BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements and amendments of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, pursuant to Chapter 4928, Revised Code, to Implement Senate Bill 221.	)	Case No. 08-888-EL-ORD

DUKE ENERGY OHIO, INC.'S MEMORANDUM CONTRA APPLICATION FOR REHEARING

I. INTRODUCTION

Duke Energy Ohio, Inc. (DE-Ohio) hereby submits its Memorandum Contra to the Applications for Rehearing regarding the rules set forth in the Public Utilities Commission of Ohio (Commission) Opinion and Order on April 15, 2009 related to alternative and renewable energy technologies and resources. DE-Ohio will address certain specific comments of the Ohio Consumer and Environmental Advocates (OCEA). DE-Ohio's decision not to address certain comments should not be construed as its agreement with other matters not specifically addressed in this memorandum contra.

II. APPLICATIONS FOR REHEARING

The Application for Rehearing submitted by the OCEA suggests many revisions to the rules that are simply not well reasoned and supportive of SB 221. The first of these is the assertion that the Commission should revise 4901:1-39-01 (L), O.A.C., to clarify that the Commission should choose the independent program evaluator and therefore remove a potential conflict of interest. The OCEA argues that the Commission has the responsibility to ensure that claimed energy savings or peak demand reductions have been achieved under R.C. 4928.66(B). The thrust of R.C. 4928.66 is to impose upon the electric distribution utilities (EDU) the responsibility to implement energy efficiency programs. The provision cited by OCEA merely sets forth the follow-up required by the Commission to verify that the EDUs have met their mandates. Thus, the responsibility in the first instance is on the EDU and not on the Commission. Once the results of an analysis are presented to the Commission, the Commission will have the opportunity to audit, test and verify the reports of these independent program evaluators. The likelihood of a conflict of interest in this setting is extremely remote. Moreover, if the independent program evaluator is paid for by the EDU and hired by the Commission for purposes of measurement and verification of programs, there still exists a potential conflict. Notwithstanding, the rule notes that the evaluator will work "at the sole discretion of the commission staff". This provision in the rule will be an adequate safeguard against any potential conflict.

The OCEA asserts that 4901:1-40-03(B)(1) should be modified to accurately reflect R.C. 4928.64(B) because, the OCEA claims, the existing language does not reflect the statutory requirement to include all sales, not just sales under the standard service offer, in the potential baseline. The revised code and the rule could not be more specific. The law requires that the baseline shall be "the average of such total kilowatt hours sold in the preceding three years to any and all retail electric consumers whose load centers are served by that utility and are located within the utility's certified territory." R.C. 4928.64(B). This language is unambiguous and inclusive. The rule states that the baseline shall be "the average of such total kilowatt hours it sold in the preceding three calendar years." 4901:1-40-03(B)(1), O.A.C. Again this language is unambiguous and inclusive. The OCEA's concern here is misplaced.

The OCEA addressed provisions contained within the Commission's rules that set forth filing requirements for integrated resource plans. DE-Ohio concurs with the comments of others Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the Companies) that the Commission unreasonably and unlawfully exceeded its authority in imposing the requirement for an annual integrated resource plan. Senate Bill 221 contained no such mandate and does not address long term forecast reports in any respect. The OCEA the compounds this requirement by advocating that 4901:5-5-06 (A)(1) be modified so that the EDUs provide discussion and analysis on <u>any</u> change that might influence the EDU's energy

and demand forecast. The OCEA's proposed language change includes "economic, demographic and technological changes which may be expected to influence the reporting person's generation mix. Use of energy efficiency and peak-demand reduction programs, availability of fuels, type of generation, use of alternative energy resources pursuant to section 4928.64 of the revised code or techniques used to store energy for peak use." Such a requirement, though it provides good job security for regulatory counsel, would require almost constant vigilance and filings. The rules presently mandate an annual forecast filing. The update of this filing for *any* change as described above is simply over-broad and unworkable for both the EDU's and the Commission. This requested revision is unreasonable and unnecessary.

Additional requested modifications in OCEA's memorandum are provisions which essentially seek additions to rule requirements that are unnecessarily detailed and overbroad. Also, much of the information specified is available to the Parties through discovery when relevant. Thus, there is no benefit to rewriting the rules to include such specific mandates.

Finally, the OCEA asserts that the Commission should require each EDU to demonstrate the cost effectiveness of the integrated resource plan through a comparison over a twenty-year forecast horizon instead of a ten-year forecast horizon. Although OCEA claims this would be consistent with statute, the reference to the revised code does not support OCEA's assertion.

Revised Code 4935.04 details the form and substance of what is required in an annual forecast report. The excerpt provided by the OCEA is taken from a provision which details what is to be provided in a month-to-month energy demand and peak load forecast. This is a very different and specific provision of the law and is separate and apart from requiring an EDU to demonstrate cost effectiveness of its entire integrated resource plan over a twenty-year forecast horizon. In the context this docket, wherein we are all striving to attain clarity, consistency and good public policy, such misdirection is not helpful. A mandate to provide an integrated resource plan that provides cost justifications over a twenty-year period is beyond the wisdom of Karnak or any other divine source and simply not feasible.

III. Conclusion

DE-Ohio respectfully requests the Commission to deny the Applications for Rehearing as noted above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via ordinary mail or via electronic mail on the all Parties of Record this 27th day of May, 2009.

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Elizabeth H. Watts

Summary: Memorandum I am refiling this Memorandum contra to include the source document. electronically filed by Ms. Elizabeth H Watts on behalf of Duke Energy Ohio, Inc.