

FILE

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Administration of )  
the Significantly Excessive Earnings Test ) Case No. 11-2954-EL-UNC  
under Section 4928.143(F), Revised Code, )  
and Rule 4901:1-35-10, Ohio )  
Administrative Code. )

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**STIPULATION AND RECOMMENDATION**

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**INTRODUCTION**

Rule 4901-1-30, Ohio Administrative Code (O.A.C.) provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties who have signed below (the Signatory Parties) and to recommend that the Public Utilities Commission of Ohio (the Commission or PUCO) approve and adopt the Stipulation and Recommendation (Stipulation), as part of its Opinion and Order in this proceeding, resolving all of the issues in the proceeding.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues in this proceeding; violates no regulatory principle or precedent; and is the product of serious bargaining among knowledgeable and capable Signatory Parties in a cooperative process and undertaken by the Signatory parties representing a wide range of interests to resolve the aforementioned issues. For purposes of resolving the issues raised by this proceeding, the Signatory parties stipulate, agree, and recommend as set forth below.

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## **PARTIES**

This Stipulation is entered into by and among Duke Energy Ohio, Inc., (Company), and Ohio Partners for Affordable Energy, the Ohio Energy Group, The Kroger Company, and the Staff of the Public Utilities Commission of Ohio (Staff) (collectively the Stipulating Parties).

## **STIPULATION**

The Company has calculated its earned return on average electric common equity for the year ended December 31, 2010, to be 7.14 percent, including deferred expenses authorized as part of the Company's Electric Security Plan (ESP), filed under Case No. 08-920-EL-SSO, *et al.* Excluding these deferrals, the earned return is 7.47 percent. Consistent with the Stipulation and Recommendation filed in Case No. 08-920-EL-SSO, *et al.*, because this return does not exceed 15 percent, the Company's return on common equity is not significantly in excess of the return on common equity earned during 2010 by publicly traded companies facing comparable business and financial risk. The Signatory Parties stipulate, agree, and recommend that the Commission admit the Company's Application and accompanying materials filed May 16, 2011, into the record of this proceeding and issue its Opinion and Order in this proceeding determining that significantly excessive earnings under Revised Code Section 4928.143(F) did not occur with respect to the Company's ESP in 2010.


## **PROCEDURAL ISSUES**

This Stipulation is submitted for purposes of this proceeding only and is not deemed binding in any other proceeding, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation. The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission. The Signatory Parties agree that is the Commission or

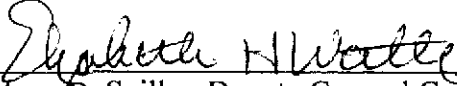
any court of competent jurisdiction rejects all of any material part of this Stipulation, or otherwise materially modifies its terms, any adversely affected Signatory Party shall have the right to file an application for rehearing or motion for reconsideration. If such application or motion is filed, and if the Commission or court does not, on rehearing or reconsideration, accept the Stipulation without material modification within 45 days of the filing of such motion, then anytime thereafter the adversely affected Signatory Party may terminate its Signatory Party status without penalty or cost and regain its rights as a non-Signatory Party as if it had never executed the Stipulation by filing a notice with the Commission and the other Signatory Parties. Unless the Signatory party exercises its right to terminate its Signatory Party status as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

**IN WITNESS WHEREOF**, this Stipulation has been signed by the authorized agents of the undersigned Parties this 19<sup>th</sup> day of July 2011. The undersigned Parties respectfully request the Commission to issue its Opinion and Order determining that significantly excessive earnings did not occur with respect to the Company's ESP in 2010. The Stipulation will be held open for additional intervenors and parties to sign on as Signatory parties until the issuance of an Order by the Commission.

STAFF OF THE PUBLIC UTILITIES  
COMMISSION OF OHIO

By:   
Thomas McNamee, Assistant Attorney General  
its Attorney

DUKE ENERGY OHIO, INC.

By:   
Amy B. Spiller, Deputy General Counsel  
its Attorney

OHIO PARTNERS FOR AFFORDABLE ENERGY

By: Colleen L. Mooney (per written authorization of 7/19/11)  
Colleen L. Mooney, its Attorney

THE OHIO ENERGY GROUP

By: Michael L. Kurtz (per written authorization of 7/18/11)  
Michael L. Kurtz, its Attorney

THE KROGER COMPANY

By: Mark S. Yurick (per written authorization of 7/18/11)  
Mark S. Yurick, its Attorney