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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation of **Duke Energy Ohio, Inc.** Relative to Its Compliance with the Natural Gas Pipeline Safety Standards and Related Matters.

Case No. 11-3636-GA-GPS

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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 Duke Energy Ohio, Inc., (Duke Energy Ohio) and the Staff of the Public Utilities Commission of Ohio (Staff)<sup>1</sup> (collectively the Parties) to this Stipulation and Recommendation (Stipulation), and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation, which resolves all of the issues in this case.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in the proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties to resolve the aforementioned issues. While this Stipula-

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<sup>1</sup> Pursuant to O.A.C. 4901-1-10(C) and 4901-1-30, Staff is deemed a party for purposes of entering into this Stipulation.

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tion is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving certain issues raised by these proceedings, the Parties stipulate, agree and recommend as set forth below.

Except for dispute resolution purposes, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against either 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 either Party would have taken if these issues had been fully litigated.

The Signatory parties fully support this Stipulation and urge the Commission to accept and approve the terms hereof.

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 discussion and compromises by the parties, an overall reasonable resolution of all such issues, and;

WHEREAS, this stipulation is the product of the discussions and negotiations of the Parties, and is not intended to reflect the views or proposals that either 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, and

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 solution to the issues raised in this case;

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

1. Duke Energy Ohio is a natural gas company within the meaning of R.C. 4905.02, 4905.03 (A)(6) and 4905.90(G)(1), and is therefore a public utility and an operator subject to the ongoing jurisdiction and supervision of the Commission pursuant to R.C. 4905.02, 4905.04, 4905.05, 4905.06, and 4905.90 through 4905.96, respectively. Accordingly, Duke Energy Ohio is required to comply with the gas pipeline safety (GPS) rules in O.A.C. Chapter 4901:1-16, which set forth the safety standards and requirements for intrastate gas pipeline facilities subject to the Commission's jurisdiction, O.A.C. 4901:1-13 Minimum Gas Service Standards (MGSS) and Title 49 of the Code of Federal Regulations (C.F.R.) Part 191 and Part 192 Transportation of Natural and Other Gas By Pipeline (Minimum Federal Safety Standards) which the Commission adopted in *In the Matter of Adopting Chapter 4901:1-16 of the Ohio Administrative Code*, Case No. 90-10310GE-ORD and which the Commission has revised at various times, most recently in *In the Matter of the Commission's Review of Certain rules in Chapter 4901:1-16, Ohio Administrative Code , to Incorporate Recent*

*changes in Federal Regulations*, Case No. 07-241-GA-ORD, and which is codified as O.A.C. 4901:1-16-03.

2. Duke Energy Ohio maintains a gas distribution pipeline system that provides service to over 400,000 customers in southwestern Ohio.
3. Staff alleges in its Staff Report of Investigation<sup>2</sup> that Duke Energy Ohio failed to comply with multiple sections of the Minimum Federal Safety Standards Part 191 and 192, the MGSS, and the GPS rules, Chapters 4901:1-13 and 4901:1-16 respectively. The alleged violations are summarized as follows:
  - Section 192.751 Prevention of accidental ignition – Duke Energy Ohio did not minimize the danger of accidental ignition by inspecting the gas powered appliances in the apartment or ensuring the piping from the meter to the appliances was pressure tight prior to reestablishing service.
  - Section 4901:1-13-05(A) (3) (c); Minimum customer service levels – Duke Energy Ohio failed to perform a pressure test required under this section.
  - Section 192.603 Operations, General provisions – Duke Energy Ohio did not follow its operation and maintenance procedures in effect for reestablishment of service.

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<sup>2</sup>

A report by the Staff of the Public Utilities Commission of Ohio was filed in this case captioned docket number on June 17, 2011.

- Section 192.605 Procedural manual for operations, maintenance, and emergencies – Duke Energy Ohio did not incorporate the requirements of O.A.C. 4901:1-13-05(A)(3) into their procedures.
- Section 192.803 Qualification of Pipeline Personnel, Definitions – Duke Energy Ohio’s contractors were not trained in the requirements for pressure testing when reestablishing service after a service had been disconnected for more than 30 days, and failed to recognize or respond to abnormal operating conditions by failing to recognize indications from the meter dial that a leak existed and failing to respond to reports by the apartment residents that they smelled gas after reestablishment of service.
- Section 191.9 Distribution System: Incident report – Duke Energy Ohio failed to submit a timely Incident Report that accurately identified “Incorrect Operation” as the incident cause.
- Section 4901:1-16-05(B)(3); Notice and reports of service failures and incidents – Duke Energy Ohio submitted a final incident report that did not identify Incorrect Operation as a contribution to the incident and did not report any actions taken to minimize the possibility of a recurrence.
- Section 192.739 Pressure limiting and regulating stations: Inspecting and testing – Though non-contributing factor to the November 2, 2010 incident, Duke Energy Ohio failed to perform regular inspec-

tion on the regulator station providing gas to all buildings located at 800 Franklin Avenue, Lebanon, Ohio.

4. Duke Energy Ohio does not admit to the accuracy of Staff's allegations in ¶ 3 above but it has responded to Staff's allegations nonetheless and remedied the above cited violations by complying with the following Staff recommendations:

- Duke Energy Ohio agreed to modify and has modified its Operations and Maintenance Plan and applicable procedures to specifically require that a pressure test consistent with O.A.C. 4901:1-13-05 be conducted when reestablishing service when gas service has been off for 30 days or greater.
- Duke Energy Ohio agreed to re-qualify and has re-qualified all company and contractor personnel on all applicable procedures for reestablishment of gas service including visual inspection, pressure testing requirements, and recognition of abnormal operating conditions. Staff further recommended that Duke Energy Ohio review, and the Company has reviewed their qualifications for evaluating pipeline personnel.
- Duke Energy Ohio agreed to provide and has provided to Staff a plan to provide assurance that no safety concerns exist as a result of their procedures failing to include a pressure test when reestablishing

*Signature*

service for existing house lines off for more than thirty (30) days. A copy of the plan is attached hereto as Attachment 1.

- Duke Energy Ohio agreed to submit and has submitted a revised Incident Report Form to correctly identify Incorrect Operation as a contribution to the incident and to identify steps taken to minimize the possibility of a recurrence. Finally,
  - Duke Energy Ohio agrees to pay a forfeiture of \$500,000 that shall be payable within ten (10) business days of the Commission Order adopting this Stipulation, payable by certified check to the “Treasurer State of Ohio,” and will be deposited in the State Treasury to the credit of the General Revenue Fund. Duke Energy Ohio may not recover this forfeiture in any pending or future proceeding before the Commission, as set forth by O.A.C. 4901:1-16-14(C).
5. The Parties agree that nothing in this Stipulation shall be interpreted to preclude the Commission from opening a GPS case or any other case, assessing other forfeitures and ordering remedies against Duke Energy Ohio for any other violation of the GPS rules uncovered during Staff audits during any other period.
6. The Parties agree that this Stipulation establishes no precedent to be relied upon in any manner in any other proceeding except any proceeding that may be necessary to enforce the provisions of this Stipulation.

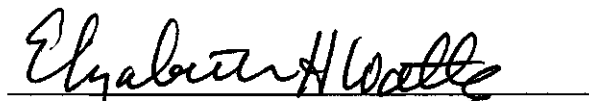
7. The Staff Report of Investigation filed with the Docketing division of the Commission on June 17, 2011 should be identified and admitted into evidence as Staff exhibit 1.
8. This Stipulation shall be designated as Joint Exhibit I and admitted into evidence in this proceeding.
9. This Stipulation constitutes a compromise resolution by the Parties of all issues raised by the Parties in this case. The Parties agree that if the Commission rejects all or any part of this Stipulation, or otherwise materially modifies its terms, either Party shall have the right, within thirty (30) days after the date of the Commission's order, either to file an application for rehearing or to terminate and withdraw from the Stipulation by filing a notice termination and withdrawal with the Commission in this proceeding. If an application for rehearing is filed and if the Commission does not, on rehearing accept the Stipulation without material modification, either Party may terminate and withdraw from the Stipulation by filing a notice of termination and withdrawal with the Commission in this proceeding within ten (10) business days after the date of the Commission's Entry on Rehearing. Upon filing of a notice of termination and withdrawal by either party, the Stipulation shall immediately become null and void. In such event, a hearing shall go forward and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues, and

to have this proceeding decided on the record and brief as if the Stipulation had never be executed.

10. The Parties understand and agree that this Stipulation is not binding on the Commission; however, the Stipulation is entitled to the Commission's careful consideration, the Parties agree that the Stipulation is in their best interest, and the public interest, and urge the Commission to adopt the same.
11. The undersigned hereby stipulate and agree and each represent that it is authorized to enter into this Stipulation and Recommendation this 14<sup>th</sup> day of November, 2011.

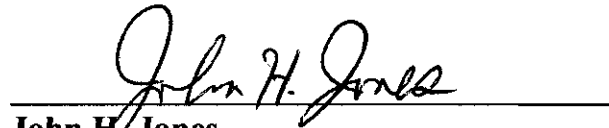
**AGREED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2011**

**On Behalf of Duke Energy Ohio, Inc.:**



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### SAFETY FOLLOW-UP

Following the gas incident that forms the basis for the Staff's investigation in this proceeding, the Company has performed pressure testing on ALL gas reconnects in order to ensure safe performance until the Company was able to institute changes to its data systems. Effective Monday, October 31, 2011, the Company provides information to its field performers, including contractors, to enable them to determine, with respect to any gas "on order", whether or not a premise has been without service for 30 days or more. For premises that have been off for 30 days or more, the field performer is directed to perform a house line pressure test.

In response to a request from the Public Utilities Commission of Ohio's Staff to ensure that Duke Energy Ohio's protocol for reconnecting gas customers continued to be safe throughout the time this proceeding has been pending, Staff requested that the Company analyze its data and provide an analysis for this purpose. The Company did such an analysis and the results are presented herein.

In reviewing the data related to gas reconnections for customers, the Company undertook the following logical steps to sort the relevant data.

1. Query data to isolate the customer reconnects performed during July 1, 2010 to June 30, 2011, where gas service had been off for 30 days or more.
2. Determined from this group of customers, which had resulted in trouble calls.
3. Isolated trouble calls for customers with houseline leaks, where the call was made within 30 days of the reconnection.
4. Of the customers existing at this stage of the query (8), determined from the facts that only one of these customers could be regarded as one that might have been identified otherwise. For this customer, the reconnection occurred at 8:18 a.m. The customer called the Company at 8:41 a.m. reporting an odor of gas. At 9:08 a.m., the Company had turned the gas off at the meter and advised the customer to call a professional to repair the problem.

The first excel spreadsheet included herein, demonstrates this analysis.

Subsequent to a discussion with Staff, the Company further compared the above described statistics with an identical analysis for a more limited three month period both before and after the Company had begun houseline pressure tests on ALL customer reconnects. The results of this analysis are included in an excel spreadsheet also included here. Based upon the above analysis the Company does not have a safety concern with customer reconnects performed during July 1, 2010 to June 30, 2011.

## Spreadsheet Number!

[illegible]

## **Spreadsheet Number 2**

### **Comparison of three months data from 2010 to 2011**

	<b>Reconnected</b>	<b>Total Trouble Calls</b>	<b>Houseline Leaks</b>	<b>H/L Leaks found within 30 days of reconnect</b>
<b>2010</b>	<b>11071</b>	<b>378</b>	<b>131</b>	<b>32</b>
<b>2011</b>	<b>9890</b>	<b>508</b>	<b>158</b>	<b>18</b>