

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MEMORANDUM CONTRA DUKE ENERGY OHIO, INC. MOTION TO STRIKE BY  
NATURAL RESOURCES DEFENSE COUNCIL AND  
ENVIRONMENTAL LAW & POLICY CENTER**

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On April 17, 2017, Duke Energy Ohio (“Duke” or the “Company”) filed its Annual Energy Efficiency and Peak Demand Reduction Status Report with the Public Utilities Commission of Ohio (“Commission”) for the period of January 1, 2016 to December 31, 2016 (the “Report”), as required under O.A.C. 4901:1-39-05. On May 17, 2017, the Natural Resources Defense Council and the Environmental Law & Policy Center (collectively, “Environmental Commenters”) filed comments on the Report pursuant to Ohio Admin. Code 4901:1-39-06(A). On June 2, 2017, Duke responded by filing a motion to strike our comments (along with comments filed by the Ohio Manufacturers’ Association Energy Group), arguing that our comments were not “related to Duke Energy Ohio’s Status Report individually.” Duke Motion to Strike at 2 (June 2, 2017). In fact, our comments focused on specific legal interpretations of R.C. 4928.662 that Duke adopted in its Report and that may well be central to future implementation of the Ohio energy efficiency standard under R.C. 4928.66. Therefore, the Commission should deny Duke’s motion to strike and rule on the issues raised in our comments.

As an initial matter, we note that Duke also complains that we “filed comments without seeking intervention as interested parties and despite the fact that there is no procedural schedule.” Motion to Strike at 1. However, Ohio Admin. Code 4901:1-39-06(A) expressly permits any “person” – regardless of whether that person has formally intervened in a case as an

interested party – to file comments on a utility portfolio status report. Notably, under Ohio Admin. Code 4901:1-39-01(U), “person” is defined by reference to R.C. 4928.01(A)(24) and in turn R.C. 1.59(C), which states that a person includes *any* “individual, corporation, business trust, estate, trust, partnership, and association.” Both of Environmental Commenters fit within that definition and were therefore entitled to file comments on Duke’s report. Additionally, Ohio Admin. Code 4901:1-39-06(A) specifies that comments on a portfolio status report are due within 30 days of the filing of the report, a deadline that we complied with in this case.

With respect to Duke’s central argument that our comments did not relate to its Report, in fact we specifically addressed the Report’s first-time application of R.C. 4928.662, enacted through Senate Bill 310 in 2014, to add 934,519 MWh to Duke’s cumulative savings bank.<sup>1</sup> We pointed out that the Commission has not yet addressed the proper interpretation of certain ambiguous aspects of R.C. 4928.662, and that in its calculation of the 934,519 MWh figure Duke had therefore relied upon its own interpretation of that provision. We therefore requested three specific actions from the Commission: (1) institution of a comprehensive rulemaking to guide the future application of R.C. 4928.662 by Duke and other utilities in the future;<sup>2</sup> (2) a specific ruling that Duke incorrectly applied R.C. 4928.662 in its “retroactive counting of customer action and federal standard measures prior to the effective date of SB 310 of September 12, 2014”;<sup>3</sup> and (3) a proactive ruling that the type of savings included in that 934,519 MWh do not count toward a utility’s shared savings.<sup>4</sup> All of these relate directly to concrete issues regarding

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<sup>1</sup> Environmental Comments at 2-8.

<sup>2</sup> *Id.* at 2-4.

<sup>3</sup> *Id.* at 5-6.

<sup>4</sup> *Id.* at 6-7.

Duke's application of R.C. 4928.662 in its Report and potential implications for Duke's future energy efficiency programs, and are therefore properly within the scope of this proceeding.<sup>5</sup>

Dated: June 16, 2017

Respectfully Submitted,

/s/ Madeline Fleisher

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<sup>5</sup> Although currently the Commission allows utilities to earn shared savings on the basis of the annual energy savings achieved through their energy efficiency programs, the Ohio legislature is currently considering a bill that would allow a utility to earn incentives based on whether its "actual cumulative energy efficiency and peak demand reduction savings meet or exceed the cumulative mandates" under R.C. 4928.66. 132nd General Assembly, House Bill 114, proposed Section 4928.6621(B), <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-114>.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Memorandum Contra* submitted on behalf of the Natural Resource Defense Council and Environmental Law & Policy Center was served by electronic mail upon the following Parties of Record on June 16, 2017.

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Summary: Memorandum Memorandum Contra Duke Motion to Strike by Environmental Law and Policy Center and Natural Resources Defense Council electronically filed by Madeline Fleisher on behalf of Natural Resources Defense Council and Environmental Law and Policy Center