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**FILE**

February 25, 2009

**VIA FEDERAL EXPRESS**

Ms. Renee Jenkins  
Chief, Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215-3793


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**Re: Case No. 08-709-EL-AIR  
Case No. 08-710-EL-ATA  
Case No. 08-711-EL-AAM**

Dear Ms. Jenkins:

Enclosed please find an original and 21 copies of the Objections to Staff Report and Statement of Major Issues of the Greater Cincinnati Health Council. Please file the original and 20 copies in the above referenced proceedings and please date stamp and return the additional copy to me in the enclosed self-addressed stamped envelope.

Very truly yours,



Douglas E. Hart

DEH  
Enclosures

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |   |                        |
|--|---|------------------------|
| In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates. | ) | Case No. 08-709-EL-AIR |
|  | ) |                        |
| In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.                            | ) | Case No. 08-710-EL-ATA |
|  | ) |                        |
| In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.      | ) | Case No. 08-711-EL-AAM |
|  | ) |                        |

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**OBJECTIONS TO STAFF REPORT AND STATEMENT OF MAJOR ISSUES  
OF THE GREATER CINCINNATI HEALTH COUNCIL**

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In accordance with R.C. § 4909.19, Ohio Admin. Code § 4901-1-28 and the Hearing Examiner's Entry of February 5, 2009, the Greater Cincinnati Health Council ("GCHC") hereby submits its objections to the January 27, 2009 Staff Report. These objections relate to the findings, conclusions and recommendations contained in the Staff Report and the failure of the Staff Report to address certain specific items.

The GCHC submits these objections without prejudice to or limitation upon its right to participate fully at the hearing in this proceeding, including the cross-examination of all witnesses presented as to all issues raised during the course of the proceeding. Whether or not it presents witnesses at the hearing, the GCHC may adduce evidence through cross-examination of any witness concerning not only its objections to the Staff Report, but also to objections filed by others, particularly Duke Energy Ohio, Inc. ("DE-Ohio"), and as to such additional issues which the Commission or the Hearing Officer may, in their discretion, permit the parties to present in accordance with Ohio Admin. Code § 4901-1-28(C).

## **INTRODUCTION**

On January 27, 2009, the Commission's Staff submitted its findings in the Staff Report concerning DE-Ohio's application for an increase in electric distribution rates. The investigation and preparation of the Staff Report were conducted in accordance with the Commission's Entry dated July 23, 2008. The Staff Report examines the operating income and rate base, rate of return, rates and tariffs, and quality of service of DE-Ohio. In these objections to the Staff Report, the GCHC has focused on those aspects of the Staff Report that most affect its hospital membership.

The GCHC is a non-profit member association that represents 34 acute care and specialty hospitals, 18 of which are in the Southwest Ohio counties served by DE-Ohio. The GCHC also serves over 150 affiliate and associate members including long-term care facilities, physician practices and a variety of offsite health care providers. The GCHC regularly engages in representing its members' interests in matters of potential economic impact. The GCHC is engaged in making every reasonable effort to control the cost of energy to its members and to support their efforts to be good stewards of their business costs. The ultimate goal is to control the increase in costs or, when possible, to reduce the costs of energy paid by GCHC members which must inevitably be passed on to their customers.

## **OBJECTIONS TO STAFF REPORT**

### **Operating Income**

The GCHC objects to the Staff Report's reliance, as stated at page 8, upon three months of actual and nine months of forecasted data in determining DE-Ohio's revenue requirements when the 2008 test year was completed before the release of the Staff Report. The Staff Report should have reflected DE-Ohio's actual 2008 data, less all Hurricane Ike costs which have been

excluded from the test year. DE-Ohio is required to submit its actual 2008 data within three months of the end of the test year, but because of the timing of the release of the Staff Report and the Attorney Examiner's Entry February 5, 2009 setting the hearing for March 31, 2009, DE-Ohio may escape examination of its actual 2008 operating expense data, which may prove to be less than the projections used in the Staff Report.

#### **Rate of Return**

At page 14, the Staff Report recommends a rate of return in the range of 8.34% to 8.87%. This recommendation was based upon economic data that did not reflect the severe downturn in the economy that has occurred in 2008 and early 2009, which should be taken into account to project an appropriate rate of return for the period in which the rates will be in effect. Approval of a rate of return in the recommended range would result in excessive earnings.

The Staff Report failed to recommend a point in the recommended range that should be used to establish DE-Ohio's revenue requirements and should have recommended a point at the low end of the range.

#### **Backup Delivery Point Capacity Rider**

The GCHC objects to the Staff Report's recommendation at page 21 to approve a backup delivery point capacity rider. DE-Ohio has already agreed (as memorialized in paragraph 2 of Attachment 9 to the Stipulation filed on October 27, 2008 in Case No. 08-920-EL-SSO, and approved by the Commission in its December 17, 2008 Opinion and Order) to a plan that allows hospitals to obtain an additional feeder where one does not exist on terms and conditions specified.

The GCHC further objects to Staff's recommendation to charge customers who are already receiving backup delivery at no charge. DE-Ohio has already agreed to provide existing

distribution reserve capacity to hospitals at no charge for existing load during the ESP period. (Paragraph 1 of Attachment 9 to the Stipulation). The Staff Report's treatment of reserve capacity is contrary to these provisions which the Commission has approved as reasonable. Any additional payment for backup or reserve capacity is unjustified.

To the extent the Commission approves any form of charge for existing backup capacity, the Staff Report erred by not requiring that the cost of any capital associated with such capacity be removed from DE-Ohio's rate base, so as not to be recovered twice.

The GCHC further objects to such added charges for backup delivery capacity as they would serve to legitimize the deterioration of maintenance and reliability of the existing primary distribution system. The provision of this backup capacity has historically been to offset reliability issues in the distribution system and charging for it should not be a substitute to improving reliability of the primary distribution system.

#### **Cost of Service Analysis**

The GCHC objects to the Staff Report's reliance on DE-Ohio's Cost of Service Study, which disproportionately assigns costs to the DS and DP class of service. Correspondingly, the rates of return displayed in Table 1 on page 28 are skewed downward for these classes of service.

#### **Distribution of Proposed Revenue Increase**

The GCHC objects to the proposed revenue increases in the Staff Report for the DP and DS customer classes in Table 4 on page 30 of 64.94% for DP and 37.13% for DS ratepayers.

The GCHC objects to the proposed demand charge increase of 36.1% for DS customers and 66.2% for DP customers on pages 36 and 38, respectively. These exceptional rate increases are inequitable and unwarranted and directly impact all hospitals in the DE-Ohio service area.

#### **Reliability and Service Quality Review**

The GCHC objects to the failure of the Staff Report to recommend that DE-Ohio's service reliability justifies a downward adjustment in the authorized rate of return.

The GCHC objects to the failure of the Staff Report to assess whether system reliability and maintenance expenses during the test period were inflated or accelerated in order to recover from the lack of maintenance performed in prior years.

The GCHC objects to the Staff Report because the system reliability measurements relied upon are inadequate to judge the impact of distribution system failures. Because only outages of a specified minimum duration (four hours) are reported, the data does not fully reflect the impact on hospital customers. Outages of any length have an impact on hospital functions and costs. The GCHC objects to the Staff Report to the extent it ignored any outage data in assessing the reliability of DE-Ohio service. GCHC members' records of service interruptions and the Staff Report's description of issues found during routine quality checks of DE-Ohio's performance raises concerns that the control and measurement of the reliability of DE-Ohio's monopoly distribution system is of limited effectiveness.

GCHC objects to the failure of the Staff Report to recommend any adverse effect on DE-Ohio's requested rate increase as a result of numerous failures identified therein:

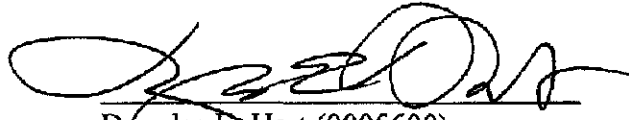
- on page 47, with regard to OAC 4901:1-10-27(E)(1)(g) substations, the Staff discovered recordkeeping irregularities.
- on page 45, with regard to OAC 4901:1-10-27(E)(1)(f), Right of Way Vegetation Control, Staff discovered that DE-Ohio had unilaterally changed its vegetation clearing program without permission. It is not apparent that Staff investigated the effect DE-Ohio's unilateral changes had on its system reliability or on the level of expenditures made during the test year because of earlier maintenance deferrals.
- on page 49, with respect to OAC 4901:1-10-06, National Electric Code, the Staff Report states that out of 141 inspections involving substations, pad mounted transformers, switch gear, overhead/other, 116 exceptions were noted.

- on page 51, under "Electric Reliability Performance Review," the CAIDI report shows a clear decline in performance for two years, starting in 2005. The SAIFI report indicates a sharp decline in performance for the years 2000 to 2005 with only one year of improvement from 2006 to 2007. The Staff Report does not address either of the other two reliability indices required by OAC 4901:1-10-10, namely, SAIDI and ASAI.

## STATEMENT OF MAJOR ISSUES

1. Measures of system reliability fail to realistically address customer impacts.
2. The proposed rate increases have a disproportionate impact on DP and DS customers, which includes substantially all hospitals.
3. The proposed backup deliver point rider is inconsistent with the Stipulation approved by the Commission in Case No. 08-920-EL-SSO.
4. The rate of return is excessive in light of current economic conditions.
5. Use of nine months of estimated data in lieu of actual 2008 results may overstate revenue requirements.

Respectfully submitted,



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Attorney for The Greater Cincinnati  
Health Council

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections to Staff Report and Statement of Major Issues of the Greater Cincinnati Health Council was served upon the parties of record listed below this 26<sup>st</sup> day of February 2009 by first class U.S. mail, postage prepaid, and by electronic service.



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