

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Application of Duke Energy:  
Ohio, Inc. for an Increase: Case No. 08-709-EL-AIR  
in Electric Distribution :  
Rates. :

- - -

In the Matter of the :  
Application of Duke Energy: Case No. 08-710-EL-ATA  
Ohio, Inc. for Tariff :  
Approval. :

- - -

In the Matter of the :  
Application of Duke Energy: Case No. 08-711-EL-AAM  
Ohio, Inc. for Approval to:  
Change Accounting Methods.:

- - -

In the Matter of the :  
Application of Duke Energy:  
Ohio, Inc. for Approval of: Case No. 06-718-EL-ATA  
Its Rider BDP, Backup :  
Delivery Point Rider. :

- - -

PROCEEDINGS

before Ms. Jeanne Kingery and Mr Scott Farkas,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-C,  
Columbus, Ohio, called at 10:00 a.m. on Tuesday,  
March 31, 2009.

- - -

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## 1 APPEARANCES:

2 Duke Energy  
3 By Ms. Elizabeth H. Watts  
4 and Mr. Rocco D'Ascenzo  
5 155 East Broad Street  
6 Columbus, Ohio 43215

7 and

8 Baker & Hostetler  
9 By Mr. Michael D. Dortch  
10 Capitol Square, Suite 2100  
11 65 East State Street  
12 Columbus, Ohio 43215-4260

13 On behalf of Duke Energy Ohio.

14 Mr. David C. Rinebolt  
15 231 East Lima Street  
16 P.O. Box 1793  
17 Findlay, OH 45839-1793

18 and

19 Ms. Colleen Mooney  
20 1431 Mulford Road  
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22 On behalf of Ohio Partners for  
23 Affordable Energy.

24 Vorys, Sater, Seymour and Pease, LLP  
25 By Ms. Benita Kahn  
52 East Gay Street  
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On behalf of Ohio Telecommunications  
Association.

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On behalf of the City of Cincinnati.

## 1 APPEARANCES (Continued):

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3 By Mr. John W. Bentine  
4 Mr. Matthew White  
5 Mr. Mark S. Yurick  
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8 On behalf of the Kroger Company.

9 Boehm, Kurtz & Lowry  
10 By Mr. David Boehm  
11 36 East Seventh Street  
12 Suite 1510  
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14 On behalf of the Ohio Energy Group.

15 Mr. Douglas E. Hart  
16 441 Vine Street, Suite 4192  
17 Cincinnati, Ohio 45202

18 On behalf of the Greater Cincinnati  
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21 & Owens, LLP  
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23 100 East Campus View Boulevard, Suite 360  
24 Columbus, Ohio 43235

25 On behalf of the People Working  
Cooperatively

Janine L. Migden-Ostrander  
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By Ms. Ann M. Hotz  
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10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485

On behalf of the Residential  
Consumers of the State of Ohio.

## 1 APPEARANCES (Continued)

2 Richard Cordray, Ohio Attorney General  
3 Duane W. Luckey, Senior Deputy  
4 Attorney General  
5 Public Utilities Section  
6 By Mr. Stephen A. Reilly  
7 Mr. William Wright  
8 180 East Broad Street, 9th Floor  
9 Columbus, Ohio 43215-3793

10 On behalf of the Staff of the Public  
11 Utilities Commission.

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1 Tuesday Morning Session,

2 March 31, 2009.

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4 EXAMINER KINGERY: Good morning. The  
5 Public Utilities Commission of Ohio has called at  
6 this time and place Case No. 08-709-EL-AIR, being In  
7 the Matter of the Application of Duke Energy Ohio,  
8 Inc. for an Increase in Electric Distribution Rates  
9 and associated cases.

10 My name is Jeanne Kingery. This is Scott  
11 Farkas. We are attorney examiners appointed by the  
12 Commission to hear these cases.

13 At this point I would like to take  
14 appearances of the parties beginning with Duke.

15 MS. WATTS: On behalf of Duke Energy  
16 Ohio, Elizabeth Watts, Mr. Rocco D'Ascenzo, and  
17 Michael Dortch. Thank you.

18 EXAMINER KINGERY: Thank you.

19 PARTICIPANT: Douglas Hart for the  
20 Greater Cincinnati Health Council.

21 MS. CHRISTENSEN: Mary Christensen, on  
22 behalf of People Working Cooperatively.

23 MR. BOEHM: David Boehm from the law firm  
24 of Boehm, Kurtz & Lowry for the Ohio Energy Group.

25 MR. O'BRIEN: On behalf of the City of

1 Cincinnati, Bricker & Eckler, LLP, by Thomas J.

2 O'Brien, 100 South Third Street, Columbus, Ohio.

3 MR. YURICK: On behalf of Kroger Company  
4 John Bentine, Mark Yurick and Matthew White, from the  
5 law firm of Chester, Willcox & Saxbe.

6 MS. KAHN: On behalf of the Ohio  
7 Telecommunications Association, Benita Kahn, Vorys,  
8 Sater, Seymour and Pease.

9 MS. MOONEY: On behalf of Ohio Partners  
10 for Affordable Energy, Dave Rinebolt and Colleen  
11 Mooney.

12 PARTICIPANT: On behalf of the  
13 residential customers of Duke Energy Ohio, by Ann M.  
14 Hotz, Larry Sauer, and Jeff Small. Thank you.

15 MR. REILLY: On behalf of the staff of  
16 the Public Utilities Commission, Richard Cordray,  
17 Attorney General, Duane Luckey, section chief, Steve  
18 Reilly and Bill Wright, assistant attorneys general,  
19 180 East Broad Street, Columbus, Ohio.

20 EXAMINER KINGERY: Thank you.

21 Going down our list of parties, is IEU  
22 present today?

23 (No response.)

24 EXAMINER KINGERY: And TW Telecom?

25 (No response.)



1 EXAMINER KINGERY: And Mr. Albert E.  
2 Lane?

3 (No response.)

4 EXAMINER KINGERY: Let the record reflect  
5 those three parties are not present this morning.

6 MS. WATTS: Your Honor, I believe IEU has  
7 withdrawn as a party to this matter.

8 EXAMINER KINGERY: Thank you. I believe  
9 you're right.

10 Duke, are we ready to proceed, or is  
11 there anything you need to do before witnesses?

12 MS. WATTS: Your Honor, we believe we  
13 have a stipulation in principle with all of the  
14 parties in the case. We need an additional 45  
15 minutes or so to wrap up some very minor details in  
16 the document we are working on, and we would  
17 appreciate reconvening in order to present a  
18 stipulation to you.

19 EXAMINER KINGERY: Okay. When you say  
20 apparently going to be among all the parties, you  
21 mean every one of the parties?

22 MS. WATTS: All of parties present here  
23 today, not including Mr. Lane and Time Warner  
24 Telecom.

25 EXAMINER KINGERY: Any objections?

1 (No response.)

2 EXAMINER KINGERY: You said a half an  
3 hour?

4 MS. WATTS: 45 minutes.

5 EXAMINER KINGERY: Let's call it  
6 11:00 o'clock we will be back.

7 MS. WATTS: Thank you very much.

8 (Recess taken.)

9 EXAMINER KINGERY: How are back on the  
10 record.

11 MS. WATTS: We have a signed stipulation,  
12 which is at this moment being copied two floors up,  
13 so we should have it. If we can go ahead with the  
14 procedural things, we could complete that while  
15 waiting for the copies.

16 EXAMINER KINGERY: That would be  
17 wonderful.

18 MS. WATTS: Your Honor, the first  
19 procedural thing is we would like to offer into  
20 evidence our testimony in the case.

21 EXAMINER KINGERY: Okay.

22 MS. WATTS: We have Exhibits 1 through  
23 17, and Exhibit 19, 20, and 21, which I will  
24 identify.

25 EXAMINER KINGERY: Okay. You may

1 proceed.

2 MS. WATTS: Exhibit 1 is the direct  
3 testimony of Keith G. Butler.

4 Exhibit 2 is the testimony of Carl J.  
5 Council, Jr.

6 EXAMINER KINGERY: Okay.

7 MS. WATTS: Exhibit 3 is the direct  
8 testimony of Stephen G. De May.

9 EXAMINER KINGERY: Okay.

10 MS. WATTS: Exhibit 4 is the direct  
11 testimony of Peggy Laub.

12 EXAMINER KINGERY: Okay.

13 MS. WATTS: Exhibit 5 is the direct  
14 testimony of Stephen R. Lee.

15 Exhibit 6 is the direct testimony of  
16 James E. Mehring.

17 Exhibit 7 the testimony of Sandra P.  
18 Meyer.

19 8 is Roger A. Morin.

20 9 is Paul G. Smith, direct testimony.

21 10 is John J. Spanos.

22 11 is Donald L. Storck.

23 12 is William Don Wathen, Jr.

24 13 is James E. Ziolkowski.

25 14 is the supplemental direct testimony

1 of Roger Morin.

2 15 is the supplemental direct testimony  
3 of Paul G. Smith.

4 16 is the supplemental direct testimony  
5 of William Don Wathen.

6 17 is the supplemental direct testimony  
7 of James Ziolkowski.

8 19 is the supplemental direct testimony  
9 of Donald L. Storck.

10 Duke Energy Exhibit 20 would be proof of  
11 publications in Hamilton County, which was docketed  
12 on March 11.

13 Duke Energy 21 would be proof of  
14 publications in Butler County which was docketed on  
15 March 13.

16 EXAMINER KINGERY: Those exhibits will be  
17 so marked.

18 MS. WATTS: Your Honor, in addition to  
19 those, we have testimony in support of the settlement  
20 offered by Paul G. Smith, and that would be Duke  
21 Energy Ohio 18.

22 EXAMINER KINGERY: That has not been  
23 docketed at this point, correct?

24 MS. WATTS: That's correct, it has not  
25 been docketed.

1           Your Honor, the stipulation in this case  
2 would be Joint Exhibit 1.

3           EXAMINER KINGERY: It will be so marked,  
4 as 18.

5           At this point are there other parties who  
6 will to want make any testimony or have any testimony  
7 marked as exhibits?

8           MR. REILLY: Yes. Staff would like to --  
9 staff has the direct testimony of David Hodgen to  
10 identify in support of the stipulation, and staff  
11 would like the Staff Report marked as Staff Exhibit  
12 No. 1 and would ask the Bench to take administrative  
13 notice of the Staff Report filed in the docket on  
14 January 27 of this year.

15           I have a courtesy copy for the court  
16 reporter to mark as Staff Exhibit 1. I would move  
17 the introduction of Staff Exhibit 1. I think the  
18 fact of the administrative notice, if your Honor is  
19 willing to take it, it speaks to the identification  
20 and authentication of the document. The relevance of  
21 the document is spoken to by the Ohio Revised Code.  
22 It is a document ordered under the Revised Code and  
23 actually forms the basis for the issues in this case,  
24 along with the objections. On that basis I would  
25 move the introduction of the Staff Report Staff

1 Exhibit No. 1.

2 EXAMINER KINGERY: Okay. Anybody have  
3 any objections to administrative notice of the Staff  
4 Report?

5 (No response.)

6 EXAMINER KINGERY: We will take  
7 administrative notice of that.

8 MR. REILLY: If your Honor is taking  
9 notice of proposed exhibits, staff has a response to  
10 Duke's proposed exhibits.

11 EXAMINER KINGERY: First, we will mark  
12 the Staff Report as Staff Exhibit 1.

13 MR. REILLY: And Mr. Hodgden's testimony  
14 as Staff Exhibit 2.

15 EXAMINER KINGERY: It will be so marked.

16 MR. REILLY: I would like to pass out  
17 Staff Exhibit 2 at this point. It is in support of  
18 the stipulation that has not been put into evidence  
19 at this point.

20 EXAMINER KINGERY: You are welcome to do  
21 so.

22 MR. REILLY: Thank you.

23 MS. WATTS: Your Honor, we would like to  
24 pass out Duke Energy Exhibit 18 as well.

25 EXAMINER KINGERY: Feel free. Are there

1 any other items of testimony that need to be marked  
2 at this point?

3 MS. HOTZ: OCC would like to reserve the  
4 right to file its testimony if the stipulation should  
5 fall apart.

6 EXAMINER KINGERY: If the stipulation is  
7 not approved by the Commission?

8 MS. HOTZ: Exactly.

9 EXAMINER KINGERY: If the stipulation is  
10 not approved by the Commission, I think all parties  
11 would have the right to file testimony, and we would  
12 proceed with a hearing likely on that testimony.

13 MS. HOTZ: Thank you.

14 EXAMINER KINGERY: Mr. Reilly, you said  
15 you had discussion on the Duke exhibits. Is that the  
16 question of marking them or their admission?

17 MR. REILLY: No, your Honor, their  
18 admission.

19 EXAMINER KINGERY: We have not had a  
20 motion to admit them at this point. They're just  
21 marked.

22 Off the record at this point.

23 (Discussion off the record.)

24 EXAMINER KINGERY: While we were off the  
25 record, we were beginning a discussion of the

1 remainder of the procedure for this hearing. We have  
2 at this point apparently a stipulation. It is not  
3 docketed. The examiners don't have a copy of it, and  
4 there is testimony in support of the stipulation,  
5 also not docketed, and we also don't have a copy of  
6 that.

7           There are, I believe, two parties who are  
8 not present today, and, therefore, have certainly not  
9 seen the final form of the stipulation and have  
10 certainly not seen the testimony that's filed in  
11 support of that stipulation, so our expectation is  
12 that the parties would file the testimony so that the  
13 other parties and the examiners would have a chance  
14 to see the testimony, review the stipulation, and  
15 then we would come back for a brief hearing where we  
16 would have those two witnesses.

17           Does anybody have any problems with that  
18 approach?

19           MS. WATTS: Well, your Honor, the two  
20 parties that are not present have, in fact, seen  
21 everything, except the testimony that was just  
22 submitted on behalf of staff and on behalf of the  
23 company because Time Warner Telecom and Mr. Lane have  
24 received copies of all the stipulations that have  
25 been discussed in the process. So they are aware



1 what is proceeding, how it was intended today, and I  
2 think everybody expected we would just offer our  
3 witnesses to support the stipulation and finish  
4 everything up today. I don't know that anybody here  
5 has any issue with that. If it's not workable for  
6 you, that's a different issue.

7 EXAMINER KINGERY: We generally do review  
8 stipulations and review testimony in advance so we  
9 have a chance to see whether we have questions. It  
10 also seems since it's noon now and you all have been  
11 working on the stipulation for the last two hours, it  
12 would seem unlikely that the two other parties who  
13 aren't here have seen the final draft. Obviously, we  
14 don't know the extent to which changes were made  
15 today.

16 MS. WATTS: That's correct. There was  
17 nothing substantive that either party -- I can't  
18 speak for Mr. Lane, but I know that Time Warner  
19 Telecom sort of had finished with the process as of  
20 Monday.

21 EXAMINER FARKAS: But they're not a  
22 signatory.

23 MS. WATTS: No. They intend not to be  
24 signatory, nor do they expect to oppose the  
25 stipulation.

1 EXAMINER FARKAS: But they haven't seen  
2 the final version that everybody signed.

3 EXAMINER KINGERY: Off the record.

4 (Discussion off record.)

5 EXAMINER KINGERY: After a lengthy  
6 discussion off the record, the parties present in the  
7 room and the examiners have agreed on the following  
8 process for the remainder of this proceeding.

9 First, all exhibits that have been filed  
10 by the end of the day today -- correction, all  
11 prefiled testimony filed by the end of the day today  
12 will be marked and referred to as "testimony of," and  
13 then the last name of the person testifying or  
14 supplemental testimony of and then the last name of  
15 the person testifying.

16 In one case I believe there is a person  
17 who has filed additional testimony and supplemental  
18 testimony and testimony in support of the  
19 stipulation. I would propose that the two witnesses  
20 whose testimony is in support of the testimony be  
21 referred to as, let's say, testimony in support of  
22 the stipulation of Smith or of Hodgen. Each one of  
23 those exhibits will be admitted into the record.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER KINGERY: The testimony filed

1 today in support of the stipulation with regard to  
2 that testimony, I understand that all of the parties  
3 present in the room and who are parties to the  
4 stipulation are waiving cross-examination.

5           There are certain parties who are not  
6 present. If any party who is not present today  
7 wishes to cross-examine on the testimony in support  
8 of the stipulation, those parties will have till the  
9 end of business Monday, April 6, to inform the  
10 Commission that such party wishes to cross-examine  
11 either or both of those witnesses. They would do so  
12 by filing a notice in the docket by the close of  
13 business on the 6th.

14           With regard to the testimony filed prior  
15 to today, cross-examination I understand is being  
16 waived by all of the parties to the stipulation  
17 provided that if the Commission determines that it  
18 should either modify the stipulation or not approve  
19 the stipulation in ways that are not acceptable to  
20 the parties such that we have to have a hearing then  
21 on the application, then cross-examination would not  
22 be waived and the parties would have the right to  
23 cross-examine on that testimony.

24           In the event that a hearing on the  
25 stipulation testimony is necessary, that hearing

1 would be held on Tuesday, April 7 at 10:00 o'clock.

2 In addition we have discussed briefing  
3 and all of the parties present have waived the filing  
4 of post hearing briefs.

5 Joint Exhibit 1, the Stipulation, will be  
6 referred to as Joint Exhibit 1 and it is also  
7 admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER KINGERY: Staff Exhibit 1 will  
10 remain the Staff Report, and I understand,  
11 Mr. Reilly, you wanted to make a motion to admit that  
12 at this point.

13 MR. REILLY: Yes, your Honor.

14 EXAMINER KINGERY: Any objections?

15 (No response.)

16 EXAMINER KINGERY: It will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER KINGERY: Have I missed anything  
19 or is anything unclear?

20 With that, we are adjourned.

21 (The hearing adjourned at 12:31 p.m.)

22 - - -  
23  
24  
25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, March 31, 2009, and carefully compared with my original stenographic notes.

---

Rosemary Foster Anderson,  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My commission expires April 5, 2009.

(RFA-8257)

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/13/2009 9:05:47 AM**

**in**

**Case No(s). 08-0709-EL-AIR**

Summary: Transcript Duke Energy 3/31/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.