

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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**JOINT MOTION FOR PREHEARING CONFERENCE ON DISCOVERY
AND
JOINT MEMORANDUM CONTRA TO DUKE ENERGY OHIO'S MOTION TO
CONTINUE SCHEDULE FOR PROCEEDINGS
BY
NATURAL RESOURCES DEFENSE COUNCIL,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
ENVIRONMENTAL LAW AND POLICY CENTER,
AND
THE SIERRA CLUB**

The Natural Resources Defense Council, Office of the Ohio Consumers' Counsel ("OCC"), the Environmental Law and Policy Center, and the Sierra Club (collectively "Joint Movants"), pursuant to Ohio Adm. Code 4901-1-12(A) and 4901-1-26(A)(1), move the Public Utilities Commission of Ohio ("PUCO" or "Commission") for a prehearing conference for the purpose of resolving outstanding discovery matters that have arisen regarding requests submitted to Duke Energy Ohio ("Duke" or the "Company") for information in this case. The reasons supporting this Joint Motion for Prehearing Conference on Discovery ("Motion") are set forth in the attached Memorandum in Support.


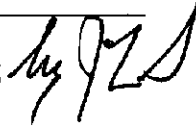
Reasons supporting an approximately three-month extension and continuance in the proceeding -- but not the indefinite suspension requested by Duke in its Motion to Continue

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Schedule for Proceedings ("Duke's Motion") filed on October 7, 2010¹ -- are also provided in the instant pleading.²

Respectfully submitted,

NATURAL RESOURCES DEFENSE COUNCIL AND
SIERRA CLUB


Shannon Fisk
2 N. Riverside Plaza, Suite 2205 
Chicago, IL 60606
(312) 651-7904 (Telephone)
sfisk@nrdc.org

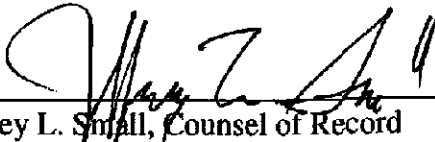
and


Henry W. Eckhart, Counsel of Record 
50 West Broad Street, Suite 2117
Columbus, OH 43215
(614) 461-0984 (Telephone)
(614) 221-7401 (Facsimile)
henryeckhart@aol.com
Natural Resources Defense Council and Sierra Club

¹ Duke's Motion at 4.

² Duke's Motion was electronically served upon parties on October 8, 2010 (the day after the filing, in violation of Ohio Adm. Code 4901-1-05(A)). Attachment 1. According to Ohio Adm. Code 4901-1-12(C), the due date for a responsive pleading to a motion that contains a request for expedited treatment is "seven days after the *service* of the motion." Emphasis added. The PUCO's Entry dated August 12, 2010 also provides seven days for the submission of a memoranda contra. Therefore, the due date is October 15, 2010.


JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL




Jeffrey L. Small, Counsel of Record
Ann M. Hotz

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
(614) 466-9475 (Facsimile)
small@occ.state.oh.us
hotz@occ.state.oh.us

ENVIRONMENTAL LAW & POLICY CENTER



Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
(312) 673-6500 (Telephone)
rkelter@elpc.org 

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Company has failed to timely comply with its discovery responsibilities in this proceeding. Joint Movants require additional time to prepare for this case, but the Commission should also schedule a prehearing conference to unravel multiple discovery disputes as well as any confusion regarding the usefulness of discovery responses in the wake of the revised Long-Term Forecast Report ("LTFR") filed by Duke on October 7. Joint Movants require time to review the revised LTFR and conduct additional discovery on the revised filing.

Joint Movants herein address the above-mentioned discovery problems and also respond to Duke's Motion. In Duke's Motion, the Company seeks a continuance until an unspecified date in "early 2011" due to the Company's plan to submit a Standard Service Offer ("SSO") filing by the end of 2010, which Duke contends will "significantly impact the consideration of issues in the Long-Term Forecast and Resource Plan" that is the

subject of this proceeding.³ This assertion is difficult to address without further elaboration by the Company, and does not provide just cause for an indefinite suspension of the procedural schedule. Joint Movants confront the more definite (but false) assertion contained in Duke's Motion that Joint Movants' interests are largely limited to the possibility that Duke will pursue construction of a nuclear power plant.⁴ Joint Movants also confront Duke's assertion that it is a "misconception" that a significant risk exists regarding the Company's non-compliance with applicable energy efficiency standards as revealed in Duke's LTFR.⁵

II. ARGUMENT

A. A Limited Continuance Should be Granted and a Discovery Conference Should be Scheduled due to Duke's Continued Failure to Timely Respond to Discovery.

An extension and continuance should be granted because Duke has failed to timely respond to discovery requests submitted by NRDC, Sierra Club, and OCC. The new schedule should extend by approximately three months the procedural dates stated in the PUCO's Entry dated August 12, 2010.⁶ The Commission's rules are intended "to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings" and

³ Duke's Motion at 4.

⁴ Id. at 2-3.

⁵ Duke's Motion at 3.

⁶ Entry at 1-2, ¶(4)(b)-(d). Duke has filed a revised LTFR, as further discussed in the next section. The three month extension also considers the expected availability of expert witnesses, especially in connection with the December holiday season.

authorize any party to “obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.”⁷ As the Ohio Supreme Court has explained, the Commission’s discovery rules are supposed to aid “full,” “broad,” and “reasonable” discovery.⁸

The Commission’s rules also provide alternatives to deal with discovery problems. Ohio Adm. Code 4901-1-26(A)(1), provides:

[A]n attorney examiner may, upon motion of any party or upon their own motion, hold one or more prehearing conferences for the purpose of:

- (1) Resolving outstanding discovery matters, including:
 - (a) Ruling on pending motions to compel discovery or motions for protective orders.
 - (b) Establishing a schedule for the completion of discovery.

A prehearing conference should be ordered for the purpose of resolving outstanding discovery matters that have arisen regarding requests submitted to Duke. Motions to compel have not yet been submitted, but may exist by the time of the prehearing if Duke fails to make a better effort to respond to discovery. In light of Duke’s continued intransigence in responding to discovery, full, broad, and reasonable discovery will not occur unless a continuance is granted and a discovery conference is scheduled.

Joint Movants have experienced multiple problems in obtaining full and timely responses to discovery requests. For example, NRDC and Sierra Club jointly submitted twenty-eight interrogatories and fifty-seven requests for production of documents

⁷ Ohio Adm. Code 4901-1-16(A), (B).

⁸ *Ohio Consumers’ Counsel v. Public Utilities Comm’n*, 111 Ohio St.3d 300, 320 (2006); R.C. 4903.082.

("RFPs") to Duke on August 6, 2010. Despite Commission rules requiring responses to discovery within twenty days,⁹ the Company failed to timely respond to NRDC and Sierra Club's requests. On September 2, 2010, counsel for NRDC and Sierra Club sent an e-mail to counsel for Duke requesting a date certain by which responses to their discovery would be provided.¹⁰ During a September 9, 2010 telephone call, Duke's counsel informed NRDC and Sierra Club that Duke would produce approximately ninety percent of its response on Friday, September 10, and produce the rest early the next week.¹¹

On September 10, 2010, Duke produced to NRDC and Sierra Club responses to only twenty-three interrogatories and twenty-six RFPs. On September 16, 2010, counsel for NRDC and Sierra Club sent an e-mail to counsel for Duke noting that additional responses had still not been provided, seeking clarification of two responses that had been provided, and informing Duke that NRDC and Sierra Club would file a motion to compel and/or to extend the date for filing testimony and for the hearing if Duke did not produce a complete response by September 20, 2010.¹² Later that day, NRDC and Sierra Club received Duke's response to one more interrogatory and seventeen more RFPs.

Duke's counsel also informed counsel for NRDC and Sierra Club that Duke might seek to slow down the proceeding due to its upcoming SSO filing.¹³ On September 21,

⁹ Ohio Adm. Code 4901-1-19(A) and 4901-1-20(C).

¹⁰ Attachment 2.

¹¹ The conversation was memorialized in an e-mail transmitted to Duke's counsel. Attachment 3.

¹² Attachment 4.

¹³ Attachment 5.

2010, Duke's counsel informed NRDC and Sierra Club's counsel that the Company would "definitely file a motion to seek an extension" of the case schedule.¹⁴ That explanation was apparently transmitted as a substitute for providing a full response to discovery. Based on that representation, NRDC and Sierra Club decided to hold off on submitting a motion to compel or to continue the case schedule at that time.

On October 1, Duke sent NRDC and Sierra Club additional responses to their first set of discovery. The Company, however, still owes NRDC and Sierra Club responses to one interrogatory and seven RFPs. Given that NRDC and Sierra Club have not received a complete response to their first set of discovery more than two months after Duke was served, a continuance is necessary so that they have a reasonable opportunity to obtain responses to all discovery, including additional discovery necessitated by Duke's filing of a revised LTFR. The history of discovery problems also supports use of the additional time to schedule and conduct a discovery conference at which Duke's counsel and technical experts are available to deal with discovery disputes.

The OCC has also experienced slowed and incomplete discovery responses, especially as Duke contemplated a revised filing. For example, OCC counsel contacted Duke on September 14, 2010 regarding the Company's failure to completely respond to an initial set of discovery and other problems related to discovery.¹⁵ OCC counsel offered to have technical personnel discuss the discovery dispute related to OCC's initial

¹⁴ Attachment 6.

¹⁵ Attachment 7.

set of discovery.¹⁶ Although Duke appeared to agree to this approach, Duke's counsel has never responded with contact information for its technical personnel. Furthermore, Duke's counsel located OCC's fourth set of discovery in an e-mail that had not been communicated to the Duke personnel assigned to respond to discovery.¹⁷ Duke seems to have slowed or stopped responding to discovery as it decided to amend its LTFR and move for a continuance.

Additional time is required to schedule and conduct a discovery conference at which Duke's counsel and technical experts should be made available to deal with discovery disputes.

B. The Indefinite Suspension of the Case Proposed by Duke is Not Justified, But a Limited Continuance Should Be Granted To Provide Joint Movants Adequate Time to Review and Conduct Discovery on Duke's Revised LTFR.

Duke seeks further delay in connection with "fil[ing] its next SSO [i.e. Standard Service Offer," but this delay does not meet the standard to justify an indefinite suspension of the procedural schedule.¹⁸ The standard is stated in Ohio Adm. Code 4901-1-13(A), which provides that continuances "may be granted upon motion of any party for good cause shown. . . ." Duke fails to recognize that cases involving long-term forecast reports and SSOs are distinct proceedings, governed by distinct provisions within the

¹⁶ Id.

¹⁷ Attachment 8.

¹⁸ Duke's Motion at 4.

Ohio Revised Code¹⁹ and the Ohio Administrative Code. In doing so, the Company essentially seeks the consolidation of the instant case with that of a case that is neither filed nor described in Duke's Motion. Duke's only argument is that waiting until some undefined time for a future Duke filing "makes good regulatory and public policy sense."²⁰ Duke leaves the reader uninformed regarding the meaning of its claim about regulatory and policy sense, and entirely fails to recognize the distinctness between the two types of proceedings.

While Duke's proposed suspension of the case should be denied, good cause exists under Ohio Adm. Code 4901-1-13 to grant a more limited extension and continuance than that sought by the Company. An additional burden is placed on Joint Movants' ability to prepare their cases as the result of Duke's revision of its LTFR. The revised LTFR was filed on October 7, 2010, only three weeks before testimony is due from Joint Movants under the existing procedural schedule. Duke's revised LTFR sets forth additional and revised information regarding Duke's energy demand projections and proposed resource plan for meeting that demand.

Additional time is necessary to conduct a discovery conference (provided for under Ohio Adm. Code 4901-1-26(A)(1)) and to permit Joint Movants additional time to conduct discovery on Duke's revised plan. The revision raises problems regarding whether Duke's responses to discovery requests still apply now that a revised LTFR has

¹⁹ The governing statute regarding long-term forecast reports is R.C. 4935.04, while the governing statutes regarding SSO rates are R.C. 4928.141, *et seq.* The pertinent rules governing long-term forecast reports are located in Ohio Adm. Code 4901:5-1, while the pertinent rules governing applications to set SSO rates are located in Ohio Adm. Code 4901:1-35.

²⁰ Duke's Motion at 4.

been submitted. Duke has essentially submitted a new long-term forecast report. Good cause therefore exists for a three-month extension and continuance regarding the procedural dates stated in paragraph (4) in PUCO's Entry dated August 12, 2010. The length of the continuance should not be tied, as Duke proposes, to any expected arrival date of a new Duke filing to set SSO rates.

The limited continuance proposed by Joint Movants, which should permit (among other matters) a promptly held discovery conference, is necessary to ensure that Joint Movants have adequate time to review the revised LTFR, conduct necessary discovery on those revisions, and to prepare expert testimony.

C. Duke's Motion Mischaracterizes and Over-Simplifies the Positions of Joint Movants.

The discovery tasks undertaken by Joint Movants are extensive in scope, and must be addressed by additional time and at a discovery conference. Duke over-simplifies Joint Movants' interests, stating that Joint Movants' interests revolve primarily around the Company's potential efforts to seek rate recovery to construct a new nuclear power plant.²¹ While Joint Movants are concerned about that potential given the cost and rate impact that a nuclear plant would involve, this is far from the only issue in which Joint Movants are interested.

For example, as Movants NRDC and Sierra Club explained in their intervention motion:

²¹ Id. at 2.

This IRP process presents critical questions regarding what is Duke's most cost-effective and reasonable plan for meeting its customers' energy needs, implementation of Senate Bill 221, and the extent to which Duke will pursue energy efficiency, renewable resources, combined heat and power, and cost-effective low carbon generation sources, rather than dirtier, more expensive energy resources.²²

Joint Movants are interested in, intend to pursue discovery on, and are likely to present testimony regarding each of these issues. These issues are all relevant, for example, to ensuring that Duke's IRP satisfies the regulatory standard that Duke's reasonably projected energy needs are satisfied in a "cost effective and reasonable manner" that considers both "supply- and demand-side resources."²³

In addition, while Duke contends that concerns raised by Joint Movants and the public about the Company's energy efficiency efforts are based on a "misperception,"²⁴ those concerns are based on the contents of the LTFR. In particular, both the original LTFR and the revised LTFR raise the specter that the Company will conclude that it cannot comply with the energy efficiency standards set forth in Sub. Senate Bill 221 ("S.B. 221").²⁵ In two out of the four resource plans identified in the LTFR, Duke assumes that it will fail to meet the S.B. 221 energy efficiency standards.²⁶ By contrast, Joint Movants believe (and intend to offer testimony) that satisfying or even exceeding the efficiency standards set forth in S.B. 221 must be a core part of any cost effective and reasonable resource plan approved by the Commission.

²² NRDC and Sierra Club Motion to Intervene at 2 (July 27, 2010).

²³ Ohio Adm. Code 4901:5-5-01(L).

²⁴ Duke's Motion at 3.

²⁵ See, e.g., Revised LTFR at 187-88 (October 7, 2010).

²⁶ Original LTFR at 188 ("Economic Potential Energy Efficiency") and Revised LTFR at 190.


Joint Movants will demonstrate that Duke's non-compliance with the S.B. 221 energy efficiency standards is not based upon any "misperception." Joint Movants' inquiries are over-simplified by Duke, and the Commission should consider the wide scope of Joint Movants' interests in setting a revised procedural schedule.

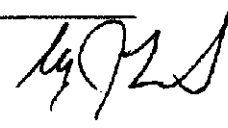
III. CONCLUSION

For the foregoing reasons, the Commission should grant the Joint Motion for Prehearing Conference. The Commission should deny Duke's request to suspend the schedule in this case until it proposes a new SSO, and instead should provide approximately three months of additional time for discovery, the preparation of testimony, and for the start of the hearing to deal with added complications that have arisen since the procedural schedule was first set.

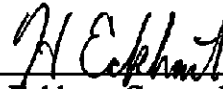
Respectfully submitted,

NATURAL RESOURCES DEFENSE COUNCIL
AND SIERRA CLUB


Shannon Fisk
2 N. Riverside Plaza, Suite 2205
Chicago, IL 60606
(312) 651-7904 (Telephone)
sfisk@nrdc.org



and



Henry W. Eckhart, Counsel of Record
50 West Broad Street, Suite 2117
Columbus, OH 43215
(614) 461-0984 (Telephone)
(614) 221-7401 (Facsimile)
henryeckhart@aol.com



Natural Resources Defense Council and
Sierra Club

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Jeffrey L. Small, Counsel of Record
Ann M. Hotz

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
(614) 466-9475 (Facsimile)
small@occ.state.oh.us
hotz@occ.state.oh.us

ENVIRONMENTAL LAW & POLICY
CENTER

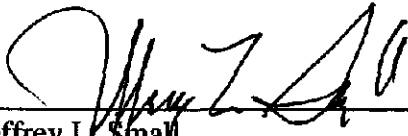


Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
(312) 673-6500 (Telephone)
rkelter@elpc.org



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Motion for Prehearing Conference on Discovery and Joint Memorandum Contra was served via electronic transmission to the persons listed below, on this 15th day of October, 2010.



Jeffrey L. Small

SERVICE LIST

Elizabeth A. Watts
Duke Energy Ohio, Inc.
139 East Fourth Street, 25 Atrium II
Cincinnati, OH 45202
elizabeth.watts@duke-energy.com

Thomas McNamee
William Wright
Attorney General's Office
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215
Thomas.mcnamee@puc.state.oh.us
William.wright@puc.state.oh.us

Terrence N. O'Donnell
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215-4891
dodonnell@bricker.com

Terrence N. O'Donnell
Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third St.
Columbus, OH 43215-4891
dodonnell@bricker.com

Attorney for the Solar Alliance

**Attorneys for Mid-Atlantic
Renewable Energy Coalition**

Will Reisinger
Nolan Moser
Trent A. Dougherty
Megan De Lisi
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
will@theoec.org
nolan@theoec.org
trent@theoec.org
megan@theoec.org

**Attorneys for the Ohio Environmental
Council**

From: "Cochern, Carys S" <Carys.Cochern@duke-energy.com>
To:
CC: "Watts, Elizabeth H" <Elizabeth.Watts@duke-energy.com>
Date: 10/8/2010 5:02 PM
Subject: Duke Energy LTFR filings for 10/7/10
Attachments: PUCO_10503ELFOR_ProtectiveOrder_100710.pdf; PUCO_10503ELFOR_AmendedLTFRcover_100710.pdf; PUCO_10503ELFOR_Motion_to_continue_100710.pdf

Thank You.

Carys Cochern
Duke Energy
155 East Broad St
21st Floor
Columbus, OH. 43215
614-222-1330 phone
614-222-1337 fax

Have an awesome day!

Fisk, Shannon

From: Fisk, Shannon
Sent: Thursday, September 02, 2010 11:34 AM
To: Elizabeth.Watts@duke-energy.com
Cc: henryeckhart@aol.com
Subject: RE: NRDC Duke discovery

Ms. Watts,

I am writing to request a date certain by which Duke intends to respond to NRDC's first set of discovery in case No. 10-503-EL-FOR, which was served on you via e-mail on August 6, 2010. The Ohio PUC's regulations require a response to discovery requests within 20 days, O.A.C. 4901-1-19(A), 4901-1-20(C), which would have been by August 26. To date, we have yet to receive a response from Duke, outside of your e-mail reply to our inquiry yesterday that you are "responding to discovery as soon as we possibly can."

As you know, under the current case schedule there is a relatively short period of time remaining for the parties to prepare their cases, with NRDC's expert reports due in just over eight weeks, and the hearing scheduled for just a few weeks after that. In order to ensure that we have adequate time to prepare our case and to engage in any additional discovery that may be necessary, we request that Duke comply with its discovery obligations as expeditiously as possible, and to identify the date on which we can expect a response.

Thank you for your prompt attention to this matter. Please let me know if you would like to discuss further.

Shannon

Shannon Fisk
 Senior Attorney
 Natural Resources Defense Council
 2 N. Riverside Plaza, Suite 2250
 Chicago, IL 60606
 (312) 651-7904

From: henryeckhart@aol.com [<mailto:henryeckhart@aol.com>]
Sent: Friday, August 06, 2010 2:36 PM
To: Elizabeth.Watts@duke-energy.com; small@occ.oh.us; MHeintz@elpc.org; rkelter@elpc.org; william.wright@puc.state.oh.us; will@theoec.org
Cc: Fisk, Shannon
Subject: Fwd: NRDC Duke discovery

All: Please ignore the earlier e-mail which was supposed to be the NRDC Duke Discovery in No. 10-503-EL-FOR but somehow was in a different case. This should be the correct discovery. If it is not in No. 10-503-EL-FOR please let me know. I have sent a copy by US mail so you can make sure you get the right discovery. Sorry about the confusion.

Fisk, Shannon

From: Fisk, Shannon
Sent: Thursday, September 09, 2010 3:10 PM
To: Watts, Elizabeth H
Subject: RE: NRDC discovery

Thanks, Elizabeth.

Just to confirm our conversation a little while ago, it is my understanding that Duke intends to produce approximately 90% of its response to NRDC's first set of discovery requests in Ohio PUC case number 10-503 on Friday, September 10, with the remaining to be produced early next week. Please let me know if my understanding is incorrect.

Shannon

Shannon Fisk
Senior Attorney
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606
(312) 651-7904

From: Watts, Elizabeth H [<mailto:Elizabeth.Watts@duke-energy.com>]
Sent: Thursday, September 09, 2010 2:47 PM
To: Kuhnell, Dianne B
Cc: Fisk, Shannon
Subject: NRDC discovery

Dianne:

Shannon Fisk, (NRDC) would like to receive discovery responses electronically to the extent that is possible. Please send them to him via email when you are able to do so. Thanks.



Elizabeth H. Watts
Assistant General Counsel
Duke Energy Ohio
155 East Broad Street
21st Floor
Columbus, Ohio 43215
(614) 222-1330
(614) 202-2509 cell

please consider the environment before printing this email

Fisk, Shannon

From: Fisk, Shannon
Sent: Thursday, September 16, 2010 2:47 PM
To: Watts, Elizabeth H; Henry Eckhart
Cc: Kuhnell, Dianne B
Subject: RE: Discovery Responses

Elizabeth,

We are still waiting to receive at least the following responses to NRDC and Sierra Club's first set of discovery requests:

1. Responses to interrogatories 16, 21, 22, 23, and 26
2. Responses to requests for production of documents ("RFP") number 11, 13-18, 27, 31, 33, 36 through 57
3. The disk that accompanied the first filing of the application
4. Documents you produced in response to discovery requests sent by any other party in this proceeding, which we requested in our request for production of documents number 1. This includes, but is not limited to:
 - a. The CD of responses to Ohio Consumer's Counsel discovery
 - b. OEC-POD-01-001 Attachment
 - c. Responses to Staff DR 01-001 through 004 and 008

In addition, in response to RFP number 9, you stated that the responsive information will be provided "in an amended filing." When will such filing be submitted?

In response to RFP number 29, which requested "any assessment" of the potential for energy efficiency in Duke service territory that has been reviewed or created by Duke since 2007. In response, Duke directed us to Appendix C of Ohio PUC case number 09-199-EL-EEC, which contains one report. Is Duke contending that this is the only responsive document to RFP 29, or should we expect to receive additional documents in response?

Also, the only response provided to RFP number 34 is "N/A." Please explain what that response means. For example, is Duke claiming that there are no responsive documents, that the request is not relevant to the proceeding, or what?

NRDC and Sierra Club submitted their first set of discovery on August 6, 2010. Under the Ohio PUC rules, Duke's responses were due within 20 days, O.A.C. 4901-1-19(A), 4901-1-20(C), which was by August 26. During our Thursday, September 9 discussion, you promised to produce approximately 90% of Duke's response on Friday, September 10, and to produce the rest early this week. Instead, we received some written responses on Friday, September 10, and you presented our local counsel with some responsive documents on Monday, September 13. Based on the amount of discovery outstanding (as detailed above), these responses would appear to be far less than approximately 90% of the total, and we have yet to receive any additional responses from Duke. Meanwhile, our expert reports are due in just over six weeks, with the hearing scheduled shortly thereafter, which leaves NRDC and Sierra Club with little time to conduct any additional discovery that might be appropriate.

As such, if we do not receive all responses to the interrogatories and RFPs in NRDC and Sierra Club's August 6, 2010 first set of discovery by 10am Ohio time on Monday, September 20, 2010, we will be required to seek

assistance from the hearing examiners in the form of a motion for an extension of the expert report and hearing schedules and/or a motion to compel.

Please let me know if you have any questions or would like to discuss this matter further. Thanks,

Shannon

Shannon Fisk
Senior Attorney
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606
(312) 651-7904

From: Watts, Elizabeth H [<mailto:Elizabeth.Watts@duke-energy.com>]
Sent: Wednesday, September 15, 2010 10:33 AM
To: Fisk, Shannon; Henry Eckhart
Cc: Kuhnell, Dianne B
Subject: RE: Discovery Responses

There is more coming this week and I believe we owe you the disk that accompanied the first filing of the application and was confidential.

From: Fisk, Shannon [<mailto:sfisk@nrdc.org>]
Sent: Tuesday, September 14, 2010 12:32 PM
To: Watts, Elizabeth H; Henry Eckhart
Subject: RE: Discovery Responses

Elizabeth,

Is what you gave to Henry Duke's complete response to our first set of discovery requests, or is there still more coming this week?

Shannon

From: Watts, Elizabeth H [<mailto:Elizabeth.Watts@duke-energy.com>]
Sent: Monday, September 13, 2010 3:58 PM
To: Henry Eckhart
Cc: Fisk, Shannon; Ford, Ned - fuse
Subject: RE: Discovery Responses

We would not have sent the discovery to Shannon. We would hope you would be able to do so as we are really running as fast as we can right now.

From: Henry Eckhart [<mailto:henryeckhart@aol.com>]
Sent: Monday, September 13, 2010 3:27 PM
To: Watts, Elizabeth H
Cc: sfisk@nrdc.org; Ford, Ned - fuse
Subject: Discovery Responses

Elizabeth: I received the packet of discovery responses and the disc. Did you send the same rponses to Shannon in Chicago? Is this all of the repsonses or will there be more?

Fisk, Shannon

From: Watts, Elizabeth H [Elizabeth.Watts@duke-energy.com]
Sent: Thursday, September 16, 2010 3:08 PM
To: Fisk, Shannon; Henry Eckhart
Cc: Kuhnell, Dianne B
Subject: RE: Discovery Responses

Shannon:

We will push to get as much out to you as possible. The best I have to offer you is that we are working flat out to do this and have requests on multiple cases from multiple parties. We only have one paralegal and she just can't work any harder than she is already doing. We are coordinating and reviewing responses from many folks around the company both in Ohio and Charlotte. If you feel you need to file a motion to compel, it will simply slow us down that much more in responding.

Also, as the Company intends to make an SSO filing by the end of the year, it may be that we will need to slow this docket down to accommodate the interaction with that filing, in which case, there is no real urgency. Also, with the filing of an SSO, perhaps you can gain some comfort level that the company is not proposing a nuclear construction or any related cost recovery for the next three years.

We will get as much of the outstanding discovery out to you as soon as we possibly can. Thanks.



Elizabeth H. Watts
Assistant General Counsel
Duke Energy Ohio
155 East Broad Street
21st Floor
Columbus, Ohio 43215
(614) 222-1330
(614) 202-2509 cell

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From: Fisk, Shannon [mailto:sfisk@nrdc.org]
Sent: Thursday, September 16, 2010 3:47 PM
To: Watts, Elizabeth H; Henry Eckhart
Cc: Kuhnell, Dianne B
Subject: RE: Discovery Responses

Elizabeth,

We are still waiting to receive at least the following responses to NRDC and Sierra Club's first set of discovery requests:

1. Responses to interrogatories 16, 21, 22, 23, and 26
2. Responses to requests for production of documents ("RFP") number 11, 13-18, 27, 31, 33, 36 through 57
3. The disk that accompanied the first filing of the application
4. Documents you produced in response to discovery requests sent by any other party in this proceeding, which we requested in our request for production of documents number 1. This includes, but is not limited to:
 - a. The CD of responses to Ohio Consumer's Counsel discovery
 - b. OEC-POD-01-001 Attachment
 - c. Responses to Staff DR 01-001 through 004 and 008

In addition, in response to RFP number 9, you stated that the responsive information will be provided "in an amended filing." When will such filing be submitted?

In response to RFP number 29, which requested "any assessment" of the potential for energy efficiency in Duke service territory that has been reviewed or created by Duke since 2007. In response, Duke directed us to Appendix C of Ohio PUC case number 09-199-EL-EEC, which contains one report. Is Duke contending that this is the only responsive document to RFP 29, or should we expect to receive additional documents in response?

Also, the only response provided to RFP number 34 is "N/A." Please explain what that response means. For example, is Duke claiming that there are no responsive documents, that the request is not relevant to the proceeding, or what?

NRDC and Sierra Club submitted their first set of discovery on August 6, 2010. Under the Ohio PUC rules, Duke's responses were due within 20 days, O.A.C. 4901-1-19(A), 4901-1-20(C), which was by August 26. During our Thursday, September 9 discussion, you promised to produce approximately 90% of Duke's response on Friday, September 10, and to produce the rest early this week. Instead, we received some written responses on Friday, September 10, and you presented our local counsel with some responsive documents on Monday, September 13. Based on the amount of discovery outstanding (as detailed above), these responses would appear to be far less than approximately 90% of the total, and we have yet to receive any additional responses from Duke. Meanwhile, our expert reports are due in just over six weeks, with the hearing scheduled shortly thereafter, which leaves NRDC and Sierra Club with little time to conduct any additional discovery that might be appropriate.

As such, if we do not receive all responses to the interrogatories and RFPs in NRDC and Sierra Club's August 6, 2010 first set of discovery by 10am Ohio time on Monday, September 20, 2010, we will be required to seek assistance from the hearing examiners in the form of a motion for an extension of the expert report and hearing schedules and/or a motion to compel.

Please let me know if you have any questions or would like to discuss this matter further. Thanks,

Shannon

Shannon Fisk
Senior Attorney
Natural Resources Defense Council

2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606
(312) 651-7904

From: Watts, Elizabeth H [mailto:Elizabeth.Watts@duke-energy.com]
Sent: Wednesday, September 15, 2010 10:33 AM
To: Fisk, Shannon; Henry Eckhart
Cc: Kuhnell, Dianne B
Subject: RE: Discovery Responses

There is more coming this week and I believe we owe you the disk that accompanied the first filing of the application and was confidential.

From: Fisk, Shannon [mailto:sfisk@nrdc.org]
Sent: Tuesday, September 14, 2010 12:32 PM
To: Watts, Elizabeth H; Henry Eckhart
Subject: RE: Discovery Responses

Elizabeth,

Is what you gave to Henry Duke's complete response to our first set of discovery requests, or is there still more coming this week?

Shannon

From: Watts, Elizabeth H [mailto:Elizabeth.Watts@duke-energy.com]
Sent: Monday, September 13, 2010 3:58 PM
To: Henry Eckhart
Cc: Fisk, Shannon; Ford, Ned - fuse
Subject: RE: Discovery Responses

We would not have sent the discovery to Shannon. We would hope you would be able to do so as we are really running as fast as we can right now.

From: Henry Eckhart [mailto:henryeckhart@aol.com]
Sent: Monday, September 13, 2010 3:27 PM
To: Watts, Elizabeth H
Cc: sfisk@nrdc.org; Ford, Ned - fuse
Subject: Discovery Responses

Elizabeth: I received the packet of discovery responses and the disc. Did you send the same responses to Shannon in Chicago? Is this all of the responses or will there be more?

Fisk, Shannon

From: Watts, Elizabeth H [Elizabeth.Watts@duke-energy.com]
Sent: Tuesday, September 21, 2010 4:02 PM
To: Fisk, Shannon; henryeckhart@aol.com
Cc: Kuhnell, Dianne B; Spiller, Amy B
Subject: RE: Discovery Responses

We will definitely file a motion to seek an extension. I spoke with Dan Johnson this morning to make sure Staff is OK with us doing so. He hasn't gotten back to me yet. I agree that a joint motion would likely be the best way to go. If you can wait until we get ours filed, that would be helpful.

I have been working with folks here and with our senior paralegal to get the balance of discovery out to you. You should have it all very soon.

Thank you Shannon,

Elizabeth

From: Fisk, Shannon [mailto:sfisk@nrdc.org]
Sent: Tuesday, September 21, 2010 11:31 AM
To: Watts, Elizabeth H; henryeckhart@aol.com
Cc: Kuhnell, Dianne B
Subject: Re: Discovery Responses

Elizabeth,

When does Duke intend to decide whether to request to slow the docket down for the SSO filing? At this point, we believe the expert report and hearing dates need to be extended due to Duke continued failure to timely respond to our discovery requests, and we intend to file a motion in the next couple of days requesting such extension. If, however, Duke is definitely planning to request to move the expert report and hearing dates in the very near future, then perhaps we can find a way to do so jointly and avoid unnecessary motions practice.

Shannon

From: Watts, Elizabeth H <Elizabeth.Watts@duke-energy.com>
To: Fisk, Shannon; Henry Eckhart <henryeckhart@aol.com>
Cc: Kuhnell, Dianne B <Dianne.Kuhnell@duke-energy.com>
Sent: Thu Sep 16 16:07:34 2010
Subject: RE: Discovery Responses

Shannon:

We will push to get as much out to you as possible. The best I have to offer you is that we are working flat out to do this and have requests on multiple cases from multiple parties. We only have one paralegal and she just can't work any harder than she is already doing. We are coordinating and reviewing responses from many folks around the company both in Ohio and Charlotte. If you feel you need to file a motion to compel, it will simply slow us down that much more in responding.

Also, as the Company intends to make an SSO filing by the end of the year, it may be that we will need to slow this docket down to accommodate the interaction with that filing, in which case, there is

no real urgency. Also, with the filing of an SSO, perhaps you can gain some comfort level that the company is not proposing a nuclear construction or any related cost recovery for the next three years.

We will get as much of the outstanding discovery out to you as soon as we possibly can. Thanks.



Elizabeth H. Watts
Assistant General Counsel
Duke Energy Ohio
155 East Broad Street
21st Floor
Columbus, Ohio 43215
(614) 222-1330
(614) 202-2509 cell

please consider the environment before printing this email

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Shannon Fisk
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Natural Resources Defense Council
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Sent: Monday, September 13, 2010 3:27 PM
To: Watts, Elizabeth H
Cc: sfisk@nrdc.org; Ford, Ned - fuse
Subject: Discovery Responses

Elizabeth: I received the packet of discovery responses and the disc. Did you send the same responses to Shannon in Chicago? Is this all of the responses or will there be more?

From: "Watts, Elizabeth H" <Elizabeth.Watts@duke-energy.com>
To: JEFF SMALL <SMALL@occ.state.oh.us>
Date: 10/7/2010 1:30 PM
Subject: RE: Discovery in Duke LTFR Case, 10-503

Thanks Jeff. I will be filing today an Amended Long Term Forecast Report and Resource Plan, a motion to slow down the schedule and a new motion for protective order. I will send over all material unredacted to you. After the filing is done, I will also send you, via email, a redlined version of the LTFR-RP so that you can see exactly what was changed. The changes are somewhat extensive and I deemed it important to file a clean new version to decrease confusion.

Elizabeth

-----Original Message-----

From: JEFF SMALL [mailto:SMALL@occ.state.oh.us]
Sent: Thursday, October 07, 2010 1:06 PM
To: Watts, Elizabeth H
Subject: Re: Discovery in Duke LTFR Case, 10-503

Please have your technical person contact Greg Stone about the input values inquired into by the OCC's first set of discovery. He can be contacted directly at 614-995-7883 and slone@occ.state.oh.us

I hope the contact, as well as responses to our third set of discovery, come this week.

Thanks.

Jeff Small
 Assistant Consumers' Counsel

-----Original Message-----

From: "Watts, Elizabeth H" <Elizabeth.Watts@duke-energy.com>
To: SMALL, JEFF <SMALL@occ.state.oh.us>

Sent: 10/6/2010 5:30:27 PM
Subject: RE: Discovery in Duke LTFR Case, 10-503

Jeff:

Prior to the end of the week, I will be filing a motion to change the procedural schedule in this case to delay prosecution of the case into early next year. We will be filing an SSO sometime prior to the end of the year and the issues are intertwined. It makes sense to table the IRP until after the SSO is filed. Once that is accomplished we can see where we are and make decisions accordingly. That being said, if you would like to set up an informal discussion to talk about INT-31 we can do that. I haven't gone back to look at which one that is but am willing to address it if that is helpful. Let me know. Sorry for not responding earlier and I do appreciate your patience.

Elizabeth

-----Original Message-----

From: JEFF SMALL [mailto:SMALL@occ.state.oh.us]
Sent: Wednesday, October 06, 2010 5:26 PM
To: Spiller, Amy B; Watts, Elizabeth H
Cc: ANN HOTZ
Subject: Fwd: Discovery in Duke LTFR Case, 10-503
Importance: High

**** High Priority ****

I forward an email that I sent on September 14, 2010 regarding Duke's response to INT-31. Duke's did not fully respond to the interrogatory, as stated in the email. I have not received a response to my earlier inquiry, including my offer to have technical personnel discuss the matter more fully. I would appreciate a timely response to this further inquiry.

Also, the OCC's third set of discovery was transmitted on September 9, 2010, and I do not have a response from Duke to that set. The discovery is overdue, and the OCC would like a prompt response to that set of discovery.

A fourth set of discovery is pending. While not overdue at this point, the foregoing problems regarding the timeliness of Duke's responses to discovery causes concerns. I hope that Duke is making progress towards a timely response to the OCC's fourth set of discovery.

I would appreciate a prompt response to these important matters that must be resolved in a case that goes to hearing in the near

future.

Jeff Small
Assistant Consumers' Counsel

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From: "Watts, Elizabeth H" <Elizabeth.Watts@duke-energy.com>
To: Debra Bingham <bingham@occ.state.oh.us>
CC: JEFF SMALL <SMALL@occ.state.oh.us>, "Kuhnell, Dianne B" <Dianne.Kuhnell@...>
Date: 10/12/2010 3:54 PM
Subject: RE: 4th Set Disc. Req. Duke 10-503 Final 9.17.10 c

Debra:
Jeff Small sent an email earlier this month mentioning a fourth set of discovery. I had lost track of this one and it's been sitting in my inbox until today. Because I am very bad at catching these when other matters are pressing, would you kindly add Dianne Kuhnell and Kristen Cocanougher to your email list and copy both of them when you send out discovery? That way it will be handled and responded to much more quickly. Thanks so much. We will respond as soon as possible to these although this matter may be delayed.

Dianne.Kuhnell@duke-energy.com <mailto:Dianne.Kuhnell@duke-energy.com>
Kristen.Cocanougher@duke-energy.com <mailto:Kristen.Cocanougher@duke-energy.com>
My apologies,
Elizabeth

From: Debra Bingham [mailto:bingham@occ.state.oh.us]
Sent: Friday, September 17, 2010 5:04 PM
To: Watts, Elizabeth H
Subject: 4th Set Disc. Req. Duke 10-503 Final 9.17.10 c

Attached please find OCC's 4th set of discovery requests in the subject case. For your convenience in answering, we are submitting the document to you in Word format. If you have any questions, please contact our office.

Thank you.

Deb Bingham
Administrative Assistant
The Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
614-466-1311 - phone
614-466-9475 - facsimile
bingham@occ.state.oh.us

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