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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan.)	Case No. 08-920-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Accounting Methods.)	Case No. 08-921-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge(s).)	Case No. 08-922-EL-UNC
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend its Tariff.)	Case No. 08-923-EL-ATA

SUPPLEMENTAL TESTIMONY OF KEVIN M. MURRAY
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO

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November 5, 2008

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**SUPPLEMENTAL TESTIMONY OF KEVIN M. MURRAY
ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO**

1 I. INTRODUCTION

2 Q1. Please state your name and business address.

3 A1. My name is Kevin M. Murray. My business address is 21 East State Street, 17th
4 Floor, Columbus, Ohio 43215-4228.

5 Q2. By whom are you employed and in what position?

6 A2. I am a Technical Specialist for McNees Wallace & Nurick LLC ("McNees"),
7 providing testimony on behalf of Industrial Energy Users-Ohio ("IEU-Ohio").

8 Q3. Please describe your educational background.

1 A3. I graduated from the University of Cincinnati in 1982 with a Bachelor of Science
2 degree in Metallurgical Engineering.

3 **Q4. Please describe your professional experience.**

4 A4. I have been employed by McNees for eleven years where I focus on helping IEU-
5 Ohio members address issues that affect the price and availability of utility
6 services. I have also been active on behalf of industrial customers in the
7 formation of regional transmission operators and the organization of regional
8 electricity markets. Prior to joining McNees I was employed by Kegler, Brown,
9 Hill & Ritter in a similar capacity. I previously spent twelve years with The
10 Timken Company, a specialty steel and roller bearing manufacturer. While at
11 The Timken Company, I worked within a group that arranged for electricity and
12 natural gas requirements for facilities in the United States. I also spent several
13 years in supervisory positions within the company's steelmaking operations.

14 **Q5. Have you previously testified before this Commission?**

15 A5. I have previously submitted testimony in the Ohio Edison Company, The
16 Cleveland Electric Illuminating Company, and The Toledo Edison Company
17 (collectively "FirstEnergy" or "Companies") electric distribution companies' rate
18 increase cases which are pending before the Commission (Case Nos. 07-551-
19 EL-AIR, *et al.*). However, on February 11, 2008, a Stipulation and
20 Recommendation supported by many of the parties in those proceedings was
21 submitted. The Stipulation and Recommendation, if adopted, would resolve
22 many of the contested issues in the proceedings. A provision in the Stipulation

1 and Recommendation provides that my testimony in those proceedings will not
2 be offered.

3 I have submitted direct testimony in FirstEnergy's application for approval of a
4 competitive bidding process in Case No. 08-936-EL-SSO as well as its
5 application for approval of an electric security plan ("ESP") in Case No. 08-935-
6 EL-SSO.

7 I have also submitted direct testimony in the ESP proceeding for Columbus
8 Southern Power Company and Ohio Power Company (collectively "AEP") in
9 Case Nos. 08-917-EL-SSO and 08-918-EL-SSO.

10 I submitted direct testimony in these proceedings.

11 **Q6. What is the purpose of your testimony?**

12 A6. The purpose of my testimony is to identify a provision in the Stipulation and
13 Recommendation filed in these proceedings on October 28, 2008, that violates
14 an important regulatory principle and is contrary to the public interest. More
15 specifically, I explain why Section 13.b. of the Stipulation and Recommendation
16 dealing with the implementation of Section 4928.66, Revised Code, is
17 inconsistent with the criteria that the Commission has used to review settlements
18 submitted by some or all of the parties in a contested proceeding. I also address
19 why Section 13.b. of the Stipulation and Recommendation imposes
20 unreasonable restrictions upon mercantile customers that may seek waivers
21 pursuant to Section 4928.66, Revised Code, in exchange for committing their

1 energy efficiency and/or peak demand reduction capabilities towards an electric
2 distribution company's portfolio obligations.

3 It should be obvious from my testimony that I do not agree with the Second
4 Supplemental Testimony of Paul G. Smith in which he characterizes the
5 Stipulation and Recommendation as resolving all disputed issues in these
6 proceedings other than a single issue related to residential governmental
7 aggregation that the Office of the Ohio Consumers' Counsel ("OCC") has
8 reserved the right to contest.

9 II. OBJECTIONS TO THE STIPULATION AND RECOMMENDATION

10 **Q7. Does the limited scope of your testimony suggest that you believe the**
11 **balance of the Stipulation and Recommendation meets the criteria used by**
12 **the Commission to evaluate settlements?**

13 **A7.** No, the scope of my testimony should not be read to support or oppose the
14 balance of the Stipulation and Recommendation.

15 **Q8. Please explain your understanding of Section 13.b. of the Stipulation and**
16 **Recommendation.**

17 **A8.** As indicated by my qualifications, I am not an attorney. Therefore, my
18 understanding and opinions are based on my reading of language in the
19 Stipulation and Recommendation, informed by my participation in the
20 negotiations as to the intent of this section of the Stipulation and
21 Recommendation. I describe the potential regulatory consequences of language
22 in the Stipulation and Recommendation based on my technical perspective and

1 state my understanding of Section 4928.66(A)(2)(c), Revised Code, based upon
2 my training and experience, to explain my reasoning and conclusions.

3 Section 13.b. is spread over four pages of a Stipulation and Recommendation
4 that contains some 39 pages of text. This section of the Stipulation and
5 Recommendation proposes to limit the conditions under which a mercantile
6 customer may seek to commit efficiency and/or peak demand reduction
7 capabilities towards an electric distribution company's portfolio obligations
8 pursuant to Section 4928.66(A)(2)(c), Revised Code, which states:

9 ...Any mechanism designed to recover the cost of energy efficiency
10 and peak demand reduction programs under divisions (A)(1)(a) and
11 (b) of this section may exempt mercantile customers that commit
12 their demand-response or other customer-sited capabilities,
13 whether existing or new, for integration into the electric distribution
14 utility's demand-response, energy efficiency, or peak demand
15 reduction programs, if the commission determines that that
16 exemption reasonably encourages such customers to commit those
17 capabilities to those programs. ...

18 Based on my understanding of the language in Section 13.b., which I formed
19 during the settlement discussions, I believe that the purpose of Section 13.b. of
20 the Stipulation and Recommendation is intended to limit and narrow the
21 opportunity for a mercantile customer to secure an exemption from the cost

1 recovery mechanism regardless of the case the customer might otherwise make
2 to the Commission in favor of such an exemption.

3 The language in Section 13.b. is somewhat confusing because it first suggests
4 that the exemption "**shall**" be available to any customers that have a minimum
5 monthly demand of 3 megawatts ("MW") "...at a single site or aggregated at
6 multiple sites within DE-Ohio's certified territory and agree to comply with the
7 Commission's rules regarding exemption from cost-recovery mechanisms." It
8 then proceeds to identify the mandatory process that must be followed by a
9 "qualifying" customer to obtain an exemption. The end result of this language, if
10 the Stipulation and Recommendation is accepted by the Commission, would
11 impose a 3 MW size limitation and add other conditions to be eligible for an
12 exemption. These are not eligibility criteria that the General Assembly reflected
13 in Section 4928.66(A)(2)(c), Revised Code.

14 **Q9. Section 4928.01(A)(19) defines "mercantile customer" as a commercial or**
15 **industrial customer consuming more than 700,000 kilowatt hours ("kWh")**
16 **per year or is part of a national account involving multiple facilities in one**
17 **or more states. How does the 3 MW size limitation in the Stipulation and**
18 **Recommendation compare to this statutory definition?**

19 **A9.** The 3 MW limitation in the Stipulation and Recommendation substantially and
20 arbitrarily narrows the eligibility criteria in Section 4928.66(A)(2)(c), Revised
21 Code, and the as-applied definition of "mercantile customer". Any customer with
22 a monthly minimum demand of 3 MW and having a 100% annual load factor
23 (which is the ratio of average demand to maximum demand) would consume

1 approximately 26,300,000 kWh per year, over 13,000,000 kWh per year at a 50%
2 annual load factor and about 7,900,000 kWh per year at a 30% annual load
3 factor.

4 **Q10. What important regulatory principle is violated by Section 13.b. of the**
5 **Stipulation and Recommendation?**

6 A10. It is my understanding that the Ohio General Assembly delegates authority to the
7 Commission and that neither the Commission nor the parties to a Stipulation and
8 Recommendation have the ability to change a law that the Ohio General
9 Assembly has enacted. I understand that this is an important regulatory
10 principle. Section 13.b. proposes to rewrite Section 4928.66(A)(2)(c), Revised
11 Code, in ways that would preclude an otherwise eligible mercantile customer
12 from seeking an exemption.

13 **Q11. Why do you believe Section 13.b. of the Stipulation and Recommendation**
14 **is contrary to the public interest?**

15 A11. Again, it is my understanding that the Ohio General Assembly is responsible for
16 making public interest determinations. Section 4928.66(A)(2)(c), Revised Code,
17 gives the Commission the ability to make case-by-case determinations on an
18 exemption request for any "mercantile customer". Section 13.b. of the Stipulation
19 and Recommendation would, if adopted, close the door on this opportunity for
20 mercantile customers that cannot meet the 3 MW threshold regardless of merit.
21 Based on the language adopted by the Ohio General Assembly, it is my opinion
22 that this arbitrary cut-off of the statutory exemption opportunity is contrary to the
23 public interest as expressed by the General Assembly. Additionally, the

1 Commission has only started to implement the energy efficiency and peak
2 demand reduction provisions in the new law. The Commission has issued draft
3 rules for comment but final rules will not likely be available for some time. There
4 is no real world experience with mercantile customers committing their efficiency
5 and/or peak demand reduction capabilities towards an electric distribution
6 company's portfolio obligations. Therefore, arbitrarily cutting off the exemption
7 opportunity at this point, before the real world implementation experience better
8 informs the Commission on this and other issues, is an imprudent choice
9 regarding the implementation of the new law.

10 **Q12. Were the limitations in Section 13.b. proposed by any party to the**
11 **proceeding filing expert direct testimony?**

12 A12. No. Also, no such limitations were included in Duke Energy Ohio's ("Duke")
13 proposed ESP. Theodore E. Schultz, who testified on behalf of Duke, identified
14 that Duke's proposed ESP would allow customers served at transmission level
15 voltage, with either a single site load of at least 1 MW or a total aggregated load
16 within Duke's service area of 1.5 MW, to opt out of Duke's energy efficiency plan,
17 similar to Duke's existing Rider DSM. In his supplemental testimony, Mr. Schultz
18 corrected his testimony such that the option to opt out was limited to a single site
19 or aggregated load of 25 MW. Duke proposed to make this opt out an affirmative
20 election by the customer, rather than an automatic opt out.

21 The ability to opt out, discussed by Mr. Schultz, is unrelated to the mercantile
22 customer exemption opportunity that exists under Section 4928.66, Revised
23 Code. Therefore, I believe it is unaffected by Section 13.b. of the Stipulation and

1 Recommendation and would continue to exist if the Commission approves the
2 Stipulation and Recommendation since this is a provision of Duke's ESP that is
3 not expressly modified by the Stipulation and Recommendation.

4 **Q13. Did you voice IEU-Ohio's concerns about Section 13.b. during the**
5 **negotiations that occurred prior to the filing of the Stipulation and**
6 **Recommendation?**

7 A13. Yes.

8 **Q14. Do you have any other concerns with Section 13.b. of the Stipulation and**
9 **Recommendation?**

10 A14. Yes. Additional language in Section 13.b. states that to qualify for the exemption,
11 "the applicant customer must demonstrate to the Commission that it has
12 undertaken or will undertake self-directed energy efficiency and/or demand
13 reduction programs that have produced or will produce annual percentage
14 energy savings and/or peak demand reductions equal to or greater than the
15 applicable annual percentage statutory energy savings and/or peak demand
16 reduction benchmarks to which DE-Ohio is subject." I do not recommend the
17 Commission approve this provision.

18 **Q15. What are your concerns with this language?**

19 A15. There is an old adage that if you ask an optimist whether a glass is half full or
20 half empty, you will always get a response that the glass is half full. Conversely,
21 the same question posed to a pessimist will always get a response that the glass
22 is half empty. I think this is a good perspective to keep in mind when considering

1 the practical consequences of the proposed language identified in the response
2 to question 14.

3 We have language that once again seeks to impose limits on mercantile
4 customers seeking the exemption permitted under Section 4928.66, Revised
5 Code, at a time when there is no real world experience with mercantile
6 customers committing their efficiency and/or peak demand reduction capabilities
7 towards an electric distribution company's portfolio obligations. I do not believe
8 the specific limits that result from this language would be a wise policy
9 determination by the Commission. A simple example may help to illustrate why.

10 In my example, I have used energy reduction benchmarks for an electric
11 distribution company in excess of those that will be in effect during the three-year
12 ESP. I have done so to make the numbers more direct and easier to
13 comprehend. Let's assume that an electric distribution company has an
14 obligation to produce a 5% reduction in electricity usage during an annual
15 calendar period. Let's also assume that a mercantile customer has identified an
16 energy efficiency project it can undertake that will reduce its annual electricity
17 usage by 4%, and the customer is willing to commit its capabilities towards the
18 electric distribution company's portfolio obligations.

19 Under my example, the proposed language in Section 13.b. would foreclose the
20 customer from seeking an exemption as part of the value proposition it may
21 require in exchange for committing its capabilities towards the electric distribution
22 company's portfolio obligations. The language, at least from the perspective of

1 exemption eligibility, implies that any customer's energy efficiency improvement
2 that is less than the electric distribution company's portfolio obligation, in a given
3 year, has no value at all. I think this is fundamentally wrong. I also think the
4 Commission's policies, particularly at this stage of implementation, should be
5 directed more at encouraging, rather than discouraging, energy efficiency,
6 particularly given the fairly aggressive portfolio obligation. The proposed
7 language could serve to discourage mercantile customers' efforts towards energy
8 efficiency. From my perspective, if an electric distribution company is hungry for
9 energy efficiency improvements, it may be a reasonable judgment that half a loaf
10 is better than none at all. At the same time, I recognize that half a loaf, with other
11 factors held constant, is less valuable than a full loaf.

12 I believe that the resources customers may expend to achieve energy efficiency
13 or peak demand reductions are likely to vary significantly from customer to
14 customer when we focus on mercantile customers such as industrial customers.
15 For example, in the case of an industrial customer, significant energy efficiency
16 savings or peak demand reductions are likely to result from changes in
17 processes, perhaps from technological innovation or advances, rather than from
18 more traditional measures such as replacing lighting stock. This leads me to
19 conclude that the value proposition that will be required in order for the customer
20 to be willing to commit its capabilities towards an electric distribution company's
21 portfolio requirements will need to be addressed on a case-by-case basis. I
22 believe the draft rules that have been issued by the Commission recognize this
23 reality.

1 If you accept the premise that in order for a mercantile customer to be willing to
2 commit its capabilities towards an electric distribution company's portfolio
3 requirement the value proposition will need to be addressed on a case-by-case
4 basis, perhaps through a reasonable arrangement pursuant to section 4905.31,
5 Revised Code, then I fail to see why it would be advantageous to tie the
6 Commission's, the customer's and the electric distribution utility's hands by
7 arbitrarily imposing limits on the ability to seek an exemption. It would be a far
8 better policy for the Commission to stay silent on this issue and address it on a
9 case-by-case basis. If the Commission is presented with a request for an
10 exemption by a mercantile customer that can only commit towards some portion
11 of an electric distribution company's portfolio obligation, rather than committing a
12 full proportionate share, it can make a specific determination based upon the
13 facts presented to it in that proceeding, as to whether a full exemption, no
14 exemption, or some middle ground is reasonable.

15 **III. RECOMMENDATION AND CONCLUSION**

16 **Q16. What actions do you suggest the Commission take if it agrees with your**
17 **recommendations regarding Section 13.b. of the Stipulation and**
18 **Recommendation?**

19 **A16.** I recommend that the Commission reject Section 13.b. of the Stipulation and
20 Recommendation and permit the exemption opportunity to develop on a case-by-
21 case approach based on the merits of any exemption requests and in
22 accordance with the rules ultimately adopted by the Commission.

1 **Q17. Does that conclude your supplemental testimony?**

2 **A17. Yes.**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Supplemental Testimony of Kevin M. Murray on Behalf of Industrial Energy Users-Ohio* was served upon the following parties of record this 5th day of November 2008, via electronic transmission, hand-delivery or first class mail, postage prepaid.


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