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FILE

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April 26, 2007

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PUCO

Ms. Renee J. Jenkins  
Docketing Department  
Public Utilities Commission of Ohio  
180 East Broad Street, 13<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: Case No. 05-1500-EL-COI: *In the Matter of the Commission's Review to Provision of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering, Demand Response, Cogeneration, and Power Production*

Dear Ms. Jenkins:

Attached, please find the original and 18 copies of Duke Energy Ohio's Application for Rehearing addressing the Commission Finding and Order in the above-referenced case. Please file the original and date stamp the three extra copies of the memorandum and return them to me in the enclosed overnight envelope.

Should you have any questions regarding this filing, please do not hesitate to contact me at 513-287-4489.

Kind Regards,

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Duke Energy Ohio

Cc: Paul, Colbert, Associate General Counsel, Duke Energy Ohio  
Jim Lemke, Senior Engineer, District Planning Midwest, Duke Energy Ohio  
David Celona, VP Governmental & Regulatory Affairs, Duke Energy Ohio  
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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Review to     )  
Provision of the Federal Energy Policy Act of     )  
2005 Regarding Net Metering, Smart Metering,     )  
Demand Response, Cogeneration, and Power     )  
Production     )

Case No. 05-1500-EL-COI

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**APPLICATION FOR REHEARING OF  
DUKE ENERGY OHIO, INC.**

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**I. INTRODUCTION**

On December 14, 2005, the Public Utilities Commission of Ohio ("Commission") issued an Entry opening an investigation addressing the Energy Policy Act of 2005 (EPAAct 2005), which was signed into law by President George W. Bush on August 8, 2005. EPAAct 2005 amends the federal Public Utilities Regulatory Policies Act of 1978 ("PURPA") and requires state regulatory authorities, as it relates to electric utilities, to consider and make specific determinations regarding net metering, smart metering, cogeneration and small power production purchase and sale requirements, and interconnection. The Commission solicited responses as well as held technical conferences addressing the aforementioned regulatory topics between December 14, 2005 and April 6, 2006. On June 28, 2006, the Commission issued an Entry that directed its Staff ("Commission Staff") to prepare a report and make recommendations for Commission consideration in order to advance Ohio's interest in EPAAct 2005.

On August 28, 2006, the Commission Staff issued its Report, which provided recommendations in the areas of net metering smart metering, demand response,

cogeneration, and small power production, including the same of stand-by power, interconnection, and other related areas. The Commission Staff afforded interested stakeholders until September 18, 2006, to file responses to the Commission Staff's recommendations. Upon receipt of initial responses, the Commission Staff afforded interested parties the opportunity to file Reply Comments addressing initial responses filed. Reply Comments were due no later than October 6, 2006. After receipt of Initial and Reply Comments, the Commission issued its Finding and Order on March 28, 2007.

Duke Energy Ohio ("DE-Ohio") is an Ohio corporation engaged in the business of supplying electricity and natural gas to consumers in Southwestern Ohio and is a public utility as defined by Sections 4905.02 and 4905.03 of the Ohio Revised Code ("O.R.C."). The Commission's Finding and Order has a direct effect on DE-Ohio's provision of electric service to consumers in Southwestern Ohio. Based on the Commission's Finding and Order, DE-Ohio submits the following Application for Rehearing and Memorandum in Support. DE-Ohio takes issue with the Commission's Finding and Order for the following reasons:

1. The Commission has not afforded interested parties adequate opportunity to provide relevant, more detailed comments on proposed interconnection provisions, in light of the far-reaching effects of the Commission's final modifications;
2. Also, the Commission has not afforded interested parties ample time to review its Finding and Order to determine whether the newly reorganized rules incorporate any suggested changes offered by commenters. In light of expansive restructuring of the rules, interested parties should be

afforded more time to thoroughly consider the implications of the Commission's Finding and Order.

For the foregoing reasons, as well as those stated in the accompanying Memorandum in Support, DE-Ohio respectfully requests that the Commission reverse its decision related to its Finding and Order in favor of offering more time to consider the interconnection provisions, as well as to allow interested parties more time to consider the Commission's Finding and Order.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "P.A. Colbert", is written over a horizontal line.

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## MEMORANDUM IN SUPPORT

- I. The Commission has not afforded interested parties adequate opportunity to provide relevant, more detailed comments on proposed interconnection provisions, in light of the far-reaching effects of the final modifications.

The Commission has not provided adequate opportunity to provide detailed comments on the interconnection provisions in Sections 4901:1-22-01 through 4901:1-22-04 of the O.A.C. The Commission Staff's report in August 2006 stated, "....JCARR is scheduled to revisit the Commission's interconnection rule in Sections 4901:1-22-01 through 04 of the O.A.C. in September 2007. Commission Staff believes that making any potential or future improvements, changes, or alterations to the interconnection rules resides in this 2007 rule review process."<sup>1</sup>

In its Finding and Order, the Commission seems to dismiss the statements made in the Staff's report in favor of finalizing the interconnection rules without considering all the implications of the rules. DE-Ohio understood the Commission Staff's report to mean that the review process would continue into September 2007 in order to first review the logistics associated with the interconnection provisions and consider the substantive issues (textual analysis and suggestions) in September 2007. The Commission Staff recently included review of O.A.C. 4901:1-22 *et seq.* in *Case No. 06-653-EL-ORD, In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative*

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<sup>1</sup> See Page 25 of *A Report by the Staff of the Public Utilities Commission of Ohio In the Matter of the Commission's Review to Provision of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering, Demand Response, Cogeneration, and Power Production*, Case No. 05-1500-EL-COI dated August 28, 2006.

*Code*. In that Entry, however, the Commission Staff included no proposed language for review. Instead, the Commission Staff states, "We have reviewed this chapter. We propose to amend rule 4901:1-22-03 to update the referenced date. Other than that change, no modifications are being proposed, as this chapter was just reviewed in Case No. 05-1500-EL-COI."<sup>2</sup> As such, it appears that any further consideration of the issues associated with O.A.C. 4901:1-22 *et seq.* will not be addressed in any more detail. In not continuing on the procedural path detailed in the Commission Staff's Report, DE-Ohio submits that the Commission Staff has acted too hastily in finalizing this section of the O.A.C. while also precluding necessary, interested parties from having an opportunity to consider fully the implications of the proposed rule changes.

**II. The Commission has not afforded interested parties ample time to review its Finding and Order to determine whether the newly reorganized Order incorporates any suggested changes offered by commenters.**

The Commission Finding and Order reorganizes the Proposed Rule in such a way that makes it difficult to determine whether the Commission adopted any of the suggested changes by commenters. Due to the size and complexity of this rule, it is nearly impossible to digest the entire document in the short span of time offered to review and submit an Application for Rehearing. DE-Ohio supports the need for revising the rule and the three level review process proposed in the Staff's Proposed Rules; however, DE-Ohio believes that it is necessary to include a myriad of minimal, yet effectual modifications in order to ensure that the Final Rule is more accurately aligned with its intended scope and purpose.

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<sup>2</sup> See Page 145 in *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*.

Therefore, DE-Ohio suggests the Commission order a more comprehensive review and comment process for the interconnection rule, including at least one informal workshop at the beginning of the process. This process should be aligned with the JCARR review of Chapter 4901:1-22 in September 2007, as DE-Ohio understood was recommended in the Commission Staff's Report. This will provide adequate opportunity to suggest additions, modifications, and/or eliminations to ensure that the Final Rule is effective.

As it relates to smaller issues proposed in Chapter 4901:1-22, DE-Ohio suggests that the Commission provide an option for exemption from the entire process with agreement of the customer and the Ohio EDU. A similar option is included in Indiana's regulatory provisions and effectively affords customers and EDUs the ability to opt-out of the process. Based on those results, DE-Ohio proposes that adding this option would greatly simplify the process for both DE-Ohio and Ohio customers. Other than small net metering projects, the larger projects, like a 1.5 MW diesel generator at a new hospital, for example, do not lend themselves well to a formal process of having all the information and plans together in order to make a "complete" application. Such processes are more interactive, which works well for both parties. Although the rule provides for a formal process for those customers that desire it, Duke Energy's experience in other areas of its Midwest service territory suggests that an informal process is typically more efficient and reasonable for customers and the EDU. All of Duke Energy's interconnection requests in its Kentucky and Indiana service territories have been handled in this informal manner in the last several years. This

process has more than met the customer's needs and expectations for timely, fair responses, as well as approval of the interconnection request.

Further, a requirement for fees is inconsistent with DE-Ohio's current practice and the Staff's recommendations in its Report. The Proposed Rule seems to require application fees in many instances, including the small net metering type of application, which the Staff's Report recommended affording the option of performing at no cost. DE-Ohio currently does not charge a fee for any size application. Other utilities do charge fees; however, DE-Ohio's practice has given us a good reputation of being DG and renewable energy friendly.

Likewise, Level 1.1 and 1.2 simplified parameters appear to be missing items that were originally included in 1.0. This is probably inadvertent, but an important correction that should be made. In addition, the Proposed Rule requirements for Interconnection Agreements are inconsistent with DE-Ohio's current practice. DE-Ohio would like the opportunity for more discussion on this issue. Finally, there are some technical issues with requirements in 4901:1-22-07(A)(2)(l) & (m) related to grounding that can be fixed with relative ease.

Again, these types of small issues should be addressed by the new rule. To ensure that such issues are addressed properly, DE-Ohio proposes that the Commission grant its Application for Rehearing in order to grant more time to consider DE-Ohio's suggested modifications.

### III. CONCLUSION

Accordingly, the Commission erred in finalizing the rules so rapidly. In so doing, the Commission has not afforded interested and/or effected parties ample time to consider the full implications associated with the finalization of these



provisions. For the foregoing reasons, DE-Ohio respects that Commission grant rehearing with respect to the ruling on O.A.C. 4901:1-22 *et seq.*

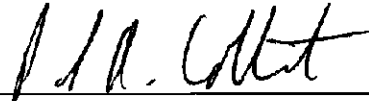
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support by Duke Energy Ohio* has been served on the following parties of record this 27th day of April, 2007, via hand-delivery or U.S. mail, postage prepaid.



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