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DUKE ENERGY OHIO EXHIBIT \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Adjust and Set the ) Case No. 10-1268-EL-RDR  
Annually Adjusted Component of its )  
Market-Based Standard Service Offer )

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**SUPPLEMENTAL TESTIMONY OF**

**WILLIAM DON WATHEN JR.**

**ON BEHALF OF**

**DUKE ENERGY OHIO, INC.**

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## **I. INTRODUCTION**

1   **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2   A.   My name is William Don Wathen Jr., and my business address is 139 East Fourth Street,  
3       Cincinnati, Ohio 45202.

4   **Q.   BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5   A.   I am employed by Duke Energy Business Services LLC (DEBS) as General Manager and  
6       Vice President of Rates, Ohio and Kentucky. DEBS provides various administrative and  
7       other services to Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and other  
8       affiliated companies of Duke Energy Corporation (Duke Energy).

9   **Q.   PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL**  
10   **EXPERIENCE.**

11   A.   I received Bachelor Degrees in Business and Chemical Engineering, and a Master of  
12       Business Administration Degree, all from the University of Kentucky. After completing  
13       graduate studies, I was employed by Kentucky Utilities Company as a planning analyst.  
14       In 1989, I began employment with the Indiana Utility Regulatory Commission as a senior  
15       engineer. From 1992 until mid-1998, I was employed by SVBK Consulting Group,  
16       where I held several positions as a consultant focusing principally on utility rate matters.  
17       I was hired by Cinergy Services, Inc., in 1998, as an Economic and Financial Specialist  
18       in the Budgets and Forecasts Department. In 1999, I was promoted to the position of  
19       Manager, Financial Forecasts. In August 2003, I was named to the position of Director -  
20       Rates. On December 1, 2009, I took the position of General Manager and Vice President  
21       of Rates, Ohio and Kentucky.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC UTILITIES**  
2 **COMMISSION OF OHIO?**

3 A. Yes. I have presented testimony on numerous occasions before the Public Utilities  
4 Commission of Ohio (Commission) and various other state, local, and federal regulators.

5 **Q. PLEASE SUMMARIZE YOUR DUTIES AS GENERAL MANAGER AND VICE**  
6 **PRESIDENT OF RATES, OHIO AND KENTUCKY.**

7 A. As General Manager and Vice President of Rates, Ohio and Kentucky, I am responsible  
8 for all state and federal matters involving Duke Energy Ohio and Duke Energy Kentucky,  
9 Inc.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

11 A. The purpose of my testimony is to respond to the direct testimony offered by the Office  
12 of the Ohio Consumers' Counsel (OCC) with regard to its proposed adjustments to the  
13 Company's Rider PTC-AAC (price-to-compare: annually adjusted component) revenue  
14 requirement calculation. In particular, my testimony serves to correct inaccuracies that  
15 have been advanced by the OCC as a result of what appears to be a misunderstanding of  
16 the Company's filing. Furthermore, my testimony refutes the mischaracterization of the  
17 impacts of recent environmental litigation, particularly with respect to Duke Energy  
18 Ohio, as offered by the OCC's witness.

## **II. RESPONSE TO OCC TESTIMONY**

19 **Q. HAVE YOU REVIEWED THE TESTIMONY OF DAVID MARCZELY FILED**  
20 **ON BEHALF OF THE OCC IN THIS CASE?**

21 A. Yes, I have read Mr. Marczely's testimony.

1 Q. WILL YOU SUMMARIZE YOUR UNDERSTANDING OF MR. MARCZELY'S  
2 RECOMMENDATIONS?

3 A. Mr. Marczely essentially makes two recommendations in his testimony related to the  
4 outcome of recent environmental litigation involving Duke Energy Ohio. His first  
5 recommendation relates to the 2008 Consent Decree<sup>1</sup> reached in a lawsuit brought by the  
6 Sierra Club and others that alleged violations of environmental law resulting from  
7 operations of the J.M. Stuart generating station. This particular generating station is co-  
8 owned by Duke Energy Ohio (39% ownership interest), Dayton Power and Light, and  
9 Columbus Southern Power. Although the Consent Decree addresses a number of issues,  
10 the focus of Mr. Marczely's argument in this case is the requirement that the co-owners  
11 surrender 5,500 SO<sub>2</sub> emission allowances (EAs) before January 31, 2017. Mr. Marczely  
12 claims that because of this requirement to surrender allowances, Duke Energy Ohio  
13 should credit its Rider PTC-AAC revenue requirement with the product of its share of the  
14 5,500 SO<sub>2</sub> EAs (39% would be 2,145) times the average cost of SO<sub>2</sub> EAs for the year  
15 ended March 31, 2010. Adopting Mr. Marczely's logic, the impact on the Rider PTC-  
16 AAC revenue requirement in this case would be to reduce the annual revenue  
17 requirement by \$171,600.

18 The second recommendation Mr. Marczely makes is that Duke Energy Ohio  
19 should reduce its Rider PTC-AAC revenue requirement by the value of SO<sub>2</sub> EAs that will  
20 be surrendered as a result of separate litigation involving Duke Energy Indiana's Wabash  
21 River Generating Station and Duke Energy Ohio's Beckjord Generating Station.

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<sup>1</sup> *Sierra Club v. The Dayton Power & Light Company, et al.*, Civil Action No. 2:04-cv-905, United States District Court of Ohio, Eastern Division, Consent Decree (August 7, 2008).

1        Apparently, Mr. Marczely believes that Duke Energy Ohio's ratepayers will be harmed  
2        by the surrender of EAs owned by Duke Energy Indiana attributable to the Wabash River  
3        Generating Station and, thus, he recommends that some value be credited to Duke Energy  
4        Ohio customers as a result of an action against a Duke Energy Indiana generating facility.  
5        Mr. Marczely offers no specific value for this recommendation, claiming that Duke  
6        Energy Ohio's refusal to provide data about Duke Energy Indiana activity limited his  
7        ability to formulate a recommendation.

### III. THE 2008 CONSENT DECREE

8        **Q.    DO YOU AGREE WITH MR. MARCZELY'S RECOMMENDATION**  
9        **REGARDING THE SURRENDER OF EMISSION ALLOWANCES AS PART OF**  
10       **THE 2008 CONSENT DECREE?**

11      A.    Although I do agree that customers should not bear the cost of replacing SO<sub>2</sub> EAs  
12      surrendered in the 2008 Consent Decree, Mr. Marczely's recommendation is untimely  
13      and misguided. Pursuant to the 2008 Consent Decree, the surrender of the SO<sub>2</sub> emission  
14      allowances must take place before January 31, 2017. However, until the SO<sub>2</sub> EAs are  
15      actually surrendered, there is no impact to customers or to shareholders. Mr. Marczely  
16      clearly understands this distinction insofar as his testimony, on pages 3 and 4, suggest  
17      that Duke Energy Ohio "reduce [its] request for recovery, amounts equal in value to the  
18      loss of marketable emission allowances surrendered in the 2008 Consent Decree and the  
19      2009 MO&O."<sup>2</sup> It will only be after any of the SO<sub>2</sub> EAs are surrendered that Duke

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<sup>2</sup> Prepared Testimony of David W. Marczely on Behalf of the Office of Consumers' Counsel, PUCO Case No. 10-1268-EL-RDR. (beginning on page 3, line 20).

1 Energy Ohio may be required to replace the SO<sub>2</sub> EAs in order to meet its compliance  
2 with emission standards.

3 To date, the Company has not surrendered any of its share of the 5,500 SO<sub>2</sub>  
4 emission allowances specified in the 2008 Consent Decree. Consequently, there is no  
5 'actual harm' to remedy regarding the surrender of SO<sub>2</sub> EAs at this time. Mr. Marczy's  
6 recommendation would give customers a credit for some arbitrarily determined value of  
7 SO<sub>2</sub> EAs that have not yet been surrendered and may not be surrendered until as late as  
8 January 2017. Furthermore, through at least the end of 2011 when the current electric  
9 security plan (ESP) expires, recovery of EAs is addressed in a completely separate rider,  
10 Rider PTC-FPP (price-to-compare: fuel and purchased power). Because recovery of the  
11 cost of EAs is not included in the Rider PTC-AAC, any real or perceived harm to  
12 ratepayers should only be addressed in proceedings dealing with the rider actually  
13 recovering such costs. It should be noted that the Rider PTC-FPP is audited annually by  
14 an external auditor hired by the Commission. The scope of the audit has always included  
15 a thorough review of how the Company manages its EA inventory. The OCC has been  
16 an intervenor in the prior audit cases and can, through intervention, submit discovery on  
17 the Company regarding its accounting for EAs in that case.

18 **Q. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD ABOUT MR.**  
19 **MARCZELY'S RECOMMENDATION REGARDING THE 2008 CONSENT**  
20 **DECREE?**

21 **A.** Mr. Marczy's attempt to value the impact of surrendering Duke Energy Ohio's share of  
22 the 5,500 SO<sub>2</sub> EAs is unsupported by any of the facts in the case and is essentially just a  
23 calculation using an arbitrary price for SO<sub>2</sub> EAs. To calculate his proposed adjustment to

1 the Rider PTC-AAC revenue requirement, he multiplies Duke Energy Ohio's share of the  
2 SO<sub>2</sub> EAs to be surrendered, 2,145 tons, by the average price of SO<sub>2</sub> EAs for the twelve  
3 months ended March 31, 2010. Again, because Duke Energy Ohio has not yet  
4 surrendered any of the SO<sub>2</sub> EAs at issue, it is fairly logical and intuitive to conclude that  
5 the cost incurred to replace the not yet surrendered SO<sub>2</sub> EAs is \$0. Mr. Marczy's  
6 calculation would only be applicable at the time the SO<sub>2</sub> EAs are actually surrendered.  
7 Therefore, there should be no adjustment to either Rider PTC-AAC or Rider PTC-FPP  
8 related to recovery of SO<sub>2</sub> EAs inasmuch as there has not yet been any incremental cost  
9 incurred due to the 2008 Consent Decree.

10 Mr. Marczy's choice of using the average SO<sub>2</sub> EA price for the twelve months  
11 ending March 31, 2010, significantly overstates the impact of the surrender at today's  
12 market price for SO<sub>2</sub> EAs. The current market price for SO<sub>2</sub> EAs, per NYMEX quotes,  
13 ranges from about \$2.90 per ton for 2010 to about \$0.90 per ton for 2016. Even at the  
14 higher valuation, the total cost to replace Duke Energy Ohio's share of SO<sub>2</sub> emission  
15 allowances to be surrendered is \$6,221 (\$2.90 per ton \* 2,145 tons). Nevertheless, Duke  
16 Energy Ohio will commit to ensure that the cost of SO<sub>2</sub> EAs to replace the surrendered  
17 SO<sub>2</sub> EAs as part of the 2008 Consent Decree will not be flowed through either Rider  
18 PTC-AAC or Rider PTC-FPP.

#### IV. THE 2009 MEMORANDUM OPINION AND ORDER

19 **Q. PLEASE SUMMARIZE MR. MARCZELY'S RECOMMENDATION**  
20 **REGARDING THE 2009 MEMORANDUM OPINION AND ORDER.**

21 **A.** The document attached to Mr. Marczy's testimony is a copy of the 2009 Memorandum  
22 Opinion and Order (2009 MM&O). This document is the result of extensive litigation



1 brought by a number of plaintiffs regarding the operation of generating plants owned by  
2 Duke Energy Indiana and Duke Energy Ohio. The 2009 MO&O ultimately provides for  
3 remedies associated with alleged violations at Duke Energy Indiana's Wabash River  
4 Generation Station and at Duke Energy Ohio's Beckjord Generating Station. Although  
5 Duke Energy Ohio has never owned, in whole or in part, any of the facilities at the  
6 Wabash River Generation Station and its customers have never paid any of the  
7 ownership, operating, or maintenance cost of that facility, Mr. Marczely claims that Duke  
8 Energy Ohio should reduce its Rider PTC-AAC revenue requirement by the value of SO<sub>2</sub>  
9 EAs surrendered by Duke Energy Indiana as a result of the 2009 MO&O.

10 **Q. IN YOUR OPINION, IS THERE A VALID AND LEGITIMATE REASON FOR**  
11 **DUKE ENERGY OHIO TO ADJUST THE REVENUE REQUIREMENT FOR**  
12 **RIDER PTC-AAC, WHICH RECOVERS COSTS ASSOCIATED WITH ASSETS**  
13 **THE COMPANY OWNS, FOR COSTS THAT MAY BE INCURRED BY AN**  
14 **AFFILIATE?**

15 **A.** Not in my opinion. The 2009 MO&O is unambiguous in separately addressing assets  
16 owned by Duke Energy Ohio and assets owned by Duke Energy Indiana. As is readily  
17 apparent from the "remedy" sections of that document, the court set forth the remedy  
18 applicable to Duke Energy Indiana's Wabash River Generating Station, beginning on  
19 page 31 of the 2009 MO&O. The remedy for Duke Energy Indiana's station is set apart  
20 from the remedy ordered for Duke Energy Ohio's Beckjord Generating Station, which  
21 starts on page 50. The fact that the two issues are addressed in the same document is  
22 hardly a reason to comingle the jurisdictional aspects of the remedies. It will be up to the

1 Indiana Utility Regulatory Commission to address the impact of the remedy for the  
2 Wabash River Generating Station on Duke Energy Indiana's retail rates.

3 It may be that Mr. Marczely believes Duke Energy Ohio is 'giving' Duke Energy  
4 Indiana SO<sub>2</sub> EAs to make up for those that will be surrendered. However, that is  
5 categorically not the case. Duke Energy Indiana is a fully regulated utility and operates  
6 its generation business independent from Duke Energy Ohio. There is no record of any  
7 SO<sub>2</sub> EAs being transferred, at any cost, between Duke Energy Indiana and Duke Energy  
8 Ohio since the date of the 2009 MO&O and, none were transferred in anticipation of the  
9 2009 MO&O.

10 The only nexus evident between the surrender of SO<sub>2</sub> EAs associated with Duke  
11 Energy Indiana's Wabash River Generating Station and Duke Energy Ohio's recovery of  
12 environmental costs in its Rider PTC-AAC or its Rider PTC-FPP, is that the former was  
13 mentioned in the same document addressing Duke Energy Ohio's Beckjord Generating  
14 Station. It defies logic to suggest that the surrender of Duke Energy Indiana SO<sub>2</sub> EAs is,  
15 in any other way, related to Duke Energy Ohio's standard service offer rates. And Mr.  
16 Marczely fails to articulate any justification for Duke Energy Ohio's cost recovery  
17 mechanisms to be influenced by unrelated circumstances concerning a non-jurisdictional  
18 generating station.

19 **Q. IS THERE ANYTHING NOTEWORTHY IN THE 2009 MO&O SPECIFICALLY**  
20 **ADDRESSING DUKE ENERGY OHIO?**

21 **A.** Yes. The 2009 MO&O included a remedy specifically for the alleged violations at Duke  
22 Energy Ohio's Beckjord Generating Station. Specifically, the Court ordered that a

1 penalty of \$687,500 be paid to the plaintiffs in that case and that additional equipment be  
2 installed at Beckjord to control particulate emissions.

3 The penalty has already been paid and the Company will, of course, not seek  
4 recovery of this penalty payment. The cost of any additional compliance equipment is  
5 eligible for inclusion in Rider PTC-AAC as long as the rider exists.

**V. CONCLUSION**

6 **Q. DOES THE COMPANY'S APPLICATION IN THIS CASE INCLUDE ANY**  
7 **COSTS FOR ENVIRONMENTAL COMPLIANCE RELATED TO THE**  
8 **SURRENDER OF EMISSION ALLOWANCES OF RELATED TO**  
9 **ENVIRONMENTAL COMPLIANCE RESULTING FROM THE SURRENDER**  
10 **OF EMISSION ALLOWANCES AT THE J.M. STUART PLANT?**

11 **A. No.**

12 **Q. DOES THE COMPANY'S APPLICATION IN THIS CASE INCLUDE ANY**  
13 **COSTS FOR ENVIRONMENTAL COMPLIANCE RELATED TO THE**  
14 **GENERATION FACILITIES OWNED BY COMPANIES OTHER THAN DUKE**  
15 **ENERGY OHIO?**

16 **A. No.**

17 **Q. IN YOUR OPINION, SHOULD THE COMPANY'S CURRENTLY PROPOSED**  
18 **RIDER PTC-AAC REVENUE REQUIREMENT BE ADJUSTED AS A RESULT**  
19 **OF THE OCC'S RECOMMENDATIONS?**

20 **A. No.**

21 **Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?**

22 **A. Yes, it does.**

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