

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED

JUN 14 2007

DOCKETING DIVISION  
Public Utilities Commission of Ohio

In the Matter of the Application for :  
Recovery of Costs, Lost Margin, and :  
Performance Incentive Associated With :  
the Implementation of Electric : Case No. 06-91-EL-UNC  
Residential Demand Side Management :  
Programs by The Cincinnati Gas & :  
Electric Company :

In the Matter of the Application for :  
Recovery of Costs, Lost Margin, and :  
Performance Incentive Associated With :  
the Implementation of Electric Non- : Case No. 06-92-EL-UNC  
Residential Demand Side Management :  
Programs by The Cincinnati Gas & :  
Electric Company :

In the Matter of the Application for :  
Recovery of Costs, Lost Margin, and :  
Performance Incentive Associated With :  
the Implementation of Natural Gas : Case No. 06-93-EL-UNC  
Demand Side Management Programs :  
By The Cincinnati Gas & Electric :  
Company :

---

**STIPULATION AND RECOMMENDATION**

---

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 who have signed below (Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation),

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician                      Date Processed 6-14-07

which resolves all of the issues raised by The Cincinnati Gas & Electric Company, now known as Duke Energy Ohio (DE-Ohio) in these cases relative to the Application to establish demand side management programs within DE-Ohio's certified territory.

This Stipulation is supported by adequate data and information; 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's Staff,<sup>1</sup> to resolve the aforementioned issues. While 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 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 any Party, or the Commission itself. This Stipulation and Recommendation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position which one or more of the Parties would have taken if these issues had been fully litigated.

---

<sup>1</sup> Staff will be considered a party for the purpose of entering into this Stipulation by virtue of O.A.C. Rule 4901-1-10(c).

This Stipulation is a compromise involving a balance of competing positions, and it does not necessarily reflect the position that the parties would have taken if these issues had been fully litigated. The parties believe that this Stipulation represents a reasonable compromise of varying interests. This Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification. Should the Commission reject or modify all or any part of this Stipulation, the parties shall have the right to file an application for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, 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. Upon such notice filing the Stipulation shall immediately become null and void. Prior to the filing of this notice, 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, to file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful the Commission may convene an evidentiary hearing such that the Parties will be afforded the opportunity to present evidence through witnesses, to cross 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. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, some, or all, of the parties shall submit the amended Stipulation to the Commission for approval.

All 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 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 which 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 solution to the issues raised in the cases

set forth above concerning DE-Ohio's Application to establish DSM programs;

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 and recommend that, except as set forth and modified herein, the Commission should adopt DE-Ohio's Application in their entirety.
2. The Parties agree that DE-Ohio shall recover lost revenues and shared savings, subject to refund based upon future impact studies performed by DE-Ohio and/or its consultants, submitted to Staff for evaluation, for the following three residential programs: (1) Home Energy House Call; (2) Energy Efficiency Website; and (3) Ohio Energy Project (NEED).
3. The Parties agree that independent program evaluation costs will be capped at five (5) percent of each program's expenditures. The program evaluations shall be performed at the direction of the Duke Energy Community Partnership (DECP) Board in consultation with the Staff.
4. The Parties agree that after the completion of a program evaluation that demonstrates that the evaluated program is not cost-effective, any remaining monies allocated to such program shall be referred

back to the DECP Board for the evaluation and implementation of other cost-effective DSM programs or the expansion of existing cost-effective programs as appropriate.

5. The Parties agree that shared savings shall not be collected by DE-Ohio for each program until such program has achieved at least 65% of its targeted savings. The Parties also agree that the Company shall receive graduated shared savings as set forth in the Company's application and such recovery shall be capped at 10% of the shared savings for any program if DE-Ohio meets 100% of the targeted goal (see Staff report).
6. The Parties agree that DE-Ohio may continue the cost-effective electric DSM programs set forth in its application for a five (5) year period from the effective date of the Commission's order in these cases. Thereafter, DE-Ohio must seek Commission approval to continue the programs.
7. Notwithstanding DE-Ohio's application in these cases, as amended, the Company's natural gas DSM programs shall be limited to a three-year pilot program to test the effectiveness of providing rebates to encourage customers to purchase more efficient natural gas furnaces. DE-Ohio will implement the Smart Saver – Energy Star Products – Gas Furnace, and the Smart Saver – Energy Star Products – Gas Furnace with ECM programs (Gas Furnace Programs) as such pilot programs. DE-Ohio shall recover

the costs of these programs and the associated lost revenues through the electric DSM rider. DE-Ohio shall not be permitted to recover any shared savings during the three-year pilot program. These programs shall be available only to customers with both gas and electric service provided by DE-Ohio. Prior to the end of the pilot phase of these two programs DE-Ohio shall conduct a market analysis to determine whether these programs have been effective in increasing the saturation of these furnaces in DE-Ohio's certified territory. Based upon that market analysis, DECP, in consultation with the Staff, shall determine whether or not to continue the furnace programs beyond the three-year pilot phase. With Commission approval, DE-Ohio may extend the pilot programs for up to an additional two-year period to coincide with the programs set forth in paragraph six (6) above.

8. The Parties agree that DE-Ohio may file its evaluation reports six-months later than the dates specified on the table at page fifty-four (54) of the Amended Application.
9. The Parties agree that non-residential consumers may opt-out of participation in, and payment of, Rider DSM as set forth on page sixty-five (65) of the Amended Application.

The undersigned hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this 14th day of June, 2007.

Respectfully Submitted,

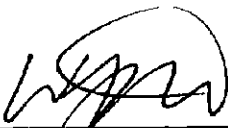
A handwritten signature in black ink, appearing to read "P. A. Colbert", written over a horizontal line.

Paul A. Colbert, Trial Attorney  
Associate General Counsel  
Rocco D'Ascenzo, Counsel  
Duke Energy Ohio

2500 Atrium II, 139 East Fourth Street  
P. O. Box 960  
Cincinnati, Ohio 45201-0960  
(513) 287-3015



On behalf of Staff


  
\_\_\_\_\_  
Its Attorney William Wright

On Behalf of Ohio Energy Group

  
\_\_\_\_\_  
Its Attorney Mike Kurtz

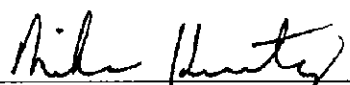
*Id. by phone  
authority*

On behalf of The Ohio Consumers' Council

  
\_\_\_\_\_  
Its Attorney Larry Sauer

*Id. by  
phone authority*

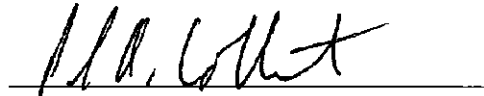
On behalf of Kroger

  
\_\_\_\_\_  
Its Attorney Mike Kurtz

*Id. by phone authority*

## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served electronically on the following parties this 14<sup>th</sup> day of June 2007.



Paul A. Colbert  
Rocco D'Ascenzo, Counsel

INDUSTRIAL ENERGY USERS-OHIO

SAMUEL C. RANDAZZO, GENERAL COUNSEL  
MCNEES WALLACE & NURICK LLC 21 EAST  
STATE STREET 17TH FLOOR  
COLUMBUS OH 43215  
Phone: (614) 469-8000

NEILSEN, DANIEL J ATTORNEY AT  
LAW

MCNEES WALLACE & NURICK LLC  
FIFTH THIRD CENTER, 17TH FL. 21  
EAST STATE STREET  
COLUMBUS OH 43215

KROGER COMPANY, THE

MR. DENIS GEORGE 1014 VINE STREET-G07  
  
CINCINNATI OH 45202-1100

KURTZ, MICHAEL  
BOEHM, KURTZ & LOWRY  
36 EAST SEVENTH STREET SUITE  
1510  
CINCINNATI OH 45202  
Phone: (513) 421-2255  
Fax: (513) 421-2764

OFFICE OF THE CONSUMERS COUNSEL

LARRY SAUER  
10 WEST BROAD STREET, SUITE 1800  
COLUMBUS OH 43215-3485  
Phone: 614-466-8574  
Fax: 614-466-8575

NONE

OHIO ENERGY GROUP, INC.

KURTZ, MICHAEL  
BOEHM, KURTZ & LOWRY  
36 EAST SEVENTH STREET SUITE

1510  
CINCINNATI OH 45202  
Phone: (513) 421-2255  
Fax: (513) 421-2764

OHIO PARTNERS FOR AFFORDABLE ENERGY  
DAVID RINEBOLT  
337 SOUTH MAIN STREET 4TH FLOOR, SUITE  
5, P.O. BOX 1793  
FINDLAY OH 45839-1793  
Phone: 419-425-8860  
Fax: 419-425-8862

RINEBOLT, DAVID  
LAW DIRECTOR  
231 WEST LIMA STREET P.O. BOX  
1793  
FINDLAY OH 45839-1793  
Phone: 419-425-8860  
Fax: 419-425-8882