

FILE

MC GINNIS & ASSOCIATES, INC.
614-431-1344 COLUMBUS, OHIO 800-498-2451

Page 1

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Application) Case No.
of Duke Energy Ohio for Approval) 08-920-EL-SSO
of an Electric Security Plan.)

In the Matter of the Application) Case No.
of Duke Energy Ohio for Approval) 08-921-EL-AAM
to Amend Accounting Methods.)

In the Matter of the Application) Case No.
of Duke Energy Ohio for Approval) 08-922-EL-UNC
of a Certificate of Public)
Convenience and Necessity to)
Establish an Unavoidable)
Capacity Charge.)

In the Matter of the Application) Case No.
of Duke Energy Ohio for Approval) 08-923-EL-ATA
to Amend its Tariffs.)

- - -

DEPOSITION OF KEVIN M. MURRAY

FRIDAY, NOVEMBER 7, 2008

10:11 O'CLOCK A.M.

- - -

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1 Deposition of Kevin M. Murray, a witness
2 herein, called by Duke Energy Ohio for examination
3 under the statute, taken before us, Deborah J.
4 Holmberg, Registered Merit Reporter and Notary
5 Public in and for the State of Ohio, and Linda D.
6 Riffle, Registered Diplomate Reporter, Certified
7 Realtime Reporter and Notary Public in and for the
8 State of Ohio, pursuant to notice and stipulations
9 of counsel hereinafter set forth, at the offices
10 of Duke Energy Corporation, 155 East Broad Street,
11 21st Floor, Columbus, Ohio, on Friday, November 7,
12 2008, beginning at 10:11 o'clock a.m. and
13 concluding on the same day.

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S T I P U L A T I O N S

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It is stipulated by and among counsel for the respective parties herein that the deposition of Kevin M. Murray, a witness herein, called by Duke Energy Ohio for examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notaries, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notaries is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notaries taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notaries taking it.

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P R O C E E D I N G S

- - -

Friday, November 7, 2008

Morning Session

- - -

MS. HEIGEL: Catherine Heigel, and I'm
counsel for Duke Energy Ohio in this case, in Case
Number -- If you want me to read it off. I'll
take care of all that.

This deposition is being taken in
furtherance of discovery in Duke Energy Ohio's
Electric Security Plan. And those Case Numbers
are 08-920-EL-SSO, 08-921-EL-AAM, 08-922-EL-UNC
and 08-923-EL-ATA.

Our first exhibit will be the Notice of
Deposition when she comes back in. So that will
be marked as Exhibit No. 1.

I just want to confirm you did receive
that.

MR. CLARK: Yes. Received it
electronically.

MS. HEIGEL: All right. I'm assuming
that we're going to -- Bear with me here a second,
since this is Ohio, and while I'm licensed here,
the protocol may be a little different here, but I

1 just want to agree that this deposition will be
2 subject to the usual stipulations.

3 MR. CLARK: Usual stipulations being?

4 MS. HEIGEL: Basically, that all
5 objections will be reserved till the hearing
6 except for objections as to the form of the
7 question.

8 MR. CLARK: Okay.

9 MS. HEIGEL: Which is argumentative --

10 MR. CLARK: Sure.

11 MS. HEIGEL: -- that type of thing.

12 All right. You want to identify
13 yourself?

14 MS. WATTS: Elizabeth Watts on behalf of
15 Duke Energy.

16 MR. WHITE: Matt White on behalf of
17 Kroger.

18 MS. ROBERTS: Jacqueline Roberts on
19 behalf of the Ohio Consumers' Counsel.

20 MR. CLARK: Joe Clark with the law firm
21 of McNees, Wallace & Nurick, on behalf of the
22 Industrial Energy Users of Ohio.

23 MR. MOSER: Nolan Moser on behalf of the
24 Ohio Environmental Council.

25 MS. WATTS: Who was that, please?

1 MR. MOSER: This is Nolan Moser,
2 N-o-l-a-n M-o-s-e-r, on behalf of the Ohio
3 Environmental Council.

4 MR. MURRAY: I'm Kevin Murray here for
5 the Industrial Energy Users - Ohio.

6 (Witness placed under oath.)

7 MS. HEIGEL: Thank you.

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1 KEVIN M. MURRAY

2 of lawful age, being first duly placed under oath,
3 as prescribed by law, was examined and testified
4 as follows:

5 EXAMINATION

6 BY MS. HEIGEL:

7 Q. Mr. Murray, would you state your name and
8 address for the record?

9 A. My name is Kevin M. Murray. My address
10 is McNees, Wallace & Nurick, 21 East State Street,
11 Columbus, Ohio 43215.

12 Q. And have you been deposed before?

13 A. Yes, I have.

14 Q. So you know how this works; I'm going to
15 ask you a series of questions, you're going to
16 give me your answers to the best of your
17 knowledge; court reporter is going to take
18 everything down.

19 We'll get a transcript. We've arranged
20 to get -- have transcripts available same day. If
21 you like -- I assume you'll have the ability to
22 review the transcript, and you'll let us know --
23 not much time between now and the hearing, but
24 you'll let us know basically if there's anything
25 that you feel that's inaccurately portrayed in the

1 transcript; is that correct?

2 A. I believe so.

3 Q. Okay.

4 MR. CLARK: That's fine.

5 BY MS. HEIGEL:

6 Q. As you know, it's important that you
7 understand the questions and that the answers that
8 you give be truthful and accurate. So if at any
9 time you do not understand the questions as I've
10 framed them or anything about the questions or do
11 not accept assumption of a proposition stated in
12 the question, please state so at that time, okay?

13 A. Okay.

14 Q. And I believe you just stated that your
15 address is a law firm address. Is that your
16 employer?

17 A. Yes.

18 Q. Okay. And In what capacity are you
19 employed by the law firm?

20 A. I'm employed as a technical specialist.

21 Q. Okay. Can you just briefly describe your
22 educational and professional background?

23 A. My educational background is actually
24 described in my supplemental testimony. I
25 received a Bachelor's degree in metallurgical

1 engineering from the University of Cincinnati in
2 1982. I spent approximately 12 years working for
3 the Timken Company in their steelmaking division,
4 much of that in operations. Spent -- The last
5 three years, I was involved in arranging their
6 electricity and natural gas supplies for
7 facilities throughout the United States.

8 I've been employed by McNeese, Wallace &
9 Nurick or our previous law firm for approximately
10 12 years.

11 Q. Okay. And did you cause to be prefiled
12 in this docket direct testimony consisting of
13 14 pages and two exhibits?

14 A. Yes, I did.

15 Q. And we'll mark that as Exhibit No. 2.

16 At any time as we go through these, if
17 you want to wait until those copies get in here to
18 verify the exhibits, let me know, but I think all
19 of these are pretty familiar to you.

20 Did you also cause to be prefiled in this
21 docket supplemental direct testimony consisting of
22 13 pages?

23 A. Yes.

24 Q. We'll mark the supplemental direct
25 testimony as Exhibit 3.

1 Can you briefly describe for me what the
2 purpose of your testimony in the case is?

3 A. Ask a clarifying question?

4 Q. Sure.

5 A. I had assumed that the focus of the
6 deposition was my supplemental testimony, and so I
7 brought a copy of that.

8 Q. That is the focus of the deposition, but
9 if you don't mind, if you could give me --

10 A. I didn't bring a copy of my direct
11 testimony, so do you want me to describe that as
12 well or --

13 Q. Well, do you not recall?

14 A. I'd have to look at it to refresh my
15 memory.

16 MR. CLARK: It's our understanding that
17 the deposition was solely about the supplemental
18 testimony.

19 MS. HEIGEL: That is the focus of it.

20 MR. CLARK: Focus or solely?

21 MS. HEIGEL: That is the purpose of his
22 deposition.

23 MR. CLARK: Okay.

24 BY MS. HEIGEL:

25 Q. Why don't I reframe the question then.

1 Can you tell me what the purpose of your
2 supplemental testimony is in this deposition?

3 A. Sure. My supplemental testimony is to
4 raise some objections to the Stipulation that was
5 filed in this proceeding, specifically related to
6 Section 13.b of the Stipulation and
7 Recommendation.

8 Q. Can you tell me what the membership of
9 IEU is comprised of? Who are your members?

10 A. IEU is comprised -- It's a voluntary
11 trade association. Its members have commercial
12 and industrial facilities located throughout the
13 State of Ohio. They tend to be more
14 energy-intensive consumers.

15 Q. Can you tell me which of your membership
16 are located in Duke Energy Ohio's service
17 territory?

18 A. Sure. We have two members of IEU Ohio
19 that have facilities in Duke's service territory;
20 General Motors and Marathon Oil.

21 Q. General Motors and Marathon Oil?

22 A. Correct.

23 Q. And are these members -- And I'm
24 specifically now referring to those that are
25 located in Duke Energy Ohio's service territory

1 that you've named for me, General Motors and
2 Marathon Oil. Are they currently doing
3 energy-efficiency programs, to your knowledge?

4 A. I don't know.

5 Q. If they were doing energy-efficiency
6 programs, do you have any idea how they would be
7 measuring and verifying the impacts associated
8 with those programs?

9 A. I'm not familiar with what they're
10 presently doing.

11 Q. Have you spent any time in preparation
12 for your testimony in this case speaking with your
13 members, General Motors and Marathon Oil, about
14 their energy-efficiency programs?

15 MR. CLARK: Objection. Privileged
16 communications.

17 MS. HEIGEL: What's the basis of the
18 privilege? I mean, what --

19 MR. CLARK: Talking about their legal
20 needs in this case.

21 MS. HEIGEL: I'm not asking for any trade
22 secrets of that nature.

23 We'll just move on.

24 BY MS. HEIGEL:

25 Q. Are you familiar with Senate Bill 221,

1 specifically what has been codified as Revised
2 Code Section 4928.66?

3 A. I have some familiarity with it.

4 Q. Okay. So you are also then familiar with
5 the new benchmarks for energy-efficiency and
6 demand response that have been included as part of
7 that; is that correct?

8 A. I am aware that the legislation provides
9 for benchmarks in those areas.

10 Q. In your view, what are the policy
11 objectives of that section of the statute,
12 specifically Section 4928.66?

13 MR. CLARK: I'll object only to just the
14 fact that he's -- if you're asking him to come to
15 a legal conclusion; otherwise, he can answer, but
16 with the objection on the record.

17 MS. HEIGEL: Absolutely.

18 BY MS. HEIGEL:

19 Q. I'm asking for, as you did in your
20 supplemental testimony, providing your opinion
21 based on your technical perspective of what the
22 policy objectives of Senate Bill 221 are,
23 understanding that you are not a lawyer.

24 A. The legislation provided for specific
25 reductions in both energy consumption or send out,

1 I guess is the way I would describe it, by
2 electric distribution utilities, as well as peak
3 demand reductions, and the targets are
4 increasingly aggressive over time, meaning the
5 electric distribution company has a -- each year
6 has a higher level of energy-efficiency and peak
7 demand reduction that they must achieve.

8 Q. Why do you think that the General
9 Assembly passed Senate Bill 221 and those
10 aggressive targets?

11 MR. CLARK: Objection. Speculation.

12 THE WITNESS: I don't know.

13 MS. HEIGEL: Again, I'm asking for his
14 opinion as to -- as he did in his supplemental
15 testimony from his technical perspective what he
16 thinks the objectives of having those
17 aggressive -- increasingly aggressive targets
18 might be.

19 MR. CLARK: Object. I understand that
20 question, but you're asking why. It's a
21 different -- You're asking him to, you know, delve
22 into the minds of the legislators.

23 MS. HEIGEL: I think he's answered. So I
24 will --

25 MR. CLARK: Okay.

1 MS. HEIGEL: If that's all right. I'm
2 good with that.

3 BY MS. HEIGEL:

4 Q. I'll move now to your testimony, which I
5 believe you have in front of you; correct?

6 A. Correct.

7 MS. HEIGEL: And we have previously
8 marked this supplemental testimony as Exhibit 3.
9 Now, I can wait if you want to follow along until
10 we have the copies of the supplemental testimony.

11 MS. ROBERTS: Please proceed until we
12 have copies. I have no objection to that.

13 MS. HEIGEL: Okay. I just want to make
14 sure everybody is all right with that.

15 BY MS. HEIGEL:

16 Q. If you'll turn to Page 3 of your
17 supplemental direct testimony. On Lines 15
18 through 18, you state that Section 13.b of the
19 Stipulation and Recommendation "...is inconsistent
20 with the criteria that the Commission has used to
21 review settlements submitted by all of the
22 parties -- all or some of the parties in a
23 contested proceeding."

24 Can you tell me what criteria you're
25 referring to?

1 A. I'm referring to the criteria that a
2 stipulation not violate an important regulatory
3 principle, as well as the law.

4 Q. On Page 4, Lines 13 through 14, you state
5 that the scope of your testimony should not be
6 read to support or oppose the balance of the
7 Stipulation and Recommendation, that is, all
8 provisions other than Section 13.b; is that
9 correct?

10 A. That's correct.

11 Q. Do you have an opinion on the balance of
12 the Stipulation?

13 A. No, I do not.

14 Q. Moving down to the bottom of Page 4,
15 starting at Line 21, you state there, if you are
16 at that point, that you have described the
17 potential regulatory consequences of the language
18 in the Stipulation based on your technical
19 perspective.

20 Can you explain in what ways your
21 technical training and experience informed your
22 opinion about potential regulatory consequences of
23 this language?

24 A. I can evaluate the three-megawatt
25 threshold that is identified in the Stipulation

1 and Recommendation and how that is inconsistent
2 with the definition of mercantile customer.

3 Q. And your technical training is helpful to
4 you in making that evaluation in what way?

5 A. A mercantile customer is defined as a
6 customer that has either one or multiple
7 facilities, if they're a national account; annual
8 energy consumption of 700,000 kilowatt-hours per
9 year; and as I've discussed in my testimony,
10 beginning at the bottom of Page 6 and carrying on
11 over to Page 7, the three-megawatt threshold
12 establishes a level of consumption that's
13 considerably higher than the definition of
14 mercantile customer.

15 Q. On Page 5 of your testimony, Lines 9
16 through 17, you have an excerpt there from the
17 statute, Section 4928.66(A)(2)(c).

18 And I'm not going to go through that --
19 I'm not going to read what that is. I think we're
20 all to that -- to that point.

21 MR. CLARK: Sure.

22 BY MS. HEIGEL:

23 Q. Can you tell me what you think it means
24 to commit demand-response or other customer-sited
25 capabilities for integration into the electric

1 distribution utility's demand-response,
2 energy-efficiency, or peak demand reduction
3 programs?

4 A. My understanding as to -- I think the
5 intent of that section is that by committing the
6 customer's capability, the electric distribution
7 utility is going to be able to count that towards
8 the benchmarks that are identified in the
9 legislation. Precisely how that happens is not
10 defined at this point in time.

11 This is a section of the statute that the
12 Commission is required to promulgate rules, to
13 implement draft rules that have been proposed at
14 this point in time, and the Commission has
15 received comments, but it has not acted and issued
16 final rules at this point.

17 Q. Can you tell me what, in your view, other
18 customer-sited capabilities might include?

19 A. I would have to go back and refer to some
20 other sections of the legislation if you give me
21 to time to do that.

22 Q. Sure.

23 A. Okay.

24 Q. Absolutely.

25 A. If you go to Section 4928.64 of the

1 statute, and specifically 64(A)(1), it talks about
2 what are called mercantile customer-sited advanced
3 energy resource or renewable energy resources,
4 whether new or existing, that the mercantile
5 customer commits for integration into the electric
6 distribution utility's demand-response,
7 energy-efficiency or peak demand reduction
8 programs as provided under division (B)(2)(b) of
9 Section 4926 of the Revised Code, including, but
10 not limited to, any of the following.

11 And I'm not going to read the statute
12 verbatim, but it describes action by the customer
13 to improve its -- or, reduce its reactive power
14 consumption, actions by the customer that would
15 capture the waste heat or thermal capabilities, as
16 well as the use of storage technology that would
17 allow the customer to modify either its demand or
18 load shape.

19 It also includes electric generation
20 equipment controlled by the mercantile customer
21 that uses it, an advanced energy resource or
22 renewable energy resource. And then any other
23 resource that that mercantile customer has that
24 can be utilized as an alternative energy resource
25 if it was utilized directly by an electric

1 distribution company.

2 Q. Thank you very much.

3 Going back to your supplemental
4 testimony. On Page 6, Lines 14 through 18 where
5 then you have the definition of mercantile
6 customer.

7 Can you tell me whether -- now I'm
8 speaking right now just of Duke Energy Ohio's
9 territory -- whether both General Motors and
10 Marathon Petroleum meet the 700,000 kWh threshold?

11 A. I believe they both would.

12 Q. Do you know whether they would meet the
13 three-megawatt threshold that's contained in
14 Section 13.b of the stipulation?

15 MR. CLARK: If you know.

16 THE WITNESS: Can you clarify? Are you
17 asking whether or not individual accounts meet
18 that threshold, or whether all of their facilities
19 in the service territory meet that threshold?

20 BY MS. HEIGEL:

21 Q. If they aggregated -- It's a very good
22 clarifying question.

23 If they were to aggregate their accounts,
24 would they meet that three-megawatt?

25 A. I have not specifically looked at any

1 invoices, but based upon my discussions with the
2 customers, I believe Marathon would be, in the
3 aggregate, in total, slightly more than
4 three megawatts, General Motors would not. Their
5 facilities in Duke's service territory would not.

6 Q. Can you tell me what you think
7 qualifies -- and this is only if you have an
8 opinion -- what you think qualifies, based on the
9 definition, as a national account?

10 MR. CLARK: Only if you have an opinion
11 or know.

12 THE WITNESS: I really haven't thought
13 about that.

14 BY MS. HEIGEL:

15 Q. Okay. That's fine.

16 Do you have an opinion as to whether
17 franchised businesses should be recognized and
18 allowed to aggregate?

19 A. Can you clarify what you mean by a
20 franchised business?

21 Q. Well, you may be able to help me here
22 more than I'm helping you in terms of framing this
23 question, but Marathon Petroleum, is that a
24 franchised -- are the stations franchised or are
25 they all company owned?

1 A. I honestly don't know the total. I
2 believe a number of the facilities are company
3 owned.

4 Q. Okay.

5 A. And I believe the facilities that we're
6 talking about in Duke service territory are
7 company owned.

8 Q. Thank you.

9 But you don't have an opinion as to
10 whether franchised businesses that are not company
11 owned should be permitted to aggregate?

12 A. I'm not sure what you mean by "franchised
13 businesses".

14 Q. What I'm talking about -- What I'm
15 talking about is the difference between the
16 company owning them, as I think we established
17 that perhaps is the case with Marathon Petroleum
18 in Duke Ohio's service territory, versus a
19 situation where the individual stations would be
20 individually owned and not company owned. So we
21 don't -- If you don't have an opinion, that's
22 fine, we can move on.

23 A. I'd have to think about that.

24 Q. Okay. That's an area that we aren't sure
25 we've addressed yet in rulemaking. I was just

1 curious what IEU's view on that was.

2 I think you answered earlier that you
3 were not aware of specific energy-efficiency
4 measures that your membership was taking; is that
5 correct?

6 THE WITNESS: Could you reread the
7 question?

8 (Question read back as requested.)

9 THE WITNESS: I believe when you asked
10 the question previously, it was directed at the
11 Marathon and General Motors facilities in the Duke
12 service territory, and limited to those
13 facilities, the answer is no.

14 BY MS. HEIGEL:

15 Q. Okay. Let's broaden the question then.

16 In terms of your greater membership, do
17 you have a general understanding of what their --

18 MR. CLARK: Objection. How's it relevant
19 to this proceeding?

20 MS. HEIGEL: Well, these are policy
21 issues that are going to affect more than just
22 Duke Energy Ohio, so I think it is certainly
23 relevant to this proceeding.

24 MR. CLARK: Okay. I'm still not seeing
25 it. I mean, it's about this case.

1 MS. HEIGEL: I'll move on.

2 MR. CLARK: Okay.

3 MS. HEIGEL: I'll move on.

4 BY MS. HEIGEL:

5 Q. So as far as Marathon and General Motors
6 go, you are not aware of whether they have
7 invested in energy efficiency to the extent sought
8 by the legislation? Just confirming.

9 A. I don't understand your question because
10 I'm not --

11 Q. The benchmarks, the .3 percent of sales
12 in 2009, the .5 percent of sales.

13 MR. CLARK: I'm going to object.
14 Benchmarks don't apply to customers; they apply to
15 companies.

16 BY MS. HEIGEL:

17 Q. I understand that. But what I'm saying
18 is that the investment -- the company gets their
19 energy-efficiency savings from its sales. Its
20 sales are from customers. And the activities that
21 customers do is going to impact whether the
22 company can reach its benchmarks.

23 So all I'm asking is, I'm just confirming
24 that you don't know the answer since you don't
25 know the answer to the prior question.

1 A. Now I'm totally lost.

2 MR. CLARK: I'm lost, too.

3 BY MS. HEIGEL:

4 Q. The original question was do you know
5 what energy efficiency General Motors and Marathon
6 Petroleum are doing, what measures.

7 A. I believe I answered that I'm not aware
8 of what they specifically have undertaken for
9 facilities in the Duke Energy service territory.

10 Q. That's fine.

11 I'll move on.

12 MS. HEIGEL: We want to go off the record
13 for just a second.

14 (Discussion held off the record.)

15 - - -

16 Thereupon, Duke Exhibit Nos. 1
17 through 3 was marked for purposes
18 of identification.

19 - - -

20 MS. HEIGEL: I think we'll go back on the
21 record at this time.

22 BY MS. HEIGEL:

23 Q. I'm going to try to ask one more question
24 here in that series that I was trying to ask
25 before.

1 Mr. Murray, can you tell me what the
2 contribution you expect in total megawatt-hours,
3 megawatt percentage of baseline that you expect
4 IEU members -- or you can pick either one, General
5 Motors or Marathon -- to make toward Duke Energy's
6 achievement of the benchmarks?

7 MR. CLARK: I'm going to object. You've
8 had too many questions that are privileged and I
9 don't think the witness should answer.

10 MS. HEIGEL: I'm not sure that question
11 asked for privileged information. It's an
12 expectation of contribution. He either knows or
13 he doesn't know. He has an opinion or he doesn't.

14 MR. CLARK: Based upon his knowledge
15 gained through client communications, which are
16 privileged.

17 THE WITNESS: I think I can answer it
18 generically.

19 MR. CLARK: Okay. To that extent.

20 MS. HEIGEL: It would be helpful.

21 MR. CLARK: Sure. Just general is fine.

22 THE WITNESS: If you look at Pages 9
23 through 12 of my testimony, I discuss another
24 limitation that arises from other provisions in
25 Section 13.b of the Stipulation.

1 And as I interpret the intent of the
2 language that appears in that section, it seems to
3 want to impose the effect that in order to be
4 eligible for seeking a waiver, the customer that
5 meets all of the other requirements, must
6 undertake the same level of energy efficiency as
7 the EDU is obligated to -- energy efficiency or
8 peak demand direction the EDU is obligated to
9 undertake under the statute.

10 And on Page 10 of my testimony, I try to
11 provide a specific mathematical example as to why
12 I don't think that is a good idea or requirement
13 from a policy perspective.

14 So from my perspective, I think that any
15 contribution that a customer can make towards the
16 energy efficiency or peak demand reduction
17 obligations is potentially relevant. The fact
18 that they may not necessarily meet the specific
19 benchmarks that an electric distribution company
20 is subject to is a fact, but it's not
21 determinative.

22 BY MS. HEIGEL:

23 Q. Okay. Thank you.

24 MS. TARKENTON: On the phone is Tammy
25 Tarkenton.

1 MS. ROBERTS: Hello, Tammy.

2 MS. HEIGEL: Hi, Tammy.

3 BY MS. HEIGEL:

4 Q. On Page 7 of your testimony, Line 6 --

5 MR. HART: Doug Hart.

6 MS. HEIGEL: Paul Smith has come on the
7 line.

8 BY MS. HEIGEL:

9 Q. Again, back on Page 7, Lines 6 through
10 10, you state that it's your understanding that
11 the Ohio General Assembly delegates authority to
12 the Commission, but that neither the Commission
13 nor the parties to the Stipulation have the
14 ability to change a law that the General Assembly
15 has passed.

16 Can you tell me how -- in what capacity
17 you have gained that understanding?

18 A. From talking to my counsel.

19 Q. On Page 7, at Lines 15 through 16, you
20 again state it's your understanding that the
21 General Assembly's responsible for making public
22 interest determinations.

23 Can you tell me in what -- upon what
24 information you base that understanding?

25 A. From talking with my counsel.

1 Q. On Page 8, Lines 2 through 3, you
2 reference the rulemaking proceeding that is
3 ongoing.

4 Can you tell me, have you participated in
5 that process for IEU?

6 A. I know IEU filed comments in the
7 proceeding. I probably had some involvement
8 reviewing the draft comments, but it's been a long
9 time ago.

10 Q. Okay. On Page 8, Lines 3 through 6, you
11 indicate, "There is no real world experience with
12 mercantile customers committing their efficiency
13 and/or peak demand reduction capabilities towards
14 an electric distribution company's portfolio
15 obligations."

16 How -- How should customers, in your
17 view, commit their energy-efficiency and demand
18 response capabilities to the utility?

19 A. That's an issue that I think is going to
20 have to be addressed by the rules issued by the
21 Commission.

22 Q. Do you have an opinion as to how they
23 should do that?

24 A. I think this is alluded to in my
25 testimony that for mercantile customers, I think

1 that that is probably going to have to be
2 addressed on a case-by-case basis.

3 Q. And that would be done through special
4 contracts?

5 A. The term, as I understand it, is called a
6 reasonable arrangement.

7 Q. At the bottom of Page 8, Lines 21 through
8 23, can you explain for me why you believe the opt
9 out discussed in Mr. Schultz's direct and
10 supplemental testimony is unaffected by
11 Section 13.b of the Stipulation?

12 A. The opt out discussed by Mr. Schultz
13 makes an analogy to some of the Company's current
14 tariff that allows certain customers to not be
15 subject to a charge for current demand-side
16 management activities. The opt out that he
17 discussed is unrelated to the mercantile customer
18 exemption.

19 So my understanding of another provision
20 in the Stipulation is it says that unless
21 expressly -- and I'm paraphrasing here, but unless
22 expressly modified by the Stipulation, the
23 Company's application, if the Stipulation is
24 accepted in its as-filed form by the Commission,
25 is approved, and since this opt out, again,

1 appeared to be unrelated to the mercantile
2 customer exemption, it would be -- it would
3 continue to be in effect.

4 MS. HEIGEL: Okay. I'm going to go ahead
5 and just mark the Stipulation as 4.

6 - - -

7 Thereupon, Duke Exhibit No. 4 was marked
8 for purposes of identification.

9 - - -

10 BY MS. HEIGEL:

11 Q. On Page 9, Lines 10 through 17, you
12 recommend against requiring customers to
13 demonstrate that they are doing or plan to do
14 energy-efficiency or demand response sufficient to
15 meet the -- meet or exceed the benchmark levels.

16 What criteria do you think the Commission
17 should use to determine eligibility for exemption?

18 A. I believe that that is an issue that the
19 customer -- the Commission will need to address on
20 a case-by-case basis.

21 Q. You spent a couple pages, 9 through 11 of
22 your supplemental testimony, drawing this glass
23 half empty, have full analogy, which I personally
24 like; we use it in my household. I'm the half
25 full; my husband's the half empty.

1 But in this context, what do you think
2 the ramifications should be if a customer doesn't
3 meet their commitment, whether it's partial or
4 full commitment to meeting these requirements?

5 A. Well, there's two ways to answer that.
6 It may be an issue that's addressed in the
7 Commission's final rules. We don't know at this
8 particular point in time. We'll have to wait and
9 see what the rules say when they're issued.

10 The other option is as I've identified, I
11 think, addressing the commitment in most cases
12 will likely occur through a reasonable
13 arrangement. A reasonable arrangement is a
14 contract that's filed with the Commission for
15 approval. And in the context of that contract,
16 it's certainly feasible that the contract, itself,
17 would address those types of issues.

18 Q. So it would be feasible in that scenario,
19 as you propose, for different customers to have
20 different penalties or liquidated damages for
21 failing to meet the requirement?

22 A. I think that's theoretically possible.
23 Whether the Commission would accept that is
24 speculation.

25 Q. Sure.

1 Are you familiar with the penalties
2 provided for in Section 4928.66(C)?

3 A. I would have to look at the section of
4 the legislation.

5 MS. HEIGEL: Okay. I've got that.

6 THE WITNESS: I have a copy, but....

7 MS. HEIGEL: We'll mark Section 4928.66
8 as Exhibit 5.

9 - - -

10 Thereupon, Duke Exhibit No. 5 was marked
11 for purposes of identification.

12 - - -

13 BY MS. HEIGEL:

14 Q. Do you need a copy?

15 A. I have the complete legislation here.

16 Q. Yes, I admit yours is a much more user
17 friendly copy.

18 A. We better work off the same document,
19 though.

20 Q. It's on Page 2 of 2(C).

21 So now that I've given you the document
22 to refresh your recollection, are you familiar
23 with that provision of the statute providing for
24 penalties for the utilities?

25 A. I've read it.

1 Q. Okay. That's sufficient.

2 Using your analogy that you provided in
3 your testimony of the five percent reduction in
4 electricity usage, if a customer had the potential
5 to cost effectively reduce its electricity usage
6 by 10 percent as shown in an assessment for that
7 facility, do you have an opinion as to how much of
8 that 10 percent the customer should be required to
9 do?

10 THE WITNESS: Could you reread the
11 question?

12 (Question read back as requested.)

13 THE WITNESS: I'm not understanding your
14 question because the reference to five percent in
15 my testimony was the benchmark that the electric
16 distribution utility was assumed to have in a
17 particular year, so....

18 BY MS. HEIGEL:

19 Q. There's -- I'm sorry. I was referencing
20 it just from the standpoint of you had presented a
21 hypothetical, I was presenting a hypothetical, my
22 hypothetical isn't -- isn't linked to yours.

23 A. Okay. I don't understand your
24 hypothetical.

25 Q. Okay. Let me try it again.

1 A. Okay.

2 Q. We'll try it again.

3 If, hypothetically, General Motors hired
4 someone, a consultant, to come in and do an energy
5 audit of any number of its facilities and that
6 report produced a number of recommendations for
7 cost-effective energy-efficiency measures that
8 that particular account or facility could
9 implement to result in ultimately savings for that
10 facility, I was assuming that that audit produced
11 a recommendation or produced a number of measures
12 that would rise to a 10 percent level of savings.

13 Are you with me so far?

14 A. Okay.

15 Q. Okay. So we have an assessment. It
16 says, "You can save 10 percent", and I'm asking
17 you, should there be a requirement -- Let me
18 strike that.

19 I'm asking you, how much of that
20 10 percent -- how many of those programs should
21 that customer be required to do?

22 MR. CLARK: Object for a second. We're
23 kind of beyond talking about the three-megawatt
24 issue in this portion of the Stipulation, not
25 about how much the customer should have to do.

1 I'm having a hard time understanding how this is,
2 you know, not beyond the testimony and where
3 you're going.

4 MS. HEIGEL: Well, where I'm going with
5 this is --

6 MR. CLARK: Because it doesn't really
7 relate to our objections.

8 MS. HEIGEL: It is relevant. It is
9 relevant in the sense that there are these
10 benchmarks. We, the utility, have penalties,
11 forfeiture, for failing to meet those benchmarks.
12 Your client is advocating for exemptions, partial
13 exemptions, partial contributions, and so it is
14 relevant to understanding, you know, the
15 disposition of your client in pursuing energy
16 efficiency.

17 MR. CLARK: I guess what I'm having a
18 hard time with is, the benchmarks don't apply to
19 customers, they apply to companies.

20 MS. HEIGEL: Companies meet those
21 benchmarks through energy-efficiency programs that
22 are implemented by and through customers.

23 MR. CLARK: Right, but only if the
24 customer agrees to integrate their capabilities
25 into the system, so....

1 MS. HEIGEL: We'll get to the -- We'll
2 get to the baseline and adjustment of that in a
3 little bit. We can -- We can move on. I think
4 you've noted your objection and I won't ask --

5 MR. CLARK: Yeah. Irrelevancy is the
6 scope of the objection. As long as it's noted,
7 you can proceed.

8 MS. HEIGEL: It's noted. Thank you.

9 BY MS. HEIGEL:

10 Q. Page 11 of your testimony, and we talked
11 about this previously, Line 21, and then also at
12 Page 12, Lines 7 through 9, you talk about your
13 recommendation that the Commission should make
14 these exemption determinations on a case-by-case
15 basis; is that correct?

16 A. Yes.

17 Q. Do you have any idea how many customers
18 might qualify as mercantile customers statewide?

19 MR. CLARK: If you know.

20 THE WITNESS: No.

21 BY MS. HEIGEL:

22 Q. You don't know.

23 Do you know how many IEU customers
24 qualify?

25 MR. CLARK: Objection. Privileged.

1 MS. HEIGEL: It's privileged as to how
2 many of --

3 MR. CLARK: Their usage is privileged
4 information.

5 MS. HEIGEL: I'm not asking for specific
6 facility usage, I'm asking for how many customers
7 meet your mercantile definition -- meet
8 the statutory mercantile definition.

9 MR. CLARK: Even the number is a
10 revelation of customer information.

11 MS. HEIGEL: All right. Moving on to the
12 initial comments that IEU filed on September 9th,
13 2008. We'll mark that as Exhibit -- I think we're
14 up to 6.

15 - - -

16 Thereupon, Duke Exhibit No. 6 was marked
17 for purposes of identification.

18 - - -

19 MS. HEIGEL: Yeah, I've got it.

20 MR. CLARK: Comments.

21 MS. HEIGEL: It's here. I've got it.

22 THE WITNESS: I don't have a copy of
23 those either.

24 MS. HEIGEL: We should have plenty here.
25 Does everybody have a copy of that now?

1 THE WITNESS: I --

2 BY MS. HEIGEL:

3 Q. Did you get a copy?

4 A. Yes.

5 Q. Okay. Just making sure.

6 Just to reestablish, you had indicated
7 earlier that you had some involvement in the
8 preparation of these comments through review and
9 comment on drafts.

10 A. I think I indicated I may have seen
11 drafts of what IEU ultimately filed. I don't know
12 that that amounts to any significant involvement.

13 Q. Okay. And what we're referring to are
14 the initial comments of the Industrial Energy
15 Users of Ohio in Case No. 08-888-EL-ORD.

16 On Page 2, Paragraph 3 of these comments,
17 there is a statement in here that -- make sure I
18 got the right page -- about midway through the
19 paragraph --

20 MR. CLARK: May we go off the record for
21 just a minute?

22 MS. HEIGEL: Sure.

23 (Discussion held off the record.)

24 MS. HEIGEL: We'll go back on the record.

25 BY MS. HEIGEL:

1 Q. I believe I was midway through the third
2 paragraph on Page 2 of the comments where there's
3 a statement that in some cases, the Commission's
4 proposed rules are inconsistent with Senate Bill
5 221. Do you see where I'm referring to there?

6 A. Yeah, I see that.

7 Q. Okay.

8 MR. CLARK: Catherine, I just want to put
9 an objection on the record before he answers the
10 questions. I don't see that the rules are
11 relevant to his testimony, but I just want it on
12 the record. He can answer the questions.

13 MS. HEIGEL: He referenced the rules in
14 his testimony.

15 MR. CLARK: Okay.

16 MS. HEIGEL: I think that made them --

17 MR. CLARK: The rules themselves?

18 MS. HEIGEL: He referenced the rulemaking
19 proceeding in his testimony.

20 MR. CLARK: Yeah.

21 MS. HEIGEL: So that would be my
22 response.

23 BY MS. HEIGEL:

24 Q. Can you tell me what rules specifically
25 IEU is referring to as being inconsistent with the

1 statute?

2 A. I would have to have the draft rules, and
3 I think if you look at the comments themselves
4 that were filed by -- I'm not sure who signed
5 it -- Dan Nielsen.

6 Q. Okay. On Pages 8 and 9, there is a
7 discussion of the proposed Rule 4901:1-39-06(B),
8 which is the commitment for integration by
9 mercantile customers. Do you see that?

10 A. Yes.

11 Q. Okay. In order to be exempt from a rate
12 rider -- this is paraphrasing -- a mercantile
13 customer must provide data on its facilities to
14 the U.S. EPA's portfolio manager. Do you see
15 where that is? It's at the -- toward the bottom
16 of Page 8.

17 A. Yes.

18 Q. Do you know whether that is a requirement
19 of Senate Bill 221?

20 A. I don't recall. I don't believe it is,
21 but I'd have to probably go through the
22 legislation page by page.

23 Q. Okay. Moving on to the reply comments,
24 which I think has been handed out. And we'll mark
25 the reply comments Exhibit 7.

1

- - -

2

Thereupon, Duke Exhibit No. 7 was marked
for purposes of identification.

3

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BY MS. HEIGEL:

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Q. These reply comments were also filed in
Case No. 08-888-ER-ORD filed on September 26th,
2008.

9

10

Have you seen these reply comments
previously?

11

12

A. Again, may have seen an early draft of
the comments, but it's been some time ago.

13

14

Q. Okay. September does seem like a
lifetime ago these days.

15

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On Page 5 of the reply comments, it's
Paragraph 1, toward the bottom, IEU is
paraphrasing Kroger here. It states that Kroger
does not believe the utility should receive credit
or benefit from a mercantile customer's
investments in energy efficiency and demand
response that would have occurred without the
utility's initiative?

23

24

Could you tell me, what -- what is your
opinion of that position?

25

A. To put this language in context, I would

1 probably have to go back and look at the Kroger
2 comments.

3 It would have -- appear to have a quote
4 here from Kroger's comments.

5 Q. Toward the bottom of Page 5 and going on
6 to Page 6, IEU references a couple sections of
7 4928.66, in particular Subsections (A)(2)(a) and
8 (B)(1) and (2), as being ambiguous, and agrees
9 with another party in the rulemaking, Dayton
10 Power & Light, that that ambiguity could lead to
11 "compounded and over-compliance with energy
12 efficiency requirements".

13 Can you tell me, do you have an idea of
14 what IEU and Dayton Power & Light, what ambiguity
15 they're referring to?

16 A. I would have to go back and look at the
17 rules, as well as Dayton's comments.

18 Q. So you -- Do you have an opinion as to
19 how, under the rules, these rules that I
20 previously mentioned, there could be
21 over-compliance with the energy-efficiency
22 requirements?

23 A. My -- My recollection is that -- I think
24 it's referenced here, is that the comments of
25 Dayton Power & Light went through some specific

1 mathematical examples to try to demonstrate how
2 that might happen.

3 Q. And I believe it's referenced here that
4 Dayton Power & Light proposed a clarification to
5 the rule to resolve that concern. Do you know
6 what that clarification was?

7 A. I don't recall off the top of my head.

8 MS. HEIGEL: I have nothing further.

9 MR. CLARK: Does anybody else have any
10 other questions?

11 MR. WHITE: Kroger doesn't have any
12 questions.

13 MS. ROBERTS: I don't have any questions.
14 Thank you.

15 MS. WATTS: Tammy, did you have any
16 questions?

17 MS. TURKENTON: I do not. Thanks.

18 MR. MOSER: This is Nolan Moser. I do
19 have a few questions.

20 - - -

21 EXAMINATION

22 BY MR. MOSER:

23 Q. First, Mr. Murray, I want to ask you
24 about the character of your observations starting
25 on Page 9. This is the glass -- glass half full,

1 half empty example.

2 Would it be fair to say that your concern
3 illustrated here is a prudential or practical
4 concern?

5 A. I'm not sure I heard your question.

6 Q. Sure.

7 Regarding your example starting on Page 9
8 of your testimony, this is the glass half full,
9 half empty example, would it be fair to say that
10 this example is illustrating a prudential or
11 practical concern; meaning that, you know, you'd
12 want to make sure that all efficiency that is out
13 there is achieved and supported in Duke's service
14 territory?

15 A. No, I don't think I agree with your
16 characterization.

17 Q. Okay. How would you characterize your
18 concern, then, with regard to the glass half full,
19 half empty example?

20 A. I think my concern is that there is
21 additional language in Section 13 that imposes an
22 arbitrary limitation based upon the customer's
23 relative contribution towards the portfolio
24 mandates that's inconsistent with the statute, as
25 I understand it. There's no such requirement in

1 the statute.

2 Q. Okay. Are you also concerned that the
3 stipulation would disincentivize efficiency among
4 the -- the customers you are concerned about?

5 A. I'm not sure I understand your -- your
6 reference there to disincentivize.

7 Q. Okay. I'll put it this way. In your
8 example, you reference the four percent savings
9 that a -- you know, a fictional mercantile
10 customer might be able to provide when a utility
11 has a five percent target.

12 And your concern, if I have it correctly,
13 is that the -- this four percent achievement that
14 the mercantile customer could provide would not be
15 incentivized because the utility would have, as
16 you characterize it, an arbitrary limit on
17 participation; meaning that the mercantile
18 customer would have to provide the utility's
19 targeted five percent savings to participate in
20 the self-directed program.

21 Is that a correct characterization?

22 A. I think what my testimony tries to
23 identify is the effect of this provision in
24 Section 13.b forecloses a customer that doesn't --
25 isn't able to offer energy efficiency or peak

1 demand reductions equal to or in excess of the
2 EDU's benchmarks, it forecloses their opportunity
3 to seek a waiver under 4928.66.

4 Q. Okay. And I think you would agree with
5 me in that the waiver of that rider would be a
6 significant incentive to achieve these
7 efficiencies; is that correct?

8 A. It may or may not be.

9 Q. It may or may not be, okay.

10 In your opinion, is -- are there other
11 ways to incentivize mercantile customers to
12 achieve efficiency savings, besides the -- besides
13 waivers from the Duke efficiency rider?

14 A. There are certainly other theoretical
15 options that exist.

16 Q. Are you familiar with the portion of the
17 Duke Stipulation that discusses the Ohio
18 Manufacturing Collaborative?

19 A. I've read it.

20 Q. What is your opinion of that section?

21 A. I have none.

22 Q. Would you characterize that section as
23 offering an alternative incentive option for
24 industrial and manufacturing customers, mercantile
25 customers, potentially, to participate in

1 energy-efficiency incentive programs?

2 MR. CLARK: Objection. You're asking him
3 to speculate.

4 MR. MOSER: Well, I'm asking his -- his
5 opinion about the --

6 MR. CLARK: His opinion to speculate.

7 MR. MOSER: Well, there's no speculation
8 involved. I mean, either it's a -- either it's an
9 option for manufacturing customers or it's not.

10 All right. We'll move on.

11 BY MR. MOSER:

12 Q. Finally, is -- Just to -- Just to
13 clarify, is the self-directed or mercantile opt
14 out option that -- that you have taken issue with
15 in the Duke Stipulation, the 13.b option, the only
16 way potentially for mercantile customers to be
17 incentivized by Duke to make new efficiency
18 investments?

19 A. I think as I have answered previously,
20 there's other theoretical ways that could provide
21 incentives.

22 MR. MOSER: Okay. I have no further
23 questions. Thank you.

24 MS. WATTS: I think we're done.

25 (Signature not waived.)

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(Thereupon, the deposition was concluded
at 11:15 o'clock a.m. on Friday,
November 7, 2208.)

- - -

C E R T I F I C A T E

State of Ohio,)
) SS:
County of Delaware,)

I, Deborah J. Holmberg, Registered Merit Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of Kevin M Murray.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.

Deborah J. Holmberg
Deborah J. Holmberg,
Registered Merit Reporter
and Notary Public in and
for the State of Ohio

My Commission Expires: October 7, 2011

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