

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio for Approval of an Electric) Case No. 08-0920-EL-SSO
Security Plan.)

In the Matter of the Application of Duke)
Energy Ohio for Approval to Amend) Case No. 08-0921-EL-AAM
Accounting Methods.)

In the Matter of the Application of Duke)
Energy Ohio for Approval of a Certificate of)
Public Convenience and Necessity to) Case No. 08-0922-EL-UNC
Establish an Unavoidable Capacity Charge.)

In the Matter of the Application of Duke)
Energy Ohio for Approval to Amend its) Case No. 08-0923-EL-ATA
Tariff.)

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BRIEF ON ENCOURAGING AND PROMOTING RESIDENTIAL
GOVERNMENTAL AGGREGATION UNDER SENATE BILL 221
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

Ann M. Hotz, Counsel of Record
Jeffrey L. Small
Jacqueline Lake Roberts
Michael E. Idzkowski
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
614-466-8574 (Telephone)
614-466-9475 (Facsimile)
hotz@occ.state.oh.us
small@occ.state.oh.us
roberts@occ.state.oh.us
idzkowski@occ.state.oh.us

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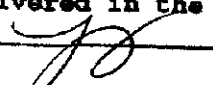
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY OF ARGUMENT	1
II. THE APPLICABLE LAW	3
A. Evidentiary Requirements And Burden Of Proof Under R.C. 4928.143	3
B. Governmental Aggregation Opportunities Required Under R. C. 4928.20 And Other Statutes.....	4
III. ARGUMENT.....	6
A. Governmental Aggregators Can Avoid Most Provider Of Last Resort Charges Under R.C. 4928.20(J) On Behalf Of Their Customers	6
B. Residential Aggregation Customers Must Have The Opportunity To Avoid The SRA-SRT And To Benefit From The 6% Shopping Credit That Is Available To Non-Residential Aggregation Customers, In Order for Duke's Electric Security Plan To Be More Favorable In The Aggregate Than The Expected Results Under A Market Rate Offer Under R.C. 4928.143.....	8
C. Decreasing Fuel and Energy Prices Provide The Commission With An Opportunity To Encourage And Promote Governmental Aggregation In the Duke Service Territory That Has Not Previously Existed	11
D. Without Permitting Residential Governmental Aggregation Customer The Opportunity To Avoid The Same Riders And Costs That Non-Residential Governmental Aggregation Customers Avoid The Commission Would Be Allowing Duke To Charge Discriminatory Prices As Prohibited Under R.C. 4905.35 And Contrary To The Directives Of R.C. 4928.141(A) And Contrary To The Public Policy Set Forth In R.C. 4928.02(A).	14
E. Residential Aggregation Customers Should Be Permitted To Return To The Market Rate When They Return To The Standard Service Offer	15
IV. CONCLUSION.....	16

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Office of the Ohio Consumers' Counsel ("OCC") files this Brief to ensure that residential customers of governmental aggregators in the areas served by Duke Energy-Ohio Inc. ("Duke" or "Company") are given sufficient opportunity to obtain lower rates through shopping as intended by S.B. 221. "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).¹ The parties to the Stipulation and Recommendation (“Stipulation”), dated October 27, 2008, agreed to carve out for litigation this issue from the issues otherwise settled in the Stipulation.²

The Stipulation resolves all other issues relating to Duke’s first-ever Application For Approval of an Electric Security Plan (“Application”) file with the Public Utilities Commission of Ohio (“Commission” or “PUCO”) on July 31, 2008, in response to S.B. 221. If approved, the electric security plan (“ESP”) would establish a standard service offer price that customers will pay for generation, pursuant to R.C. 4928.143, along with other related matters. Numerous parties, including the OCC, intervened and served discovery upon the Company. The Commission held three public hearings, two in Cincinnati on October 7, 2008, and one in Middletown on October 15, 2008.

After the parties filed the Stipulation, the Commission held an evidentiary hearing on November 10, 2008 to address two contested issues. As stated, the issue addressed in this Brief, the bypassability of riders for residential aggregation customers, was not addressed in the Stipulation. Wilson Gonzalez testified on behalf of OCC. Paul Smith, whose testimony was struck in part for inappropriately revealing settlement negotiations and modified in part for inappropriately claiming what other parties intended in signing the stipulation, testified for Duke.³

The other issue contested at hearing, the size of customer by load that would have an opportunity to obtain an exemption from the energy efficiency programs, is settled in the

¹ OCC Ex. 1 (Gonzalez Direct) at 4.

² “The Parties agree that OCC shall have the right to carve out for litigation the issue of bypassability of charges and shopping credits for residential governmental aggregation customers.” Joint Exh. 1 (October 27, 2008) at 32, fn11.

³ Tr. Vol. 1 at 24-41.

Stipulation by those that signed. The Industrial Energy Users of Ohio ("IEU") contested that provision of the Stipulation during the hearing.

II. THE APPLICABLE LAW

A. Evidentiary Requirements And Burden of Proof Under R.C. 4928.143

R.C. 4928.143 sets forth the evidentiary requirements for approval of an ESP.

R.C. 4928.143(C)(1) establishes Duke's burden of proof in this proceeding; "The burden of proof in the proceeding shall be on the electric distribution utility." Additionally, R.C. 4928.143(C)(1) specifies the substantive basis for approval or disapproval of an ESP application:

The commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4938.142 of the Revised Code.

R.C. 4928.143(C)(1) provides the Commission with the authority to modify an electric security plan. One issue with respect to the ESP remains unresolved and through the Stipulation, the parties have agreed to litigate and present their cases with the determination ultimately made by the Commission regarding residential governmental aggregation. The Commission's decision on residential aggregation will be incorporated into the ESP. Accordingly, Duke must clearly demonstrate that its ESP is more favorable in the aggregate than the expected results of a market rate offer.

B. Governmental Aggregation Opportunities Required Under R.C. 4928.20 And Other Statutes

R.C. 4928.20(J) establishes that governmental aggregators may elect to avoid provider of last resort charges imposed by the electric distribution utility if they are willing to return to the electric distribution utility at the electric distribution utility's market price:

On behalf of the customers that are part of a governmental aggregation under this section and by filing written notice with the public utilities commission, the legislative authority that formed or is forming that governmental aggregation may elect not to receive standby service within the meaning of division (B)(2)(e)(d) of section 4928.143 of the Revised Code from an electric distribution utility in whose certified territory the governmental aggregation is located and that operates under an approved electric security plan under that section. Upon the filing of that notice, the electric distribution utility shall not charge any such customer to whom electricity is delivered under the governmental aggregation for the standby service. Any such consumer that returns to the utility for competitive retail electric service shall pay the market price of power incurred by the utility to serve that consumer plus any amount attributable to the utility's cost of compliance with the alternative energy resource provisions of section 4928.64 of the Revised Code to serve the consumer.

R.C. 4928.143(B)(2)(d) defines "standby service" broadly to encompass provider of last resort service:

Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

The only type of provider of last resort service not included in R.C. 4928.143(B)(2)(d) is the nonbypassable charge identified under R.C. 4928.143(B)(2)(c), surcharges for generation facilities built after January 1, 2009.

R.C. 4928.20(I) also requires the customers of governmental aggregators to contribute to phase-in rates necessary to prevent rate shock under R.C. 4928.144. However, that provision is not relevant in this case.

Besides authorizing governmental aggregators to opt-out of most provider of last resort services, the General Assembly adopted other provisions that establish its intent to promote large-scale governmental aggregations such as R.C. 4928.20(K):

The commission shall adopt rules to encourage and promote large-scale governmental aggregation in this state. For that purpose, the commission shall conduct an immediate review of any rules it has adopted for the purpose of this section that are in effect on the effective date of the amendment of this section by S.B. 221 of the general assembly.

The same paragraph directs the Commission to consider the effect of nonbypassable generation charges within an ESP under section 4928.143 of the Revised Code:

The commission shall consider the effect on large-scale governmental aggregation of any nonbypassable generation charges, however collected, that would be established under that plan, except any nonbypassable generation charges that relates to a cost incurred by the electric distribution utility, the deferral of which has been authorized by the commission prior to the effective date of the amendment of this section by S.B. 221 of the 127th general assembly.

As under R.C. 4928.144 and 4928.20(K), which require Governmental Aggregators to contribute proportionally to phase-in rates, Governmental Aggregators cannot bypass new construction surcharges under R.C. 4928.143(B)(2)(c). So under R.C. 4928.143, the Commission should consider how such nonbypassable surcharges or rates would affect the viability of large-scale governmental aggregations. And before approving the amount of such surcharges, the Commission should consider if such new construction surcharges or phase-in rates would seriously endanger large-scale

governmental aggregation. The final provision allows the Commission to not consider past deferrals as endangering large-scale governmental aggregation because they would relate to past services already rendered to potential aggregation customers.

The Commission should also consider the reasons why the legislature may have believed that protecting government aggregation was so important. In essence government aggregation under SB 221 allows competition to continue while not obligating the state to move to competitive markets on a permanent basis. Under SB 221, if a market option is chosen – even on a phase-in basis, the end result in five or perhaps ten years is an irrevocable move to competition, unless the law changes again. Aggregation appropriately provides consumers with the best protection by presenting both options – either a regulated rate through the ESP or a competitive rate under aggregation. Aggregation also protects all customers by putting pressure on utilities to be more accountable and more efficient and modest in their increase requests. If they ask too much, aggregation provides customers with the ability to go elsewhere. In these hard economic times, this is clearly important.

III. ARGUMENT

A. Governmental Aggregators Can Avoid Most Provider Of Last Resort Charges Under R.C. 4928.20(J) On Behalf Of Their Customers.

R.C. 4928.20(J) unquestionably grants governmental aggregators the election to avoid most provider of last resort charges on behalf of their customers:

On behalf of the customers that are part of a governmental aggregation under this section * * * the legislative authority that formed or is forming that governmental aggregation may elect not to receive standby service within the meaning of division (B)(2)(d) of section 4928.143 of the Revised Code from an electric

distribution utility in whose certified territory the governmental aggregation is located * * * Upon the filing of the notice, the electric distribution utility shall not charge any such customer to whom electricity is delivered under the governmental aggregation for the standby service.

R.C. 4928.143(B) established under S.B. 221 identified each of the charges that Duke could include in its ESP. Only two provisions under (B) could possibly be interpreted to be provider of last resort charges and those are R.C. 4928.143(B)(2)(c) and (d). R.C. 4928.143(B)(2)(c) relates to the new construction surcharge, or Duke's SRA-NDC, which governmental aggregators cannot elect to bypass based upon the explicit language in the statute. But, as stated above, governmental aggregators can elect out of everything under R.C. 4928.143(d), which includes all other provider of last resort costs. Accordingly, all of the nonbypassable riders Duke identifies as relating to its provider of last resort function, which is the same as standby service,⁴ should be bypassable by customers of governmental aggregators under S.B. 221 except SRA-NDC.

Under Duke's application, Duke identifies the System Resource Adequacy ("SRA") charge as providing partial compensation for Duke's provider of last resort obligation.⁵ The other compensation comes from the TRC, which will end for residential customers on January 1, 2009. The SRA charges include: the market capacity purchases or SRA-SRT, the capacity dedication or SRA-CD and newly dedicated capacity or SRA-NDC.

⁴ R.C. 4928.143(B)(2)(d) identifies "standby service" as Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service.

⁵ Duke Exh. 10 (Direct Testimony of Paul G. Smith) at 11.

Accordingly, governmental aggregators can elect to avoid all provider of last resort charges, except for those under SRA-NDC, on behalf of their residential customers, which is at least the same amount as that which non-residential customers can avoid under paragraph 20 of the Stipulation, the SRA-SRT and the 6% shopping credit. The 6% shopping credit was developed as equal to the Infrastructure Maintenance Fund charges, which according to the Application is identical to the SRA-DC.⁶ Therefore, the Stipulation allows non-residential governmental aggregation customers to do what they are permitted under law but the Stipulation explicitly leaves for litigation the question as to whether residential governmental aggregation customers will be permitted to do under Duke's ESP what residential governmental aggregation customers are permitted to do under R.C. 4928.20(J).

This carved out issue regarding residential customers of governmental aggregators must be resolved to provide a nondiscriminatory opportunity for residential customers to receive the same benefits from competition as non-residential customers and for their shopping to be encouraged and promoted. SB 221 requires these results.

B. Residential Aggregation Customers Must Have The Opportunity To Avoid The SRA-SRT And To Benefit From The 6% Shopping Credit That Is Available To Non-Residential Aggregation Customers, In Order for Duke's Electric Security Plan To Be More Favorable In The Aggregate Than The Expected Results Under A Market Rate Offer Under R.C. 4928.143.

In order for Duke's ESP to meet the statutory standard of being more favorable in the aggregate than the expected results under a market rate offer, the PUCO must encourage and promote governmental aggregation by allowing residential governmental

⁶ Duke Exh. 10 (Direct Testimony of Paul G. Smith) at 12.

aggregation customers to avoid rider SRA-SRT and to receive a 6% shopping credit equal to SRA-CD just as non-residential customers are allowed under the Stipulation.

The Stipulation provides that:

The Parties recommend that the Commission find that DE-Ohio's ESP-SSO, as modified by this Stipulation, including its pricing and all other terms and conditions, plus any deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under R.C. 4928.142.

But not settled for purposes of the statutory standard is the aggregation issue OCC carved out in Stipulation footnote 11. Duke's ESP could only be more favorable in the aggregate than the expected market rate offer if the PUCO grants residential governmental aggregation customers the opportunity to bypass the SRA-SRT and receive the 6% shopping credit.

Under a market rate offer customers should only have to pay for generation rates once. Requiring residential customers under a governmental aggregation to pay the SRA-SRT, and the SRA-CD (which is equal to the 6% shopping credit) and all generation costs from a supplier requires those customers to pay the same costs twice. This would not be the case under a market rate offer. Moreover, allowing residential governmental aggregation customers to avoid the provider of last resort charges would impose discipline upon Duke to keep its generation costs down for all customers during this period of falling fuel and energy prices.⁷

The recession, greatly impacted by recent revelations of much more serious economic problems than Duke or other parties could have predicted when Duke filed its

⁷ OCC Exh. 1 (Direct Testimony of Wilson Gonzalez) at 9.

application, has caused fuel and energy prices to rapidly drop since Duke filed its ESP application.⁸

For this reason, the market prices that Duke relied upon in its application to compare to its ESP rate may be out-of-date and higher than actual market prices much sooner than anyone would have predicted. And using the market by encouraging and promoting governmental aggregation as an alternative to the ESP will be an important means whereby the Commission can be sure to impose pressure upon Duke to keep its ESP costs and rates competitive with the expected results under a market rate offer.⁹

It is critical to use aggregation to impose competition upon the ESP costs. Much of Duke's ESP filing is premised on its ability to file increases through a variety of riders. The magnitude of these riders is unknown at this time and will be subject to litigation. Given the past, wherein Duke's RSP rate increased by as much as 40 percent during the three year term, a repeat of such performance will likely send Duke's rates above the market rate. This is especially possible now that market prices have declined. Residential customers need an exit ramp and are no less deserving than commercial customers. In the event that Duke's rates exceed market rates, than residential customers – like business customers need the opportunity to take control of their electric rates by seeking more affordable alternatives. Government aggregation, long supported by the General Assembly, provides a plausible and responsible way to offer alternative options to customers that can make electric service more affordable. In these economic times, that is an important goal.

⁸ Tr. Vol. I (Gonzalez) at 160.

⁹ Tr. Vol. I (Gonzalez) at 158.

C. Decreasing Fuel and Energy Prices Provide the Commission with an Opportunity to Encourage and Promote Governmental Aggregation in the Duke Service Territory That Has Not Previously Existed.

S.B. 221 imposed upon the Commission numerous new responsibilities to encourage and promote large-scale governmental aggregation. Most relevant to this case are the responsibilities the General Assembly set forth under R.C. 4928.20(K):

The commission shall adopt rules to encourage and promote large-scale governmental aggregation in this state. For that purpose, the commission shall conduct an immediate review of any rules it has adopted for the purpose of this section that are in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly. Further, within the context of an electric security plan under section 4928.143 of the Revised Code, the commission shall consider the effect on large-scale governmental aggregation of any nonbypassable generation charges, however collected, that would be established under that plan, except any nonbypassable generation charge that relates to a cost incurred by the electric distribution utility, the deferral of which has been authorized by the commission prior to the effective date of the amendment of this section by S.B. 221 of the 127th general assembly.

Under S.B. 221 the General Assembly directs the Commission to “encourage and promote large-scale governmental aggregation in this state.” The Commission has reviewed its electric service and safety standards under Ohio Adm. Code 4901-1-10 and its competitive retail electric rules under Ohio Adm. Code 4901-1-21 since the effective date of S.B. 221, the only rules addressing governmental aggregation. But that review, proposed changes and comments originally based upon a five-year review,¹⁰ and only eventually addressed “additional modifications consistent with SB 221.”¹¹

¹⁰ *In the Matter of the Commission’s Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, 4901:1-25, and 4901:1-26 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order (November 6, 2008) at 1.

¹¹ *Id.* at 2.

Nowhere in that Finding and Order does the Commission address its newly established obligation under SB 221 to “encourage and promote large-scale governmental aggregation” through rules. Therefore, the Commission should encourage and promote large-scale governmental aggregation in this case.

Beyond the Commission’s rulemaking obligations, the Commission must also specifically consider the effects of nonbypassable charges that are proposed in an ESP on large scale governmental aggregation programs.¹² The only nonbypassable charges that the Commission need not take into consideration in ESP plans are deferrals based upon charges already incurred by the electric utility, which are not applicable here.

The nonbypassable charges that Duke intends to impose upon residential governmental aggregation customers are the SRA-SRT charges. These are charges based upon future costs and the 6% shopping credit or the SRA-CD, which are not deferrals based upon costs incurred in the past.¹³ The very specific directions by the General Assembly, requiring the Commission to consider the effects of nonbypassable charges on governmental aggregation, imposes the burden of proof on Duke to demonstrate that the nonbypassable charges it proposes will not effect the viability of large scale governmental aggregation programs in its service territory. Duke has made no attempt to meet that burden. Additionally, because R.C. 4928.20(J) requires that governmental aggregation customers be permitted to not elect Duke’s backup service (which includes all generation charges), Duke may not be able to meet that burden. Each residential customer would save an estimated average \$40 per year if they could bypass the SRA-

¹² R.C. 4928.20(K).

¹³ Duke Ex. 10 (Direct Testimony of Paul G. Smith) at 11-12.

SRT and would accrue the 6% shopping credit,¹⁴ which would be the same as bypassing the SRA-CD. An aggregation of 50,000 such customers would result in a savings of \$2 million per year or \$6 million over the ESP period.¹⁵ This kind of savings could be the basis for a viable governmental aggregation program that the Commission has an obligation to encourage and promote. Given that this is just the savings from not paying certain Duke charges which should be bypassable, additional savings would also be expected to accrue to customers for the difference between Duke's rates and the then prevailing market rate secured through the government aggregation program. For example, a modest five percent discount off of an \$.08 cents per kilowatt hour charge would produce roughly an additional \$40. savings for a total of \$80. per year. For a senior citizen on a fixed income, those savings may exceed one week of groceries.

With additional softening of market prices due to the weakness of the economy, aggregators are facing an increasing likelihood that a reasonable supply contract can be secured.¹⁶ The Commission should do everything it can to encourage large-scale governmental aggregators to participate in this market.¹⁷ The Commission should reject Duke's proposal, in Mr. Smith's testimony, that would require residential customers of governmental aggregations to pay what the law (R.C. 4928.20(J)) prevents Duke from charging when customers competitively shop for service.

¹⁴ This amount assumes that the average residential customer uses 1,000 kwh per month. It also assumes that the SRA-SRT savings are .001422 per kwh (as indicated in Duke's rider tariff) and that the 6% credit savings are .00265 per kwh. The annual SRA-SRT savings would be \$17.06 and the annual 6% credit savings would be \$31.81. So the \$40 savings per year is a conservative estimate compared to the \$48.87 sum of \$17.06 and \$31.81.

¹⁵ Tr. Vol. 1 (Gonzalez) at 161-163.

¹⁶ Id.

¹⁷ OCC Ex. 1 (Gonzalez Direct) at 6.

D Without Permitting Residential Governmental Aggregation Customers the Opportunity to Avoid the Same Riders and Costs that Non-residential Governmental Aggregation Customers Avoid the Commission would be Allowing Duke to Charge Discriminatory Prices as Prohibited Under R.C. 4905.35 and Contrary to the Directives of R.C. 4928.141(A) and Contrary to the Public Policy Set Forth In R.C. 4928.02(A).

Under R.C. 4905.35(A) the Commission cannot allow Duke to “make or give any undue or unreasonable preference to any person.” Additionally, R.C. 4928.02(A) specifies that it is a policy in this state to provide nondiscriminatory pricing. Under R.C. 4905.141(A) Duke is directed to provide consumers, “on a comparable and nondiscriminatory basis within its certified territory a standard service.”

The Stipulation grants to non-residential governmental aggregation customers the avoidance of riders and the granting of shopping credits. But Duke, through Mr. Smith’s testimony, would discriminate against residential governmental aggregation customers by denying them the benefits the Stipulation provides to non-residential customers.¹⁸ Duke would give non-residential governmental aggregation customers an unreasonable preference. To avoid unlawful discrimination, the Commission must give residential governmental aggregation customers the same benefits as non-residential customers.

The failure to treat all government aggregation customers alike is discriminatory and bad public policy. It may also hurt the many small “mom and pop” businesses. For example, many of these small businesses may not be able to attract marketers due to the small size of their load. However, as part of a government aggregation, they would be able to take advantage of a potentially better rate. However, if the government aggregator is unable to provide benefits to residential customers, it may not proceed.

¹⁸ OCC Ex. 1 (Gonzalez Direct) at 6.

This leaves small commercial customers at a competitive disadvantage in comparison to the larger commercial customers and franchise operations that may have a greater ability to secure a contract with a marketer and who will also receive the benefits of the shopping credit and the bypassability of the SRA-SRT. There is no justification in law or public policy for this kind of discrimination that allows Duke to decide who the winners and losers are. For that reason, an additional provision must be added to give residential governmental aggregation customers the same benefits before the Stipulation meets Ohio law.

E. Residential Aggregation Customers Should Be Permitted to Return to the Market Rate When They Return to the Standard Service Offer.

The Stipulation provides for non-residential customers to “return at a price equal to 115% of the ESP-SSO price.”¹⁹ But residential governmental aggregation customers should not be required to return at 115% of the ESP-SSO price, as this price is not the market price to which governmental aggregation shopping customers are supposed to return under R.C. 4928.20(J). Mr. Smith agreed that the market price varies from time to time based upon supply and demand.²⁰

The 115% of the ESP does not sufficiently vary with the market to reflect a true market price. If it were to truly follow the market the percentage would not be applied to generation costs that do not vary with supply and demand of generation markets. Accordingly, residential governmental aggregation customers should be permitted to return to the market price.²¹

¹⁹ Stipulation at para. 20.

²⁰ Tr. Vol. I. (Smith) at 47.

²¹ OCC Ex. 1 (Gonzalez) at 12.

While the Stipulation sets forth a rate of 115% of the standard service offer which may be acceptable to the aggregator, if the aggregator finds that 115% of the standard service offer is higher than the market price, the governmental aggregator should be allowed to require that Duke go to market to procure the necessary power. By accepting a potential benefit under the stipulation, aggregators should not forfeit a statutory right. The truth of the matter is that unless and until a government aggregator must return its customers, there is no way to know which rate is preferable for the returning customers, whether it is 115% of the SSO or the market rate. In order to protect residential customers, their statutory rights should not be foreclosed.

The Stipulation provides a returning price of 115 percent of the Standard Service Offer. It should be noted that for nonresidential non aggregation customers, there is no statutory protection setting forth their right to return at market rates. However the law does provide that aggregation customers may return to a utility and be charged the market rate. Inasmuch as the Stipulation provides for a rate for returning customers of 115 percent and the law allows a market rate, returning residential aggregation should have the choice between the two options.

IV. CONCLUSION

The issue of residential governmental aggregation--including whether residential consumers and their governments will be able to achieve price benefits during the three-year term of Duke's ESP--is carved out²² for the PUCO's decision and not settled in the Stipulation. SB 221 requires the PUCO to encourage and promote governmental

²² Stipulation at 32, fn 11.

aggregation.²³ SB 221 and other law require the PUCO to avoid discriminatory pricing.²⁴ R.C. 4928.20(J) allows governmental aggregators to elect out of standby service, which is the same as provider of last resort service, except in the case of newly dedicated facilities that meet the requirements under R.C. 4928.143(B)(2)(c) and contributions to phased-in amounts meant to avoid rate shock under R.C. 4928.144. Neither phase-ins nor newly dedicated facilities are part of this case, so residential customers of governmental aggregators should be permitted to bypass all provider of last resort riders, including SRA-SRT and should receive the 6% shopping credit that is equal to the SRA-CD.

For these reasons under Ohio law, the PUCO should allow residential customers of governmental aggregation to avoid the same generation riders that nonresidential customers of governmental aggregation can avoid under the Stipulation. This result is essential for residential aggregation customers to be given the opportunity for electricity price improvement that is intended by the Ohio General Assembly. And this result for residential aggregation customers is necessary if the PUCO is to find, under SB 221, that Duke's ESP is more favorable in the aggregate than the expected market rate option.²⁵

Therefore, the PUCO should decide this issue in the interest of Duke's residential customers and their intended opportunity under Ohio's new energy law to benefit from the electricity pricing advantages of governmental aggregation.

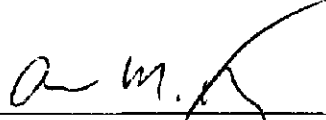
²³ R.C. 4928.20 (I), (J) and (K).

²⁴ R.C. 4905.33, 4905.35, 4928.141(A) and 4928.02(A).

²⁵ R.C. 4928.143(C).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Ann M. Hotz, Counsel of Record

Jeffrey L. Small

Jacqueline Lake Roberts

Michael E. Idzkowski

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

614-466-8574 (Telephone)

614-466-9475 (Facsimile)

hotz@occ.state.oh.us

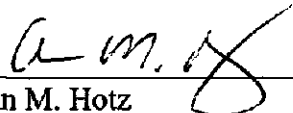
small@occ.state.oh.us

roberts@occ.state.oh.us

idzkowski@occ.state.oh.us

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Brief* was served via electronic mail on this 17th day of November 2008 to the following persons.


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
rpmaalloy@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.*