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139 East Fourth Street, R. 25 At II
P.O. Box 960
Cincinnati, Ohio 45201-0960
Tel: 513-419-1843
Fax: 513-419-1846
john.finnigan@duke-energy.com

John J. Finnigan, Jr.
Associate General Counsel

VIA OVERNIGHT MAIL

PUCO

December 26, 2007

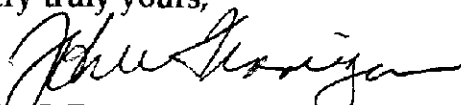
Ms. Betty McCauley
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

Re: Reply Motion in Case Nos. 01-1228-GA-AIR and 07-589-GA-AIR

Dear Ms. McCauley:

I have enclosed two originals and 40 copies of a Reply Motion of Duke Energy Ohio, Inc. in Support of Motion to Modify Filing Date for Rider AMRP Application. Please file an original and 20 copies in each of the above-referenced cases. Please return a file-stamped copy of this letter in the enclosed, return-addressed envelope. Thank you for your consideration in this matter.

Very truly yours,


John J. Finnigan, Jr.

Enclosures

cc: All counsel of record (w/encl.)

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BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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|---|------------------|-------------------------|
| In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Rates |))) | Case No. 01-1228-GA-AIR |
| In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval to Change Accounting Methods |)))) | Case No. 01-1539-GA-AAM |
| In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates |))) | Case No. 07-589-GA-AIR |
| In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for its Gas Distribution Service |)))) | Case No. 07-590-GA-AIR |
| In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods |))) | Case No. 07-591-GA-AAM |

REPLY MEMORANDUM OF
DUKE ENERGY OHIO, INC.
IN SUPPORT OF MOTION
TO MODIFY FILING DATE FOR RIDER AMRP APPLICATION

The Ohio Consumers' Counsel ("OCC") opposes Duke Energy Ohio, Inc.'s ("DE-Ohio") motion for an order modifying the filing date for its next Rider AMRP application on the grounds that the motion violates R.C. 4909.18 and the original 2001 Rider AMRP stipulation. The OCC's arguments are not well-taken and should be rejected.

I. DE-Ohio's Motion Complies With R.C. 4909.18

The OCC argues that DE-Ohio's motion violates R.C. 4909.18 because the statute prohibits filing a notice of intent to file a new rate application until the sooner of: (1) a final order has been issued in a pending application to increase the same rate; or (2) 275 days have elapsed since the pending application was filed. The OCC argues that DE-Ohio violated this provision because DE-Ohio filed the application in its pending gas rate case on July 18, 2007 and filed its notice of intent on November 30, 2007. The OCC's argument is without merit for the following reasons.

A. DE-Ohio's Motion Complies With R.C. 4909.18 Because DE-Ohio's July 17, 2007 Application Seeks to Decrease the Rider AMRP Surcharge

The OCC's argument should be rejected because DE-Ohio's pending application in the gas rate case actually seeks to *decrease* Rider AMRP to zero and to roll in the existing AMRP revenue requirement, plus new AMRP investment through March 31, 2007, into DE-Ohio's base rates. As a result of DE-Ohio's July 18, 2007 application, Rider AMRP will be re-set at zero. The application did not seek to increase the Rider AMRP surcharge; therefore, R.C. 4909.18 does not apply. The OCC's argument therefore fails.

B. DE-Ohio's Motion Complies With R.C. 4909.18 Because the Need to Implement Accelerated Main and Riser Replacement Programs Can be Considered an Emergency

R.C. 4909.18's prohibition of overlapping applications does not apply to emergency situations. The safety and reliability risks that would

exist without the AMRP, including riser replacements, could reasonably be considered an emergency situation as compared to the level of safety and reliability produced by the AMRP. Prior to the AMRP, DE-Ohio was on a pace to replace its cast iron and bare steel mains over a 90-year time period. By the end of this time period, its remaining cast iron and bare steel mains would have been over 200 years old. These mains are more prone to leaks than modern plastic mains. The AMRP has substantially reduced DE-Ohio's main leaks and gas pipeline safety incidents, as discussed at pages 39-40 of the Staff Report.

DE-Ohio also seeks to modify the AMRP to include service head adapter riser replacements. Under DE-Ohio's current riser replacement program, it would take DE-Ohio 27 years to replace these risers. DE-Ohio proposed to include riser replacements with the AMRP and to complete the riser replacements over nine years. The Staff Report recommends accelerating the replacement schedule to three years.

The Commission has noted the safety issues relating to these risers in the Commission-ordered generic riser investigation.¹ In a letter to all Local Distribution Companies issued in the generic riser investigation, the Commission requested that the companies should address the Staff's recommendations in the generic riser investigation "as

¹ *In the Matter of the Investigation of the Installation, Use and Performance of Natural Gas Service Risers Throughout the State of Ohio and Related Matters*, Case No. 05-463-GA-COI (Staff Report) (November 24, 2006).

soon as possible.”² Staff recently filed testimony supporting a stipulation adopting Columbia Gas’ proposal to replace these risers over a three-year period.³ Staff’s testimony noted: “[t]he Staff believes it is in the public interest for Columbia to systematically replace, as quickly as practical, all risers identified as prone to failure....”⁴

Continuing the regular schedule of Rider AMRP filings would allow DE-Ohio an opportunity to recover its costs of doing this important safety work over this accelerated time period. The OCC’s arguments should be rejected because R.C. 4909.18’s prohibition of overlapping applications does not apply to emergency situations, and the Commission could reasonably conclude that the need to accelerate DE-Ohio’s AMRP and riser replacement programs, and to allow DE-Ohio an opportunity to timely recover its costs for these programs, is an emergency.

C. Revised Code Section 4909.18 Does Not Apply Because DE-Ohio Filed its Application to Continue Rider AMRP as an Alternative Regulation Program

The OCC’s argument is also without merit because DE-Ohio filed its application to continue Rider AMRP as an alternative regulation program under R.C. 4929.05 and related statutes, to which R.C. 4909.18 does not apply. Revised Code Section 4929.05 requires that an

² *Id.* (Letter from Chairman Alan R. Schriber) (January 2, 2007).

³ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Tariffs to Recover, through an Automatic Adjustment Clause, Cost Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment*, Case No. 07-478-GA-UNC (Testimony of Edward M. Steele) (November 19, 2007).

⁴ *Id.* at 3-4.

alternative rate plan must be filed as part of an application under R.C. 4909.18; however, R.C. 4929.06 authorizes the Commission to adopt its own procedures for implementing alternative rate plans. In the present case, DE-Ohio filed its application to continue Rider AMRP under R.C. 4909.18 *and* R.C. 4929.05. Assuming the Commission approves DE-Ohio's application under R.C. 4929.05, then the Commission can authorize DE-Ohio to continue filing annual Rider AMRP applications as part of its alternative rate plan, such that the 275-day interval under R.C. 4909.18 between filing applications would not apply. The OCC's argument therefore is without merit.

D. Revised Code Section 4909.11 Renders R.C. 4909.18 Inapplicable

The OCC's argument also fails because DE-Ohio also filed its application to continue Rider AMRP, and will file the 2008 application to increase Rider AMRP, under R.C. 4929.11, which renders R.C. 4909.18 inapplicable. Revised Code Section 4929.11 states:

4929.11 Automatic adjustment of rates or charges

Nothing in the Revised Code prohibits and the public utilities commission may allow, any automatic adjustment mechanism or device in a natural gas company's rate schedules that allows a natural gas company's rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs.

Rider AMRP clearly meets the requirements of R.C. 4929.11 because Rider AMRP: (1) is an automatic adjustment mechanism; (2) for a regulated service; and (3) automatically fluctuates with changes of AMRP-related costs. The Legislature deemed that the Commission should have discretion to approve such automatic adjustment clauses that meet these requirements, *regardless of any other provision of the Revised Code*. The 275-day interval under R.C. 4909.18 between filing applications therefore cannot be used to delay the filing of an application under R.C. 4929.11. The OCC's argument must fail.

II. DE-Ohio's Motion Complies With the 2002 Stipulation

The OCC also argues that DE-Ohio's violates the 2002 Stipulation which established Rider AMRP, because the Stipulation only provided for Rider AMRP increases through May 1, 2007. The OCC's argument misses the mark, however, because DE-Ohio seeks continuation of Rider AMRP in the present proceeding. The Staff Report recommends continuation of Rider AMRP. DE-Ohio's motion for an order modifying the filing date for its next Rider AMRP application assumes that the Commission will approve continuation of Rider AMRP because DE-Ohio otherwise would not be entitled to a Rider AMRP increase. Nothing in the 2002 Stipulation prevents DE-Ohio from seeking continuation of Rider AMRP. Indeed, DE-Ohio has acted reasonably by seeking to continue this laudable safety program. DE-Ohio's request to continue Rider AMRP is totally consistent with the 2002 Stipulation. In fact, the 2002

Stipulation required DE-Ohio to continue making annual Rider AMRP filings after the May 1, 2007 Rider AMRP increase. The OCC's argument therefore fails.

III. If the Commission Determines that the Notice of Intent was Premature, the Commission Should Hold the Notice of Intent in Abeyance

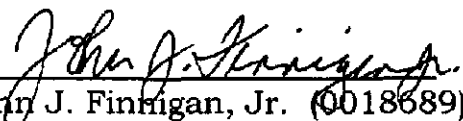
If the Commission accepts either of OCC's arguments, then the Commission should hold DE-Ohio's notice of intent in abeyance. The OCC's first argument is that, based on R.C. 4909.18, the notice of intent should not have been filed until on or after the earlier of: (1) April 21, 2008; or (2) after a final order is issued in Case No. 07-589-GA-AIR. If the Commission determines that this argument is valid, then the proper remedy is to hold the notice of intent in abeyance until the end of this time period. The OCC's second argument is that the notice of intent violates the 2002 Stipulation because the Commission has not yet approved continuation of Rider AMRP. If the Commission determines that this argument is valid, then the proper remedy is to hold the notice of intent in abeyance until the Commission issues its order approving continuation of Rider AMRP. In either case, holding the notice of intent in abeyance until such time period would avoid customer confusion and would allow the Commission to keep as close as possible to the existing schedule for Rider AMRP filings that the Commission established in 2002.

Conclusion

Based on the foregoing, DE-Ohio respectfully requests that the Commission grant DE-Ohio's motion for an order modifying the filing date for its next Rider AMRP application. In the alternative, DE-Ohio requests that the Commission find that no extension of the filing date is required.


Respectfully submitted,

DUKE ENERGY OHIO, INC.


John J. Finnigan, Jr. (0018689)
Associate General Counsel
Paul A. Colbert
Associate General Counsel
Rocco O. D'Ascenzo
Counsel
Duke Energy Shared Services, Inc.
Room 2500, Atrium II
P. O. Box 960
Cincinnati, Ohio 45201-0960
Phone: (513) 419-1843
Fax: (513) 419-1846
e-mail: john.finnigan@duke-energy.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Memorandum of Duke Energy Ohio, Inc. in Support of Motion to Modify Filing Date for Rider AMRP Application was served on the following parties of record in Case Nos. 01-1228-GA-AIR and 07-589-GA-AIR this 26th day of December, 2007.


John J. Finnigan, Jr.

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| Larry S. Sauer, Esq. Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, OH 43215-3420 | Gretchen Hummel, Esq. IEU-Ohio McNees, Wallace & Nurick 21 East State St., 7 th Floor Columbus, OH 43215 |
| David C. Rinebolt, Esq. Counsel for Ohio Partners for Affordable Energy 231 West Lima Street Findlay, OH 45840-3033 | Colleen L. Mooney, Esq. Counsel for Ohio Partners for Affordable Energy 1431 Mulford Road Columbus, OH 43212-3404 |
| M. Howard Petricoff, Esq. The New Power Company Vorys, Sater, Seymour & Pease 52 East Gay Street P. O. Box 1008 Columbus, OH 43216-1008 | Charles Harak, Esq./Jerrold Oppenheim, Esq. IUU 77 Summer Street, 10 th Floor Boston, MA 02110 |
| Noel M. Morgan Communities United for Action 215 East Ninth Street Suite 200 Cincinnati, OH 45202 | William L. Wright, Esq. Assistant Attorney General Public Utilities Commission of Ohio 180 East Broad Street, 9th Floor Columbus, Ohio 43215 |
| Thomas Lindgren, Esq. Assistant Attorney General Public Utilities Commission of Ohio 180 East Broad Street, 9th Floor Columbus, Ohio 43215 | Henry W. Eckhart, Esq. People Working Cooperatively, Inc. 50 West Broad Street, #2117 Columbus, Ohio 43215 |
| Lisa G. McAlister The Ohio Home Builders Association McNees, Wallace & Nurick LLC Fifth Third Center 21 East State Street, 17 th Floor Columbus, OH 43215-4228 | Michael L. Kurtz, Esq. Counsel for The Kroger Co. Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 |

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| David F. Boehm, Esq. Counsel for Ohio Energy Group Boehm, Kurtz & Lowry 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202 | John M. Dosker, Esq. Stand Energy Corporation 1077 Celestial Street, Suite 110 Cincinnati, Ohio 45202-1629 |
| Thomas J. O'Brien Counsel for City of Cincinnati Bricker & Eckler LLP 100 South Third Street Columbus, Ohio 43215-4236 | |