

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the) Case No. 07-589-GA-AIR
Application of Duke Energy)
Ohio, Inc. for an Increase)
in Gas Rates.)

In the Matter of the) Case No. 07-590-GA-ALT
Application of Duke Energy)
Ohio, Inc. for Approval of)
an Alternative Rate Plan)
for its Gas Distribution)
Service.)

In the Matter of the) Case No. 07-591-GA-AAM
Application of Duke Energy)
Ohio, Inc. for Approval to)
Change Accounting Methods.)

- - -

DEPOSITION OF BRUCE HAYES

THURSDAY, FEBRUARY 21, 2008

10:47 O'CLOCK A.M.

- - -

1 Deposition of Bruce Hayes, a witness
2 herein, called by Duke Energy Ohio for
3 cross-examination under the statute, taken before
4 us, Deborah J. Holmberg, Registered Merit
5 Reporter, and Valerie J. Grubaugh, Registered
6 Merit Reporter, Certified Realtime Reporter, and
7 Notaries Public in and for the State of Ohio,
8 pursuant to notice and stipulations of counsel
9 hereinafter set forth, at the offices of The
10 Office of The Ohio Consumers' Counsel, 10 West
11 Broad Street, 18th Floor, Columbus, Ohio, on
12 Thursday, February 21, 2008, beginning at 10:47
13 o'clock a.m. and concluding on the same day.

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1 APPEARANCES:

2
3 ON BEHALF OF DUKE ENERGY OHIO, INC.:

4 John J. Finnigan, Jr., Esq.

5 Associate General Counsel

6 Duke Energy Shared Services, Inc.

7 Duke Energy Corporation

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12 john.finnigan@duke-energy.com

13
14 ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES
15 COMMISSION OF OHIO:

16 Marc Dann, Esq.

17 Attorney General of Ohio

18 By: William L. Wright, Esq. (by phone)

19 Assistant Attorney General

20 Public Utilities Section

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1 APPEARANCES (continued):

2
3 ON BEHALF OF THE RESIDENTIAL CONSUMERS OF DUKE
4 ENERGY OHIO, INC.:

5 Janine Migden-Ostrander, Esq.

6 Ohio Consumers' Counsel

7 By: Joseph P. Serio, Esq.

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14
15 ALSO PRESENT:

16 Kathy Hagans

17 Don Wathen

18 Bob Parsons

19 Ted Czupik

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S T I P U L A T I O N S

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It is stipulated by and among counsel for the respective parties herein that the deposition of Bruce Hayes, a witness herein, called by Duke Energy Ohio for cross-examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notary taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notary taking it.

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1 BRUCE HAYES
2 of lawful age, being by me first duly placed under
3 oath, as prescribed by law, was examined and
4 testified as follows:

5 CROSS-EXAMINATION

6 BY MR. FINNIGAN:

7 Q. Okay. Good morning, Mr. Hayes.

8 A. Good morning.

9 Q. Your recommendation in this case is that
10 Duke Energy did not provide timely information to
11 the Commission to allow a full evaluation for its
12 utility of the Future and Rider AU proposal such
13 that the Commission should have rejected the
14 proposal; is that correct?

15 A. Yes, it is.

16 Q. What is it that the Staff Report did
17 approve for the Utility of the Future and Rider AU
18 proposals?

19 A. They approved a placeholder.

20 Q. Okay. Is --

21 A. Or they recommended a placeholder.

22 Q. Okay. Anything else?

23 A. No.

24 Q. Is any party harmed by the existence of a
25 placeholder for those proposals?

1 A. Well, it was unclear what kind of
2 proceeding would take place for whatever happened
3 in that placeholder.

4 Q. If the proceeding that would take place
5 in the placeholder proceeding is one where all
6 interested parties would have full rights to
7 intervene, object, conduct discovery, have notice
8 in a hearing over the proposals in the placeholder
9 proceeding, then is any party harmed by the
10 creation of a placeholder for Rider AU and Utility
11 of the Future in this case?

12 A. If there's -- Well, one of the concerns
13 is if there's adequate time and in the --
14 Mr. Muller's testimony there were things that
15 talked about cost or expenditures that have
16 already been made that could be included, or at
17 least was asking for.

18 Q. Well, in the placeholder proceeding is
19 when parties would have a right to object to any
20 and all expenditures; right?

21 So if in the placeholder proceeding
22 parties have adequate right, adequate time to
23 object, have a hearing, conduct discovery, is any
24 party harmed by the mere approval of a placeholder
25 for Rider AU and Utility of the Future in this

1 case?

2 A. If it was like a regular application,
3 yes, I don't think there would be anybody -- or,
4 no, I don't think there would be anybody hurt.

5 Q. And in other words, if the Rider AU
6 Utility of the Future placeholder proceeding is
7 like the Company's current AMRP annual
8 proceedings, where parties have full rights to
9 object, conduct discovery, have a hearing, would
10 those be adequate protections if the same types of
11 procedures were adopted in the Rider AU Utility of
12 the Future proceedings?

13 A. I'd have to think about that a little
14 bit, because it would -- the AMRP is an
15 alternative regulatory application, and I'd have
16 to think about how that would apply to the AU.

17 Q. Isn't AU also an alternative regulatory
18 application?

19 A. Yes, it is.

20 Q. So if the same procedures that have been
21 determined by the Commission to be appropriate for
22 the AMRP are applied to Rider AU, Utility of the
23 Future, would that give stakeholders adequate
24 protection?

25 A. Well, the original was a settlement, and

1 there was -- I'm not sure if there was a full
2 hearing on that or not, on the original AMRP.

3 Q. Well, I'm asking you about the annual
4 AMRP filings that have occurred since the AMRP was
5 approved in the Commission's May 2002 Order.

6 A. Well, I guess that really hasn't been
7 determined yet. I mean, the current AMRP is --
8 has not been settled or gone to hearing yet, so I
9 can't answer whether or not it would be the same.
10 I don't know if we'll -- how that will be handled.

11 Q. What if the same procedures from the old
12 AMRP annual filings are adopted for Rider AU,
13 Utility of the Future, if that were to occur,
14 would stakeholders have adequate opportunity to
15 raise comments and objections and have their
16 positions heard by the Commission?

17 A. Well, as I read the Staff Report, they
18 were -- the way I remember it, they were talking
19 about filing something by February 28th, and there
20 would be 30 days to conduct, you know -- Well, it
21 didn't even say whether parties would be able to
22 intervene in that or not. They left it open. It
23 was just the Staff would review and the Commission
24 would make a decision.

25 Q. But if a procedure were adopted where --

1 A. If there was plenty of time for
2 discovery --

3 Q. I'm sorry.

4 -- where stakeholders have time for
5 discovery; in other words, the same time periods
6 and the same rights as in the old AMRP annual
7 filings, would you consider that adequate
8 protection for stakeholders to raise objections
9 and protect their rights?

10 A. If you had all the protections of a
11 regular filed application, why not just file a
12 regular application?

13 Q. Well, because it takes too much time and
14 it's too costly and too time consuming. And the
15 Commission has approved streamline rider filings
16 for certain categories of costs like Rider AMRP,
17 isn't that correct, where you don't have to file
18 all the standard filing requirements?

19 A. Well, that's after it's initially
20 approved.

21 Q. And that's what I'm suggesting would be
22 the case here for Rider AU.

23 A. I'm not sure that -- until we see more
24 concrete -- everything gets put out on the table
25 that you'd want to approve an AU rider.

1 Q. And I'm just asking you how would
2 stakeholders be harmed if the same procedural
3 protections were adopted for the AU annual
4 proceedings that are in place now for the annual
5 Rider AMRP proceedings, or the old Rider AMRP
6 proceedings?

7 A. Well, the annual proceedings for the AMRP
8 are after the fact. Well, I'm not necessarily
9 interested in after the fact. I'd like to have
10 some input before the decision is made.

11 Q. Input on what before the decision is
12 made?

13 A. On whether or not the AU should be put in
14 place in the first place, whether it's, you know,
15 a reasonable cost benefit type thing.

16 Q. Okay. And assume that the OCC and other
17 stakeholders will have the right to raise that
18 objection in the annual AU proceedings, okay?
19 Make that assumption.

20 Under that assumption, is there any harm
21 to adopting AU as a placeholder in this case?

22 A. Well, the way you state it there, it's
23 basically rather than the Company having to
24 justify its expenses, it's the burden of proof is
25 now placed upon those without the information

1 later on.

2 Q. No. Assume the Company has the burden of
3 proof to show that its annual AU filing is just
4 and reasonable. Under that assumption, how is any
5 stakeholder harmed by approving Rider AU as a
6 placeholder in this proceeding?

7 A. Well, it's basically preapproved.

8 Q. The only thing that's preapproved is a
9 placeholder itself, but no parties' rights are
10 affected because there's no cost recovery approved
11 under the placeholder, and parties have full
12 rights to raise objections to actual cost recovery
13 in the annual Rider AU proceedings; isn't that
14 correct?

15 A. Well, we don't know what the AU
16 proceedings are going to be.

17 Q. Assume that parties will have the right
18 to conduct discovery, have a hearing, raise
19 objections in the Rider AU proceedings. If that
20 assumption is, in fact, true, aren't the parties'
21 rights protected in those annual Rider AU
22 proceedings?

23 A. If you make those assumptions. If you
24 make those assumptions.

25 Q. Then your answer is "yes"?

1 A. The answer is yes, if you have all the
2 rights that you would have under a normal
3 application.

4 Q. Thank you.

5 MR. FINNIGAN: Let's go off the record.

6 (Discussion held off the record.)

7 MR. FINNIGAN: Let's go back on the
8 record.

9 BY MR. FINNIGAN:

10 Q. Now, Mr. Hayes, are you familiar with the
11 Smart Metering Workshop proceedings that were
12 conducted in, it was, Case 07-646?

13 A. Just vaguely.

14 Q. Did you attend any of those workshop
15 proceedings?

16 A. I attended some of the 015.

17 Q. 1500?

18 A. 1500 workshops, but not workshops that
19 came after those.

20 Q. Did any members of your office attend
21 the 07-646 workshop meetings?

22 A. Those workshop meetings were related
23 to --

24 Q. To the electric smart grid, or smart
25 metering, or Utility of the Future proposals by

1 the different Ohio electric utilities.

2 A. I believe that Wilson Gonzales might have
3 attended at least some of those.

4 MR. SERIO: John, can you clarify, do you
5 have the full case number for those?

6 MR. FINNIGAN: 07-646-EL-UNC, I believe,
7 is the case number.

8 BY MR. FINNIGAN:

9 Q. Does the OCC have any position or
10 recommendation as to whether Ohio utilities should
11 deploy a smart metering or smart grid system?

12 A. You'll have to ask Mr. Gonzales, I guess,
13 for a policy decision on that.

14 Q. Do you have any personal recommendation
15 or position on whether utilities should deploy a
16 smart grid or smart metering system?

17 A. On the electric side?

18 Q. Electric or gas, or both.

19 A. Well, I was just getting ready to say, on
20 the electric side I think that smart grid
21 technology will be a thing of the future, and I
22 think that utilities should be exploring it.

23 I think there's a lot of unknowns to it,
24 and I think there has to be a cost benefit to
25 justify it. On the gas side, smart grid is not as

1 important in my opinion because you don't get the
2 same benefits.

3 Q. There are fewer benefits on the gas side
4 of the service than on the electric side?

5 A. Yes.

6 Q. Now, let's assume that Duke Energy Ohio
7 is a combination gas and electric company. You're
8 aware of that; right?

9 A. Yes.

10 Q. And let's assume that Duke Energy Ohio
11 deployed a smart grid system for its electric
12 service only.

13 A. Yes.

14 Q. Wouldn't that drive up costs for gas
15 customers?

16 A. It could.

17 Q. Wouldn't you expect it to, because
18 instead of having meter readers who now go out to
19 the property and allocate their cost between gas
20 and electric service when they read the meters,
21 now they are going out to read just gas only
22 meters, and a hundred percent of their costs would
23 be allocated to the gas service, so that would
24 certainly be expected to drive up gas service
25 cost, wouldn't it?

1 A. That's one possibility. There could be
2 other action taken to reduce meter reading costs.

3 Q. And what would that be?

4 A. That would be reducing from monthly reads
5 to bimonthly reads.

6 Q. Is that -- Do you have any opinion as to
7 whether that would be acceptable with the Public
8 Utilities Commission and customers?

9 A. I believe that there are two utilities,
10 large utilities in the state, that currently do
11 that.

12 Q. Who is that?

13 A. Columbia Gas and, I believe, Dominion.

14 Q. Okay. Now, you've mentioned that the
15 cost for a smart grid system -- or, strike that.

16 You mentioned that the benefits for a
17 smart grid system flow more to electric service
18 than gas service; correct?

19 A. Yes.

20 Q. Now, as long as the costs for a smart
21 grid system were allocated properly between gas
22 and electric service, so that the costs correspond
23 with the benefits that would be derived by each
24 side of the service, if that were true, would you
25 have any objection to Duke Energy Ohio deploying a

1 smart grid system for gas and electric service at
2 the same time and obtaining cost recovery for
3 that?

4 A. That allocation would be critical, but I
5 would have no problem with that if the allocation
6 was correct.

7 Q. Okay. Are you familiar with the pending
8 FirstEnergy electric distribution case?

9 A. No.

10 MR. FINNIGAN: That's all the questions I
11 have. Thank you, Mr. Hayes.

12 MR. SERIO: Bill, do you have any
13 questions?

14 MR. WRIGHT: No, I don't. Thank you.

15 MR. SERIO: We'd like to review.

16 (Signature not waived.)

17 - - -

18 (Thereupon, the deposition was concluded
19 at 11:01 o'clock a.m. on Thursday,
20 February 21, 2007.)

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A F F I D A V I T

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STATE OF _____,)

) SS:

COUNTY OF _____,)

Bruce Hayes, having been duly
placed under oath, deposes and says that:

I have read the transcript of my
deposition taken on Thursday, February 21, 2008, and
made all necessary changes and/or corrections as
noted on the attached correction sheet, if any.

Bruce Hayes

Placed under oath before me and
subscribed in my presence this _____ day of

_____, _____.

Notary Public

My Commission Expires: _____.

- - -

MC GINNIS & ASSOCIATES, INC.
614.431.1344 COLUMBUS, OHIO 800.498.2451

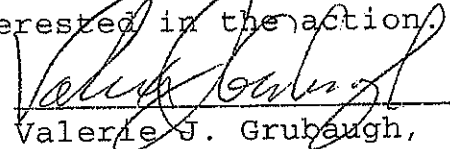
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State of Ohio,)
)
) SS:
County of Fairfield,

I, Valerie J. Grubaugh, Registered Merit Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of Bruce Hayes.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action.



Valerie J. Grubaugh,
Registered Merit Reporter,
Certified Realtime Reporter and
Notary Public in and for the
State of Ohio.

My Commission Expires:
August 10, 2011.

*** CAUTION ***

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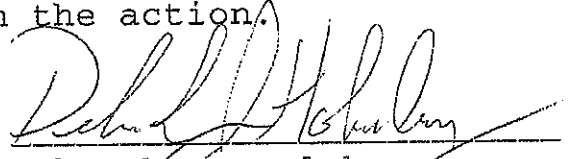
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1
2 State of Ohio,)
3 County of Delaware) SS:
4

- - -

5 I, Deborah J. Holmberg, Registered Merit
6 Reporter and Notary Public in and for the State of
7 Ohio, hereby certify that the foregoing is a true
8 and accurate transcript of the deposition
9 testimony, taken under oath on the date
10 hereinbefore set forth, of Bruce Hayes.

11 I further certify that I am neither
12 attorney or counsel for, nor related to or
13 employed by any of the parties to the action in
14 which the deposition was taken, and further that I
15 am not a relative or employee of any attorney or
16 counsel employed in this case, nor am I
17 financially interested in the action.



Deborah J. Holmberg,
Registered Merit Reporter
and Notary Public in and
for the State of Ohio

My Commission Expires: October 7, 2011.

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