

FILE

OCC EXHIBIT _____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan.)	Case No. 08-920-EL-SSO
)	
In the Matter of the Application of Duke Energy Ohio for Approval to Amend Accounting Methods.)	Case No. 08-921-EL-AAM
)	
In the Matter of the Application of Duke Energy Ohio for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge.)	Case No. 08-0922-EL-UNC
)	
In the Matter of the Application of Duke Energy Ohio for Approval to Amend its Tariff.)	Case No. 08-0923-EL-ATA
)	

**DIRECT TESTIMONY
of
WILSON GONZALEZ**

**ON BEHALF OF THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL**
10 West Broad St., Suite 1800
Columbus, OH 43215

November 5, 2008

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1 **I. INTRODUCTION**

2 ***Q1. PLEASE STATE YOUR NAME, ADDRESS AND POSITION.***

3 ***A1.*** My name is Wilson Gonzalez. My business address is 10 West Broad Street,
4 Suite 1800, Columbus, Ohio, 43215-3485. I am employed by the Office of the
5 Ohio Consumers' Counsel ("OCC") as a Principal Regulatory Analyst.

6
7 ***Q2. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND***
8 ***PROFESSIONAL EXPERIENCE.***

9 ***A2.*** I have a Bachelor of Arts degree in Economics from Yale University and a Master
10 of Arts degree in Economics from the University of Massachusetts at Amherst. I
11 have also completed coursework and passed my comprehensive exams towards a
12 Ph.D. in Economics at the University of Massachusetts at Amherst. I have been
13 employed in the energy industry since 1986, first with the Connecticut Energy
14 Office (Senior Economist, 1986-1992), then Columbia Gas Distribution
15 Companies ("Columbia Gas"), (Integrated Resource Planning Coordinator, 1992-
16 1996) and American Electric Power ("AEP") (Marketing Profitability Coordinator
17 and Market Research Consultant, 1996-2002). I have been spearheading the
18 Resource Planning activities within OCC since 2004.

19
20 ***Q3. PLEASE DESCRIBE YOUR ELECTRIC UTILITY EXPERIENCE.***

21 ***A3.*** I have been involved with many aspects of the electric utility industry
22 since 1986. While at the Connecticut Energy Office I represented the
23 office in one of the first DSM collaborative processes in the country

(Connecticut Department of the Public Utilities Commission Docket No. 87-07-01). There I analyzed the performance and cost-effectiveness of many efficiency programs for Connecticut's electric and gas utilities that led to demonstration projects, policy recommendations, DSM programs (including rate design) and energy efficiency standards. I also performed all the analytical modeling for United Illuminating's first integrated resource plan filed before the DPUC in 1990. At Columbia Gas, I was responsible for coordinating that company's Integrated Resource Plan within the corporate planning department and DSM program development activities in the marketing department. I designed and managed residential DSM programs in Maryland and Virginia. At AEP, I conducted numerous cost benefit analyses of programs being sponsored by AEP's corporate marketing department, including their residential load control water heater program. For the past 4 years at OCC I have participated in electric and gas case teams that have addressed municipal aggregation and retail competition in the Ohio energy sector.

Q4. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO?

A4. Yes. I submitted testimony in the following cases before the Public Utilities Commission of Ohio ("Commission" or "PUCO"): Vectren Energy Delivery of Ohio, Case No. 04-571-GA-AIR and Case No. 07-1080-GA-AIR; Dominion East Ohio, Case No. 05-474-GA-ATA and Case No. 07-829-GA-AIR; Vectren Energy

1 Delivery of Ohio, Case No. 05-1444-GA-UNC; AEP Case No. 06-222-EL-SLF
2 and Case No. 08-917-EL-SSO; Duke Energy of Ohio, Case No. 07-589-GA-AIR,
3 and FirstEnergy, Case No. 07-551-EL-AIR, Case No. 08-936-EL-MRO, and Case
4 No. 08-935-EL-SSO.

5
6 ***Q5. WHAT DOCUMENTS HAVE YOU REVIEWED IN THE PREPARATION OF***
7 ***YOUR TESTIMONY?***

8 ***A5.*** I have reviewed the Stipulation and Recommendation filed in this case on October
9 27, 2008 (Stipulation"). I have also reviewed the Application and associated
10 testimony in the Electric Security Plan ("ESP") filed by Duke Energy of Ohio
11 ("Duke" or "Company"). I have also reviewed the relevant responses to OCC
12 discovery and Commission Staff data requests.

13
14 **II. PURPOSE OF TESTIMONY**

15 ***Q6. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

16 ***A6.*** The purpose is to provide testimony regarding certain issues involving an
17 opportunity for residential customers to benefit from governmental aggregation.
18 In this regard, I recommend that Duke's residential customers be allowed to
19 participate in governmental aggregation opportunities under similar conditions as
20 those afforded to non-residential customers. The Stipulation does not address
21 whether residential governmental aggregation customers can bypass the SRA-
22 SRT rider and receive a shopping credit, but allows non-residential governmental
23 aggregation customers to bypass the rider and receive a shopping credit. Viable

municipal aggregation opportunities should not be thwarted by incumbent utility rate structures and conditions of service. As footnote 11 in paragraph 20 of the Stipulation notes, "...OCC shall have the right to carve out for litigation the issue of bypassability of charges and shopping credits for residential government aggregation customers." ¹

III. THE COMPANY'S GOVERNMENTAL AGGREGATION PROPOSAL

Q7. WHAT IS GOVERNMENTAL AGGREGATION?

A7. Governmental aggregation enables a governmental entity such as a municipality to aggregate the load of the individual consumers within that municipality (subject to opt-out provisions) in order to negotiate better electricity and natural gas rates from competing energy suppliers. A governmental aggregation can benefit utility customers by providing competitive opportunities that might otherwise not exist for offering lower rates to customers (partly because of relatively low municipal customer acquisition costs).

Q8. PLEASE DESCRIBE THE NON-RESIDENTIAL CHOICE AND GOVERNMENTAL AGGREGATION PROPOSAL CONTAINED IN THE STIPULATION.

A8. The non-residential choice and aggregation conditions are contained in paragraphs 17 through 20 of the Stipulation. Of special note is section "d" of paragraph 20 that states: "Non-residential customers in a Governmental

¹ Stipulation at 32.

1 Aggregation may avoid Rider SRA-SRT and receive the credit as established in
2 Stipulation Attachment 6 if the Governmental Aggregator notifies DE-Ohio at
3 least sixty (60) days prior to the start of Governmental Aggregation of its intent to
4 maintain the Governmental Aggregation through the remainder of the ESP-SSO
5 period and it agrees that returning non-residential customers shall return at a price
6 equal to 115% of the ESP-SSO price.”² The credit referred to in section “d” of
7 paragraph 20, contained in Stipulation Attachment 6 is the generation price
8 shopping credit equal to 6 percent of the current “Little g” price.³
9

10 ***Q9. DOES THE STIPULATION ADDRESS WHETHER RESIDENTIAL***
11 ***GOVERNMENTAL AGGREGATION CUSTOMERS WOULD BE OFFERED***
12 ***THE SAME SHOPPING CREDIT AND RIDER BYPASSABILITY AS NON-***
13 ***RESIDENTIAL AGGREGATION CUSTOMERS?***

14 ***A9.*** No, the Stipulation only addresses and provides a shopping credit and rider
15 bypassability for non-residential customers.
16

² Stipulation at 32.

³ Stipulation Attachment 6.

**Q10. WOULD IT BE APPROPRIATE TO MAKE A SHOPPING CREDIT AND
RIDER BYPASSABILITY AVAILABLE TO NON-RESIDENTIAL
AGGREGATION CUSTOMERS BUT NOT TO RESIDENTIAL
AGGREGATION CUSTOMERS?**

A10. No. OCC counsel has confirmed my understanding that the policy of Ohio, in R.C. 4928.02(A), is to “Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service....” Contrary to Ohio’s policy, it would be discriminatory to only offer credits and rider bypassability to non-residential customers, without such an offer for residential customers. Residential customers should be allowed to bypass the SRA-SRT and to receive the shopping credit just as proposed for non-residential customers. It would be unfair to provide non-residential customers these tools to reduce their electric costs while denying residential customers the same opportunity and such a result that the Company proposes would be violative of the regulatory principle that rates should be nondiscriminatory.

OCC counsel also has confirmed my understanding that the General Assembly required the PUCO to “adopt rules to encourage and promote large-scale governmental aggregation in this state.” In this regard, it would encourage and promote such aggregation for residential consumers if Duke made available to them the credits and rider bypassability that are proposed in the Stipulation solely for non-residential customers. If Duke’s prices under the ESP continue to escalate as they have under the RSP and the market prices continue to fall or

1 levelize at their current rate, residential customers may be able to secure better
2 rates through governmental aggregation during the ESP period.

3
4 **Q11. WHAT IS THE COMPANY'S JUSTIFICATION FOR TREATING NON-**
5 **RESIDENTIAL AND RESIDENTIAL GOVERNMENTAL AGGREGATION**
6 **CUSTOMERS DIFFERENTLY?**

7 **A11.** The Company touts that "[r]esidential customers continue to benefit from the
8 flexibility to switch suppliers at any time without any minimum stay provisions ..
9 .. This provision was specifically negotiated to avoid the price volatility and
10 uncertainty of supply that they could be exposed to under various
11 circumstances."⁴ Company witness Smith further states: "When a consumer
12 communicates their intent to stay off of the DE-Ohio system through a specific
13 date, DE-Ohio is no longer obligated to maintain the capacity, or the commodities
14 to supply energy, to the departing consumer. As part of the active portfolio
15 management process, DE-Ohio liquidates the related positions to serve such a
16 consumer. If the consumer subsequently returns before their commitment date,
17 DE-Ohio is compelled to secure the capacity and commodities, often with very
18 little advance notice. Such procurement of capacity and commodities, if available
19 at all, often costs significantly more than the average cost to serve the consumers
20 that have remained."⁵

⁴ Second Supplemental Testimony of Paul Smith at 10. I do disagree with what appears to be an insinuation by Witness Smith, on lines 9-13, page 10 of his Second Supplemental Testimony, that the Stipulation somehow addresses the residential bypassability and shopping credit issues that are supposed to be carved out for litigation per Stipulation footnote 11.

⁵ Id at 13-14.

1 ***Q12. WHAT IS THE PUCO STAFF'S POSITION ON THIS ISSUE?***

2 ***A12.*** Staff witness Turkenton states that she "believes that non-residential government
3 aggregation customers can better assess those risks. Non-residential customers
4 have had the past experience of waiving such charges (during the ESP) and
5 perhaps can better assess the risks of bypassing these charges and withstand the
6 penalty of coming back to DE-Ohio at 115% of the ESP-SSO price. Although
7 Staff believes that 115% ESP-SSO return pricing is reasonable and not a huge
8 penalty, Staff would not wish to subject residential governmental aggregation
9 customers to 115% ESP-SSO return pricing if that aggregation elected to bypass
10 these charges. On its face, giving the same right to bypass these charges to
11 residential governmental aggregations that non-residential aggregations have may
12 seem reasonable. However, in reality "subjecting and actually imposing" upon a
13 residential governmental aggregation customer 115% ESP-SSO return pricing
14 may present practical problems of implementation that perhaps may not be in the
15 best interest of customers."⁶

16

17 ***Q13. DO YOU AGREE WITH THE COMPANY'S AND STAFF'S POSITIONS ON***
18 ***RESIDENTIAL AGGREGATION AS CONTAINED IN THEIR***
19 ***TESTIMONIES?***

20 ***A13.*** No. The Company's approach is a position that would not encourage and
21 promote the competition from governmental aggregation that is supposed to be
22 encouraged and promoted for consumers under Amended S.B. 221. The PUCO

⁶ Turkenton Testimony at 7.

1 Staff's position is well intended but is a paternalistic type of "Company and
2 PUCO Staff know best" argument that would eliminate a very important exit
3 ramp for residential customers in the event that Duke's generation rates continue
4 to rise and exceed the market rate.

5
6 Moreover, the potential for competition by governmental aggregators could help
7 consumers not only by producing favorable rates for aggregation customers but
8 also would help customers by constraining Duke from unreasonably increasing
9 rates for fear of losing some of its customer base. These benefits for customers
10 also serve the policy of Ohio, which OCC counsel confirmed regarding my
11 understanding of R.C. 4928.02(A), for "...reasonably priced retail electric
12 service...."

13
14 Unlike the Staff, I believe that it is reasonable, fair, and non-discriminatory to
15 give the same right to bypass these charges to residential governmental
16 aggregations that non-residential aggregations have. Since an important
17 determinant of whether a governmental entity proposes and adopts an aggregation
18 is the potential generation savings compared to Duke's generation price, not
19 allowing residential customers to avoid the Rider SRA-SRT charge and capture
20 the shopping credit creates an unreasonable switching cost which makes it highly
21 unlikely that a residential governmental aggregation could overcome the
22 economic hurdles in Duke's service territory.

**Q14. DO YOU SHARE THE SAME CONCERN EXPRESSED BY THE COMPANY
AND STAFF REGARDING RESIDENTIAL CUSTOMERS COMING BACK
TO HIGHER THAN ESP-SSO RATES?**

A14. Yes. However, I believe that with a carefully structured governmental aggregation, informed residential customers should be allowed to entertain the decision to shop, and such customers should live with the consequences of their decisions. Informing residential customers is important, including customer education regarding the possibility of returning to a higher ESP-SSO rate and providing a clear explanation of the risks and benefits of such a generation price arrangement.

**Q15. ARE DUKE AND THE PUCO STAFF PROPOSING BARRIERS TO
RESIDENTIAL GOVERNMENTAL AGGREGATION THAT CONTRADICT
ANY PROVISIONS IN AMENDED S.B. 221?**

A15. Yes. The proposal by Duke and PUCO Staff in their testimonies would result in barriers to serving residential consumers by governmental aggregation. OCC counsel has confirmed my understanding that utility-imposed barriers to large-scale governmental aggregation in the context of an ESP are disfavored under Amended S.B. 221. Such barriers to the inclusion of residential customers within a large-scale aggregation effort would seriously hinder the development of large-scale governmental aggregation. For this reason as well as my other stated reasons in my testimony, the Company and Staff's position for denying residential

1 customers the shopping credit and rider bypassability that are proposed for non-
2 residential customers are not in the public interest.

3 S.B. 221 incorporated three new provisions into R.C. 4928.20 to ensure that the
4 Commission encourages governmental aggregation by limiting the unavoidable
5 charges that aggregated customers must pay the electric distribution utility.

- 6
- 7 • R.C. 4928.20(I) directs the Commission to require governmental
8 aggregation customers to pay only that proportion of surcharges allowed
9 under R.C. 4928.144 from which they benefit. The surcharges under R.C.
10 4928.144 are phased-in rates permitted under the standard service offer.
 - 11 • R.C. 4928.20(J) authorizes legislative authorities that have formed
12 governmental aggregations to opt out of standby service authorized under
13 R.C. 49128.143(B)(2)(e), which includes all "automatic increases or
14 decreases in any component of the standard service offer price." This
15 section also states that any consumer that did not pay a standby charge
16 under the governmental aggregation program shall pay the market price of
17 power incurred by the utility to serve that consumer plus any amount
18 attributable to the utility's cost of compliance with the alternative resource
19 provisions.
 - 20 • R.C. 4928.20(K) required the Commission to review its governmental
21 aggregation rule and "within the context of an electric security plan under
22 section 4928.143 of the Revised Code, the commission shall consider the
23 effect on large-scale governmental aggregation of any nonbypassable

1 generation charges, however collected, that would be established under
2 that plan.”
3

4 As these three sections demonstrate, the General Assembly directs the
5 Commission to take into consideration how nonbypassable generation charges
6 affect the viability of governmental aggregation. It is also clear that residential
7 customers of government aggregation should be able to return at the market price.
8 It is not proven that 115% of the standard service offer is equal to the market
9 price. Nor is the market price of power known with certitude at this time for any
10 point in the future, unless a customer locks into a price for a period of time in the
11 future.
12

13 ***Q16. IF THE COMMISSION PROVIDED FOR AGGREGATING RESIDENTIAL***
14 ***CUSTOMERS IN AGREEMENT WITH YOUR RECOMMENDATIONS, DO***
15 ***YOU AGREE THAT 115% OVER THE ESP-SSO REPRESENTS A GOOD***
16 ***PROXY FOR THE MARKET RATE?***

17 ***A16.*** I recommend that residential aggregation customers who are able to bypass Rider
18 SRA-SRT and receive a shopping credit should be able to return at the market rate
19 or 115 % of the SSO at the customer's option. The Stipulation already provides
20 that non-residential aggregation customers may return at 115% of the SSO.
21 However, I am advised by legal counsel that the law provides for the company
22 purchasing power at the market price as noted above. Therefore, the customer
23 should be allowed to choose which of the two options it prefers, the one already

1 available under the Stipulation or what is available by law. If a commitment has
2 been made that a customer does not depend upon standard service planning or
3 pricing, the rate provided to that customer upon return to Company service should
4 be the lower of a market price or 115% of ESP-SSO. With the current protracted
5 recession being forecast by many economists,⁷ increased pressure on generation
6 rates would be dampened and the chances of prices much in excess of the SSO are
7 small during the three year ESP period.

8
9 ***Q17. DOES THIS CONCLUDE YOUR TESTIMONY?***

10 ***A17.*** Yes. However, I reserve the right to incorporate new information that may
11 subsequently become available. I also reserve the right to supplement my
12 testimony in the event that Duke or the PUCO Staff submits new or corrected
13 financial or other data in connection with this proceeding.

⁷ See "Top Analysts' Forecasts Of U.S. And Foreign Interest Rates, Currency Values And The Factors That Influence Them," Blue Chip Financial Forecasts, Vol. 27, No. 11, November 1, 2008. On page 16, 100% of economists surveyed agree that the U.S. economy is in a recession or will enter one in the next 12 months.

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the *Testimony of Wilson Gonzalez on behalf of the Office of the Ohio Consumers' Counsel*, has been served upon the following parties via Electronic service and First Class U.S. Mail delivery this 5th day of November, 2008.


Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Paul A. Colbert, Esq.
Rocco O. D'Ascenzo, Esq.
Elizabeth H. Watts, Esq.
Duke Energy Ohio, Inc.
139 Fourth Street, Room 25 ATII
Cincinnati, OH 45202
paul.colbert@duke-energy.com
rocco.d'ascenzo@duke-energy.com

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mikurtz@bkllawfirm.com

Attorneys for Ohio Energy Group

Thomas J. O'Brien
Sally W. Bloomfield
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com
sbloomfield@bricker.com

Attorneys for City of Cincinnati

Thomas McNamee
William Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, OH 43215
thomas.mcnamee@puc.state.oh.us
william.wright@puc.state.oh.us

Dave Rinebolt
Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street, P.O. 1793
Findlay, OH 45839-1793
drinebolt@aol.com
cmooney@columbus.rr.com

Attorneys for Ohio Partners for Affordable Energy

Sam Randazzo
Lisa McAlister
McNees, Wallace & Nurick LLC
21 East State Street, 17th Fl.
Columbus, OH 43215
srandazzo@mwncmh.com
lmcalister@mwncmh.com

Barth E. Royer, Esq.
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, OH 43215-3927
barthroyer@aol.com

*Attorney for the Ohio Environmental
Council*

M. Howard Petricoff, Esq.
Stephen M. Howard, Esq.
Vorys, Sater, Seymour And Pease LLP
52 East Gay S., P. O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

*Attorneys for Constellation NewEnergy,
Inc. and Constellation Energy
Commodities Group, Inc.*

Noel M. Morgan, Esq.
215 East Ninth Street, Suite 500
Cincinnati, OH 45202
nmorgan@lascinti.org

*Attorney for Communities United for
Action*

Gary A. Jeffries, Esq.
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburg, PA 15212-5817
gary.a.jeffries@dom.com

Douglas E. Hart, Esq.
Greater Cincinnati Health Council
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

John Bentine, Esq.
Mark Yurick, Esq.
Chester, Willcox & Saxbe LLP
65 E. State Street, Suite 1000
Columbus, OH 43215-4213
jbentine@cwsllaw.com
myurick@cwsllaw.com

Attorneys for the Kroger Company, Inc.

Cynthia A. Fonner, Esq.
Senior Counsel
Constellation Energy Group, Inc.
550 W. Washington Street, Suite 300
Chicago, IL 60661
cynthia.a.fonner@constellation.com

*Attorney for Constellation NewEnergy, Inc.
and Constellation Energy Commodities
Group, Inc.*

Nolan Moser, Esq.
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
nmoser@theOEC.org

Bobby Singh, Esq.
Integrus Energy Services, Inc.
300 West Wilson Bridge Road, Suite 350
Worthington, OH 43085
bsingh@integrusenergy.com

Robert P. Malloy, Esq.
The Village of Terrace Park
Wood & Lamping, LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202
rpmalloy@woodlamping.com

Langdon D. Bell, Esq.
Bell & Royer Company, LPA
33 South Grant Avenue
Columbus, OH 43215-3927
Lbell33@aol.com

*Attorney for Ohio Manufacturer's
Association*

Larry Gearhardt, Esq.
Ohio Farm Bureau Federation
280 North High Street
P.O. Box 182383
Columbus, OH 43218-2383
lgearhardt@ofbf.org

Mary W. Christensen, Esq.
Christensen, Christensen, Donchatz
Kettlewell & Owens, Inc.
100 East Campus View Blvd., Suite 360
Columbus, OH 43235-4679
mchristensen@columbuslaw.org

*Attorney for People Working
Cooperatively, Inc.*

Craig G. Goodman, Esq.
National Energy Marketers Association
3333 K. Street, NW, Suite 110
Washington, DC 20007
cgoodman@energymarketers.com

Terrance O'Donnell, Esq.
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215-4236
todonnell@bricker.com

*Attorney for American Wind Energy
Association, Ohio Advanced Energy*

Henry W. Eckhart, Esq.
The Natural Resources Defense Council
and The Sierra Club of Ohio
50 West Broad Street, Suite 2117
Columbus, OH 43215
henryeckhart@aol.com

Douglas M. Mancino, Esq.
McDermott Will & Emery, LLP
2049 Century Park East, Suite 3800
Los Angeles, CA 90067-3218
dmancion@mwe.com

*Attorney for Morgan Stanley Capital
Group, Inc.*