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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2010 )  
Long-Term Forecast Report of ) Case No. 10-503-EL-FOR  
Duke Energy Ohio, Inc. )

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**DUKE ENERGY OHIO, INC.'S  
MEMORANDUM CONTRA JOINT MOTION  
FOR LOCAL PUBLIC HEARINGS**

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Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) submits this memorandum contra the joint motion for local public hearings that was filed on August 17, 2010, by the Ohio Consumers' Counsel, the Environmental Law and Policy Center, the Natural Resources Defense Council, the Ohio Environmental Council, and The Sierra Club (collectively, Movants).

Duke Energy Ohio submitted its Long-Term Forecast Report and Resource Plan (LTFR) in this case on June 15, 2010. Movants assert that the Commission should schedule no less than two local public hearings in this matter to enhance "transparency." Movants request is outside the scope of the applicable statutes and the process already delineated by the Commission and is entirely unnecessary. For the reasons set forth below, the Commission should deny Movants' motion.

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### **Local Public Hearings**

After quoting the statutes that require the filing of an LTFR and statements of policy from the Strickland Administration, Movants argue that local public hearings are necessary in this matter to implement the principle of transparency and to allow consumers to express opinions directly to the Commission as part of the overall record in this case. In making such assertions, Movants overlook the law concerning public hearings and the process that has already been established in this matter.

No statute requires the holding of local public hearings in LTFR proceedings; nor does Commission precedent recognize any established history of doing so. The Movants cite Section 4901.12, Revised Code, which only states that proceedings and records of the Commission are public records. This, of course, is entirely unrelated to the question of whether or not to order local public hearings at this point in the proceeding. Equally perplexing is the Movants second citation to the law, this time to Section 4903.13, Revised Code. That section merely requires the Commission's hearings to be open to the public. A prohibition against closing the hearing room doors to the public is not illuminating with regard to whether local hearings are required.

It is noteworthy that the Movants do not cite any statute that requires the holding of local public hearings with regard to LTRFs. Chapter 4935. of the Revised Code addresses LTRFs and specifies that, once every five years and in certain other circumstances, the Commission shall hold a "public hearing." Section 4935.04(D)(3), Revised Code. A "public hearing" is not the same thing as a local hearing that is required under section 4903.083, Revised Code. Had the legislature intended local hearings, it would have phrased the requirement as it did in that section or merely referenced that section in Chapter 4935. As ordered in an entry issued by one of the Attorney Examiners assigned to this proceeding on August 12, 2010, the Company held a

technical conference to outline the substance of its application and to respond to any questions that any party might have raised.<sup>1</sup> This conference was attended by representatives from the Ohio Consumers' Counsel, the Commission Staff, and the National Resources Defense Council. Other parties had the opportunity to participate but did not do so. These parties represent various facets of the public interest in this case.

The Attorney Examiner's Entry also scheduled a hearing for September 13, 2010, wherein members of the public may address the Commission with any concerns relevant to this case.<sup>2</sup> Duke Energy Ohio is happy to hear the concerns of its customers and welcomes their presence at the hearing on September 13. What Duke Energy Ohio cannot support, is a requirement that it spent additional ratepayer funds on the holding of additional hearings that the Commission has not found to be necessary and that are not required on the laws adopted by the Legislature. Under the schedule issued in this proceeding, the public will have ample opportunity to be heard.

In addition, in light of the fact that the Attorney Examiner's Entry set the schedule for this proceeding, if the Movants disagreed with this schedule, should that disagreement not have been registered through the filing of an interlocutory appeal? The Commission should recognize that this motion is merely an attempt by the Movants to alter the established procedure, through a motion that fails to follow its administrative rules.

#### **List of Topics to be Addressed**

The Movants also ask that the Commission require the Company to publish notice of the proposed local hearings, together with a list of topics to be addressed. If the Commission should decide that local hearings must be held, it should not agree with this listing.

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<sup>1</sup> Entry, August 12, 2010.

<sup>2</sup> *Id.*

The Movants appear to be attempting to create a procedure analogous to one that would be required in a rate case under section 4909.18, Revised Code. There is no such requirement. Most circumstances in which local hearings are required by the Commission do not include detailed topic listings and the list proposed by the Movants would do nothing to improve the understanding of members of the public. Many of the proposed topics are issues that require the analysis of technical experts and are, therefore, not reasonable issues to ask the public to discuss in local hearings.

In addition, the Movants suggest that one of the topics for discussion should be whether customers should pay for the development of a nuclear project. The Movants, in this regard, misunderstand the critical point that Duke Energy Ohio has not asked for approval of such a project, nor is it seeking cost recovery in this docket. It is, therefore, not an appropriate subject for discussion.

### **Conclusion**

During the recent few weeks and continuing up to hearing, the parties have engaged and will continue to engage in extensive discovery work. The Company has received approximately 189 interrogatories and 107 requests for production of documents to date. In preparation for hearing, each party will have received all of the information necessary to examine the Company's application and to evaluate it appropriately. The Office of the Ohio Consumers' Counsel has employed two consultants to assist with this evaluation.

The Office of the Ohio Consumers' Counsel and indeed Movants collectively represent differing interests in this case, all of which reflect the public interest. The Movants' active participation in this matter serves the public interest and places the consumer on equal footing with the Company, as desired by the Governor.

Indeed, this hearing process itself is reflective of the Commission's overall compliance with the state policy cited by Movants; it does include active participation and transparency. Thus, the call for local public hearings in this matter is unnecessary and redundant. Moreover, convenience for the individual consumer should be balanced here with the fact that their interests are already zealously represented. To the extent that is not the case, if at all, then the Commission has already scheduled a forum to allow individual participation.

For these reasons, the Commission should deny the Movants request for additional public hearings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth H. Watts", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon all parties to this proceeding by electronic mail, this 23rd day of August, 2010, addressed as follows:

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