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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set the) Case No. 07-973-EL-UNC
Annually Adjusted Component of its)
Market Based Standard Service Offer.)
)

BRIEF OF
OHIO PARTNERS FOR AFFORDABLE ENERGY

Ohio Partners for Affordable Energy ("OPAE"), an intervenor in the above-captioned case, hereby submits this brief to the Public Utilities Commission of Ohio ("Commission") concerning the application filed by Duke Energy Ohio, Inc. ("Duke") to adjust and set the annually adjusted component ("AAC") of its market-based standard service offer. Duke filed this application on September 4, 2007 to establish the 2008 AAC. At the hearing, Duke's Attachment WDW-2, Schedule 1, was introduced into evidence. The total revenue requirement for the AAC is \$111,381,755, which figure includes a return on \$353,702,043 of environmental plant construction work in progress ("CWIP"). The Commission found in *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set the Annually Adjusted Component of its Market-Based Standard Service Offer*, Case No. 06-1085-EL-UNC, Opinion and Order (November 20, 2007), that its previous approval of the AAC was based on Duke's calculations, which showed CWIP as a factor in the AAC, with no reference to percentage completion. The Commission also found that, in the present market environment, ratemaking standards, such as the limitation on earning a return on CWIP, are not dispositive of the outcome in this proceeding. Therefore, the

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Commission found that the stage of completion of CWIP should not, under these specific circumstances, be a bar to Duke's earning a return on CWIP. *Id.* at 24. This Commission finding was contrary to the recommendation of the management/performance auditor that a return on CWIP be excluded from the AAC. *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set the Annually Adjusted Component of its Market-Based Standard Service Offer*, Case No. 06-1085-EL-UNC, Commission-Ordered Ex. 1 at I-9.

The inclusion of a return on CWIP results in unreasonable AAC charges. First, a return on CWIP would not traditionally have been allowed in ratemaking proceedings. A revenue requirement determined through a traditional regulatory cost calculation would require that any CWIP be at least 75% complete before the Commission would consider allowing a return on it. Duke has not demonstrated that the CWIP portion of the environmental compliance net plant is or will be at least 75% complete (or any other percentage) during the time that the AAC is being collected.

Second, under a traditional regulatory paradigm, Duke might propose allowing a return on CWIP that customers would pay up front during plant construction. After construction is complete, the customers have a claim that the return on CWIP will provide lower capital costs at a future date when the plant is in service. The current regulatory paradigm does not provide any assurance of lower capital costs for customers at a future date.

The Commission may believe that the traditional regulatory treatment does not apply in the present "market" environment. In fact, the ACC itself would have no place in the market. Duke attempts to determine a market price for standard service

generation simply by seeking cost-based recovery similar to the traditional methodology for the treatment of CWIP, but without any limitation regarding the percentage of completion for additions to environmental plant and without any assurance of lower capital costs in the future. Duke is seeking the best of both worlds: cost recovery using traditional revenue requirement methodology (such as CWIP) instead of a market approach, but disregard for traditional ratemaking rules governing cost recovery such as those that governed CWIP. In a market environment, CWIP would not be earned at all. A return on the plant would not occur until the plant is fully operational. Thus, in a market environment, CWIP is inappropriate. In a cost-based recovery methodology, such as the one actually in effect here, limitations on a return on CWIP are sound regulatory principles and practices.

Under the circumstances of an application requesting recovery of a typically regulated concept such as CWIP, it is obvious that traditional regulatory practices can and should be used to ensure reasonable standard service offer rates, which must be filed pursuant to R.C. §4909.18 and conform to a just and reasonable standard. CWIP should be removed from the "Return on Environmental Plant" calculation in Duke's filing for purposes of setting a reasonable AAC charge in conformance with the just and reasonable standards of R.C. §4909.18.

There is no "market environment" for electric generation to serve Ohio's residential and small commercial customers. Retail competition is non-existent for these customers in Duke's service area. Therefore, any determination of a rider amount or overall generation price must necessarily involve a proxy for a market price, which is a cost-based standard service offer. There is no reason why traditional

regulatory standards for CWIP should not apply; in fact, standards must be applied in order for the AAC to meet the just and reasonable standard required by R.C. §4909.18 for standard service offers.

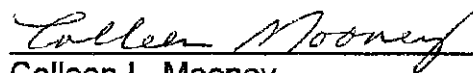
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief was served electronically upon the parties of record identified below on this 21st day of December 2007.



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