BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Energy Efficiency Portfolio Status Report of Duke Energy Ohio, Inc.	)))	Case No. 17-689-EL-EEC

MOTION TO STRIKE COMMENTS OF THE NATURAL RESOURCES DEFENSE COUNCIL, THE ENVIRONMENTAL LAW & POLICY CENTER AND THE OHIO MANUFACTURERS' ASSOCIATION AND REPLY COMMENTS OF DUKE ENERGY OHIO, INC.

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) submitted its energy efficiency and peak demand reduction status report (Status Report) in this proceeding on April 17, 2017. The Status Report was filed pursuant to new law contained in R.C.4928.662 as enacted in Senate Bill 310. Thereafter, without the courtesy of seeking intervention in the proceeding, The Natural Resources Defense Council (NRDC), Environmental Law & Policy Center (ELPC) or jointly hereinafter (Environmental Commenters) and the Ohio Manufacturers' Association Energy Group, (OMAEG) each filed comments without seeking intervention as interested parties and despite the fact that there is no procedural schedule.

Both parties complain that the Company has filed a status report that in their view does not comport with their reading of the new law. Both parties seek clarification of the Commission's interpretation of the law and the way in which the various provisions will be applied. Because the comments submitted are not necessarily focused on Duke Energy Ohio's filing but rather seek an opinion from the Commission with regard to its interpretation of the new law, these comments should be stricken from this case.

Environmental Commenters note three requests. The first request asks the Commission to open a rulemaking. The second request seeks a particular outcome from the Commission's rulemaking. The third request again seeks clarification of the Commission's interpretation of SB310 and related policy. None of these matters are related to Duke Energy Ohio's Status Report individually. The Commission has stated on a number of occasions that it will not give advisory opinions.[1] However that is precisely what Environmental Commenters are seeking.

OMAEG's comments are similar in that OMAEG also seeks clarity on the application of SB 310, but OMAEG further makes factual assertions that are completely inaccurate and devoid of any reliance on the evidence (since no hearing has yet occurred). OMAEG first argues that Duke Energy Ohio claims impacts to which it is not entitled. This argument relies on interpretation of SB310 that has not yet been clarified in a rulemaking. Should the Commission wish to interpret the law differently than has been done in this case, the Commission must engage in a rulemaking and then allow electric distribution utilities to incorporate any changes and amend as needed. Resolving such issues should not occur in respect of Duke Energy Ohio's Status Report.

OMAEG's second and third arguments are again based on an assertion regarding SB310 that should be further vetted by the Commission in a separate docket. Questions as to interpretation of SB310 and "deemed" versus "as found" comparisons and measurements are related to matters that must be determined in conjunction with rulemaking related to SB310 and outside of the Company's Status Report. Duke Energy Ohio Status Report relies on evaluation, measurement and verification (EM&V) accomplished by a third-party consultant that has complied with the law and regulation. The Status Report also included the most recent results of an assessment of potential energy savings and peak reduction study. To the extent law and

[1] See for example, *In the Matter of the Complaint of the Office of the Consumers' Counsel v. The Western Reserve Telephone Company*, Case No.92-1525-TP-CSS, Entry on Rehearing, (May 18, 1994), 1994 Ohio PUC Lexis 384.

regulation are amended, the Company should be permitted to amend its reports as needed. The Company has filed status reports since 2009 and none have been challenged by Commission Staff or otherwise acted upon by the Commission.

Finally, both OMAEG and the Environmental Commenters express concern regarding the Company's ability to collect shared savings based upon claimed savings in the status report. These arguments are misplaced in this docket since there is no related claim for any shared savings in this proceeding. Moreover, the Company is not seeking shared savings associated with any of the net benefits associated with the SB310-adjusted historic savings reported in its 2016 Annual Compliance report. Rather, the Company seeks in this docket to count the adjusted historic savings toward its compliance obligations. Duke Energy Ohio agreed to forgo its rights to earn shared savings for calendar year 2016 pursuant to a Stipulation and Recommendation in Case No.14-457-EL-RDR.[2] Additionally, as agreed to in a Stipulation and Recommendation in Case No.16-576-EL-POR,[3] the Company will not count net benefits toward shared savings from any energy savings and demand reductions achieved by customers outside the Company's approved programs. While these savings, consistent with SB310 shall be counted toward the Company's compliance obligation, they are not savings generating net benefits that would be included in shared savings now or in the future. Again, OMAEG and Environmental Commenters concerns are misplaced.

Finally, OMAEG asserts in its Comments that the Commission has enough evidence before it to disallow some of Duke Energy Ohio's claimed savings. OMAEG is mistaken as there is presently no evidence before the Commission. Rather, OMAEG has provided

[2] *In the Matter of the Application of Duke Energy Ohio, Inc., for Recovery of Program Costs, Lost Distribution Revenue and Performance Incentives Related to its Energy Efficiency and Demand Response Programs*, Case No. 14-457-EL-RDR, Stipulation and Recommendation, (January 6, 2016).
[3] *In the Matter of the Application of Duke Energy Ohio, Inc., for a Waiver to File a New Energy Efficiency and Peak Demand Reduction Portfolio Application*, Stipulation and Recommendation, (December 22, 2016).

comments. To the extent the Commission deems that evidence is necessary, the Commission may order a procedural schedule as needed. In the meantime, OMAEG and Environmental Commenters' comments should be stricken.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ *Elizabeth H. Watts*
Amy B. Spiller
Deputy General Counsel
Elizabeth H. Watts (Counsel of Record)
Associate General Counsel
Duke Energy Business Services LLC
139 East Fourth Street
1303-Main
Cincinnati Ohio 45202
513-287-4359 (telephone)
513-287-4385 (facsimile)
amy.spiller@duke-energy.com (e-mail)
elizabeth.watts@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 2nd day of June, 2017, to the following parties.

/s/ *Elizabeth H. Watts*
Elizabeth H. Watts

John H. Jones
Assistant Attorney General
Public Utilities Section
180 East Broad Street
7th Floor
Columbus, Ohio 43215
John.jones@ohioattorneygeneral.gov

Terry L. Etter
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, Ohio 43215
etter@occ.state.oh.us

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839
cmooney@ohiopartners.org

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Summary: Motion Motion to Strike and Reply Comments electronically filed by Ms. Emily Olive on behalf of Duke Energy Ohio and Spiller, Amy B. Ms. and Watts, Elizabeth H. Ms.