

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates.	)	)	Case No. 12-1685-GA-AIR
	)	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	)	Case No. 12-1686-GA-ATA
	)	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.	)	)	Case No. 12-1687-GA-ALT
	)	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	)	Case No. 12-1688-GA-AAM
	)	)	

**SUPPLEMENTAL DIRECT TESTIMONY OF**

**JAMES E. MEHRING**

**ON BEHALF OF**

**DUKE ENERGY OHIO, INC.**

<u>  X  </u>	Management policies, practices, and organization
<u>      </u>	Operating Income
<u>      </u>	Rate Base
<u>      </u>	Allocations
<u>      </u>	Rate of Return
<u>      </u>	Tariffs
<u>      </u>	Other

February 25, 2013

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**I. INTRODUCTION AND PURPOSE**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is James E. Mehring, and my business address is 139 East Fourth Street,  
3 Cincinnati, Ohio 45202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Duke Energy Business Services LCC (DEBS) as Vice  
6 President of Gas Operations for Duke Energy Ohio, Inc., (Duke Energy Ohio or  
7 Company) and Duke Energy Kentucky, Inc. (Duke Energy Kentucky) (hereinafter  
8 referred to as Gas Operations). DEBS provides various administrative and other  
9 services to Duke Energy Ohio and other affiliated companies of Duke Energy  
10 Corporation (Duke Energy).

11 **Q. ARE YOU THE SAME JAMES E. MEHRING WHO FILED DIRECT  
12 TESTIMONY IN THESE PROCEEDINGS?**

13 A. Yes.

14 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL DIRECT  
15 TESTIMONY?**

16 A. My Supplemental Direct Testimony will describe and support the Company's  
17 objection to recommendations contained in the Report by the Staff of the Public  
18 Utilities Commission of Ohio (Staff) issued in these proceedings on January 4,  
19 2013 (Staff Report).

## **II. OBJECTIONS SPONSORED BY WITNESS**

1   **Q.   PLEASE DESCRIBE COMPANY OBJECTION NO. 15.**

2   A.   Duke Energy Ohio objects to the Staff’s recommendation to eliminate the  
3       proposed Rider Facilities Relocation Tariff (Rider FRT). Staff lists several  
4       reasons why it believes the Rider should not be approved in these proceedings.  
5       On the advice of counsel, I understand that many of the Staff’s concerns are  
6       issues of a legal nature and raise issues that are either not relevant to the cost  
7       recovery proposed by the Company or are beyond the jurisdiction of the  
8       Commission to even consider. The Staff’s reasoning for not recommending Rider  
9       FRT is summarized as follows:

- 10           • The Company did not identify what type of public mass  
11           transportation project would be eligible under Rider FRT;
- 12           • The Company did not distinguish between projects that should be  
13           funded solely by governmental subdivision and projects by the  
14           utility in accordance with home rule charter of the Constitution;
- 15           • The Company did not address direct and indirect benefits of  
16           transportation projects including economic, social and  
17           environmental benefits and does not ensure that appropriate  
18           customers are being charged in accordance with cost causation and  
19           recovery principals;
- 20           • The rider is confusing because of the two options for funding; and

- 1           • The Company’s proposal of clarity regarding treatment of cost  
2           overruns and whether unintended legal liability is created such as  
3           future remediation.

4 **Q. IS STAFF’S FIRST CRITICISM THAT THE COMPANY DID NOT**  
5 **IDENTIFY THE TYPE OF PROJECT TO BE INCLUDED IN RIDER FRT**  
6 **ACCURATE?**

7 A. No. The applicability section of Rider FRT explains the types of relocation  
8 projects that could be included for recovery under the Rider as those relocations  
9 “directly related to the construction and operation of any mode of mass  
10 transportation, including but not limited to, light rail, heavy rail, high-speed rail,  
11 street cars, subways, trolleys, trams or buses.” As I explained in my Direct  
12 Testimony, the City of Cincinnati’s street car project is a type of project to be  
13 recovered under Rider FRT. Consistent with Rider FRT, if the City of Cincinnati  
14 were to elect to not pay for the relocation itself as part of the project, then the City  
15 would elect to have the residents in its municipal boundary pay the costs. And  
16 then, the Company will file an application with the Commission to set the Rider.  
17 If the City agreed to pay for relocation itself, then there would be no need to apply  
18 to set the rider.

19           To the extent Staff’s criticism refers to a perceived failure to identify other  
20 potential projects, the Company cannot identify any other specific projects  
21 because no such other projects exist at this time. To the extent a future project  
22 would be eligible for recovery under the Rider and the municipality elects to use  
23 the Rider to socialize the costs among its residents, then the Company would

1 apply to the Commission to set the rider. If the municipality elects to pay for the  
2 relocation itself, the Rider will not be impacted and a rate adjustment would not  
3 be necessary. As such, the Staff's criticism that Rider FRT does not identify the  
4 types of projects eligible for recovery is simply inaccurate.

5 **Q. IS STAFF'S SECOND CRITICISM THAT THE COMPANY DID NOT**  
6 **DISTINGUISH BETWEEN PROJECTS THAT SHOULD BE FUNDED**  
7 **SOLELY BY GOVERNMENTAL SUBDIVISION AND PROJECTS BY**  
8 **THE UTILITY IN ACCORDANCE WITH HOME RULE CHARTER OF**  
9 **THE CONSTITUTION REASONABLE OR ACCURATE?**

10 A. No. Staff's criticism is not reasonable. Upon advice of counsel, Staff's concern  
11 regarding projects covered under home rule versus those that should be recovered  
12 directly by the political subdivision is misplaced and beyond the jurisdiction of  
13 the Commission to even determine. Notwithstanding the fact that I am not a  
14 lawyer, the concept of Rider FRT is fairly simple. Rider FRT applies in situations  
15 involving mass transportation projects as defined under the applicability section  
16 of the Rider and where the municipality is requiring Duke Energy Ohio to move  
17 the facilities located in the municipal right-of-way that the Company uses to serve  
18 customers. If it is not a right-of-way facility relocation that is required for a  
19 municipal mass transportation project, then the Rider does not apply.

20 Now, one could debate whether a particular mass transportation project  
21 requiring utility relocation is one that a municipality is required to pay for under  
22 Ohio law. Based upon advice of counsel, that is a fact-specific determination that  
23 would likely have to be resolved by a court. Moreover, even if the municipality is

1 not required to pay the costs under Ohio law, it may still contractually agree to do  
2 so. Rider FRT simply offers the municipality flexibility to pay for the utility  
3 relocation costs. Staff's concern is fact specific, requires legal interpretation.

4 Even if it is determined under a fact-specific situation that the  
5 municipality is not obligated to pay for relocation costs, it is my understanding  
6 based upon advice of counsel, that Ohio law provides alternative methods for the  
7 utility to recover its costs through rates that are consistent with Rider FRT.

8 **Q. IS STAFF'S THIRD CRITICISM THAT THE COMPANY DID NOT**  
9 **ADDRESS DIRECT AND INDIRECT BENEFITS OF**  
10 **TRANSPORTATION PROJECTS INCLUDING ECONOMIC, SOCIAL**  
11 **AND ENVIRONMENTAL BENEFITS AND DOES NOT ENSURE THAT**  
12 **APPROPRIATE CUSTOMERS ARE BEING CHARGED IN**  
13 **ACCORDANCE WITH COST CAUSATION AND RECOVERY**  
14 **PRINCIPALS REASONABLE?**

15 A. No. Staff's concern that Rider FRT does not take into consideration economic  
16 development benefits is neither relevant nor material. The utility's cost to serve  
17 its customers does not depend upon the economic development of a community.  
18 If a municipality orders a utility to relocate facilities that are needed to serve the  
19 utility's customers that are currently situated in the municipal right of way, then  
20 the utility is incurring a cost. The municipality controls the right of way and the  
21 utility must relocate facilities in order to continue to serve its customers. The  
22 reason for the municipal-ordered relocation is relevant for purposes of  
23 determining who pays for the relocation as between the municipality directly and

1 the utility's rates. But whether the project is beneficial in terms of economic  
2 development opportunities or not, is absolutely irrelevant as to whether there is a  
3 cost created to the utility as part of serving customers and how the utility should  
4 recover its costs.

5 Similarly, Staff's concern that the Company's Rider FRT does not follow  
6 cost causation principles is simply false. Rider FRT is precisely the mechanism  
7 needed to ensure that cost recovery follows cost causation principles. The  
8 Company is proposing for eligible projects to charge the municipality directing  
9 the utility facility relocation. The municipality has the ability to determine  
10 whether it pays or whether its citizens receiving the direct benefit of the facility  
11 relocation should pay. A municipality (or its customers) is only responsible for  
12 the relocation costs it causes. No more, no less. Practically speaking, if a  
13 neighboring municipality were to cause facility relocation due to a transportation  
14 project falling under rider FRT that will connect to another municipality's  
15 transportation project, the second municipality would only pay for the facility  
16 relocation costs it causes within its jurisdictional boundaries. It is for the  
17 municipalities to coordinate any issues with construction and connections costs in  
18 and among themselves. Rider FRT is limited solely to the facility relocation  
19 caused by a municipality within its jurisdictional borders.

20 **Q. IS STAFF'S FOURTH CRITICISM THAT THE RIDER IS CONFUSING**  
21 **BECAUSE OF THE TWO OPTIONS FOR FUNDING VALID?**

22 A. No. Rider FRT is clear. As I previously stated, for eligible projects where the  
23 municipality is obligated to pay, the municipality may: 1) elect to pay Duke

1 Energy Ohio directly; 2) have Duke Energy Ohio paid through a utility  
2 assessment of the Company bills within that municipality; or 3) a combination of  
3 both.. Either the municipality pays or the citizens of the municipality pay. That  
4 determination will be made by the elected officials of the municipality. Again  
5 this is no different than the current process, where Duke Energy Ohio directly  
6 bills a municipality for facility relocation in those situations where the  
7 municipality is obligated to pay, or as advised by counsel, if Duke Energy Ohio  
8 were to apply to the Commission for a municipality-specific rider under 4939.06  
9 for an operation cost caused directly buy a municipal ordinance.

10 **Q. IS STAFF’S FIFTH CRITICISM THAT THE COMPANY’S PROPOSAL**  
11 **LACKS CLARITY REGARDING TREATMENT OF COST OVERRUNS**  
12 **AND WHETHER UNINTENDED LEGAL LIABILITY IS CREATED**  
13 **SUCH AS FUTURE REMEDIATION VALID?**

14 A. No. Staff’s concerns regarding the lack of clarity regarding how cost over runs  
15 will be treated and potential future environmental liability are misplaced. First, as  
16 proposed in Rider FRT, Duke Energy Ohio would apply to the Commission to  
17 implement the Rider and the Commission will review the costs. Over runs, if any  
18 will be reviewed by the Commission as it reviews all costs under a tracker  
19 proceeding. Second upon advice of counsel, liability issues are not for the  
20 Commission to determine. Remediation liability, for example, is governed under  
21 either state or federal law. The courts, not the Commission, interpret those laws,  
22 and will be tasked with determining liability for environmental remediation.

1 Staff's concern that Rider FRT does not address such liability is thus unfounded  
2 because neither a tariff, nor the Commission can do so.

3 **Q. DOES THE CITY OF CINCINNATI HAVE A MUNICIPAL RIGHT OF**  
4 **WAY ORDINANCE THAT DIRECTS WHO PAYS FOR FACILITY**  
5 **RELOCATION?**

6 A. At the time the Company filed its case in these proceedings, no. But now the City  
7 of Cincinnati (City) does have such an ordinance. The City enacted a right-of-way  
8 ordinance this past fall of 2012. The Company and the City disagree as to the  
9 applicability and validity of the City's ordinance. Nonetheless, an ordinance now  
10 exists and defines City public improvement projects to include a streetcar and also  
11 would require right-of-way occupants, as opposed to the City itself, to pay for  
12 facility relocation costs related to public improvement projects.

13 **Q. HAVE THERE BEEN ANY RECENT DEVELOPMENTS WITH RESPECT**  
14 **TO THE ONGOING NEGOTIATIONS BETWEEN DUKE ENERGY**  
15 **OHIO AND THE CITY OF CINCINNATI AS IT PERTAINS TO THE**  
16 **STREETCAR AS DESCRIBED IN YOUR DIRECT TESTIMONY?**

17 A. Yes. As of January 30, 2013, Duke Energy Ohio and the City have entered into  
18 two agreements addressing the relocation of the facilities to accommodate the  
19 construction of the streetcar. Neither agreement resolves the cost responsibility  
20 issue. The first agreement is titled a Facility Relocation and Operation  
21 Agreement. This agreement is the result of months of negotiations to ensure that  
22 Duke Energy Ohio will have reasonable access to its underground facilities once  
23 the streetcar is operational. The Company and the City have agreed to numerous

1 operational parameters and protocols, including the appropriate and safe distance  
2 for the relocation of the Company's facilities from the streetcar, while ensuring  
3 that the Company's personnel, customers, and streetcar patrons are adequately  
4 protected. The second agreement is entitled a Cooperation Agreement. This  
5 Cooperation Agreement describes the process to resolve the cost responsibility for  
6 relocation expenses between the City and Duke Energy Ohio. As it was explained  
7 to me, the agreement calls for a declaratory action that is filed in the Hamilton  
8 County Court of Common Pleas, to determine the rights and responsibilities under  
9 the City's right of way ordinance. The issues are complex and, as I understand,  
10 involve legal arguments as to whether or not the City's recently enacted right-of-  
11 way ordinance is valid as it pertains to the streetcar and whether or not the city  
12 itself should be responsible for the relocation expenses. The Cooperation  
13 Agreement also outlines the payment process if Duke Energy Ohio is successful  
14 in its challenge and for the depositing of funds by the City to cover the  
15 Company's current estimate of relocation costs.

16 **Q. GIVEN THE STATUS OF THE AGREEMENTS WITH THE CITY, IS**  
17 **RIDER FRT EVEN NECESSARY?**

18 A. The Company believes it is. The City of Cincinnati's streetcar is but one possible  
19 project that could occur and fall under the Rider FRT. The Rider was intended to  
20 provide municipalities with flexibility for funding these sorts of projects and for  
21 Duke Energy Ohio to obtain cost recovery. With respect to the Cincinnati  
22 streetcar, if the Company is not successful in its challenge under the Cooperation  
23 Agreement, then Rider FRT could provide the vehicle for recovery of the

1           Company's costs of relocation of these facilities. It is important to note that these  
2           facilities are both used and useful and necessary for the Company to provide  
3           service to customers in Cincinnati. But for the streetcar, the Company would not  
4           have to relocate these facilities.

### **III.   CONCLUSION**

5   **Q.   DOES THIS CONCLUDE YOUR PRE-FILED SUPPLEMENTAL DIRECT**  
6           **TESTIMONY?**

7   A.   Yes.