

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's Review )  
and Adjustment of the Fuel and Purchased )  
Power and System Reliability Tracker )  
Components of Duke Energy Ohio, Inc., )  
and Related Matters. )

Case No. 07-723-EL-UNC

In the Matter of the Application of Duke )  
Energy Ohio, Inc., to Adjust and Set its )  
2008 System Reliability Tracker. )

Case No. 07-975-EL-UNC

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**POST-HEARING BRIEF OF  
OHIO PARTNERS FOR AFFORDABLE ENERGY**

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Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned cases, hereby submits this post-hearing brief to the Public Utilities Commission of Ohio ("Commission") concerning the applications filed by Duke Energy Ohio, Inc. ("Duke") to review and adjust the fuel and purchased power ("FPP") and system reliability tracker ("SRT") components of its generation standard service offer. At the hearing, a stipulation and recommendation was accepted into the record as Joint Exhibit No. 1. As a signatory party to the stipulation, OPAE urges the Commission to adopt the stipulation in its entirety.

OPAE is a signatory party to the stipulation because the stipulation resolves for purposes of these cases two issues of concern to OPAE. With regard to both of these issues, OPAE believes that Duke has made concessions so that the stipulation has value for OPAE's clients. OPAE has made no side agreements with Duke.

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The first issue resolved for these cases by the stipulation concerns the outage of the Zimmer Station from April 13, 2007 through June 11, 2007. The stipulation states that the signatory parties agree that the FPP rate set in this FPP case will not be adjusted to reflect any disallowance for the replacement power costs associated with the outage. Jt. Ex. 1 at 5. The signatory party further agree that the auditor in the next audit shall, for the purpose of recommending an appropriate adjustment, if any, to the FPP rate (1) examine Duke's operation, maintenance, and turbine-related activities at the Zimmer Station, (2) determine if the extended portion of the April 13, 2007, through June 11, 2007 outage was prudent, and (3) make a recommendation regarding recovery of fuel and purchased power costs associated with the extended portion of the outage. Id.

This language resolves OPAE's concerns about the extended Zimmer outage. It was necessary to concede that no disallowance would be reflected in this case because the auditor made no finding of the cost of the extended outage and no recommendation for a dollar amount of a disallowance, if any, and no party to the case was able to make a recommendation for the cost or any disallowance. Under these circumstances, it was necessary that the issue of the extended Zimmer outage be carried over to the next audit. The next auditor will examine Duke's operation and maintenance of the Zimmer turbine and make a recommendation regarding the prudence of the extended outage and also the cost of the outage and the amount of any disallowance. As a signatory party to the stipulation, OPAE asserts that the entire issue of the extended Zimmer outage is carried over to the next audit. OPAE's assertion is confirmed by Duke's witness William Don Wathen, Jr., who testified in

support of the stipulation. He testified that the Zimmer turbine outage extension issue is preserved so that the next auditor may fully examine Duke's maintenance practices at the Zimmer station for the purpose of determining if the outage extension that occurred in June 2007 was prudent and adversely affected the FPP price for 2007. Customers and all parties will have the opportunity to fully examine the outage extension and its effect on the FPP price. Supplemental Testimony of William Don Wathen Jr., Duke Ex. 8 at 5. Mr. Wathen confirmed on cross examination that the stipulation carries the Zimmer extended outage issue over to the next audit in its entirety and that the stipulation language is not intended to limit the inquiry or recommendations made by the next auditor in any way. Tr. II at 21-25.


There is no ambiguity on this issue. The Zimmer outage issue is fully carried over to the next audit. A recommendation on prudence and the cost of the extended outage will be made by the next auditor. A disallowance may be recommended by the auditor and may be made by the Commission. The carry over of the Zimmer issue is a concession made by Duke in the stipulation and has value for OPAE's clients.

The second issue of concern to OPAE was the continuance of active management and the auditor's ability to audit active management transactions. In the stipulation, Duke agrees to work with the Commission's Staff to develop documentation that will facilitate the auditing of active management transactions included in the FPP, including but not limited to the following: (1) a clear and comprehensive set of procedures that address the portions of the portfolio that are subject to transactions and the specific triggers that allow identified portions and magnitudes of the portfolio to be traded, (2) an effective system of controls over the

procedures, (3) the daily positions, market conditions and other relevant decision-making criteria, and (4) actual transactions conducted, including rationale for any transactions not conforming to the documented procedures. Jt. Ex. 1 at 4. OPAE believes that this stipulated provision will allow for better auditing of active management transactions. Because the Commission has determined that active management may continue at this point, OPAE believes that documentation must exist to facilitate the auditing of these transactions. The next auditor should be in a better position to audit active management transactions in order to determine if active management benefits ratepayers and serves the public interest. Therefore, OPAE believes that this stipulated provision has value to OPAE's clients.

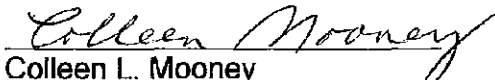
The Commission should adopt the stipulation and recommendation in its entirety. The stipulation is the product of serious bargaining among knowledgeable parties. Duke has made concessions to carry over the Zimmer extended outage issue to the next audit and to develop documentation of active management transactions for future audits. The Staff of the Commission contributed its expertise on the need to carry over the Zimmer extended outage issue and to develop documentation to facilitate the auditing of active management. With its treatment of these two issues, the stipulation benefits ratepayers and serves the public interest. The stipulation also conforms to regulatory practices by carrying over issues to future audits and improving the documentation of transactions to be audited in the future. Therefore, the stipulation meets the Commission's three-part test for the reasonableness of stipulations and should be adopted by the Commission in its entirety.

Respectfully submitted,

  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Post-Hearing Brief was served electronically upon the parties of record identified below on this 7th day of January 2008.



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