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Oconee County is considering entering into a Memorandum of Understanding with Duke Energy that would alllow them to collaborate on matters related to shoreline management.

More thought to go into Oconee, Duke Energy pact

Builder thinks Memorandum of Understanding opens up legal quandary

BY CARLOS GALARZA
THE JOURNAL

WALHALLA — A local homebuilder is apparently getting his wish to have Oconee County slow down before entering into any memorandum of understanding with Duke Energy.

Tom Markovich of Markovich Homes recently asked the Oconee County Council to carefully consider any unintended legal liabilities that the county could be subject to by entering into such an agreement with Duke.

The memorandum would allow Oconee and Duke to coordinate their land and/or water management responsibilities by sharing data, monitoring and enforcing reservoir buffer activity, reviewing lake use permitting and police zoning and land use matters.

Duke has shoreline management jurisdiction over lakes Keowee and Jocassee.

One of Markovich's concerns is that the memorandum would open the door to federal intervention on local issues because Duke receives its permitting and lakeshore oversight authority from the Federal Energy Regulatory Commission.

Markovich said lawsuits normally proceed through local and state jurisprudence before they are "ripe" to enter federal court.

It is a costly process, he said, that in some ways helps weed out frivolous lawsuits or legal action without merit.

The possibility that the agreement could open a direct route for these lawsuits in the federal system troubles Markovich.

Another concern for Markovich is language in the agreement that would hold Duke Energy "harmless" from litigation arising out of its application of the memorandum.

Art Holbrooks, head of the Oconee County Planning Department, indicated Thursday that more consideration would be given to the drafting of the document.

Holbrooks said the MOU is on the Planning Commission agenda Monday night.

"I plan to do a brief update, and announce that staff will be scheduling a discussion session for the public to provide input on the scope of issue to include in an MOU," Holbrooks said. "Of course, anything that comes out of the session will be presented to the Commission for their review."

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