

FILE

RECEIVED-DOCKETING DIV

DE-Ohio Exhibit _____

2007 FEB 28 PM 2:51

BEFORE

PUCO

THE PUBLIC UTILITIES COMMISSION OF OHIO

Consolidated Duke Energy Ohio, Inc.,	) Case Nos.	03-93-EL-ATA
Rate Stabilization Plan Remand, and	)	03-2079-EL-AAM
Rider Adjustment Cases	)	03-2081-EL-AAM
	)	03-2080-EL-ATA
	)	05-725-EL-UNC
	)	06-1069-EL-UNC
	)	05-724-EL-UNC
	)	06-1085-EL-UNC
	)	06-1068-EL-UNC

DIRECT TESTIMONY OF

SANDRA P. MEYER

ON BEHALF OF

DUKE ENERGY OHIO, INC.

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
delivered in the regular course of business.
by _____ Date Processed 2-28-07

February 28, 2007

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION AND PURPOSE.....	1
II. DISCUSSION.....	3
VIII. CONCLUSION.....	13

I. INTRODUCTION AND PURPOSE

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

2 A. My name is Sandra P. Meyer, 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 as President of Duke Energy
6 Ohio, Inc. (DE-Ohio), and its subsidiary, Duke Energy Kentucky, Inc.

7 **Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL
8 QUALIFICATIONS.**

9 A. I earned a Bachelor of Science degree in Accounting from Louisiana State
10 University, and I have completed Harvard University's Advanced Management
11 Program. I am a certified public accountant in North Carolina and Texas, and a
12 member of the North Carolina Association of Certified Public Accountants and
13 the American Institute of Certified Public Accountants. I have served as advisory
14 director of the Houston Chapter of the Texas Society of Certified Public
15 Accountants. I am also a past regional director and past president of the Charlotte
16 and Houston Chapters of Financial Executives International, a professional
17 society of chief financial officers and other financial executives.

18 **Q. PLEASE SUMMARIZE YOUR WORK EXPERIENCE.**

19 A. I joined Texas Eastern Corporation (Texas Eastern) in 1976 as a junior
20 accountant. I held positions of increasing responsibility with Texas Eastern and
21 its successor, PanEnergy Corp. (PanEnergy). I was elected vice president and
22 controller of PanEnergy in 1994, and I was named to the additional position of

1 treasurer in 1996. Following the 1997 merger of Duke Power Company and
2 PanEnergy to form Duke Energy Corporation, I held various financial leadership
3 positions with Duke Energy Corporation until 2001, when I was named senior
4 vice president of retail services. In 2003, I became group vice president of
5 customer service, sales and marketing for Duke Power, a division of Duke
6 Energy. I was named to my current position in April 2006.

7 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS PRESIDENT OF**
8 **DE-OHIO.**

9 A. As President of DE-Ohio, I am responsible for ensuring that our customers
10 continue to have access to safe, reliable, and reasonably priced gas and electric
11 service, and that these services are provided in accordance with applicable federal
12 and state laws and regulations.

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

15 A. My testimony provides an overview of DE-Ohio's position with respect to the
16 Supreme Court of Ohio's Remand of DE-Ohio's market-based standard service
17 offer (MBSSO) and describes the pricing options currently before the
18 Commission. I also express the concerns of the Company with respect to the
19 continued efficacy and commercial reasonableness of rate stabilized MBSSO
20 pricing structures. Lastly, I discuss the pricing alternatives and initiatives
21 currently under consideration by the Company given the uncertainty inherent in
22 rate stabilized MBSSOs.

23

II. DISCUSSION

2 **Q. WHAT IS AN MBSSO?**

3 A. An MBSSO is the market price for competitive retail electric service, *i.e.*,
4 generation, offered by an electric supplier such as DE-Ohio. By definition, an
5 MBSSO is a market price; it is not a regulated rate. The continued attempts by
6 various Parties to this proceeding and for that matter, all "MBSSO like"
7 proceedings, to cost justify a market price with traditional regulated constructs is
8 equivalent to fitting a square peg into a round hole. It is simply improper and, in
9 the Company's opinion, contrary to the Ohio legislature's intent in establishing a
10 deregulated environment for the sale of electricity.

11 **Q. PLEASE SUMMARIZE THE HISTORY OF DE-OHIO'S**
12 **CONSOLIDATED MBSSO PROCEEDINGS.**

13 A. In the consolidated MBSSO remand cases, there were four market pricing
14 proposals before this Commission. The specifics of all of DE-Ohio's MBSSO
15 proposals are set forth in the Second Supplemental Testimonies of Mr. John P.
16 Steffen and Mr. Judah Rose. For convenience, I will very briefly describe them
17 here.

18 First, in January 2003, DE-Ohio proposed to implement a competitive
19 market option (CMO) as its market price. This CMO offered consumers a viable
20 price that was truly reflective of pricing in a competitive market and was
21 consistent with the statutory framework outlined in Senate Bill 3. Additionally,
22 the CMO afforded DE-Ohio the flexibility to adjust the market price down from a
23 ceiling established by DE-Ohio's proposed price formula, based upon turns in the

1 market. The benefits of this flexibility were twofold. First, it fostered competition
2 in the market, thereby ultimately benefiting customers, and giving DE-Ohio some
3 measure of some measure of certainty over revenue and earnings in an otherwise
4 competitive, albeit nascent market. DE-Ohio could adjust its price in relation to
5 market fluctuations in order to recover its costs of providing competitive retail
6 electric generation service to those consumers choosing to be served by DE-Ohio.
7 Second, as a Provider of Last Resort (POLR), DE-Ohio designed its CMO to
8 provide a safety net for those consumers who choose to negotiate a price with a
9 competitive retail electric service (CRES) provider.

10 In December 2003, the Commission requested that DE-Ohio develop an
11 MBSSO pricing plan as an alternative to the CMO, which the Commission
12 referred to as a rate stabilization plan (RSP). DE-Ohio filed its first RSP MBSSO
13 on January 26, 2004. This proposal contained a fully bypassable price to compare
14 and a fully non-bypassable POLR charge. It was simple in structure and met the
15 Commission's goals of rate certainty for consumers, revenue stability for DE-
16 Ohio, and further development of the competitive retail electric market. When
17 DE-Ohio filed its direct testimony in support of its first RSP MBSSO, the
18 Company made minor changes to the pricing structure in response to comments
19 made by several intervenors.

20 Shortly thereafter, DE-Ohio submitted a Stipulation that contained many
21 of the elements of its RSP MBSSO. The stipulated pricing structure, also a RSP
22 MBSSO, was signed by many Parties to the proceeding, including community
23 groups, CRES providers, and commercial and industrial consumers. The specifics

1 of the Stipulation are also fully explained in Mr. Steffen's Second Supplemental
2 Testimony. Importantly, the Stipulated MBSSO also accomplished the
3 Commission's three goals for RSP pricing structures stated above.

4 The Commission, however, did not adopt the Stipulation as filed and in its
5 Opinion and Order made significant material changes to the Stipulated MBSSO.
6 In doing so, the Commission effectively rejected the Stipulation and instead,
7 attempted to establish a market price that was entirely unacceptable to DE-Ohio
8 and, in DE-Ohio's view, inconsistent with the Commission's own RSP goals.
9 Accordingly, DE-Ohio filed its Application for Rehearing, which offered the
10 Commission three viable pricing alternatives for its consideration. Specifically,
11 DE-Ohio requested that the Commission reverse its decision and adopt the
12 Stipulation as filed, adopt the CMO, or adopt an alternative pricing structure,
13 which was based upon the Stipulation and certain changes made by the
14 Commission in its Opinion and Order (Alternative Proposal). The Alternative
15 Proposal was fully supported by the existing record evidence, as discussed in Mr.
16 Steffen's testimony, and resulted in a slightly lower total market price than the
17 Stipulated MBSSO.

18 In its November 23, 2004 Entry on Rehearing, the Commission again
19 declined to adopt any of the pricing proposals offered by DE-Ohio and instead
20 made significant changes to DE-Ohio's Alternative Proposal. Given the rapidly
21 approaching end of DE-Ohio's market development period for commercial and
22 industrial consumers, DE-Ohio chose to accept the majority of the Commission's
23 changes. DE-Ohio filed tariffs and began charging the Commission ordered

1 market price to commercial and industrial consumers in January 2005 and to
2 residential consumers in 2006. DE-Ohio continued to litigate the issues of
3 avoidability of the system reliability tracker (SRT) and the price to charge
4 returning customers. The returning price issues were resolved via the
5 Commission's subsequent Entries in March and April 2005. The avoidability of
6 the SRT was agreed to in Case No. 05-724-EL-UNC.

7 **Q. PLEASE EXPLAIN DE-OHIO'S POSITION ON THE REMAND OF ITS**
8 **MBSSO PRICING STRUCTURE?**

9 A. The case is currently before the Commission on remand from the Supreme Court
10 of Ohio on two issues. First, the Court stated that the Commission failed to
11 adequately state its reasoning and cite the record evidence it relied upon in
12 establishing DE-Ohio's MBSSO pricing structure in its November 23, 2004 Entry
13 on Rehearing. Second, the Court stated that the Commission should have allowed
14 discovery regarding "all agreements entered into on or after January 26, 2004,
15 between [DE-Ohio] and the parties to the matters before the commission,"¹ (Side
16 Agreements) to determine whether the parties to the Stipulation were engaged in
17 serious bargaining.²

18 Despite the very limited nature of the Court's remand, the Commission
19 has not at this time limited the scope of its review in this proceeding, leading to
20 unnecessary litigation of DE-Ohio's MBSSO pricing structure, which has been in
21 place for two years and which resulted from the Company's proposal of a rate
22 stabilization plan requested by the Commission. DE-Ohio believes that the

¹ *OCC v. PUCO*, 111 Ohio St. 3d 300, 319 (2006).

² *Id.*

1 appropriate scope of this proceeding should be consideration of the evidence
2 available to the Commission in November 2004 when it issued its Entry on
3 Rehearing. OCC's desire to expand the scope of this proceeding is taking the
4 Commission down a road leading to inappropriate hindsight inquiry of issues
5 already fully litigated and affirmed by the Supreme Court of Ohio.

6 With respect to the first issue on remand, DE-Ohio has stated repeatedly in
7 this proceeding that it believes that the existing evidentiary record fully supports
8 its current MBSSO pricing structure. DE-Ohio's witness, Mr. Steffen, goes into
9 great detail regarding this issue in his Second Supplemental Testimony. DE-Ohio
10 believes the Commission should affirm its November Entry on Rehearing and
11 permit DE-Ohio to continue to charge consumers according to the MBSSO
12 pricing structure it agreed to implement in the consolidated MBSSO cases.

13 With respect to the second issue on remand, DE-Ohio has complied with
14 the Court's remand ordered and has provided an agreement with the City of
15 Cincinnati, the single agreement between DE-Ohio and a party to the proceeding.
16 DE-Ohio, however, submits that the issue regarding the existence or non-
17 existence of alleged "Side Agreements" is entirely irrelevant to the present
18 remand proceeding. As more fully explained in Mr. Steffen's Second
19 Supplemental Testimony, this Commission rejected each proposal offered by DE-
20 Ohio in the initial MBSSO proceeding, including the Stipulation. Therefore, the
21 bargaining capacity of the various parties to the Stipulation is entirely irrelevant
22 because there was no approved Stipulation.

1 Moreover, in its refusal to reasonably limit the scope of this remand
2 proceeding, this Commission has permitted, and in fact ordered, new discovery,
3 far exceeding that ordered by the Supreme Court of Ohio. The additional
4 discovery regarding confidential commercial contracts and operations of an
5 unregulated affiliate of DE-Ohio have no impact on the establishment of DE-
6 Ohio's MBSSO market price. The unconstrained probing and borderless scope of
7 the present hearing have resulted in an inefficient use of the resources of DE-
8 Ohio, its affiliates, this Commission, and the other parties to this case.

9 **Q. WHAT IS DE-OHIO REQUESTING THE COMMISSION DO IN THE**
10 **PRESENT PROCEEDING?**

11 **A. DE-Ohio is requesting that the Commission affirm the MBSSO pricing structure**
12 **without modification and permit DE-Ohio to resume charging the resulting**
13 **market prices set in the Commission's Entry on Rehearing on November 23,**
14 **2004. Inherent in this request is the expected true-up, including a provision for**
15 **carrying costs, of those riders which have been frozen or reset to zero as a result**
16 **of the Commission's December 20, 2006 Entry in a manner consistent with the**
17 **approved calculation of those MBSSO components. The MBSSO, including**
18 **these riders, is simply the formula for establishing the market price for**
19 **competitive retail electric service offered by DE-Ohio in accordance with the**
20 **relevant market pricing regulations of the state.**

21 Because the Commission has not as yet limited the scope of the hearing on
22 remand, OCC has proceeded as if the entire record is now open. By implication,
23 this would include the previously submitted MBSSO pricing structures. DE-Ohio

1 believes OCC's interpretation to be seriously misguided. However, if the
2 Commission accepts OCC's interpretation, and subsequently does anything other
3 than re-affirm the MBSSO pricing structure it previously approved in November
4 2004, DE-Ohio requests the Commission to reconsider its Opinion and Order and
5 November 23, 2004 Entry on Rehearing, and allow DE-Ohio to implement its
6 CMO as initially proposed. DE-Ohio continues to believe that its CMO,
7 proposed in January 2003 and at the outset of these proceedings, offered the
8 Commission, DE-Ohio and DE-Ohio's consumers a transparently calculated
9 market price. DE-Ohio also submits that its CMO is reasonable and appropriate
10 under the relevant market pricing statutes and regulations of this State.

11 **Q. WHAT IS DE-OHIO'S CURRENT POSITION WITH RESPECT TO THE**
12 **ONGOING VIABILITY OF AN RSP STRUCTURED MBSSO?**

13 A. Based upon the litigious experience with its current MBSSO pricing structure,
14 DE-Ohio believes that the State's RSP initiative has resulted in MBSSOs that are
15 not consistent with all of the Commission's goals in that they do not foster
16 revenue certainty to the utility. The RSP MBSSO pricing structures lack an
17 ability to adjust market prices with the rise and fall of the market. Accordingly, a
18 market price, which is RSP-based, must be set at a level that the Company is
19 willing to accept over a prolonged period of time representing market price highs
20 and lows. Under the conditions imposed by the RSP, DE-Ohio assumed the risk
21 associated with market volatility in exchange for a pricing structure that would
22 remain intact as ordered and provide revenue certainty to the Company.

1 The Commission's RSP methodology has failed to provide DE-Ohio the
2 revenue stability it contemplated in accepting the Commission's November Entry
3 on Rehearing. This lack of revenue stability is evidenced by the fact that DE-
4 Ohio finds itself defending the propriety of its entire pricing structure yet again.

5 This continued litigation over market prices is not revenue stability.
6 Rather, this results in revenue *instability*, which casts doubt on the benefit of
7 participation in a rate stabilized MBSSO. Accordingly, DE-Ohio's support of a
8 negotiated MBSSO in the form of an RSP on a going forward basis is waning.

9 **Q. WHAT ALTERNATIVES TO AN RSP MBSSO ARE CURRENTLY**
10 **BEING CONSIDERED BY DE-OHIO?**

11 A. As I previously mentioned, DE-Ohio is reevaluating its support of the
12 Commission's RSP MBSSO pricing constructs given the uncertainty that this
13 remand proceeding has injected into the market. DE-Ohio now believes a pricing
14 structure that is more reflective of the true market may be the fairest option both
15 for the Company and for consumers. If the current MBSSO pricing structure is
16 not affirmed without modification, DE-Ohio will be forced to develop a pricing
17 plan that is similar to its CMO and more reflective of actual competitive market
18 pricing.

19 Additionally, DE-Ohio continues to believe that a long-term legislative
20 solution is the best alternative to clarify the existing market-based regulations and
21 provide revenue certainty that will encourage dedication of adequate generation to
22 serve consumers in the state. Although no formal legislation has been introduced
23 in the Ohio General Assembly, DE-Ohio believes that such an initiative may be

1 necessary to clarify and advance the best interests of both the Company and the
2 citizens of Ohio.

3 **Q. GIVEN DE-OHIO'S DECLINING SUPPORT OF AN RSP STRUCTURED**
4 **MBSSO, WHY IS THE COMPANY WILLING TO CONTINUE ITS**
5 **CURRENT PRICE?**

6 A. When it chose not to oppose the Commission's November 23, 2004 Entry on
7 Rehearing, DE-Ohio made a commitment to its pricing structure until December
8 31, 2008. The Company is willing to stand by this commitment for the benefit of
9 its consumers. The MBSSO set by the Commission in its November 23, 2004
10 Entry on Rehearing and agreed to by DE-Ohio, was within the mid-range of
11 market prices submitted into the evidence by DE-Ohio witness Judah Rose.

12 Although DE-Ohio does not consider the current state of the market
13 relevant to the Commission-approved November 2004 MBSSO, Mr. Rose's
14 Second Supplemental Testimony, demonstrates that this same pricing structure
15 continues to produce prices in the range of current market prices. However, as
16 more fully described in Mr. Rose's Second Supplemental Testimony, the current
17 MBSSO is no longer in the midpoint of the range of market prices, but is now at
18 the low point. Accordingly, if the Commission insists upon such a hindsight
19 inquiry to justify its November 23, 2004 Entry on Rehearing, then current
20 evidence clearly shows that the Commission made a wise decision. Consumers
21 have benefited by having the option of a lower market price without exposure to
22 significant price volatility.

1 **Q. WHAT OTHER ACTION IS DE-OHIO TAKING IN LIGHT OF THE**
2 **CONTINUED UNCERTAINTY RESULTING FROM THE RSP MBSSO?**

3 A. At present, under its current corporate separation plan, DE-Ohio has an obligation
4 to transfer its generating assets to an Exempt Wholesale Generator (EWG) by
5 December 31, 2008. In its Application to Amend its MBSSO, filed in Case No.
6 06-986-EL-UNC, DE-Ohio proposed amending its plan so that the Company
7 could continue to provide consumers generating service from DE-Ohio's lower
8 cost and efficient generating assets. Given the state of uncertainty that currently
9 exists in RSP MBSSO pricing structures, the economic incentive for DE-Ohio's
10 continued ownership and first call dedication of those efficient assets to Ohio
11 consumers is unreliable. Therefore, DE-Ohio is evaluating plans to transfer its
12 generating assets to an EWG, which will necessitate purchasing all of its
13 generation supply in the market.

14 **Q. WHAT BENEFIT DOES DIVESTITURE PROVIDE DE-OHIO?**

15 A. Divestiture to an EWG benefits DE-Ohio by giving it unfettered access to the
16 wholesale and retail electric markets. If the EWG commits first call on its
17 capacity to another customer who provides more contract assurances than the
18 negotiated Ohio MBSSO price, DE-Ohio's consumers will pay the uncertain retail
19 market price resulting from the volatile prices of wholesale capacity and energy
20 available in the market. Although future pricing is uncertain, dwindling capacity
21 is likely to result in higher prices for electric wholesale generators in the coming
22 years.

1 If DE-Ohio continues to own its generating assets it benefits consumers by
2 maintaining a known, reliable supply of capacity. DE-Ohio is willing to maintain
3 ownership and forego unrestricted access to the wholesale and retail electric
4 generation markets under its current MBSSO market pricing framework.

5 **III. CONCLUSION**

6 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

7 **A. Yes.**

SANDRA P. MEYER DIRECT