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THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for an Increase in Electric Distribution Rates	)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio for Tariff Approval	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio for Approval to Change Accounting Methods	)	Case No. 08-711-EL-AAM

DUKE ENERGY OHIO'S MEMROANDUM CONTRA OCC'S APPLICATION FOR REHEARING

I. INTRODUCTION

Duke Energy Ohio ("DE-Ohio" or the "Company") respectfully submits its Memorandum Contra to the Office of the Ohio Consumer's Counsel's (OCC) Application for Rehearing filed February 13, 2009. OCC Seeks Rehearing of the Commission's January 14, 2009, Finding and Order in the above styled proceeding on one limited issue, the timing of the consideration of DE-Ohio's recovery of storm costs. OCC's position on Rehearing is that the Commission erred in its finding that "the reasonableness of the deferred amounts and the recovery thereof, if any, will be examined and addressed in a future proceeding before the Commission.'"[1] OCC's requests the Commission clarify that this deferred amount should be examined in a future rate case proceeding under R.C. 4909.18, 4909.15 and not under the current distribution rate case. OCC's position completely ignores the fact that DE-Ohio's deferral request was made in the context of a rate

[1] OCC' Application for Rehearing at 2.

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proceeding filed under 4909.18, 4909.15 (and related statutes), and that the storm restoration expenses were incurred during the Commission approved test year in the rate proceeding. The current proceeding is the most appropriate forum to consider the recoverability of the storm restoration expenses. Moreover, OCC's position that the Commission must wait until some unknown future distribution rate case filing is not in the best interests of rate payers because it would ultimately increase the storm restoration asset. The Commission's Order approving the deferral request permitted DE-Ohio to include carrying charges on the deferred recovery costs. Because the current rate case is still pending and the results are not known, it is uncertain when DE-Ohio will file its next distribution rate proceeding. Delaying the consideration of the storm cost recovery until some unknown future proceeding only serves to increase the carrying charges expense to customers and possibly encourages DE-Ohio to file another distribution rate case sooner. On the other hand, DE-Ohio's proposal to address the storm cost recovery in the current rate case proceeding is not only supportable under Ohio law, but ultimately reduces the costs to customers. The proposal to include the recovery in a discrete rider mechanism eliminates any possibility of over recovery as the regulatory asset will not be folded into base rates. Once the storm costs are recovered, the Rider is set to zero. Accordingly, the Commission should affirmatively state that the recovery of the storm restoration expenses should be considered in the context of the current proceeding and establish a procedural schedule. The Commission's Order was both reasonable and consistent with Ohio law. OCC's Application for Rehearing should be denied.

II. LAW AND ARGUMENT

A. The Commission has Authority to Consider DE-Ohio's Deferral Request in the Current Proceeding.

The Commission's authority in this proceeding arises from its traditional regulatory authority contained in Chapter 4909. The applicable rate making formula statute is R.C. § 4909.15, which provides in relevant part:

> (D) The public utilities commission, when fixing and determining just and reasonable rates, fares, tolls, rentals, and charges, shall determine:
>
> > (4) The cost to the utility of rendering the public utility service for the test period less the total of any interest on cash or credit refunds paid, pursuant to section 4909.42 of the Revised Code, by the utility during the test period.

R.C. 4909.15(D)(2)(b) supports recovery of the storm restoration expenses, providing that upon finding the utility's existing rates are "insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable,..."[2] the Commission shall, "fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected for the performance or rendition of the service... and order such just and reasonable rate, fare, charge, toll, rental, or service to be substituted for the existing one."[3]

The storm restoration expenses were incurred during the test period and exceed the storm restoration costs currently included in DE-Ohio's distribution rates. The current level of storm restoration in DE-Ohio's base rates is insufficient to yield reasonable compensation for service rendered. Accordingly, these costs are appropriate for consideration and recovery in a distribution rate case pursuant to R.C. §4909.15. The Ohio Supreme Court agrees. According to the Ohio Supreme Court, "[t]he language of R.C. 4909.15 is unequivocal. Rate increases are based on costs of rendering utility service *during the test period*."[4]

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[2] Ohio Revised Code Ann. §4909.15(D) (Anderson 2008).
[3] Ohio Revised Code Ann. §4909.15(D)(2)(b) (Anderson 2008).
[4] *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St 3d 535 at 539.

The present case was filed under the very same statutes that OCC maintains the Commission must consider the hurricane deferral recovery. On June 25, 2008, DE-Ohio filed its Notice of an Application for an Increase in Rates in these proceedings according to R.C. §§ 4909.18, 4909.19 and 4909.43.[5] The proposed test year for this case is the twelve months ended December 31, 20008. By Entry dated, July 23, 2008 the Commission approved the Notice and the proposed test year.[6] DE-Ohio filed its Applications on July 25, 2008.[7] Among other things, the Application included a request for a distribution investment rider, Rider DR. Rider DR was designed in part, to recover incremental investment in the Company's electric distribution system and electric distribution expenses for specific accounts, not included base rates.[8] These incremental investments and expenses include storm restoration as those costs would be reflected in the same distribution related accounts described in the Company's Applications in these proceedings.[9]

On December 22, 2008, DE-Ohio filed its Motion for Approval to Change Accounting Methods to Defer and Create a Regulatory Asset for Storm Restoration Costs Incurred During the Test Year and Recovery Mechanism for Storm Restoration Costs (Deferral Request). DE-Ohio proposed two possible methods for recovery of the restoration expenses.[10] The first proposal was to use Rider DR, a rider mechanism already at issue in these proceedings, but to limit its scope from the broader group of distribution system investments to only those storm restoration expenses

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[5] *In re: Application of DE-Ohio for an Increase in Rates,* Case No. 08-709-EL-ATA et al., (Application)(July 25, 2008).
[6] *In re: Application of DE-Ohio for an Increase in Rates,* Case No. 08-709-EL-ATA et al., (Entry at 4)(July 23, 2008).
[7] By Entry dated September 10, 2008, the Commission found DE-Ohio's Applications complied with the applicable statutes and regulations.
[8] As explained in the Company's Applications and Direct Testimony, Rider DR is limited to only those plant and O&M accounts that are specifically distribution or distribution-related, including investments associated with the Company's SmartGrid project. By Opinion and Order dated December 17, 2008, in Case No. 08-920-EL-SSO, the Commission approved Rider DR-IM to recovery SmartGrid investments. Rider DR-IM as approved does not include other incremental distribution investments or expenses. Those issues are still pending in this proceeding.
[9] *Id.*
[10] *Deferral Request at* 6-7.

and investments caused by Hurricane Ike.[11] As part of its Deferral Request, DE-Ohio proposed to change rider's name to Rider DR-Ike, to reflect the limitation. The second proposal for recovery was through an adjustment to actual test year expenses in these proceedings and an amortization of the costs over three years.[12] Either method is an appropriate forum for consideration of the storm recovery.

OCC's claim that the Commission must delay its consideration of the storm recovery until the Company files its next distribution rate case is erroneous. R.C. 4905.13 vests the Commission with authority to establish a system of accounts for public utilities and to prescribe the manner in which the accounts must be kept.[13] The Ohio Supreme Court has recently upheld the Commission's ability to approve deferrals for distribution related expenses, finding the authority was separate from rate-making authority. In *Elyria Foundry Co. v. PUC*,[14] the Court rejected Elyria's challenge to the Commission's authority to allow a utility to capitalize and defer distribution expenses and costs for infrastructure improvements and increased reliability.[15] In affirming the Commission's deferral Order, the Court noted that the Commission has "recognized" and broad discretion in approving the manner in which utility accounts are kept.[16] The Court also noted that the Commission has the ability to scrutinize the deferrals prior to rate recovery, finding specifically that the Commission will review the deferral in a rate proceeding to ensure the deferrals are "reasonable and appropriately incurred, [and] clearly and directly related to specifically necessary infrastructure improvements and reliability needs."[17] That is precisely what DE-Ohio proposes in the above-styled cases. DE-Ohio sought the creation of a

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[11] *Id.*
[12] *Id.*
[13] *Consumers' Counsel v. Pub. Util. Comm.* 32 Ohio St.3d 263, 271, 513 N.E.2d 243(1987).
[14] *Elyria Foundry Co. v. PUC*, 114 Ohio St. 3d 305, 307 (Ohio 2007).
[15] *Id.*
[16] *Id.*
[17] *Id.*

regulatory asset to defer distribution related investments and expenses directly attributable to damage sustained by Hurricane Ike. DE-Ohio incurred these storm restoration expenses during the Commission approved test year and made its recovery proposals as part of a rate proceeding to establish its future distribution rates. Once the asset was approved, the Commission has the ability to review the expenses for reasonableness of recovery in a distribution rate case. This case. DE-Ohio's recovery proposals minimize the impact to rate payers by addressing the expense immediately while spreading out the recovery over a defined period of years. OCC's position will put the issue on hold, effectively collecting interest charges, until the Company files its next case.

Since the storm restoration expenses were incurred during the test year, they are ripe for inclusion in the pending distribution rate case pursuant to R.C. Chapter 4909 and more specifically, the rate-fixing standard under R.C. §4909.15. In fact, OCC has argued this exact point on at least two prior occasions in relation to a utility's request to implement a cost recovery mechanism for storm restoration expenses. In Case No. 06-412-EL-ATA, OCC opposed the joint application of Columbus Southern Power Company and Ohio Power Company for approval to recover storm restoration costs through a discrete rider stating, "the rate treatment proposed by AEP would only be appropriate for consideration within a proceeding that complies with the rate-making statutes contained in the Ohio Revised Code."[18] Similarly, in Case No. 05-1090-EL-ATA, OCC opposed Dayton Power & Light's application to approve a storm cost recovery rider arguing "the Commission is required to set this case for hearing and observe other procedural requirements associated with a distribution rate increase pursuant to Chapter 4909

[18] *In re: Application of Columbus Southern Power Company and Ohio Power Company to Implement Storm Related Service Restoration Cost Recovery Riders,* Case No. 06-412-EL-UNC, (OCC Motion to Intervene at 3)(March 21, 2006); *citing* R.C. §§4909.18, 4909.19, and R.C. 4909.43,

(filing and notice requirements and fixation of rates) of the Revised Code."[19] OCC's p argument here that DE-Ohio's storm restoration expenses, incurred during a Commission-approved test year with recovery proposed in the context of a rate case filed pursuant to R.C. 4909, are somehow inappropriate for consideration and recovery is disingenuous at best.

B. Deferred storm restoration expenses are appropriate for recovery through a discrete rider adjustment

DE-Ohio's proposed methods to recover storm restoration investments and expenses are neither novel nor unlawful. DE-Ohio's Deferral Request proposed two alternatives to recover the storm-related investments and expenses: (1) recovery through a discrete distribution investment rider (Rider DR-Ike) already at issue in this proceeding; or (2) through an adjustment to the test year expense with a fixed period of amortized recovery. Both methods are supported by prior precedent.

The Commission has approved the deferral and amortization of non-reoccurring expenses before. In Case No. 85-726-EL-AIR, the Commission approved the amortization and recovery of headquarters relocation costs for American Electric Power.[20] The Commission also routinely permits amortization of rate case litigation expenses. Similarly, the Commission recently approved recovery of deferred storm-related expenses through discrete cost recovery mechanisms. In Case No 05-0190-EL-ATA, the Commission approved Dayton Power & Light's (DP&L) application to establish a discrete Rider to recovery approximately $12.6 million in restoration expenses caused by storms that had a "devastating impact on DP&L's system during

[19] *In re: Application of DP&L for Approval of Tariff Changes Associated with a Request to Implement a Storm Cost Recovery Rider.* Case No 05-1090-EL-ATA, (OCC's Motion to Dismiss at 4)(June 9, 2006).
[20] In re Application of Ohio Power Company to Increase Certain of its Filed Schedules Fixing Rates and Charges for Recovery, Case No 85-726-EL-AIR, (Opinion and Order at 104)(July 10, 1986).

December 2004 and January 2005."[21] In Case No 06-412-EL-UNC, the Commission approved a joint request by Columbus Southern Power Company and Ohio Power Company to recover winter storm restoration expenses of $11.9 and $11.7 million, respectively.[22]

DE-Ohio's proposals for recovery "smooth out" the recovery of the expense and do not result in over recovery. The proposed rider, Rider DR-Ike (f/k/a Rider DR), will spread out recovery over a defined period of time and will ultimately reduced to zero, expiring when the costs are recovered. Similarly, amortizing the deferred costs over a period of years will smooth out the expense and the rate will be adjusted in the next distribution rate case. Further, both alternatives provide the Commission and Intervening Parties the ability to consider the reasonableness and prudence of DE-Ohio's storm restoration investments and expenses prior to recovery, either in this proceeding or in a subsequent rider proceeding.

On the other hand, OCC's Application for Rehearing results in bad policy for all stakeholders. OCC's position sends a bad message, is arbitrary, and increases costs to customers. The Commission should deny OCC's Application for Rehearing and consider the recovery of the wind storm restoration in the current proceeding, or as a discrete rider filing. Either option affords the Staff the opportunity to ensure DE-Ohio acted prudently in restoring power to its customers.

C. The Staff Report in this proceeding fully examined the condition of DE-Ohio's electric delivery system and compliance with reliability requirements.

As part of its investigation in this proceeding, the Staff of the Commission fully investigated and audited DE-Ohio's electric delivery system, making consideration of the storm restoration expenses in this proceeding all the more relevant. The findings and recommendation

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[21] *In re: Application of DP&L for Approval of Tariff Changes Associated with a Request to Implement a Storm Cost Recovery Rider.* Case No 05-1090-EL-ATA, (Entry at 7)(July 12, 20006).

[22] *In re: Application of Columbus Southern Power Company and Ohio Power Company to Implement Storm Related Service Restoration Cost Recovery Riders,* Case No. 06-412-EL-UNC, (Finding and Order at 6)(August 9, 2006).

of the Staff's investigation are contained in its January 27, 2009, Staff Report of Investigation, which includes a detailed investigation into DE-Ohio's Reliability and Service Quality according to requirements set forth under the Ohio Administrative Code ("OAC"). It should be noted that the Staff was conducting its inspection and audit of DE-Ohio's electric delivery system around the time of the September 14, 2008 windstorm.

The Staff's inspection and audits concluded that DE-Ohio was either in full compliance with all distribution system inspection and testing requirements or was on track to be fully compliant by the end of the test year.[23] Specifically, the Staff Report concluded that DE-Ohio: (1) was in full compliance with required distribution circuit and equipment inspection programs under OAC 4901:1-10-27(D)(1); and (2) was in full compliance with monthly transmission and distribution substation and equipment inspections under OAC 4901:1-10-27(D)(3). The Staff Report further found that pursuant to OAC 4901:1-10-27(E): (1) as of August 31, 2008 the Company had completed 79% of its required 2008 wood pole and tower inspections; (2) the Company was fully compliant with the requirement to inspect one fifth of its distribution system on an annual basis; (3) the Company performed required pad-mounted transformer inspections; and (4) as of August 31, 2008, the Company had completed vegetation management on 75.5% of circuit miles scheduled to be trimmed by December 31, 2008. The Staff Report further concluded that DE-Ohio has never missed a reliability target, and in fact noted that DE-Ohio's System Average Interruption Frequency ("SAIFI") scores have improved since the Company's 2005 rate case. Clearly DE-Ohio was meeting all requirements to maintain its electric delivery system; so, there is no question as to whether DE-Ohio was providing safe, adequate and reliable service.

[23] As referenced in the Staff Report on page 43, as of August 31, 2008, DE-Ohio had inspected 79% of the distribution poles scheduled for inspection in 2008. As further noted by the Staff report on page 46, as of August 31, 2008, DE-Ohio had completed 75.5% of the circuit miles scheduled for vegetation line clearing for 2008.

Further Staff served DE-Ohio with several sets of discovery requests related to storm restoration, three of which specifically addressed the Hurricane Ike damage and storm restoration expenses.[24] The responses included, among other things, estimated costs by FERC account, types of expenses, contractors/ utilities used, number of contracted employees, total hours worked, equipment expenses, and costs per person per day. These responses were provided to all parties to the pending rate case through discovery, including OCC.

Accordingly, there is absolutely no benefit or legitimate reason to delay consideration of the Hurricane Ike storm restoration recovery to a future distribution rate case. These storm restoration expenses are relevant to the pending proceeding, were incurred during the current test year, and were investigated by Staff during the course of its investigation of the Company's pending rate request, not to mention contemporaneously with the examination of DE-Ohio's compliance with electric delivery and service quality standards required under the Ohio Administrative Code. Approving rider recovery as part of this proceeding will reduce the overall costs to customers by spreading the costs out over time with a defined sunset will reduce the ratepayer's burden of paying additional carrying charges. Accordingly, the Commission should deny OCC's Application for Rehearing.

III. CONCLUSION.

For the foregoing reasons, as well as those set forth in DE-Ohio's Deferral Request, the Commission OCC's Application for Rehearing should be denied.

[24] Responses to Staff's 32nd, 34th and 39th sets of Discovery. See Exhibit A.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via ordinary mail, postage pre-paid or via overnight delivery on the following parties this 23 day of February 2008.

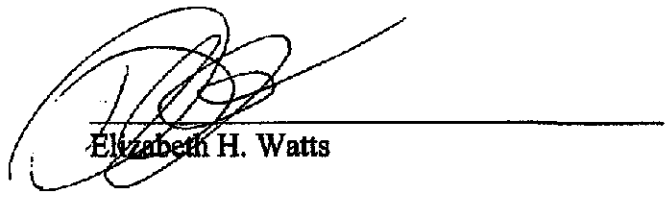

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Exhibit A

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Thirty-Second Staff Data Requests
Date Received: November 4, 2008

STAFF-DR-32-003 Supplemental

REQUEST:

Provide the latest available monthly estimate by FERC Account of all Ohio costs related to the September 2008 hurricane Ike wind storm. Please update remaining estimated months with actual as it becomes available.

RESPONSE:

See Attachment Staff-DR-32-003 Supplemental for actual costs through November related to September 2008 Hurricane Ike windstorm.

PERSON RESPONSIBLE: William Don Wathen Jr.

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
SEPTEMBER STORM DAMAGES BY FERC ACCOUNT

Attachment Staff-DR-32-003 Supplemental

Account	Description	September Estimate	Actual September	Actual October	Actual November	Actual Total
107	Construction Work in Progress	576,717	604,622	165,659	1,439	771,720
108	Retirement Work In Progress	0	3,127	5,034		8,161
154	Materials & Supplies	0	7,140	0		7,140
408	Payroll Taxes	679,313	285,900	206,523	39,658	532,081
568					(941)	(941)
570	Maintenance of Station Equipment	18,997	18,997	6,010	7,952	32,959
581					1,461	1,461
588	Miscellaneous Expenses		0	4		4
592	Maintenance of Station Equipment	193,598	193,598	37,438	4,998	236,034
593	Maintenance of Overhead Lines	26,961,017	6,063,633	6,896,913	12,738,727	25,699,273
912	Demonstrating and Selling Expenses		0	587		587
920	Administrative & General Salaries	1,237	1,237	1,298	1,374	3,909
921	Office Supplies & Expenses	8,669	8,669	34,980	1,837	45,486
923	Outside Services Employed		0	975		975
926	Employee Pension & Benefits	1,208,885	1,208,885	730,700	84,583	2,024,168
930	Miscellaneous General Expenses		0	797	5	802
		31,668,433	8,395,808	8,086,918	12,881,093	29,363,819

STAFF-DR-32-003

REQUEST:

Please provide the Staff with the following:

Provide the latest available monthly estimate by FERC Account of all Ohio costs related to the September 2008 hurricane Ike wind storm. Provide September and October actual to compare to estimated data for the same period. Please update remaining estimated months with actual as it becomes available.

RESPONSE:

See Attachment Staff-DR-32-003.

WITNESS RESPONSIBLE: James E. Mehring

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
SEPTEMBER STORM DAMAGES BY FERC ACCOUNT

Attachment Staff-DR-32-003

Account	Description	September Estimate	Actual September	Actual October	Actual Total
107	Construction Work in Progress	576,717	604,622	165,659	770,281
108	Retirement Work In Progress	0	3,127	5,034	8,161
154	Materials & Supplies	0	7,140	0	7,140
408	Payroll Taxes	679,313	285,900	206,523	492,423
570	Maintenance of Station Equipment	18,997	18,997	6,010	25,007
588	Miscellaneous Expenses		0	4	4
592	Maintenance of Station Equipment	193,598	193,598	37,438	231,036
593	Maintenance of Overhead Lines	28,981,017	6,063,633	6,896,913	12,960,546
912	Demonstrating and Selling Expenses		0	587	587
920	Administrative & General Salaries	1,237	1,237	1,298	2,535
921	Office Supplies & Expenses	8,669	8,669	34,980	43,649
923	Outside Services Employed		0	975	975
926	Employee Pension & Benefits	1,208,885	1,208,885	730,700	1,939,585
930	Miscellaneous General Expenses		0	797	797
		31,668,433	8,395,808	8,086,918	16,482,726

STAFF-DR-32-004

REQUEST:

Please provide the Staff with the following:

Provide allocation explanation and methodology for hurricane Ike storm damage costs estimated on a total company basis and allocated to Ohio.

RESPONSE:

Estimates for Hurricane Ike storm damage costs were not developed on a total company basis. The estimates were developed based largely on where the contracted resources were deployed.

WITNESS RESPONSIBLE: James E. Mehring

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Thirty-Fourth Staff Data Requests
Date Received: November 13, 2008

STAFF-DR-34-001

REQUEST:

Please provide the Staff with detail for any funds, grants, loans or services, offered, or requested to mitigate the cost of storm damage to Duke Energy for years 2006 thru 2008 from any and all sources.

RESPONSE:

Nothing was received from any sources to mitigate the cost of storm damage for years 2006 thrrough 2008.

WITNESS RESPONSIBLE: William Don Wathen Jr.

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Thirty-Fourth Staff Data Requests
Date Received: November 13, 2008

STAFF-DR-34-002

REQUEST:

Provide Staff with copies of insurance policies that covering Duke Energy against storm damage for years 2006 – 2008.

RESPONSE:

Duke Energy is self-insured for damages up to deductible limits ranging from $10 million to $25 million. This insurance contains exclusions for certain property, including transmission and distribution property with minor exceptions. Attachment Staff-DR-34-002a, Attachment Staff-DR-34-002b, and Attachment Staff-DR-34-002c are copies of the insurance policy exclusions for the years 2006 through 2008.

WITNESS RESPONSIBLE: William Don Wathen Jr.

POLICY DECLARATION

OIL INSURANCE LIMITED

Policy No: 2001-194

Post Office Box HM 1751
Hamilton, Bermuda HMGX

Policy Period: January 1, 2006 (00:00:00 EST (Midnight)) to December 31, 2006 (23:59:59 EST) (Eastern Standard Time (EST)*.
***Subject to Shareholder Approval in March 2006**

Named Insured and Address	Energy Company and Address*
Bison Insurance Company Limited c/o Park (Bermuda) Limited 44 Church Street Hamilton HM 12, Bermuda	Duke Energy Corporation 422 South Church Street Charlotte, N.C. 28201-1244 U.S.A.
Assured(s) Hereunder Pursuant to Split Membership, if any.	**Joint Policyholder pursuant to Endorsement 2:**
See attached for specific coverage details.	

* To be completed only if Named Insured is not an Energy Company.

TOTAL POLICY LIMITS THROUGH DECEMBER 31, 2006.	
Limits Each Occurrence	**Deductible**
$250,000,000 (All Sectors)	$10,000,000 (All Sectors)

Elections:

Flat Premium Option	YES
Quota Share Percentage	0 %

Endorsements:

1 R&PP	YES
2 Joint Policyholder	NO
3 OPOL	YES
4 Watercraft	NO
5 Excess Insurance	Not Scheduled

Endorsements (Cont'd):

6 Depreciation	NO
7 Fidelity coverage	YES
8 Actual Cash Value Coverage	NO
9 Non Gradual Pollution Limitation	NO*
10 T&D Exclusion	YES
**Non-Consolid Subsidiary Endorsement	NO

* With effect from 1/1/2006, all coverage prospectively is on a Sudden and Accidental Basis.

IN WITNESS WHEREOF, Oil Insurance Limited has caused the policy referred to above to be executed at Hamilton, Bermuda, on the date specified therein.

OIL INSURANCE LIMITED

By _____
Authorized Representative
Elspeth Brewin
Vice President

DATED: JANUARY 3, 2006

EXHIBIT N

Endorsement No. 10 to Oil Insurance Limited Policy No.

Electrical Transmission and Distribution System Exclusion Endorsement

This Endorsement attaches to and forms a part of the policy ("Policy") to which it is attached.

The following Exclusion is added to the **"EXCLUSIONS"** section of the Policy after the wording "This policy does not apply to:"

34. Any Electrical Transmission and Distribution System.

For purposes of this Exclusion, "Electrical Transmission and Distribution System" means all above ground electrical transmission and/or distribution lines, towers, poles, fixtures, overhead conductors and devices, line transformers, service meters, street lighting, signal systems or any other above ground structure or equipment used to transmit or distribute electricity from or through any Electrical Facility (as defined below), except that any of the foregoing which is within 1,000 meters of an Electrical Facility is not considered part of an "Electrical Transmission and Distribution System".

"Electrical Facility" means any electrical power generating plant, switchyard, transformer station or transformer substation (but not including any line transformer or other similar equipment used in transmission or distribution of electricity), provided it (without regard to this Endorsement) is insured under this Policy.

Liberty Mutual.

ORIGINAL INSURED:	Duke Energy Corporation	**COMPANY:** Liberty Mutual Insurance Company As Represented in United States by Liberty International Underwriters 55 Water Street, 18th Floor New York, New York 10041
REINSURED (CAPTIVE):	Bison Insurance Company Limited Craig Appin House, P.O. Box HM 2450, 8 Wesley Street Hamilton, Bermuda HM HX	
ORIGINAL INSURED MAILING ADDRESS:	526 South Church Street Charlotte, NC 28201	
BROKER:	Marsh USA Inc. 100 North Tryon Street, Suite 3200 Charlotte, NC 28202	**ISSUED:** New York, NY
POLICY NUMBER:	4N515179001	
POLICY PERIOD:	This Insurance shall be effective January 1, 2007 to March 1, 2008 beginning and ending at 12:01 A.M. local standard time.	
LIMIT OF LIABILITY:	This Company shall not be liable for more than $17,500,000 per occurrence being 7% part of $250,000,000 excess of deductibles as respects loss or damage arising out of all perils insured against, except for sublimits listed herein. The sublimits of liability shown under the attached policy form and endorsements are part of and not in addition to the limit of liability.	
PARTICIPATION CLAUSE:	This policy covers for a 7% interest in this insurance, and this company shall not be liable for more than 7% of the limit of liability, sublimits of liability, any other limits of insurance, or any aggregate limits contained within the form attached to this policy or contained in or on any endorsements attached to this policy.	
TERM POLICY PREMIUM:	$647,834.60 being 7% part of $9,254,780 (100%) TRIA = No Coverage Non-Certified = No Coverage Total=$647,834.60	

COMMISSION: 0%

DEDUCTIBLE AMOUNT:

Property Damage	$25,000,000 per occurrence
Transit	$ 2,500,000 per occurrence
Extra Expense/Rental	30 days

FORMS AND ENDORSEMENTS ATTACHED AT ISSUE:

Liberty Mutual Notice
Liberty Mutual Notice of Membership & Annual Meeting
TRIA Policyholder Notice
Terrorism Exclusion SFP 20540903
Terrorism Exclusion Non-SFP 20590903
Foreign/Alien Terrorism Exclusion – IL 10001103
Notification of Claims Form

FOR THE COMPANY

01/02/07
DATE

In witness whereof, the company has caused this policy to be signed by its President and its Secretary at Boston, Massachusetts, and countersigned by a duly authorized representative of the company.

Edmund F Kelly
President

Dexter R. Legg
Secretary

Property Reinsurance Policy for: Bison Insurance Company Limited

Declarations

Original Named Insured:	DUKE ENERGY CORPORATION, and any subsidiary thereof and their financially controlled or actively managed organizations including partnerships, limited liability companies (LLC's), limited partnerships (LP's), joint ventures, and any other entities, persons, organizations or properties in their entirety which any of the above have agreed to insure as now exist or may hereafter be constituted or acquired. (See Endorsement 15)
Named Reinsured :	Bison Insurance Company Limited, Craig Appin House, PO Box HM 2450, 8 Wesley Street, Hamilton, Bermuda, HM HX
Original Named Insured Mailing Address:	526 South Church Street Charlotte, NC 28201-1244
Policy Number:	See Subscription Page
Term of Insurance:	01/01/2007 12:01 AM to 03/01/2008 12:01 AM
Issue Date:	01/01/2007
Term All Risk Premium:	$9,254,780
Locations Covered:	See Schedule of Locations dated 1/1/2007
Policy Limit of Liability:	$250,000,000

A. Perils Insured

This policy insures against all risks of direct physical loss or damage to Property Insured from perils not otherwise excluded, subject to the terms and conditions of this policy.

In the event of such direct physical loss or damage to any Property Insured at the Premises Described in the Declarations, and such damage, without the intervention of any other independent cause, results in a sequence of events which causes physical damage to other Property Insured by this policy, then this policy will cover such resulting loss or damage. Nothing in this clause shall be deemed to extend this insurance to property which is otherwise specifically excluded from coverages by the terms of this policy.

B. Territorial Limits

Fifty (50) States of the United States of America, District of Columbia, South and Central America and Puerto Rico

C. Property Insured

This policy covers the following kinds of property at the Premises Described in the Declarations unless otherwise excluded:

1. Real property, including improvements and betterments, owned by the Insured, or in which the Insured has an insurable interest; and
2. Personal property owned by the Insured; and
3. Personal property of others which the Insured, prior to a loss, has agreed to insure against the types of losses covered by this policy; and
4. Personal property of others in the custody of the Insured and for which the Insured is legally liable; but only to the extent of the Insured's legal liability therefor. This Company agrees to defend any suit against the Insured alleging liability for the damage or destruction of such personal property, even if the allegations of the suit are false, fraudulent, or groundless. The Company may make such investigation or settlement of such suit as the Company deems appropriate.
5. Personal property of employees, other than motor vehicles.

This policy also covers the following kinds of property, owned by the Insured or others in the custody of the Insured and for which the Insured is legally liable:

6. electrical transmission and distribution lines, line transformers, towers and poles, cables, pipes and pipelines, and equipment or apparatus connected therewith while situated on or within 1,000 feet of the Premises Described in the Declarations.

D. Newly Acquired Locations

Subject to its terms and conditions, this policy also covers property at Newly Acquired Locations, rented, purchased or in the course of construction, acquired after the inception date of this policy for a period of one hundred twenty (120) days from the date of acquisition. Permanent coverage may be provided subject to notification to and acceptance by the Company at terms to be agreed upon at the time of acceptance. There shall be no liability under this coverage for loss or damage caused by or resulting from the perils of Flood or Earth Movement.

The Company's total liability under this provision shall be limited to the Sublimit of Liability for Newly Acquired Locations specified in the Declarations, as more fully explained in the Limits and Sublimits of Liability Condition of this policy.

E. Additional Coverages

SUBSCRIPTION POLICY

In consideration of the premium charged, the subscribers hereto, hereinafter referred to as the insurers, do severally, but not jointly, agree to indemnify the Insured for the amount recoverable in accordance with the terms and conditions of the Policy.

Provided that:

1. The collective liability of Insurers shall not exceed the Limit of Liability or any appropriate Sublimit of Liability or any Annual Aggregate limit.

2. The liability of each of the Insurers shall not exceed the Limit to the pro-rata percentage of liability sat against its name.

Original Named Insured: Duke Energy Corporation

Named Reinsured: Bison Insurance Company, Limited

Policy Period: March 1, 2008 to March 1, 2009

Policy Limit: Subject to all the terms and conditions of the Policy and the Endorsements

Total Premium: $7,794,368

Reinsurers	Policy No.	Participation	Signature
Associated Electric and Gas Insurance Services, LTD		30.5%	
Munich Reinsurance America		14.0%	
National Union Fire Insurance Company of Pittsburgh, Pennsylvania		10.0%	
Liberty Insurance Underwriters		10.0%	
Arch Insurance Company (Europe) LTD		7.5%	
Aegis 1225 (Lloyds of London)		7.0%	
St. Paul Travelers (Lloyds of London)		7.0%	
Nuclear Electric Ins. LTD		5.0%	
Swiss Re		5.0%	
Zurich American Insurance Company	IM 5321981-01	4.0%	J. Del Re

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limits or conditions of the policy except as herein above set forth.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to "Trojan Horses', 'worms' and 'time or logic bombs'.

However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this policy, subject to all its terms, conditions and exclusions will cover physical damage occurring during the policy period to property insured by this policy directly caused by such listed peril.

Listed Perils
Fire
Explosion
Accident
Water Damage

D. PROPERTY EXCLUDED

This policy does not cover loss or damage to:

1. Money and securities;

2. Land; however, this exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements as described hereunder are defined as any alteration to the natural condition of the land by grading, landscaping, earthen dikes or dams, as well as additions to land such as pavements, roadways, or similar works;

3. Growing crops, water, standing timber, and animals except for research;

4. Watercraft, aircraft, motor vehicles licensed for highway use when not on the Insured's premises, but this exclusion shall not apply to contractor's equipment;

5. Export shipments after loading on board an overseas vessel, watercraft, or aircraft, or after ocean marine insurance attaches, whichever occurs first; and import shipments prior to discharge from an overseas vessel, watercraft, or aircraft, or until ocean marine insurance terminates, whichever occurs last;

6. Electrical transmission and distribution lines (and related lines, poles, towers, line transformers and any related structures or appurtenances thereto) beyond 1,000 feet of the boundary of insured locations on file with the insurers;

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Thirty-Fourth Staff Data Requests
Date Received: November 13, 2008

STAFF-DR-34-003

REQUEST:

For any funds or services requested from any source by Duke Energy related to storm damage for years 2006 – 2008 provide copies of all correspondence including preliminary estimates and cost documents submitted on behalf of or to Duke Energy along with all exhibits.

RESPONSE:

No correspondence exists. See response to Staff-DR-34-001.

WITNESS RESPONSIBLE: William Don Wathen Jr.

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Thirty-Fourth Staff Data Requests
Date Received: November 13, 2008

STAFF-DR-34-004

REQUEST:

For any funds or services received related to storm damage for years 2006 – 2008, provide Staff with copies of all entries made to record such funds or services received. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto.

RESPONSE:

No entries were made. See response to Staff-DR-34-001.

WITNESS RESPONSIBLE: William Don Wathen Jr.

STAFF-DR-39-001

REQUEST:

Please provide the Staff with the following:

a) Detailed explanation of methodology and supporting computation by cost category to support the September 2008 wind damage estimate of $31,668,433 referenced in response to Staff Data Request 32-003.

b) Provide historical accuracy for methodology referenced in question 1 above if it was utilized in previous abnormal storm damage events in the Duke Energy service territories of the southeastern states, identify the state, storm date, and estimated storm damage cost vs. actual cost.

RESPONSE:

a) Description of Hurricane Ike Storm Estimate Methodology

The estimate was composed of five basic cost categories – Duke labor, Contract labor, Materials & Supplies, Support costs (food, lodging, transportation, miscellaneous expenses), and post event outage follow-up efforts. See Attachment Staff-DR-39-001 for a summary of the calculation for each category.

1. Duke labor

Craft/Scouts/Administrative/Supervision:

Midwest field operations provided the daily estimated number of personnel working (including scouts/administrative). Daily direct labor rates were determined based upon timesheets that had been entered into the payroll system for part of the event. The total direct labor cost was a summation of the estimated number of people working per day times the average rates (for each labor type) derived from the payroll system. The direct labor was then loaded with estimated fringe benefit costs, supervision (calculated as a percent of labor), and transportation costs.

Support labor from other departments within Duke Energy:

Outside of Power Delivery, internal labor from departments such as the customer call centers, IT, purchasing, warehousing, etc. charged the storm for the support activities

they performed. The estimate for this labor was calculated as a percentage of the above total.

2. Contractors:

The Power Delivery contract strategy team and Midwest field operations kept an on-going record during the storm event of all contractors secured to assist in the restoration. The records included the name of the company, the number of employees, the date/time they arrived and the date/time of release. A man day labor rate was estimated based upon prior storm experience and current agreements that Duke has with many of the contracting companies. Generally, the contractors were grouped into one of three groups for costing. Those groups were 1. Line Crews, 2-Tree Crews, 3-Misc other utility workers (scouts etc). The cost of contractors was estimated using the daily rate for the particular type of crew *the number of days that they would bill Duke for their services* estimated number of workers.

3. Materials and Supplies

As materials and supplies are removed from the company's storerooms, the cost is posted to the ledger. The material dollars were taken from what was actually recorded in the ledger at the time of the estimate.

4. Support- lodging/food/miscellaneous expenses

The cost for this category was calculated by taking the number of people working the storm per day (as provided by operations) times an estimated daily per person amount. This amount was based on historical estimates and field input.

5. Outage Follow-Up

Midwest field operations provided an estimate as to outage follow-up clean up efforts that would occur after power was restored to put the system back to the pre-storm condition. The estimate was based on Duke internal labor working a set number of hours to perform all identified follow-up work. A small amount of material and transportation costs were included.

b) The methodology used to estimate the Ike Storm was generally similar to that which was used for the December 2005 ice storm in the Southeast (SE). The December 2005 estimate was $47.7m and the actual incurred was $51.7m. While the Ike estimate was prepared using the best available information, due to differences in individual storm events, power systems and cost structures, the accuracy of this estimate may vary from historical percentages.

PERSON RESPONSIBLE: Margaret E. Clippinger

Hurricane Ike Total Cost Estimate
Duke Energy Ohio

Summary

Duke Labor-Field Ops	13,765,752
Duke Labor-Support	3,444,469
Contractors	10,572,340
Materials & Supplies	832,930
Support-Lodging/Food	2,238,450
Followup	874,153
Other	(59,660)
Total	31,668,433

Notes
1-Estimate prepared October 3, 2008 based upon the best information available at that time
2-Estimate includes O&M, payroll taxes and capital costs

Details

1-Duke Labor — Field Operations

Step 1 Estimate workforce by category for each day of the storm event

Field Operations provided daily estimates of the internal Power Delivery workforce assigned to storm restoration.

Estimated Mandays	
Craft	4,285
Scouts/Admin	1,730

Step 2 Calculate labor rate for Craft and Scout/Admin categories

Rate per man-day calculated from actual payroll data for 1st week of the storm event, loaded with fringe benefits, supervision and transportation costs

Estimated Rate per man-day	
Craft	2,482
Scouts/Admin	1,810

Step 3 Calculate the cost for Duke Power Delivery Field Operations

Calculate Estimated # man-days <times> estimated rate per man-day

Estimated Duke Labor	13,765,752

1-Duke Labor — Support Groups

Cost estimated as a percentage of Duke Field labor in Steps above - rate based upon prior events

Step 1 Calculate the cost for support from other Duke departments, eg Call centers, Warehousing, IT, etc

Duke Field Labor-from above	13,765,752
Support Loader	25%
Estimated Support cost	3,444,469

2-Contractors

Step 1 Estimate workforce by category for each day of the storm event

Power Delivery Contract Strategy team and MW Field Operations estimated contract workforce during the event

Estimated Mandays	
Line Crews	7,585
Tree Crews	1,668
Misc (Scouts, etc)	10
Total	9,263

Step 2 Estimate the labor rate per man-day for each category of crew

Rates were estimated based upon prior storm experience and contracts with the various companies

Estimated Rate-$/man-day	
Line Crews	1,250
Tree Crews	650
Misc (Scouts, etc)	675

Step 3 Calculate the cost for Contractor workforce

Calculate Estimated # man-days <times> estimated rate per man-day

Estimated Contractor cost	10,572,340

3-Materials & Supplies

Step 1 Material costs charged to the storm event

Materials & supplies are charged to the storm as they are removed from the company's warehouses. The estimate used the actual material charges available on October 3

Estimated material costs	832,930

4-Support-Food / Lodging, etc

Step 1 Estimate the cost of food, lodging, local transportation, etc

The cost of support was estimated using a daily per diem type charge based upon prior storm experience and input from the Field Operations. The rate was then multiplied by the estimated number of people being supported over the course of the event.

Per Diem rate-$/Person/day	150
Est'ed # People-days	14,923
Estimated Support cost	2,238,450

5-Outage Follow-up

Step 1 Estimate the cost of follow-up activities after customer power was restored

Field Operations estimated the cost to do various follow-up activities

Labor/supervision	823,544
Material	50,608
Total	874,153

6-Other

Step 1 Correction entry made in financial system after labor loading rates were calculated for the estimate

Other	(59,660)

Contractor/Utility	State work was performed	Type	#People	Arrived (Date/Time)	Avg Hr/Day	Departed (Date/Time)	Per Hour Cost	Est'ed cost / person / day	Number of days	Travel Days	Total hours	Total Dollars
Pike	OH	Line	30	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	8	0.6	4,140	$323,437.50
Pike	OH	Line	7	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	8	1.0	1,008	$78,750.00
Pike	OH	Line	49	9/15/2008	16	9/27 @7:00	$ 78	$1,250.00	13	1.0	10,976	$857,500.00
Pike	OH	Line	100	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	10	1.0	17,600	$1,375,000.00
Pike	OH	Line	100	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	10	1.0	17,600	$1,375,000.00
Sumter	OH	Line	39	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	10	0.9	6,786	$530,156.25
ULCS	OH	Line	49	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	10	0.9	8,526	$666,093.75
ULCS	OH	Line	14	9/15/2008	16	9/27 @7:00	$ 78	$1,250.00	13	1.0	3,136	$245,000.00
Williams	OH	Line	14	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	10	1.0	2,464	$192,500.00
Williams	OH	Line	85	9/15/2008	16	9/24 @7:00	$ 78	$1,250.00	10	1.0	14,960	$1,168,750.00
Asplundh Line	OH	Line	15	9/16/2008	16	9/24 @7:00	$ 78	$1,250.00	9	1.0	2,400	$187,500.00
Cel/Argos	OH	Line	14	9/16/2008	16	9/24 @7:00	$ 78	$1,250.00	9	0.5	2,128	$166,250.00
Gilbert	OH	Line	36	9/16/2008	16	9/24 @7:00	$ 78	$1,250.00	9	1.0	5,760	$450,000.00
Maslec	OH	Line	18	9/16/2008	16	9/24 @7:00	$ 78	$1,250.00	9	1.0	2,880	$225,000.00
Pike	OH	Line	23	9/16/2008	16	9/24 @7:00	$ 78	$1,250.00	9	1.0	3,680	$287,500.00
Pike	OH	Line	41	9/22/2008	16	9/24 @7:00	$ 78	$1,250.00	2	1.0	1,968	$153,750.00
Sumter	OH	Line	16	9/16/2008	16	9/24 @7:00	$ 78	$1,250.00	9	0.8	2,496	$195,000.00
Sumter	OH	Line	25	9/17/2008	16	9/24 @7:00	$ 78	$1,250.00	8	0.8	3,500	$273,437.50
Lee	OH	Line	15	9/18/2008	16	9/23 @7:00	$ 78	$1,250.00	6	0.9	1,650	$128,906.25
Lee	OH	Line	19	9/18/2008	16	9/24 @7:00	$ 78	$1,250.00	7	0.9	2,394	$187,031.25
Miller	OH	Line	19	9/18/2008	16	9/24 @7:00	$ 78	$1,250.00	7	1.0	2,432	$190,000.00
Owen EMC	OH	Line	22	9/18/2008	16	9/23 @7:00	$ 78	$1,250.00	5	1.0	2,112	$165,000.00
Pike	OH	Line	44	9/18/2008	16	9/24 @7:00	$ 78	$1,250.00	6	1.0	4,928	$385,000.00
Pike	OH	Line	8	9/18/2008	16	9/24 @7:00	$ 78	$1,250.00	7	1.1	1,040	$81,250.00
Pike	OH	Line	16	9/18/2008	16	9/24 @7:00	$ 78	$1,250.00	7	1.1	2,080	$162,500.00
Pike - High Point	OH	Line	6	9/18/2008	16	9/24 @7:00	$ 78	$1,250.00	7	1.1	780	$60,937.50
Wadsworth	OH	Line	3	9/18/2008	16	9/23 @7:00	$ 78	$1,250.00	7	1.0	384	$30,000.00
Asplundh Line	OH	Line	4	9/19/2008	16	9/24 @7:00	$ 78	$1,250.00	7	1.0	512	$40,000.00
Mps	OH	Line	70	9/19/2008	16	9/24 @7:00	$ 78	$1,250.00	6	0.6	7,420	$579,687.50
Pike	OH	Line	41	9/19/2008	16	9/24 @7:00	$ 78	$1,250.00	7	0.8	5,084	$397,187.50
IPL (utility)	OH	Line	9	9/20/2008	16	9/24 @7:00	$ 78	$1,250.00	5	0.4	774	$60,468.75
Hawkeye Electric	OH	Line	19	9/21/2008	16	9/24 @7:00	$ 78	$1,250.00	4	1.0	1,520	$118,750.00
Osmose	OH	Scout	4	9/19/2008 07	16	9/21/2008 2200	$ 42	$675.00	2	1.0	192	$6,100.00
Asplundh	OH	Tree	41	9/15/2008	16	9/22/08 2300	$ 41	$650.00	7	-	4,592	$186,550.00
Davey	OH	Tree	7	9/15/2008	16	9/22/08 700	$ 41	$650.00	7	1.0	896	$36,400.00
ABC	OH	Tree	7	9/16/2008	16	9/22/08 2300	$ 41	$650.00	6	-	672	$27,300.00
Lewis	OH	Tree	126	9/16/2008	16	9/22/08 2300	$ 41	$650.00	6	-	12,096	$491,400.00
Townsend	OH	Tree	26	9/16/2008	16	9/22/08 2300	$ 41	$650.00	6	-	2,400	$97,500.00
Asplundh	OH	Tree	30	9/17/2008	16	9/22/08 2300	$ 41	$650.00	5	-	2,400	$97,500.00
Asplundh	OH	Tree	62	9/18/2008	16	9/22/08 2300	$ 41	$650.00	4	1.0	4,960	$201,500.00
Asplundh	OH	Tree	13	9/18/2008	16	9/22/08 2300	$ 41	$650.00	4	-	832	$33,800.00
Townsend	OH	Tree	11	9/18/2008	16	9/22/08 2300	$ 41	$650.00	4	-	704	$28,600.00
Lewis	OH	Tree	49	9/19/2008	16	9/22/08 2300	$ 41	$650.00	3	-	2,352	$95,550.00

Total DEO/DEK	$12,641,543.75
84% to DEO	$10,572,337.94

DEO/DEK split based upon customers off