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Office of the Ohio Consumers' Counsel

Janine L. Migden-Ostrander
Consumers' Counsel

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Your Residential Utility Advocate

April 23, 2007

Ms. Renee Jenkins, Director
Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, Ohio 43215-3793

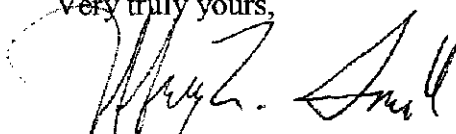
Re: OCC's Supplemental Testimony of Michael P. Haugh,
Case Nos. 03-93-EL-ATA, et al. ("Consolidated Cases")

Dear Ms. Jenkins:

Attached please find copies of OCC's Supplemental Testimony of Michael P. Haugh in the above-captioned Consolidated Cases that was originally filed on April 17, 2007 under seal along with a redacted "public" version.

At the hearing conducted on April 19, 2007, certain portions of the April 10, 2007 hearing transcript that Mr. Haugh relied upon in his Supplemental Testimony were unsealed and other determinations were made that makes it unnecessary for any portion of the Supplemental Testimony to require a filing under seal. Therefore, the attached copies of OCC's un-redacted (now "public") version of the Supplemental Testimony of Michael P. Haugh should be docketed for public access.

Very truly yours,


Jeffrey L. Small
OCC Trial Counsel

Cc: Persons on electronic service list for the hearings

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OCC EXHIBIT _____

RECEIVED-DOCKETING DIV
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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

CONFIDENTIAL
SUPPLEMENTAL TESTIMONY
OF
MICHAEL P. HAUGH

ON BEHALF OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL
10 West Broad Street, Suite 1800
Columbus, OH 43215

April 17, 2007

1 ***SQ1. ARE YOU THE SAME MICHAEL P. HAUGH WHOSE TESTIMONY WAS***
2 ***PREVIOUSLY FILED IN THIS CASE?***

3 ***SA1.*** Yes.
4

5 ***SQ2. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?***

6 ***SA2.*** The purpose of my testimony is to address the Stipulation filed on April 9, 2007
7 in this case (“2007 Stipulation”). I recommend that the Public Utilities
8 Commission of Ohio (“PUCO” or “Commission”) not approve the 2007
9 Stipulation because it does not meet the criteria regarding the reasonableness of a
10 stipulation.
11

12 ***SQ3. WHAT IS YOUR UNDERSTANDING OF THE CRITERIA THE***
13 ***COMMISSION USES TO EVALUATE A STIPULATION?***

14 ***SA3.*** In the past, the Commission has applied a three-part test in determining if a
15 stipulation should be adopted. The three-part test asks three questions. First, is
16 the stipulation a product of serious bargaining among capable, knowledgeable
17 parties? Second, taken as a package does the stipulation benefit ratepayers and
18 the public interest? Third, does the stipulation violate any important regulatory
19 principle or practice? My testimony will address the second and third parts of the
20 test.

1 ***SQ4. DOES THE 2007 STIPULATION BENEFIT RATEPAYERS AND THE***
2 ***PUBLIC INTEREST?***

3 ***SA4.*** No. There are a number of areas where the 2007 Stipulation does not benefit
4 ratepayers and is not in the public interest. The 2007 Stipulation is ambiguous
5 and meaningless in parts, and harmful to ratepayers in other parts.

6
7 ***SQ5. WHERE DO YOU FIND THE 2007 STIPULATION TO BE AMBIGUOUS OR***
8 ***MEANINGLESS?***

9 ***SA5.*** First, paragraph three of the 2007 Stipulation states that interested parties shall
10 meet to determine how to handle DE-Ohio's management of its portfolio of coal
11 assets, emission allowances, and purchased power arrangements post-2008. This
12 paragraph does not accomplish anything except an agreement to meet and "use
13 their best efforts to agree and make a recommendation."¹ The procurement of
14 coal, emission allowances, and power raises important issues that has already
15 been raised and reviewed by the Auditor. Regarding the determination of how
16 these issues should be handled post-2008, a docket already exists for the
17 determination of such issues (i.e. Case 06-986-EL-UNC dealing with extension of
18 the rate stabilization plan post-2008). That docket already exists to address the
19 issues that are the subject of paragraph three, and that docket (or related dockets)
20 better serves the purpose of exploring the post-2008 issues than the provision in
21 the 2007 Stipulation.

¹ 2007 Stipulation at page 5.

1 Second, there seems to be a fundamental disagreement over the meaning of
2 paragraph eight between DE-Ohio's witness and the PUCO Staff ("Staff").
3 During the hearing in this case held on April 10, 2007, DE-Ohio Witness Charles
4 R. Whitlock seemed to think that the only limitation on the use of former Duke
5 Energy North American Assets ("DENA Assets") was the time frame for
6 purchasing the capacity. Specifically, he stated that DE-Ohio would be able to
7 purchase capacity off the DENA Assets by using a series of short term (seven
8 days or less) purchases.² Counsel for the Staff then questioned Mr. Whitlock as to
9 whether his interpretation of that provision was necessarily the interpretation of
10 all parties or just his own.³ Judging from the nature of the cross examination, the
11 intent of this paragraph from Staff's perspective appears to be that the use of
12 DENA Assets would be further limited (I will discuss my perspective on this
13 topic later in this testimony). However, DE-Ohio seems to believe that paragraph
14 eight allows DE-Ohio to purchase capacity from these units whenever it wants,
15 assuming it is only for a seven day period, this point was confirmed by DE-Ohio
16 in response to OCC Interrogatory R-RR-DE-5a (MPH Attachment - S1). . The
17 signing of the 2007 Stipulation by both the Staff and DE-Ohio appears to mask a
18 disagreement over the use of the DENA Assets that should not exist at such an
19 early point following the execution of a stipulation.

² Transcript Vol I at page 143 (Whitlock).

³ Transcript Vol I at page 156-157.

1 **SQ6. WHERE DO YOU FIND THE 2007 STIPULATION TO BE HARMFUL TO**
2 **RATEPAYERS?**

3 **SA6.** Paragraph five does not take into account the recommendation, contained in my
4 testimony filed on March 9, 2007,⁴ to remove the return on the Construction
5 Work in Progress (“CWIP”) from the AAC. In addition, paragraph eight does not
6 provide adequate protection for ratepayers against DE-Ohio overcharging for the
7 DENA Assets. Paragraph eight allows DE-Ohio to determine the “market price”
8 by either using the midpoint of broker quotes, the average price of third party
9 transactions, or another method determined by DE-Ohio and Staff.⁵ DE-Ohio
10 Witness Whitlock admitted during the hearing in this case that during situations
11 when DE-Ohio would purchase capacity from the DENA Assets, there are usually
12 very few broker quotes.⁶ This is one reason that I opposed the use of the DENA
13 Assets, in my testimony filed on March 9, 2007.⁷ When questioned how he
14 would determine third party transaction prices, DE-Ohio Witness Whitlock used
15 an example of calling possible counterparties and whatever price was offered, that
16 would be the price of the transaction.⁸ The proposed methodology to formulate a
17 “market price” for the DENA Assets does not provide proper protections (i.e. the
18 determination of costs from an objective standpoint) for customers paying the
19 SRT.

⁴ Prepared Testimony of Michael P. Haugh at pages 19-20.

⁵ 2007 Stipulation at page 7.

⁶ Transcript Vol I at page 145 (Whitlock).

⁷ Prepared Testimony of Michael P. Haugh at pages 13-14.

⁸ Transcript Vol I at page 150 (Whitlock).

1 ***SQ7. WHAT COULD BE DONE TO LIMIT YOUR CONCERNS REGARDING***
2 ***THE VALUATION OF THE DENA ASSETS?***

3 ***SA7.*** First and foremost, there needs to be strict rules as to when the DENA Assets can
4 be used. As I stated in my testimony in this case filed on March 9, 2007, the use
5 of these assets should be limited to emergency situations where there are no other
6 options.⁹

7
8 Secondly, the guidelines for formulating a price for the DENA Assets need to be
9 more stringent. If there are limited broker quotes and transactions in the capacity
10 market, there will be too much uncertainty regarding the true market price. If the
11 Company is to use the formula set forth in Paragraph eight of the 2007
12 Stipulation, for emergency situations, there needs to be a minimum number of
13 broker quotes and transactions to determine the price of the DENA capacity. I
14 suggest the Company provide a minimum of three bids and offers from three
15 separate brokers. I would also suggest a minimum of three third-party
16 transactions be required. Finally, when formulating a price there needs to be a
17 cap on the amount DE-Ohio is charging to the customers who are paying the SRT.
18 I suggest that the price be capped at the median price DE-Ohio has paid for
19 capacity during the time frame in which the emergency occurs. I believe this cap
20 should be implemented if any capacity from the DENA Assets is used because the
21 2007 Stipulation allows for the price to be determined by an "alternative method"

⁹ Prepared Testimony of Michael P. Haugh at pages 15.

1 determined by Staff and DE-Ohio.¹⁰ As we enter the summer months and the
2 chances of a capacity emergency increase, a concrete method of valuation of the
3 DENA assets needs to be in place.

4
5 ***SQ8. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY***
6 ***PRINCIPLE OR PRACTICE?***

7 ***SA8.*** Yes. Paragraph five addresses calculations for a return on CWIP that is included
8 in proposed AAC charges, and violates traditional regulatory practices that can
9 and should be used to guide the development of realistic costs in order to ensure
10 reasonable standard service offer rates. The Commission has stated in this regard
11 that it “will continue to consider the reasonableness of expenditures” in the AAC
12 category and that “[i]t is not in the public interest to cede this review.”¹¹ A
13 reasonable methodology should be used to reflect actual costs for charges such as
14 the AAC. However, paragraph five of the 2007 Stipulation would permit a return
15 on CWIP that would not traditionally have been allowed in ratemaking
16 proceedings. I recommended removing a return on CWIP in my earlier
17 testimony, and I supported that recommendation with calculations that would
18 reduce the AAC to 5.6 percent of “little g.” My proposed adjustment provides a
19 reasonable means to develop costs for the standard service offer prices.

¹⁰ 2007 Stipulation at page 7.

¹¹ Entry on Rehearing at page 10.(November 23, 2004).

1 ***SQ9. WHAT IS YOUR RECOMMENDATION WITH REGARD TO THE 2007***
2 ***STIPULATION?***

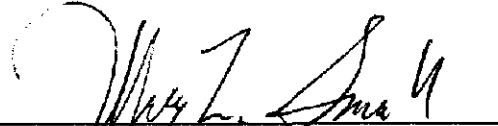
3 ***SA9.*** I recommend that the Commission not approve the 2007 Stipulation and that the
4 Commission decide this matter based on the record in this case. Specifically the
5 Commission should restrict the ability of DE-Ohio to recover capacity costs
6 associated with the DENA Assets through the SRT, except under emergency
7 situations, and disallow DE-Ohio's return on CWIP in the AAC.

8
9 ***SQ10. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY AT THIS***
10 ***TIME?***

11 ***SA10.*** Yes, it does. However, I reserve the right to incorporate new information that
12 may subsequently become available.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing (confidential) Supplemental Testimony of Michael P. Haugh on behalf of the Office of the Ohio Consumers' Counsel has been served electronically upon the persons listed below, this 17th day of April, 2007.



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Assistant Consumers' Counsel

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**Ohio Consumers' Counsel
Rider Remand
First Set of Interrogatories
Duke Energy Ohio, Inc.
Case No. 03-93-EL-ATA, *et al.*
Date Received: April 11, 2007
Response Due: April 13, 2007**

R-RI-DE-5

REQUEST:

Regarding paragraph 8 of the April Stipulation:

- a. What, if anything, would prevent DE-Ohio from overlapping periods of "7 days or less," or prevent DE-Ohio from tacking one or more periods of "7 days or less" onto a period of "7 days or less," in order to use former Duke Energy North America assets for purposes of the SRT?
- b. What, if anything, would prevent DE-Ohio from using the former Duke Energy North America plants in a manner other than described by DE-Ohio Witness Whitlock in his testimony on April 10, 2007 (i.e. when he described an unusual event two or three months ago when Vermillion capacity was used to meet capacity requirements)?
- c. How many times and for what periods of time, since January 1, 2006, has DE-Ohio used DENA assets to meet its capacity reserve margin, either for the 15 percent reserve margin or the 4.1 percent required for MISO Module E?
- d. Have any former Duke Energy North America plants other than the Vermillion plant been used in the past to provide capacity in connection with service to DE-Ohio's standard service offer customers (whether compensated for or not)?
- e. If the response to the previous sub-part of this interrogatory is negative, why has no other plant been used for the stated purpose?
- f. How would plants other than the Vermillion plant provide the firm capacity needed so that they could be used for DE-Ohio's capacity requirements, and what are the costs other than for the capacity itself that would be needed for these plants (i.e. other than Vermillion) to be useful to meet DE-Ohio's capacity requirements?

- g. If the "midpoint of broker quotes received" is used for pricing under sub-part "a." of paragraph 8, how would standard service offer customers "benefit" (i.e. as stated in Company Remand Rider Exhibit 2, page 9, line 16) as compared with DE-Ohio making a purchase according to the lowest broker quote? .
- h. How would the "broker quotes" be documented under sub-part "a." of paragraph 8 and how would they be audited (if at all)?
- i. What source(s) would DE-Ohio use to determine the "[a]verage price of 3rd party purchases transacted" if the "midpoint of broker quotes received" is used for pricing under sub-part "b." of paragraph 8?
- j. What was the average price, by month, that DE-Ohio paid for capacity purchased in 2006 and 2007?
- k. What was the highest price, by month, that DE-Ohio paid for capacity purchased in 2006 and during what time frame was that capacity purchased?
- l. In the response to the previous sub-part of this interrogatory, why did DE-Ohio purchase the capacity?
- m. On how many occasions and for what periods of time since January 1, 2006 did DE-Ohio purchase capacity on a short term basis (seven days or less)?
- n. In response to the previous sub-part of this interrogatory, when where those purchases made (i.e. provide dates) and why did DE-Ohio purchase capacity on a short term basis (seven days or less)?

RESPONSE:

- a. Assuming the referenced assets are available, nothing prevents this scenario, however unlikely.
- b. Qualified as a Designated Network Resource, whether the capacity is already sold, and a lack of assurance of cost recovery from the Commission.
- c. For the delivery period October 25, 2006 at no charge to consumers.
- d. No.
- e. No economic circumstances have arisen.
- f. One way would be to buy firm transmission from a plant that is located outside of the MISO footprint to the MISO border, from PJM for example. This would be an incremental cost to the cost of capacity. Another way might be to settle the

capacity transactions financially, meaning that if a PJM asset were to be utilized, DE-Ohio could merely buy capacity from another supplier in MISO to satisfy the Module E Requirement, while simultaneously selling capacity to PJM for the asset outside of the MISO footprint. The capacity revenues from PJM and the capacity expenses from MISO would then be net against each other in the SRT. This option does not have a transmission cost component but will be either a credit or charge for the difference to the SRT.

- g. If the "midpoint of the broker quotes received" methodology were to be employed, it would require broker quotes that contain both buy bids and sell offers. Consequently, the lowest midpoint between buy bids and sell offers, which is below the broker quote for a sell offer could be utilized.
- h. DE-Ohio will maintain the broker quotes as part of its business records and such records shall be subject to the SRT audit.
- i. DE-Ohio would use the weighted average of all reported capacity purchases and sales transacted contemporaneously within the same period.
- j. DE-Ohio has not performed such calculations.
- k. During 2006, August was the highest priced month for which capacity was purchased at \$168 per MwDay or \$7.00 per MwHour. Capacity purchases were made for the August 1-2 and August 3 time frame.
- l. The purchases were made a day or a few days in advance of the delivery period to comply with MISO Module E requirements due to the unexpected loss of generation or an increase in expected load obligations.
- m. Since January 1, 2006 DE-Ohio made 11 short-term purchases (seven days or less) for the following periods:
For 2006: March 4-6; March 9-10; March 28; April 29-30 (for two separate blocks); July 30-31; July 17-21; August 1-2; August 3; August 25-26; October 16-20. No short-term purchases in 2007.
- n. Generally, the short-term purchases noted in "m" above, were made a day or a few days in advance of the delivery period to comply with MISO Module E requirements due to the unexpected loss of generation or an increase in expected load obligations.

WITNESS RESPONSIBLE: N/A