

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RECEIVED-DOCKETING DIV  
2007 MAY 16 PM 12:43  
PUCO

In the Matter of the Complaint of James Byerly, Jr., Benjamin Wissel, Shirley Newman, Jeffrey Reichard, Daniel Ledford, Patricia Ingram, James Wellinghoff, Al Roane, Bruce Aronow, Brian Beachkofski, Central Parkway Properties, Karl Koehler, David M. Wilder, and American Building Condo Assoc., LLC	)	Case No. 07-196-EL-CSS
	)	Case No. 07-197-EL-CSS
	)	Case No. 07-198-EL-CSS
	)	Case No. 07-253-EL-CSS
	)	Case No. 07-263-EL-CSS
	)	Case No. 07-265-EL-CSS
Complainants,	)	Case No. 07-271-EL-CSS
	)	Case No. 07-281-EL-CSS
	)	Case No. 07-300-EL-CSS
	)	Case No. 07-322-EL-CSS
v.	)	Case No. 07-379-EL-CSS
	)	Case No. 07-392-EL-CSS
	)	Case No. 07-397-EL-CSS
	)	Case No. 07-404-EL-CSS
Duke Energy Ohio, Inc.,	)	
	)	
Respondent.	)	

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**COMMENTS ON STIPULATION AND PROPOSED TARIFF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION AND SUMMARY**

The formal Complaints listed above were filed between February 27, 2007, and April 9, 2007. These Complaints were filed by residents of the American Building located in downtown Cincinnati, a building converted to residential condominium use in 2005. Formal Complaints were also filed by the developer of the property and the condominium association.

The residents of the condominiums have been paying commercial electric rates since they moved into their condominiums in July 2005, with the exception of several

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residents who were switched from residential to commercial rates at some point after they initiated service with Duke. In addition to being charged commercial rates, some residents have also been charged at the higher “DS” rate based on higher demand, as opposed to the lower “DM” rate.<sup>1</sup>

According to the Complaints, the Company charged the commercial rate because each of these condominiums was being provided 3-phase service and the Company excluded 3-phase service from its residential tariff. The complainants are seeking a tariff change to incorporate 3-phase service into the residential tariff. The complainants generally sought the application of residential rates to their condominiums on a prospective basis as well as adjustments to their bills that retroactively apply residential rates back to the time the condominiums were originally purchased by their owners.

OCC moved to intervene in the cases on April 10, 2007, on behalf of approximately 602,000 residential electric customers of Duke. OCC’s intervention was not opposed.

A settlement conference was held at the PUCO on April 19, 2007. On April 30, 2007, a signed Stipulation and proposed residential three-phase tariff were docketed in the cases. OCC did not sign the Stipulation.

The Stipulation and the proposed tariff may meet the needs of the residents who filed the complaint cases, and OCC does not oppose a result for the complainants that provide them the fair rates that they seek. But the proposed tariff falls short of legal standards for tariffs and a reasonable result for all customers that may be affected,

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<sup>1</sup>The complainants are being charged either a “DS” or “DM” rate based on demand. The DS rate is termed “Service at Secondary Distribution Voltage.” P.U.C.O. Electric No. 19, Sheet No. 40.10. The DM rate is termed “Secondary Distribution Service – Small.” P.U.C.O. Electric No. 19, Sheet No. 43.10

including customers other than the complainants.

The PUCO must find the way under the settlement to remedy the complainants' problem while also ensuring fairness for all affected customers. The PUCO should take no action in this case that could affect as precedent or as a matter of res judicata any later litigation of the various issues that the settlement does not reach, such as the apparent limitation on tenants receiving the residential rate.

## **II. THE STIPULATION**

The complainants agree that the Stipulation and proposed tariff meet their needs in most respects. The Stipulation provides for the implementation of a three-phase residential tariff by Duke. The terms of the tariff would apply to each of the residents in the American Building. In addition to the implementation of the tariff and the Stipulation, Duke agrees to re-rate the bills of those residents who have been billed at the higher DM to the lower DM rate for the entire time they have lived in the American Building. Finally, the Stipulation permits the residential Complainants to continue to pursue their claims to have their accounts re-billed at the residential rate ("Rate RS").

## **III. THE TARIFF**

Rates in the proposed tariff are equivalent to standard residential rates, or Rate RS, with the exception of a slightly higher (\$6.50) monthly customer charge. Duke contends that metering costs for 3-phase service is more expensive than standard single-phase service. As with the stipulation, the tariff appears to address the concerns of the residential Complainants.

The tariff, however, is vaguely worded. While the Company is obligated to notify its "eligible" customers when the new tariff is approved,<sup>2</sup> the limited scope of the tariff raises concerns. For instance, it is unclear how Duke's customer service representative will be able to determine if a residential customer calling for new service should be billed under the "RS" or "RS3P" rate. Moreover, the tariff, as proposed, applies to a limited portion of downtown Cincinnati, which would be just a part of Duke's service area. Similarly-situated residential customers of Duke may be unable to avail themselves of a residential rate due to the vague language of the proposed tariff and limited service territory affected by the new tariff.

OCC's concerns are primarily in the "Applicability" section, which reads, in pertinent part:

Applicable to three phase electric service, for all domestic purposes in private residences and single occupancy apartments and separately metered common use areas of multi-occupancy buildings in the entire territory of the Company where (1) distribution lines are adjacent to the premises to be served, (2) the building load requires three phase service, and (3) where the Company has an existing 208Y/120V network grid.

Residences where not more than two rooms are used for rental purposes will also be included. Where all dwelling units in a multi-occupancy building are served through one meter and the common use area is metered separately, the kilowatt-hour rate will be applied on a "per residence" or "per apartment" basis, however, the customer charge will be based on the number of installed meters.

Where a portion of a residential service is used for purposes of a commercial or public character, the applicable general service rate is applicable to all service. However, if the wiring is so arranged

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<sup>2</sup> Ohio Adm. Code 4901:1-1-03(B)(1). "Within ninety days after a new rate schedule becomes effective, or within ninety days after modifications or changes in the criteria or terms and conditions of service of an existing tariff schedule or offering become effective, the utility shall disclose to the eligible customers the availability of the new tariff schedule or the fact that the criteria or terms and conditions of service of such an existing tariff have changed. A copy of such notice shall be filed with the public utilities commission prior to its distribution to customers."

that the service for residential purposes can be metered separately, this Rate will be applied to the residential service, if the service qualifies hereunder.

OCC's specific concerns with the tariff include the following.

1. The terms "private residences" and "single occupancy" in the first paragraph are vague and should be defined. Parties then should have an opportunity for comment on the definitions.
2. The term "residences where not more than two rooms are used for rental purposes . . ." is vague and open to several interpretations including the potential for the utility to claim that the residential tariffs are not available to all residential tenants. The PUCO should make it clear that the tariff is available to residential tenants, regardless of the number of rooms in the premises. Furthermore, the existing residential tariff that Duke is modifying contains the same constraint on tenants—and that tariff too should be clarified to remove any limitation on residential rates for tenants.
3. The tariff provisions apply only to the portion of Duke's service territory where: 1) distribution lines are adjacent to the premises to be served, (2) the building load requires three phase service, and (3) where the Company has an existing 208Y/120V network grid. OCC recommends that the third provision be broadened to include anywhere that the Company has three-phase facilities serving residential customers.
4. The PUCO should require the Company to identify the customers on the DS and DM (demand rates) who, based on usage or address or other factors, are likely residential customers. The customers should be sent notice of the new tariff provisions.
5. It is unclear from the tariff language whether three-phase residential service is available for master-metered accounts. The language of the tariff appears to state that, in the case of master-metered accounts, if the residential usage is metered separate from the common usage areas, the residential usage will be billed at the residential rates. The OCC recommends that the tariff language clearly state that master-metered accounts are eligible for the three-phase residential rate.

#### IV. CONCLUSION

On behalf of Duke's approximately 602,000 residential gas customers, the Commission should adopt OCC's recommendations on behalf of all customers and at the same time not forestall relief for the complainants. Duke should broaden the scope of its proposed tariff to benefit all affected customers including the complainants. The Company should replace the vague provisions of the Applicability section of its tariff in order for the benefits of its new residential three-phase tariff to be enjoyed by all eligible residential customers. Finally, the PUCO should take no action in this case that could affect as precedent or as a matter of res judicata any later litigation of the various issues that the settlement does not reach, such as the apparent limitation on tenants receiving the residential rate.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

 AMH

Richard C. Reese, Counsel of Record

Joseph P. Serio

Assistant Consumers' Counsel

The Office of the Ohio Consumer's Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

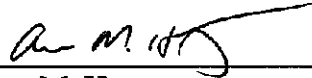
Telephone: 614-466-8574

E-mail: [reese@occ.state.oh.us](mailto:reese@occ.state.oh.us)

[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Office of the Ohio Consumers' Counsel's *Comments on Proposed Stipulation and Tariff* has been served upon the below-stated counsel, via regular U.S. Mail, postage prepaid, this 16<sup>th</sup> day of May, 2007.



Ann M. Hotz  
Assistant Consumers' Counsel

### **SERVICE LIST**

Paul Colbert  
Duke Energy Ohio  
139 East Fourth Street  
P.O. Box 960  
Cincinnati, OH 45202

James Byerly, Jr.  
30 E. Central Parkway #1003  
Cincinnati, OH 45205

Shirley J. Newman  
30 E. Central Parkway #1002  
Cincinnati, OH 45205

Daniel J. Ledford  
30 E. Central Parkway #903  
Cincinnati, OH 45205

James L. Wellingshoff  
30 E. Central Parkway #1202  
Cincinnati, OH 45205

Bruce J. Aronow  
30 E. Central Parkway #1203  
Cincinnati, OH 45205

Duane Luckey  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43216

Benjamin F. Wissel  
30 E. Central Parkway, #501  
Cincinnati, OH 45205

Jeffrey D. Reichard  
30 E. Central Parkway, #1102  
Cincinnati, OH 45205

Patricia B. Ingram  
30 E. Central Parkway #1001  
Cincinnati, OH 45205

Al Roane  
30 E. Central Parkway #901  
Cincinnati, OH 45205

Brian Beachkofski  
30 E. Central Parkway #502  
Cincinnati, OH 45205