

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Application )  
of Duke Energy Ohio for an ) Case No. 09-1849-GA-RDR  
Adjustment to Rider AMRP Rates. )

In the Matter of the Application of )  
Duke Energy Ohio for Tariff ) Case No. 09-1850-GA-ATA  
Approval. )

PUCO

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POST-HEARING BRIEF IN SUPPORT OF THE STIPULATION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in the above-captioned proceeding, hereby files this Initial Brief in support of the Stipulation and Recommendation ("Stipulation") that was filed in the above captioned proceeding. On February 26, 2010, Duke Energy Ohio, Inc. ("Duke" or "Company") filed its application ("Application") For An Increase In Gas Rates And For Approval To Change Accounting Methods, in regards to Duke's Accelerated Main Replacement Program ("AMRP") and Riser Replacement Program ("RRP") for systematic repair and/or replacement of 1) customer-owned service lines, and prone to failure risers; 2) cast iron and bare steel pipe in its distribution system.<sup>1</sup> Pursuant to the Stipulation filed on February 28, 2008, in Case No. 07-589-GA-AIR et al., and the Public Utilities Commission of Ohio's ("Commission" or "PUCO") Opinion and Order dated May 28, 2008, the AMRP rider

<sup>1</sup> Duke Ex. No. 2 Direct Testimony of Gary J. Hebbeler at 3, 13 (February 26, 2010).

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rates are subject to Duke has approximately 383,000 residential customers that will be asked to pay the rate increases requested in Duke's Application.<sup>2</sup>

On November 27, 2009, Duke gave a pre-filing notice of its intent to file an application for approval of an increase in its AMRP rider rates.<sup>3</sup> On February 26, 2010, Duke filed its Application for an Adjustment to Rider AMRP Rates. OCC filed its Motion to Intervene in these cases on December 21, 2009. On March 12, 2010, OCC filed a Motion to Continue the Evidentiary Hearing and Modify the Procedural Schedule ("Motion"). OCC's Motion was granted by the Attorney Examiner in an Entry on March 19, 2010 ("March 19 Entry").

On April 16, 2010, a Stipulation and Recommendation ("Stipulation") executed by all Parties in this case, the Company, the Commission Staff ("Staff") and OCC was filed with the Commission.<sup>4</sup>

On April 19, 2010, the Commission held an evidentiary hearing on the Stipulation and heard supporting testimony from Company witness Robert Parsons.<sup>5</sup>

## **II. THE APPLICABLE LAW**

The standard of review for consideration of a Stipulation has been discussed in a number of Commission cases and by the Ohio Supreme Court.

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<sup>2</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al, Stipulation and Recommendation at Exhibit 4 (February 28, 2008).

<sup>3</sup> Pre-filing Notice (November 27, 2009).

<sup>4</sup> Joint Ex. No. 1 Stipulation and Recommendation (April 14, 2010).

<sup>5</sup> Duke Ex. No. 4, Supplemental Direct Testimony of Robert M. Parsons (April 16, 2010).

See, e.g., *CG&E ETP Case*, PUCO Case No. 99-1212-EL-ETP, et al., at 65 (July 19, 2000). Among other places, the Ohio Supreme Court has addressed its review of stipulations in *Consumers' Counsel v. Pub. Util. Comm.*, (1992), 64 Ohio St. 3d 123, 125. Citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155, 157, the Ohio Supreme Court stated in *Consumers' Counsel* that:

The Commission, of course, is not bound to the terms of any stipulation; however, such terms are properly accorded substantial weight. Likewise, the commission is not bound by the findings of its staff. Nevertheless, those findings are the result of detailed investigations and are entitled to careful consideration.

In *Duff v. Pub. Util. Comm.* (1978), \* \* \* in which several of the appellants challenged the correctness of a stipulation, we stated:

A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.<sup>6</sup>

The Court in *Consumers' Counsel* considered whether a just and reasonable result was achieved with reference to criteria adopted by the Commission in evaluating settlements:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?<sup>7</sup>

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<sup>6</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, 125.

<sup>7</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, 126.

### **III. ARGUMENT**

#### **A. The Stipulation Is A Product Of Serious Bargaining Among Capable, Knowledgeable Parties with Diverse Interests.**

In this case, the Signatory Parties to the Stipulation include the Company, Staff, and OCC. These organizations each have extensive experience in Commission proceedings and experience in Duke's accelerated main replacement program ("AMRP") and riser replacement program ("RRP") programs.

In addition, the Stipulation was not entered into lightly. There were extensive negotiations.<sup>8</sup> The bargaining conducted by the Parties was not superficial as demonstrated by the Stipulation that encompassed numerous provisions and attachments. Per precedent for approving settlements, the signatories reflect diverse interests including OCC's representation of all residential consumers.<sup>9</sup> The compromise that was reached in the Stipulation is the product of a determined effort to resolve all outstanding issues presented in this proceeding that will yield significant benefits to Duke's residential consumers, such as adjustments decreasing Duke's revenue requirement in the amount of \$328,230<sup>10</sup> thereby reducing the AMRP rider rate to \$3.65 per month,<sup>11</sup> a \$0.04 reduction to the rate proposed by Duke in its Application.<sup>12</sup> The resulting AMRP Rider rate, under the Stipulation, is below the established cap and served as one of the grounds for OCC's support.

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<sup>8</sup> Entry at 2-3 (March 5, 2010); See Also Entry (March 19, 2010), Entry (April 2, 2010), and Entry (April 14 (2010).

<sup>9</sup> See In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company. Case No. 84-1187-EL-UNC, Opinion and Order at 7 (November 29, 1985).

<sup>10</sup> Joint Ex. No. 1, Stipulation at 5 (April 16, 2010).

<sup>11</sup> Joint Ex. No. 1, Stipulation at Exhibit 3 (April 16, 2010).

<sup>12</sup> Duke Ex. No. 4, Supplemental Direct Testimony of Robert M. Parsons at 9 (April 16, 2010).

Thus, the Stipulation meets the first criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

**B. As A Package, The Stipulation Benefits Customers And The Public Interest.**

The Stipulation benefits Duke's residential customers and the public interest by furthering one of the articulated goals of its AMRP which is immediate main maintenance savings returned to customers through Rider AMRP.<sup>13</sup> And in order to assure that goal is achieved, the Stipulation establishes an agreed upon methodology intended to enhance future AMRP filing requirements by improve the opportunity for Duke to flow main maintenance savings back to consumers. The Stipulation states: "Duke Energy Ohio commits to providing its natural gas customers with guaranteed maintenance savings attributed to the AMRP on an annual basis. For the 2009, 2010 and 2011 AMRP test years, the Parties agree to the guaranteed minimum maintenance savings calculation methodology as provided on Stipulation Exhibit 2."<sup>14</sup>

The Stipulation benefits customers and the public interest. Thus, the Stipulation meets the second criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

**C. The Stipulation Does Not Violate Any Important Regulatory Principle or Practice.**

The Stipulation does not violate any important regulatory principle or practice because it assures the Stipulation is consistent with Commission precedent and specifically with the

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<sup>13</sup> Duke Ex. No. 4, Supplemental Direct Testimony of Robert M. Parsons at 3 (April 16, 2010).

<sup>14</sup> Joint Ex. No. 1, Stipulation at 4 (April 14, 2010).

Commission's April 29, 2009, Opinion and Order in the Duke Energy Ohio Adjustment to Rider AMRP Case, PUCO Case Nos. 08-1250-GA-UNC, et al. and the Commission's May 26, 2009 Opinion and Order in the Dominion East Ohio Adjustment to its Automated Meter reading Cost recovery Charge Case, PUCO Case No. 09-038-GA-UNC.

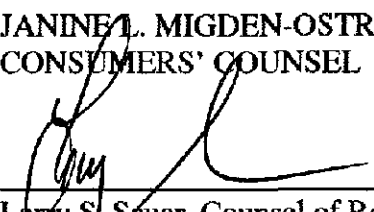
The Stipulation complies with the Commission's existing regulatory principles and practices. Thus, the Stipulation meets the third criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

#### **IV. CONCLUSION**

As discussed above, the Stipulation is a product of serious bargaining among capable, knowledgeable parties, as a package benefits customers and the public interest and does not violate any important regulatory principle or practice. Thus, the Stipulation meets the criteria for reasonableness, and the PUCO should approve the Stipulation without modification.

Respectfully submitted,

**JANINE L. MIGDEN-OSTRANDER**  
**CONSUMERS' COUNSEL**



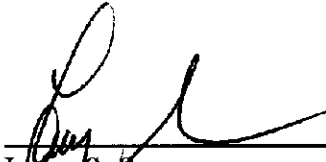
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Post-Hearing Brief was served via electronic mail to the parties of record identified below, on this 22nd day of April 2010.

  
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