

**FILE**

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PAGE 1 OF 10 PAGES ALBERT E. LANE

May 1, 2010

RESIDENCE: 7200 FAIR OAKS DRIVE-CINCINNATI, OHIO 45237-2922

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**PUCO**

The Public Utilities Commission of Ohio (15 copies-via Fed Ex this date)  
Attention Docketing Division, Ms. Renee Jenkins  
180 East Broad Street  
13<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke ) Case No-09-757-EL-ESS  
Energy Ohio, Inc. for Approval of proposed ) Case No-09-1946-EL-ATA  
Reliability Standards ) Case No-09-1946-EL-RDR  
CASE NO-08-0709-EL-AIR  
Case No-05-0732-EL-MER

**SUBJECT SUMMARY**

Albert E. Lane reply memoranda to Duke Energy of Ohio contra memorandum.  
Motion to intervene in Case # 09-757-EL-ESS and Motion to appeal to intervene in Case  
# 09-1946-EL-RDR/ATA.still pending.

**REPLY MEMORANDA**

I, Albert E. Lane continue to motion that I become a rightful intervener in Case # 09-757-EL-ESS filed April 8 and corrected April 9<sup>th</sup> (optimum inserted), 2010; revised, re-filed and re-edited by me on April 23, 2010 with the five items required by Rule 4901-1-11 O.A.C., parenthesized, along with an accompanying service list should be acceptable by the PUCO Attorney Examiners. Enclosed and attached to this memoranda is a copy of the Legal Notice by the PUCO on page A3 of the April 6, 2010 *Cincinnati Enquirer* for proposed reliability standards for DEO electric distribution system hearing to be held by PUCO May 4, 2010. It says any person seeking to participate shall file a motion to intervene with the PUCO by April 12, 2010. The ad does not say to include a service list with any persons filing. It does not say that any individual should seek the OCC to represent that individual on determining Smart Meter, grid system reliability standards. (4901-1-11(5) O.A.C. Page 2 & 3 of my April 23, 2010 re-filing.) The within shown Legal Notice's omissions caused me extraordinary circumstances and I was unable to comply with (4901-1-15 (A)(2) ). As stated in this reply memoranda, there was no Legal notice for PUCO Case No. 09.1946-EL-RDR which is parallel and part of my motion, as it represents a significant part of DEO cumulative activity discussed herein. I have verified that there was no Legal advertising with the PUCO Attorney Staff. I consider this filing also an appeal to the PUCO Attorney Examiners who denied me the right to partake in PUCO Case # 09-1946-EL-RDR/ATA to now allow same for reasons stated.

Albert E. Lane's statement to the PUCO Attorney Examiners in Case No-09-757-EL-ESS is that all of my previous filed comments and filings in the above PUCO Cases are pertinent/cumulative/necessary and active in order to substantiate and prove the validity of my statements in this motion and appeal motion to become an intervener in case No. 09-1946-EL-RDR/ATA. Please refer to all of the official PUCO Case Records of 05-0732-EL-MER; Case No. 08-0709-EL-AIR; Case No. 09-1946-EL-ATA/RDR for the

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*chronology index and contents of my previous filings, some of which are re-stated in this memoranda.* (4901-1-11 (1) O.A.C/ of page 2 of my April 23, 2010 filing.) I desire to be an intervener in order for me/ my possible future volunteer counsel to prove to the PUCO/Courts to decide that DEO should not have residential electric smart meters and its grid system with minimum reliability standards set by DEO. I previously stated in my motion that optimum reliability standards beneficial to the consumers and approved by the OCC (the OCC would have a new group of professional scientists on call who would set these reliability standards for review and approval of the PUCO) would be the new Standards, secondary to the human factor, to be approved by the PUCO. (See: Pilot controlled Hudson River landing bottom of page three this filing) This after an Ohio PUCO Geographic combined DEO inquiry/hearings take place concerning DEO cumulative past performance history in Ohio from 2005 to 2010. I singularly or a majority of the 650,000 DEO customers may not want Smart Meters at all, along with its accompanying new Reliability Standards.

It appears in my opinion that DNC was allowed to merge with Cinergy and create DEO without due process by the entire State of Ohio Government system, which now must be determined by the Courts.

I question if DEO is now an Ohio autonomous Company (Service, Safety and Reliability Performance) as commented and discussed in the 2005-6 Cinergy/Duke Energy of NC merger comment 2005-6 time frame. More on the previous and this paragraph later in this memoranda.

Albert E. Lane's direct request/statement to the PUCO Attorney Examiners to also understand in considering my request to be an intervenor in PUCO Case No. 09-757-EL-ESS is the following: In reading the PUCO Attorney Examiner entry of April 20, 2010 the Attorney Examiner stated in (3) that I did not serve a copy of my motion to intervene to the parties in this case Chapter rule 4901-1-11, O.A.C. In (4)-(5)-(6) of the same entry, it is stated by the Attorney Examiner that DEO failed to request an expedited ruling, Chapter rule 4901-1-12 O.A.C. and Rule 4901-1-12 (B) (1) O.A.C. In reference to the 4/20/2010 entry did not Albert E. Lane and DEO both make legal mistakes? Thus hasn't the Attorney Examiner by changing the dates opened up a new legal agenda in this case for both Lane and DEO, not DEO alone? Since I believe I should be included as an intervener, then wouldn't DEO be required to ask me to be involved in any settlement meetings which DEO would have to start over after the public inquiry and hearings.? The present time line sequence and the Duke Energy of Ohio agenda in this Case No. 09-757-EL-ESS is not appropriate for me and the other 650,000 DEO customers.

In this individual memoranda reply to DEO contra filing of 4/26/2010 I hereby totally refute # 5 on page 5 of said filing whereby DEO, my opposition is telling me that the OCC can adequately represent me. My suggestion to DEO is that they read the Constitution of the United States, adopted 9/17/1787 and its Bill of Rights in force since December 1791. Further the Declaration of Independence, July 4, 1776 says " all men...are created equal..with certain unalienable rights."

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The PUCO process of reviewing DEO Smart Meter and its grid system minimum Reliability Standards request vs my position of optimum standards beneficial to DEO customers approved by the OCC which shall in any event be secondary to the human factor in making a decision in this precedent case require the PUCO Attorney Examiners to respect my U.S. citizen individual DEO customer right of freedom of speech, privacy and assembly. It may be that after the hearings or because of legal concerns the smart meter and its Reliability Standards requirement should be required to be abandoned by DEO. The right of people to be secure (privacy) in their houses must be totally retained as it relates to smart meters. REASON: The U.S. Constitution and the Bill of Rights. (4901-1-11 (3). O. A. C. Page 4 of my April 23, 2010 filing).

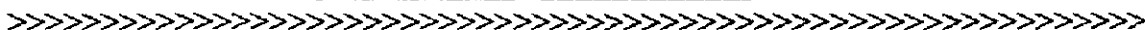
I, Albert E. Lane an Ohio individual Duke Energy of Ohio (DEO) residential electric customer consumer (account # 7170-0391-20-0) response memoranda to DEO contra memorandum filing on PUCO Docket Case #-09-757-EL-ESS dated April 26 & 27, 2010 is in this entire memoranda. I am not an attorney. Request is hereby made to PUCO Attorney Examiners to accept this memoranda filing and reactivate and open all of my other filings/comments within all of the PUCO Cases recited on page one and two of this filing, including the reopening of Case No-05-0732-EL-MER, (the 2005 merger of Cinergy and Duke Energy of North Carolina). (Under 4901-1-11 (3)-Page 4 & 5 of my April 23, 2010 filing), O.A.C. It more likely will take a great deal of time and appeal (with appropriate volunteer counsel) to prove in the Courts that Federal documents furnished by me to the PUCO concerning Duke Energy of North Carolina past pattern of Federal behavior were overlooked by the Ohio PUCO Commission and its staff, PUCO Attorney Examiners and OCC before and during the 2005-06 merger and comment appeal time frame. It is my opinion that this evidence was legitimate legal reasons for all of these aforementioned Ohio entities or administrators/employees to deny or request to deny the merger of Cinergy and Duke Energy of North Carolina to form DEO. It is my opinion that the 650,000 former Ohio Cinergy electric customers of which I am one were not fairly represented at that time based on the public Federal documents I had submitted on the PUCO Case Dockets referred to in this filing concerning Duke Energy of NC, the parent of DEO.

On March 26, 2007 I came to my own conclusion that **DEO was reacting (their press releases seem to indicate this) to what might be their neglecting overhead electric distribution problems for their 650,000 Ohio residential customers, by implying that Ohio had unusual ice and wind storms, rather than their doing preventative maintenance and replacement beforehand**. This would include but not be limited to DEO public consumer communication concerning, poles, wires, tree trimming, wind, ice, snow, transformers, turbines, turbine inspection, no. of in-house employees vs "on Call" employees, an implication that DEO is not an autonomous public utility entity in Ohio etc. A PUCO public inquiry should clarify these DEO vs Consumer concerns before Case No. 757.EL-ESS is attempted to be implemented with new Reliability Standards for Smart electric meters and its grid system and what priority the mechanical "so called" smart system may have to human control? A classic example is the recent soft airplane human pilot landing in the Hudson River which saved many lives vs that airplane's mechanical controls flying the airplane into what certainly would have been a crash. (4901-1-11 (2). O.A.C. 4/23/10).

The smart electric meters must not be potentially used by any electric utility as an excuse for preventive electric distribution system maintenance when a trained human mind would have determined maintenance was required beforehand.

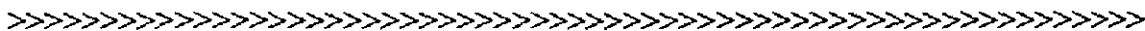
The question arises as to whether or not DEO is an Ohio autonomous public electric utility as assumed in the 2005 DENC-Cinergy merger by PUCO and OCC and others comments. In other words,-Service, Safety and Reliability performance in Ohio. I sent an e-mail to the OCC about this on April 15, 2010. The following is my e-mail to OCC and the quoted e-mail re-sponse I received from Mr. Charles Repuzynsky Director of Operations OCC on 4/18/10.

Text of my 4/15/2010e-mail to OCC administrators Mr. Reese, Mr Small, Mr. Serio.



On March 26,2007 I came to my own conclusion that DEO was reacting (their press releases seem to indicate this) to what might be their neglecting overhead electric distribution problems for their 650,000 Ohio residential customers, by implying that Ohio had unusual ice and wind storms, rather than their doing preventative maintenance and replacement beforehand. This would include their public consumer communication concening, poles, wires, tree trimming, wind, ice, snow, transformers, turbines, turbine inspection, no. of in-house employees vs "on Call employees, an implication that DEO is not an autonomous public utility entity in Ohio etc. A PUCO pubic inquiry should clarify these DEO vs Consumer concerns.

underline and bold added by A.E. Lane for this motion filing.



Did you know that the OHIO Primary is May 4, 2010? Same date as hearing on Reliability Standards in Columbus and the release of DENC Quarterly Financial statement.



Did you know that Duke of NC signed a 15 year lease in Charlotte NC of the former Wachovia Bldg to be known as Duke Energy center? How much of their Cincinnati and other Ohio office space etc has DEO given up? These and other backdated questions that I have written and asked, in my opinion, must be answered by DEO.





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I again repeated my request for a formal inquiry of DEO "Ike" windstorm service, safety and reliability performance on page 2 of PUCO Docket # \*09-1946-EL-ATA/RDR. This is the pending Case Docket whereby DEO is asking for \$31Mil for the "Ike" windstorm.

The public customer inquiry of DEO Service, Safety and Reliability performance during the 2/13/07 ice storm and the 9/14/08 windstorm must take place before DEO receives approval of any of their requested Smart Meter Reliability Standards from PUCO. I have questioned this in my motion 09-757-EL-ESS. If the new DEO Reliability Standards are approved on behalf of DEO as submitted within PUCO Case # 09-757-EL-ESS, DEO will be able to blame any inadequacy to the mechanical Smart System, thus eradicating the need for the PUCO for a human consumer prospective. A public inquiry would surely show all of these previous consumer DEO Service, Safety and Reliability consumer electric distribution problems so that they may be resolved and corrected according to present Ohio Rules and Laws by the PUCO. Public human, PUCO human Inquiries and their facts must always hold priority to the so-called potential smart system Reliability Standards in any PUCO Utility case, if Smart Systms Reliability Standards are approved as law. (DEO wants minimum Smart meter standards set by them) (I want optimum Reliability standards set by the OCC, if there is to be any standards what so ever in this precedent case.

Within PUCO Docket # 05-0732-EL-MER on March 26, 2007 I filed a comment about DEO service during the Feb 6<sup>th</sup>-7<sup>th</sup> 2007 Ohio Ice Storm when I did not have electric for two days. I asked if DEO service, safety and reliability performance were being monitored as Commissioner Alan R. Schriber said that the PUCO would vigilantly do from then on, (after Dec 21, 2005 when the PUCO approved of the Cinergy-Duke NC merger). 122,000 DEO did not have electric service during that ice storm. I also referred to within the March 26, 2007 filing, a copy I had submitted of a 45 page report of a S. Carolina electric staff inquiry of DNC Service during a 2005 ice storm. On Page I to III, there were 22 sugestions recommendations for DNC to enhance their storm management activities. I asked in the filing for a PUCO formal inquiry of DEO using the 45 page S. C. report as a prototype/guide. (4901-1-11 (4) O.A.C. Page 4 of my April 23, 2010 filing). I repeated a request for an inquiry of DEO using the S. Carolina 45 page prototype in my comment (I later was appointed to be an intervener in this case) of Dec 31, 2008 within PUCO docket No. 08-0709-EL-Air)

I had filed comments with the PUCO, and was against the merger of Cinergy and DNC because of DNC subsidiary's past pattern of behavior in the U.S. Western States in the wholesale selling of Megawatts. DNC subsidiary trader Brian Lavielle pleaded guilty in

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a U.S. Texas District Court for round trip, wash deals and keeping two sets of books 1997 to 2001 for which DNC paid the FERC an aggregate amount of \$211,000,000 in three settlements in the fall of 2004. DNC signed a consent decree with the SEC on July 8, 2005 while PUCO was hearing the merger comments. reference: 7/26/2005-Page 3 thru 5 from PUCO Docket Case #-05-0732-EL-MER attached. I stated that the merger of DNC, and Cinergy was not in the public's interest on page 1, 7/26/2005. Why didn't the OCC, PUCO Commissioners, PUCO staff and the PUCO Attorney Examiners delve into these fresh happenings in 2005? Don't U.S. District Federal Courts, A U.S. SEC CONSENT DECREE and FERC MONETARY SETTLEMENTS all about DUKE Energy of N.C. have some CREDIBILITY in Ohio when Administrators are reviewing an application to do business thru a proposed subsidiary public utility for citizens protection.? The PUCO did not allow Discovery in this case.(4901-1-11(3) O.A.C. Page 4-5 of my 4/23/2010 filing)

I found out after the ice storm of Feb 2007, that DEO by attrition had lowered since 1995 its combined overhead electric distribution employees in their Ohio and Kentucky franchised areas from 1900 to about 1100 workers. Source IBEW. I also started seeing roving bands of out of town 'ON CALL' overhead electric repair crews in Ohio, such as Shaw, McGilbert, Pike & Bowlin. I wondered where were the DEO own electric overhead electric distribution in-house workers. 4901-1-11 (4) O.A.C Page 5 of my April 23, 2010 filing.) I wondered how DEO a supposed Ohio autonomous Public Utility Company could practice Service, Safety and Reliability performance as Chairman Alan Schriber stated on Dec 21, 2005 in an official PUCO press release!

During the "Ike" windstorm, starting September 14 2008 I did not have electricity at my residence for 5 days. DEO had filed for a 4.73% electric distribution rate hike on PUCO docket # 08-9709-EL-AIR on 6/25/2008. On that same docket on Dec 22, 2008, DEO asked for \$31 mil storm restoration cost refund for their costs for the "Ike" windstorm. On Dec 31, 2008 on docket # 08-9709-EL-AIR, are my first comments of my many later comments as an intervener on the same Case Record 08-0709-EL-AIR, about the Duke Energy of Ohio "Ike" windstorm service, safety and reliability performance.

In a February 23, 2010 filing (33 pages), with the PUCO (exhibit # 6) on PUCO Docket # 09-1946\*EL-ATA/RDR, the Ohio Office of Consumer Counsel comments and refers to con petitions within that new Duke Energy of Ohio windstorm money request to Shirley Hayes and her 1,399 signature petitions in a footnote on Page 15.

I Albert E. Lane, an intervener in the original "Ike" windstorm PUCO Case Record 08-0709-EL-AIR, have been ignored and by passed by Duke Energy of Ohio legal Maneuverings (ploy) in its/their new filing for "Ike" windstorm \$31 mil in the new PUCO Case # \*09-1946-EL-ATA/RDR. I filed my motion in that case (the 2<sup>nd</sup> "Ike" case) to intervene late as the deadline wasn't printed in the press publicly. I was denied being an intervener in this case because the Attorney Examiners stated I did not file in accordance with 4901-1-11 (A)(1), O.A.C and I did not comply with Rule 4901-1-11 (A) (2) O.A.C. I did receive on April 28, 2010 in the mail a service copy

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invitation from the OCC to appear on the 14<sup>th</sup> of May 2010 by OCC's mistake as I was not a qualified intervener for the deposition in the 2<sup>nd</sup> "Ike" case #\*09-1946-EL-RDR emphasized by me with the use of an asterisk: Finally, one year and a half after the "Ike" windstorm, OCC is gathering public information if an OCC picked DEO "Ike" OCC asked witness customer wants to drive to Columbus and partake in deposition. There are 650,000 DEO customers for OCC to pick from.

The OCC Docket Case No 09-1946-EL-RDR says "Notice to take deposition upon oral examination and request for production of documents. " OCC has never called me since 2005 on any of my DNC and DEO Docket Case writings including the \$31mil., all of which they have legally received. I have never been thanked by them for any of my comments. I want a Geographic inquiry of DEO service, safety and reliability performance since 2005 including the Ice Storm of 2007 and the "Ike" windstorm of 2008.

### CONCLUSION

I have responded to the DEO contra memoranda and requirements of the PUCO Attorney Examiners. The fact remains that due process in Ohio will be skipped in this precedent case if Smart Electric monitoring Meters and their grid system with DEO requested minimum standards are installed within DEO 650,000 electric customers without geographic inquiry/hearings of DEO between 2005-2010 included. I want optimum Reliability Standards set by the OCC beneficial, to DEO customers, if there is to be any standards what so-ever in this precedent case or if Smart Meters are to be used at all.


Albert E. Lane's statement to the PUCO Attorney Examiners in Case No-09-757-EL-ESS is that all of my previous filed comments and filings in Case No-05-0732-EL-MER which must be re-opened; CASE NO-08-0709-EL-AIR; \*Case No-09-1946-EL-RDR; Case No-09-1946-EL-ATA are pertinent/cumulative and active. The accumulative past pattern of business activities behavior of DEO and its parent DENC must be considered when approving of Smart Meters.

The smart electric meters must not be potentially used by any electric utility as an excuse for preventive electric distribution system maintenance when a trained human mind would have determined maintenance was required earlier and beforehand.

Myself and other DEO customers will be deprived of our rights if PUCO Case # 09-757-EL-ESS is passed in its present DEO format proposal.(4901-1-11 (2) O.A.C. Page 6 of my 4/23/ 2010 filing.)

These and the other reasons stated in this memoranda and my previous cumulative filings are why I wish to become an intervener in PUCO Case # 09-757-EL-ESS.

Encl: Copy of Cincinnati Enquirer PUCO legal notice April 6, 2010  
ENCL: SERVICE LIST  
cc: Cincinnati Enquirer

  
Albert E. Lane



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May 1, 2010

ALBERT E. LANE

RES: 7200 FAIR OAKS DRIVE-CINCINNATI, OHIO 5237-2922

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon all parties to this proceeding sent by U.S. mail this date: May 1, 2010, addressed as follows



DUKE ENERGY OHIO INC.  
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Shirely M. Hayes  
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COPY OF PUCO LEGAL NOTICE, (CASE NO. 09-757-EL-ESS) WITHIN  
CINCINNATI ENQUIRER, PAGE A 3 , APRIL 6, 2010.

THE ENQUIRER

TUESDAY, APRIL 6, 2010 A3

and considered least likely to engender significant Republican opposition.

The three high court prospects have different strengths and weaknesses. But even conservative activists say any of the three would likely win confirmation in a Senate in which Democrats control 59

Because so little time has passed since last year's selection and confirmation of Sotomayor, both the White House and its political opponents are going over well-worn ground in evaluating Kagan and Wood.

Obama interviewed both before settling on Sotomayor.

## **LEGAL NOTICE**

The Public Utilities Commission of Ohio (PUCO) has scheduled a hearing in Case No. 09-757-EL-ESS, *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of Proposed Reliability Standards*. The application was filed pursuant to Section 4928.11 of the Ohio Revised Code and Rule 4901.1-10-10 of the Ohio Administrative Code. Duke is seeking PUCO approval of its minimum performance standards for the reliability of its distribution system. The PUCO has scheduled a hearing to consider the matters raised in the company's application. The hearing will commence on May 4, 2010, at 10:00 a.m., at the offices of the PUCO, 180 E. Broad Street, 11<sup>th</sup> Floor, Hearing Room II-C, Columbus, Ohio. Any person seeking to participate in the hearing should file with the PUCO a motion to intervene by April 12, 2010.

Further information may be obtained by contacting The Public Utilities Commission of Ohio, 180 E. Broad Street, Columbus, Ohio 43215-3793; by calling the PUCO hotline at 1-800-686-7826; or by going to the PUCO website at [www.puco.ohio.gov](http://www.puco.ohio.gov), selecting DIS, and inserting the case number referenced above.