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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Establish its Fuel ) Case No. 10-974-EL-FAC  
and Economy Purchased Power )  
Component of its Market-Based Standard )  
Service Offer for 2010. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Establish its System ) Case No. 10-975-EL-RDR  
Reliability Tracker of its Market-Based )  
Standard Service Offer for 2010. )

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STIPULATION AND RECOMMENDATION

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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 that have signed below (Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all of the issues raised by Parties in these cases relative to establishing Duke Energy Ohio's Fuel and Purchased Power Rider (Rider PTC-FPP) for the audit period of January 1, 2010 through December 31, 2010, and its System Reliability Tracker (Rider SRA-SRT).

This Stipulation is supported by adequate data and information, documented for the record in these proceedings (as agreed to by the Signatory Parties) as follows: (1) Duke Energy Ohio's quarterly Rider PTC-FPP filings; (2) the Application and testimony filed in these cases; and (3) the Management/Performance and Financial Audit of the Fuel and Purchased Power and System Reliability Tracker Riders of Duke Energy Ohio, Inc. (2010 Audit Report) filed on May

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12, 2011.<sup>1</sup> The Commission Staff shall move for the admission of the 2010 Audit Report to the evidentiary record in the above-captioned case, and the Stipulating Parties agree not to oppose the introduction of such document into the record. Duke Energy Ohio shall move for the admission to the evidentiary record of its quarterly Rider PTC-FPP filings; the Application; and Duke Energy Ohio's testimony filed on March 1, 2011. The Stipulating Parties agree not to oppose the introduction of such documents into the record.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission Staff, to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Parties stipulate, agree and recommend as set forth below.

Except for purposes of enforcement of the terms of this Stipulation, this Stipulation (and the information and data contained therein or attached) and Commission rulings that adopt the Stipulation shall not be cited as precedent in any future proceeding for or against any Party, or the Commission itself. This Stipulation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position that one or more of the Parties would have taken if these issues had been fully litigated. This Stipulation shall not be interpreted to reflect the positions that a Party would take regarding an individual provision in this Stipulation standing alone.

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<sup>1</sup> The Commission order that approved audits of Riders PTC-FPP and SRA-SRT also provides for an audit for the January 1, 2011 through December 31, 2011 period. Another audit report will be released during 2012 ("2011 Audit Report").

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. In the event the Commission issues an order that does not adopt the Stipulation in its entirety without material modification,<sup>2</sup> any Party may file an application for rehearing or terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all Parties, in the docket within thirty (30) days of the Commission's order. Other Parties to this Stipulation agree that they will not oppose or argue against any other Party's application for rehearing that seeks to uphold the original, unmodified Stipulation. In the event the Commission issues an entry on rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all Parties, in the docket within thirty (30) days of the Commission's entry on rehearing (or other entry or order subsequent to the original order that does not adopt the Stipulation in its entirety without material modification). Upon the filing of a notice of termination and withdrawal, the Stipulation shall immediately become null and void.

Prior to the filing of a notice of termination and withdrawal, the Party wishing to terminate agrees to work in good faith with the other Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Party wishing to terminate, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all signatory Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Parties will be afforded the opportunity to present evidence through witnesses, to cross-

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<sup>2</sup> Any signatory Party has the right, in its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed. Some, or all, of the Parties may submit a new agreement to the Commission for approval if the discussions achieve an outcome they believe substantially satisfies the intent of the present Stipulation.

All the Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms herein.

The Signatory Parties agree that the settlement and resulting Stipulation is a product of serious bargaining among capable, knowledgeable parties. This Stipulation is the product of an open process in which all parties were represented by experienced counsel. The Stipulation represents a comprehensive compromise of issues raised by Parties with diverse interests. Duke Energy Ohio, the Office of the Ohio Consumers' Counsel ("OCC"), and the Commission Staff<sup>3</sup> have signed the Stipulation and adopted it as a reasonable resolution of all issues. The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits customers and is in the public interest. Except as modified below, the Stipulation adopts all of the recommendations in the 2010 Audit Report that was prepared by Schumaker & Company and filed on May 12, 2011.

The Signatory Parties agree that the settlement package does not violate any important regulatory principle or practice.

WHEREAS, all of the related issues and concerns raised by the Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such

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<sup>3</sup> The Commission Staff is a party for the purpose of entering into this Stipulation by virtue of O.A.C. 4901-1-10(C).

discussions and compromises by the Parties, an overall reasonable resolution of all such issues. This Stipulation is the product of the discussions and negotiations of the Parties, and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally. Accordingly, this Stipulation represents an accommodation of the diverse interests represented by the Parties, and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Parties believe that the agreements herein represent a fair and reasonable resolution of the issues raised in the cases set forth above concerning Duke Energy Ohio's Application to establish its Rider PTC-FPP and Rider SRA-SRT;

NOW, THEREFORE, the Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

1. The Parties agree that Duke Energy Ohio will use its "existing eMax reports and refine processes to monitor work order performance (actual vs. estimated hours) and schedule attainment (actual vs. scheduled work completed)."<sup>4</sup> The auditor for the 2011 Audit Report will review and report on the adequacy of Duke Energy Ohio's implementation of this requirement.
2. The Parties agree that Duke Energy Ohio will "[c]ontinue working on managing demurrage charges."<sup>5</sup> Following up on the investigation of methods to lower demurrage charges reported to the auditors for the 2010 Audit Report,<sup>6</sup> Duke Energy Ohio will

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<sup>4</sup> 2010 Audit Report at 69, Recommendation IV-1 (referring to Finding IV-6).

<sup>5</sup> *Id.* at 88, Recommendation V-1 (referring to Finding V-3).

<sup>6</sup> *In re Duke's 2009 Audit Proceeding*, Case Nos. 10-974-EL-FAC, et al., Stipulation at ¶4 (September 3, 2010) ("2009 Stipulation").

report on its continuing efforts to reduce demurrage charges in time for consideration in the 2011 Audit Report.

3. The Parties agree that Duke Energy Ohio will “[c]ontinue to refine process control of coal pile inventories.”<sup>7</sup> The auditor for the 2011 Audit Report will review and report on the adequacy of Duke Energy Ohio’s implementation of this requirement.
4. The Parties agree that Duke Energy Ohio will discuss their planning for meeting the alternative energy requirements beyond the 2011 timeframe in a meeting with the Signatory Parties to be conducted in Columbus in February 2012 (or such other time if mutually agreed upon by all Signatory Parties).<sup>8</sup> Duke Energy Ohio’s planning in connection with the filing of its Long-Term Forecast Report during 2012 shall be among the topics for the meeting.<sup>9</sup> Duke Energy Ohio shall assure that its technical experts regarding planning for alternative energy requirements are available for the meeting.
5. The Parties agree that Duke Energy Ohio shall credit \$612,970 in 2010 vintage year emission allowance (EA) sales margins back to its Rider PTC-FPP customers in the first quarter practicable following a Commission order that approves this Stipulation. The crediting shall occur either in the September 2011 PTC-FPP filing if this Stipulation is approved by the Commission by September 1, 2011, or in a subsequent filing by Duke Energy Ohio with the Commission that provides for the credit to Rider PTC-FPP customers in a subsequent quarter.<sup>10</sup> Additionally, Duke Energy Ohio agrees to credit the sale of EAs performed on behalf of its native load customers for the remainder of the

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<sup>7</sup> 2010 Audit Report at 88, Recommendation V-2 (referring to Finding V-7).

<sup>8</sup> The requirement is related to a recommendation in the latest audit. See 2010 Audit Report at 99, Recommendation VII-1.

<sup>9</sup> The Commission Staff and Duke Energy Ohio further agree that the discussion will include the utility’s evaluation of a possible self-build option for generating renewable energy credits (“RECs”) as compared to expected REC availability in the market.

<sup>10</sup> 2010 Audit Report at 128 Recommendation IX-1 (referring to Finding IX-1).

current Electric Security Plan (ESP) period (i.e. 2011 vintage EAs) that terminates on December 31, 2011.<sup>11</sup> The auditor for the 2011 Audit Report will review and report on Duke Energy Ohio's compliance with this requirement.

6. The Parties agree that Duke Energy Ohio will "[c]omplete work to develop an accounting and procedures manual governing the processes involved in filing" for fuel or fuel-related charges.<sup>12</sup> The manual shall be developed in time for review by the auditor for the 2011 Audit Report, and the auditor shall review and report on the adequacy of Duke Energy Ohio's accounting and procedures manual for the Rider PTC-FPP Rider.
7. The Parties agree that Duke Energy Ohio will "[e]stablish a procedure for verifying customer bill information when supplying it from Duke Energy Ohio's billing system to outside auditors during testing procedures."<sup>13</sup> The procedure will be used in supplying information to the auditor for the 2011 Audit Report, and the auditor will review and report on the adequacy of Duke Energy Ohio's implementation of this requirement.
8. The Parties agree that Duke Energy Ohio will "[c]omplete work to develop an accounting and procedures manual governing the processes involved in [supporting documentation for the existing SRT rider]."<sup>14</sup> The manual will be completed according to the directives contained in the 2010 Audit Report.<sup>15</sup> The manual shall be developed in time for review by the auditor for the 2011 Audit Report, and the auditor shall review and report on the adequacy of Duke Energy Ohio's accounting and procedures manual for the Rider SRA-SRT.

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<sup>11</sup> Duke Energy Ohio currently has pending an application to establish a new Standard Service Offer in the form of an ESP in Case No. 11-3549-EL-SSO. The treatment of EAs, among other things, for the period beginning January 1, 2012 is one of the issues to be resolved in that case.

<sup>12</sup> Id., Recommendation IX-2 (referring to Finding IX-3).

<sup>13</sup> Id., Recommendation IX-3 (referring to Finding IX-4).

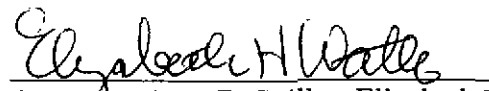
<sup>14</sup> Id. at 133, Recommendation IX-4 at 133 (referring to Finding IX-6).

<sup>15</sup> Id. (explanatory paragraph following Recommendation IX-4 at 133).

The Parties further agree that nothing in this Stipulation supersedes, or in any manner invalidates, any other agreement or provisions within any other agreement, including (but not limited to) provisions in a stipulation adopted by the Commission in Case Nos. 07-974-EL-UNC and 07-975-EL-UNC that apply to audits conducted during the entirety of the period covered by a previously approved ESP as well as a stipulation adopted by the Commission in Case Nos. 09-974-EL-FAC and 09-975-EL-RDR that apply to audit periods other than the one subject to audit in those cases.

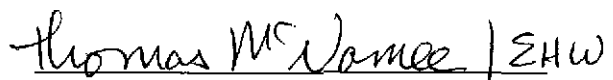
The undersigned Parties hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this 27th day of July 2011.

On Behalf of Duke Energy Ohio, Inc.



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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Stipulation and Recommendation was served on the following parties this 28th day of July 2011, by regular U.S. Mail and by electronic delivery.



Elizabeth H. Watts

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