



# Office of the Ohio Consumers' Counsel

Your Residential Utility Consumer Advocate

Janine L. Migden-Ostrander  
Consumers' Counsel

March 2, 2010

Ms. Renee Jenkins, Secretary  
Public Utilities Commission of Ohio  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

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PUCO

**RE: Stipulation and Recommendation, filed February 25, 2010 in *Duke Energy-Ohio*, Case Nos. 09-283-EL-RDR.**

Dear Ms. Jenkins:

The Ohio Consumers' Counsel ("OCC") would like to state its position with regard to the Stipulation and Recommendation filed on February 25, 2010 in this docket to resolve the matters at issue in this case. The Stipulation and Recommendation has been signed by Duke Energy Ohio ("Duke"), the Staff of the Public Utilities Commission of Ohio and Ohio Partners for Affordable Energy. For the most part, the OCC agrees with the provisions as set forth in the Stipulation as they relate to demand side management program cost recovery associated with the reconciliation of the final operation of the current programs for the period July 1, 2008 through December 31, 2008.<sup>1</sup>

On the other hand, the OCC wanted to include a provision in the Stipulation and Recommendation that would clarify that on a going forward basis, beginning with demand side management programs in effect after December 31, 2008, Duke will recover only such costs that are consistent with the rules of recovery that were established in Case No. 08-888-EL-ORD.<sup>2</sup> Duke was unwilling to include such a provision in the Stipulation and Recommendation in this case, despite the fact that Duke had agreed to such a provision in its Electric Security Plan ("ESP") Case.<sup>3</sup> It is OCC's contention that Duke is bound by the ESP Stipulation and that their reluctance to acknowledge agreed-upon terms of a former stipulation that merely requires compliance with PUCO rules is at the very least, disconcerting. Therefore, OCC was

<sup>1</sup> Application at 3-4 (March 31, 2009).

<sup>2</sup> Effective December 10, 2009.

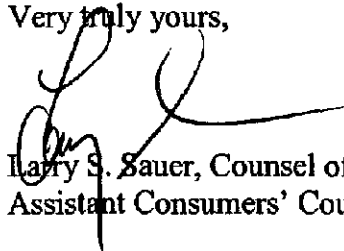
<sup>3</sup> *In the Matter of the Application of Duke Energy Ohio for Approval of Its Electric Security Plan*, Case No. 08-920-EL-SSO, et al. Stipulation ("ESP Stipulation") at ¶32 ("Pursuant to R.C. 4928.143, and subject to DE-Ohio's legal rights, including but not limited to the right to comments, apply for rehearing, and appeal, DE-Ohio shall conform to the Commission's ESP rules as set forth in Case Nos. 08-777-EL-ORD and 08-888-EL-ORD.").

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unwilling to sign the Stipulation in this case. In order to ensure that the Public Utilities Commission of Ohio understands OCC concerns and perception with regard to the appropriate cost recovery for demand side management programs in future cases, the OCC files this letter. Thank you for your attention to this matter.

Very truly yours,



Larry S. Sauer, Counsel of Record  
Assistant Consumers' Counsel

cc: Elizabeth Watts, Duke Energy, Inc.  
Matthew White, The Kroger Company  
David Rinebolt, Ohio Partners for Affordable Energy  
Werner Margard, Ohio Attorney General