

FILE

BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

2010 DEC 29 PM 3:26

In the Matter of the 2010 Long-Term
Forecast Report of Duke Energy Ohio, Inc.

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Case No. 10-503-EL-FOR

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MEMORANDUM CONTRA MOTION TO COMPEL

I. Introduction

Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) responds herein to the Office of the Ohio Consumers' Counsel (OCC) Motion to Compel Discovery. Duke Energy Ohio submitted its application in this matter for approval of its Long-Term Forecast and Resource Plan on June 15, 2010 in compliance with new rules promulgated by the Commission subsequent to the enactment of Amended Substitute Senate Bill 221. Thereafter, Duke Energy Ohio amended its application with a corrected filing on October 2, 2010. Additionally, in an effort to clarify the record, Duke Energy Ohio submitted a letter to the Commission indicating that it was not seeking any finding of need or cost recovery for the construction of a nuclear generation facility. Despite the Company's efforts to be clear about its intentions, it appears that the OCC continues to seek information that is neither relevant nor likely to lead to relevant or admissible evidence in this matter. As a result of OCC's apparent confusion, we have reached this juncture and therefore respectfully request that the Commission resolve this impasse.

The fundamental fact is that, in Revised Code 4928.142 does not provide for recovery of any costs related to construction of generation and since Duke Energy Ohio has specifically stated that it is not seeking approval of the need for or cost recovery relating to nuclear generation, it should be clear that any issues related to nuclear construction are irrelevant.

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Despite this, OCC persists in demanding information relevant to construction of nuclear generation. In support of OCC's motion, it submits a standard or review, quoting Commission that "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts." Duke Energy Ohio has complied with every discovery request the OCC has submitted that allows it to prepare its case. Now that the case clearly does not address construction of nuclear generation, it is not necessary to provide responses directed at nuclear construction costs, etc.

OCC seeks to compel a response to its Interrogatory No. 31 and its fourth and fifth sets of discovery in this matter but neglects to admit that, in fact, the Company has responded to these and it is simply the case that OCC does not like the responses it has received. Interrogatory No. 31 requests the following: "What input assumptions were utilized with the PAR model (page 189 of the 2010 LTFR) to further evaluate the seven resource portfolios developed using the "System Optimizer" capacity expansion model?" Duke Energy Ohio's response is as follows: "All input assumptions utilized with the PAR model to further evaluate the seven resource portfolios developed using the "System Optimizer" capacity expansion model are documented and contained in OCC-POD-01-008." The request for production further states: "See CD – PT.1: OCC-POD-01-008, Subdirectory RPD 8." After the exchange of this interrogatory and related response, the OCC indicated that it needed additional information and that this could best be supplied by allowing an OCC technical staff person to discuss the matter directly with a Duke Energy Ohio subject matter expert. This discussion was arranged and the parties spoke with one another. Subsequent to this discussion, the OCC continued to complain that it did not have sufficient information in response to its interrogatory. It was perceived that OCC was seeking

proprietary data and Duke Energy Ohio explained that it could not provide assumptions used in its planning model as these are "hardwired" into the model and the model is proprietary. In subsequent correspondence, the OCC asserted that the Company's response was inadequate; however, the Company is now at a loss as to how further to respond. In the spirit of discovery, Duke Energy Ohio is willing to provide a technical expert to assist the OCC in understanding the information it presently holds, but Duke Energy Ohio does not have any additional data to provide. All of the model runs, including underlying data, were supplied in live format.

The OCC next complains in regard to its fourth set of discovery. Although Duke Energy Ohio has responded to this discovery by indicating that it is no longer relevant, the OCC persists in claiming entitlement to irrelevant and unduly burdensome information. It is unreasonable, and irrational to request information relevant to construction of nuclear generation when such information is clearly not germane to the docket. The OCC's persistence in seeking this irrelevant information and, indeed, moving to compel its production on the eve of a major holiday, borders on harassment of the Company.

Finally, OCC refers to its fifth set of discovery. Its fifth set of discovery consists of only one question and one request for production of documents. The interrogatory states as follows: "What are the responses to the OCC's Interrogatories 1 through 74 based upon the Revised 2010 LTFR (any specific references to the 2010 LTFR in the OCC's earlier interrogatories should be understood to be references to the appropriate location in the Revised 2010 LTFR for purposes of responding to this interrogatory)?" In response to this request, Duke Energy Ohio advised OCC via email that there were no amended responses to provide. Despite this response, OCC

insisted upon receiving a formal response. A formal response has now been sent to OCC so there is no longer a remaining issue with respect to the fifth set.

The OCC titled a section of its motion: "Reasonable Efforts to Resolve the Dispute." However, that section of the brief merely reiterates a portion of the communication between Duke Energy Ohio and OCC. Likewise, excerpts of communications are taken out of context to support OCC's position. OCC continues to assert that Duke Energy Ohio has been non-responsive when, in fact, Duke Energy Ohio has responded to five sets of interrogatories and requests for production.

II. Conclusion

For the reasons above stated, Duke Energy Ohio respectfully requests that the OCC's motion to compel be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served upon the following parties via electronic mail, regular mail or by hand delivery this 29th day of December, 2010.


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