

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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DUKE ENERGY OHIO, INC.’S REPLY TO MEMORANDUM CONTRA MOTION TO  
STRIKE FILED BY NATURAL RESOURCES DEFENSE COUNCIL AND  
ENVIRONMENTAL LAW & POLICY CENTER AND THE  
OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP

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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 (SB310). Thereafter, 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 a Memorandum Contra Duke Energy Ohio’s Motion to Strike on June 16, 2017 and June 19, 2017, respectively. Both the Environmental Commenters’ Memorandum Contra Duke Energy Ohio, Inc.’s Motion to Strike and OMAEG’s Memorandum Contra Duke Energy Ohio, Inc.’s Motion to Strike should be denied.

Both parties responded to the motion to strike by reiterating their respective requests for Commission clarification as to how it will interpret various portions of SB310. Environmental Commenters reiterate specifically in their Memorandum Contra that they “focused on specific legal interpretations of R.C.4928.662 that Duke adopted in its Report...” Environmental Commenters admit that their Comments “pointed out that the Commission has not yet addressed

the proper interpretation of certain ambiguous aspects of R.C.4928.662.” These statements are clear and direct and amount to nothing more than a request for an advisory opinion.

OMAEG made a greater effort to tie their comments to Duke Energy Ohio’s status report, but nonetheless, likewise admit that their quest is the same as Environmental Commenters. Though OMAEG kindly provided us all with the legal definition of a “rule” under the Revised Code, OMAEG is simply incorrect in interpreting R.C.4928.662 which plainly states as follows:

“For the purpose of measuring and determining compliance with the energy efficiency and peak demand reduction requirements under section 4928.66 of the Revised Code, the public utilities commission shall count and recognize compliance as follows: (A) Energy efficiency savings and peak demand reduction achieved through actions taken by customers or through electric distribution programs that comply with federal standards...”

And additionally, with respect to OMAEG’s complaint that Duke Energy Ohio is improperly calculating “as found” versus “deemed” impacts, R.C.4928.662 (B) states:

“Energy efficiency savings and peak demand reduction achieved on and after the effective date of SB310 of the 130<sup>th</sup> General Assembly shall be measured on the higher of an as found or deemed basis, except that, solely at the option of the electric distribution utility, such savings and reduction achieved since 2006 may also be measured using this method.”

Thus, at the Company’s sole discretion, impacts going back to 2006 may be restated. While OMAEG may not agree with this approach, it has become the law and is therefore indisputable. Additionally, OMAEG does not actually point out any specific error in the calculation or any basis for the their unsubstantiated accusation. Finally, OMAEG states that such impacts must be “peer-reviewed,” again without any basis for the purported requirement. Even worse, OMAEG seems to ignore that Duke Energy Ohio’s values were, in fact, determined by Nexant, the independent third-party that conducted the Duke Energy Ohio DSM Market Potential Study (MPS) that was filed with the Commission on August 15, 2016 in Case No. 16-576-EL-POR. In fact, the Nexant evaluation

of historic savings was directly mentioned on page 9, of the Company's MPS because it was used in the evaluation of the future potential, and neither OMAEG or any other party raised a concern about the process.

Finally, although OMAEG now claims that its comments do not address the Company's ability to collect shared savings, this is directly contrary to its statement in its initial comments. OMAEG opines that "The large quantity of energy savings claimed by Duke from the SB310 Counting Provisions could impact costs to manufacturers if at some point Duke is able to collect shared savings from these customer actions."<sup>1</sup> It is worth noting that there are no costs or shared savings requested for recovery in this case, and thus, OMAEG's concerns in this regard are unfounded. Finally, as OMAEG is aware, given that it was a signatory party to the Amended Stipulation in Case No.16-576-EL-POR that is currently pending before Commission, the net benefits from energy savings and demand reductions achieved by customers outside the Company's approved energy efficiency programs will not count toward shared savings. In Case No.17-781-EL-RDR, Duke Energy Ohio submitted an application for recovery of program costs, lost distribution revenue and performance incentives,; however in its application, the Company did not recognize any shared savings. Again, OMAEG's concerns as stated in the initial Comments are unfounded.

For the reasons stated in the Company's Motion to Strike and Reply Comments, the OMAEG and Environmental Commenters' are incorrect in their respective arguments with respect to SB310 and misguided in their respective attempts to resolve these questions in this docket.

Comments of both should be stricken and Duke Energy Ohio respectfully requests that the Commission do so.

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<sup>1</sup> *Comments of the Ohio Manufacturers' Association Energy Group*, (May 17, 2017) at pg.4.

Respectfully submitted,  
DUKE ENERGY OHIO, INC.

/s/ Elizabeth H. Watts

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Duke Energy Ohio, Inc.'s Reply to Memorandum Contra Motion to Strike Filed by Natural Resources Defense Council and Environmental Law & Policy Center and The Ohio Manufacturers' Association Energy Group* was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail, on this 23rd day of June, 2017, to the following parties.

/s/ Elizabeth H. Watts

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