plan (ESP) proposed by Duke.

Also, there is undue prejudice to the Ohio public—and its representatives—where the advance notice of the local hearings is compressed to the point, as here, that it limits

⁸ Ohio Adm. Code 4901-1-15(B).

⁹ T. Strickland, *Energy, Jobs, and Progress Proposal*, (2007), <http://www.governor.ohio.gov/News/>

the public's opportunity to learn of the hearings, prepare for testifying and adjust their schedules to appear on the day and time of the local hearings. Additionally, without a summary of major issues, the public will not know what issues they should address in their testimony. Because the application is so complex and involves so many issues that will impact the Ohio public each of those issues should be listed, including electric reliability issues that may be of particular interest to customers at this time.

Duke certainly had the resources available to deploy for preparation of the rate Application it filed. The public lacks such resources and should be given more time to learn about and prepare for the local hearings. The lack of adequate public notice of the local public hearings could also prevent the Commission from having a complete record in this matter to make an informed decision, under R.C. 4903.09.

Given that local hearings are imminent under the Local Hearing Entry, an "immediate determination" is needed to prevent undue prejudice in the event the Commission ultimately reverses the ruling in question. Thus, that element for certification of the Interlocutory Appeal is also met.¹⁰

The PUCO has recognized that more than a minimal notice can be necessary for the public:

While the notice published pursuant to Section 4909.191(A), Revised Code, and Rule 4901:1-11-11(C), O.A.C, *is sufficient to satisfy legal requirements of notice, the Commission is concerned that as many customers of each company as possible receive actual notice of this hearing.*¹¹ (Emphasis added.)

¹⁰ *Id.*

¹¹ In re Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Ohio Power Company et. al., Case No. 91-101-EL-EFC, Opinion and Order (May 16, 1991) at 3-4. (In accordance with R.C.4905.31, a public hearing shall be held to allow the Commission to review the fuel procurement practices and policies of their various electric companies.)

While the Joint Appellants do not concede that providing 30-days notice of the public hearing is going above and beyond legal requirements, it will be unduly prejudicial to those parties representing the public if the public's voices are not heard due to lack of time to learn of the local hearings, prepare and then plan for attendance.

III. APPLICATION FOR REVIEW

Joint Appellants' Application for Review meets the terms of Ohio Adm. Code 4901-1-1-15(C), because the application has been filed "within five days after the ruling is issued" and the application does "set forth the basis of the appeal and citations of any authorities relied upon." The PUCO should reverse or modify the Local Hearing Entry, pursuant to Ohio Adm. Code 4901-1-15(E).

Joint Appellants, and the customers of Duke, will be prejudiced if the local hearings are scheduled without sufficient advance notice to the public regarding the dates, times, and location of the public hearings and the issues to be resolved by the hearings. That notice timing should be thirty days in advance of the hearings, as requested in the Motion of the consumer groups. The Notice should include a summary of major issues, as proposed in the Joint Motion¹²—one of them being the especially current issue of reliability of service—so that the public will better understand the issues for testimony. The Motion was not addressed or even acknowledged in the Local Hearing Entry, so the Joint Appellants cannot provide a discussion here about the rationale of the ruling.

¹² Joint Motion for Local Public Hearings.

The Commission has recognized in a prior case that a minimal notice that could be provided to the public in a case is not necessarily the notice that is adequate for the public:

While the notice published pursuant to Section 4909.191(A), Revised Code, and Rule 4901:1-11-11(C), O.A.C, *is sufficient to satisfy legal requirements of notice, the Commission is concerned that as many customers of each company as possible receive actual notice of this hearing.*¹³ (Emphasis added.)

In this first-ever filing of Duke's plan under Ohio's new energy law, more than minimal notice is needed to adequately inform the public of their opportunity to testify, so that they may seek information about the issues involving their already high electric rates, prepare for testimony at hearings and arrange their schedules.

Consistent with Ohio Adm. Code 4901-1-15(E)(1), the Commission should modify or reverse the Entry of September 17, 2008, and schedule the public hearings with at least 30-days notice and a summary of major issues provided to the customers of Duke¹⁴.

IV. CONCLUSION

For the reasons set forth above, this Appeal should be certified to the full Commission and the Commission should reverse or modify the Attorney Examiner's ruling by granting additional time (amounting to thirty days of advance notice) for notice

¹³ In re Regulation of the Electric Fuel Component Contained Within the Rate Schedules of Ohio Power Company et. al., Case No. 91-101-EL-EFC, Opinion and Order (May 16, 1991) at 3-4. (In accordance with R.C.4905.31 a public hearing shall be held to allow the Commission to review the fuel procurement practices and policies of their various electric companies.)

¹⁴ Ohio Adm. Code 4901-1-15(E)(1): "(E) Upon consideration of an interlocutory appeal, the commission may, in its discretion either: (1) Affirm, reverse, or modify the ruling."

of the local public hearings, and the local public hearings should accordingly be rescheduled. In addition, the summary of issues for the public notice must be improved.

The lack of adequate advance notice regarding the local public hearings will limit the effectiveness of these hearings in developing the record. Given the significance of this proceeding for customers' rates and service in what is Duke's first-ever proposal for an electric security plan under Ohio's new energy law, a thorough proceeding that creates an informative record is warranted. A rushed schedule for local public hearings without adequate public notice will result in undue prejudice to Ohioans and their representatives. In the interest of a transparent state regulatory process for the setting of electric rates in south-western Ohio and the PUCO's acquiring of all the facts for making a decision as part of that process, the Commission should re-schedule the local hearings with adequate advance notice.

Respectfully Submitted,

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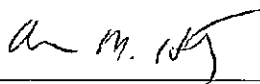
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Interlocutory Appeal was served by electronic service and by U.S. Mail, prepaid, to the counsel identified below (provided electronically to the Attorney Examiners) this 22nd day of September 2008.



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