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**DE-OHIO EXHIBIT** \_\_\_\_\_

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan	)	Case No. 08-920-EL-SSO
	)	
	)	
In the Matter of the Application of Duke Energy Ohio for Approval to Amend Accounting Methods	)	Case No. 08-921-EL-AAM
	)	
	)	
In the Matter of the Application of Duke Energy Ohio for Approval of a Certificate of Public Convenience and Necessity to Establish an Unavoidable Capacity Charge	)	Case No. 08-922-EL-UNC
	)	
	)	
In the Matter of the Application of Duke Energy Ohio for Approval to Amend its Tariffs	)	Case No. 08-923-EL-ATA
	)	

**SECOND SUPPLEMENTAL TESTIMONY OF**

**PAUL G. SMITH**

**ON BEHALF OF**

**DUKE ENERGY OHIO**

October 28, 2008

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**I. INTRODUCTION AND PURPOSE**

1 **Q. PLEASE STATE YOUR NAME.**

2 A. My name is Paul G. Smith.

3 **Q. DID YOU FILE DIRECT AND SUPPLEMENTAL TESTIMONY IN THIS**  
4 **PROCEEDING ON BEHALF OF DUKE ENERGY OHIO (DE-OHIO)?**

5 A. Yes.

6 **Q. WHAT IS THE PURPOSE OF YOUR SECOND SUPPLEMENTAL**  
7 **TESTIMONY IN THIS PROCEEDING?**

8 A. The purpose of my Second Supplemental Testimony is to discuss and support the  
9 reasonableness of a Stipulation and Recommendation (Stipulation) filed in the  
10 above-captioned proceedings. The Stipulation is filed with the support of most of  
11 the parties to these proceedings, including the Staff of the Public Utilities  
12 Commission of Ohio (Commission), the Ohio Energy Group, The Kroger Co.  
13 (Kroger), People Working Cooperatively, Ohio Manufacturer's Association, Ohio  
14 Environmental Council, Commercial Group, Communities United for Action,  
15 Ohio Consumers' Council ("OCC"), Ohio Partners for Affordable Energy, Sierra  
16 Club, Natural Resources Defense Council, Greater Cincinnati Health Council  
17 (GCHC), Integrys Energy, Constellation NewEnergy, and Constellation Energy  
18 Commodities Group (collectively, the Stipulating Parties). This testimony will  
19 demonstrate that: (1) the Stipulation is a product of serious bargaining among  
20 capable, knowledgeable parties; (2) the Stipulation does not violate any important  
21 regulatory principle or practice; and (3) the Stipulation, as a whole, will benefit  
22 consumers and is in the public interest.

1 **II. DISCUSSION**

2 **Q. PLEASE GENERALLY DESCRIBE THE STIPULATION.**

3 A. This Stipulation, filed with the Commission on October 28, 2008, represents a  
4 resolution of all but one of the issues among the Stipulating Parties relating to  
5 DE-Ohio's application to establish an Electric Security Plan (ESP) within its  
6 certified territory.

7 In summary, the Stipulating Parties agree that DE-Ohio shall implement  
8 an ESP as set forth in its application, except as modified by the Stipulation, for  
9 the three-year period January 1, 2009, through December 31, 2011. The  
10 Stipulating Parties agree that DE-Ohio shall increase its annual base generation  
11 price (PTC-BG) by approximately 2% per year in 2009 and 2010, and by 1.2% in  
12 2011. Such increases include the impact of terminating the existing residential  
13 and non-residential regulatory transition charges, as originally scheduled, on  
14 December 31, 2008, and December 31, 2010, respectively. The Stipulation  
15 approves the continuation of certain trackers that recover costs related to fuel,  
16 purchased power, emission allowances, environmental compliance, homeland  
17 security, changes in tax law, generation capacity including reserves, and  
18 transmission. Additionally, the Stipulation approves new trackers: (1) to recover  
19 costs related to deploying SmartGrid, an infrastructure modernization initiative;  
20 and (2) to compensate DE-Ohio for programs and activities to achieve energy  
21 efficiency savings<sup>1</sup>.

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<sup>1</sup> The term "energy efficiency," as used in this second supplemental testimony, includes both energy efficiency/conservation and demand response activities.

1 **Q. PLEASE DESCRIBE THE ISSUE THAT IS NOT RESOLVED BY THE**  
2 **STIPULATION.**

3 A. The Stipulation resolves all issues raised by the Stipulating Parties in the case  
4 except for the issue of residential governmental aggregation pricing. Specifically,  
5 the OCC has reserved the right to carve out for litigation the issue of residential  
6 governmental aggregation consumers' ability to avoid Rider SRA-SRT and to  
7 also receive a generation shopping credit.

8 **Q. DOES THE STIPULATION REPRESENT A PRODUCT OF SERIOUS**  
9 **BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?**

10 A. Yes. The number and standing of the parties and their attorneys to the Stipulation  
11 is readily apparent. The Stipulating Parties regularly participate in rate  
12 proceedings before the Commission, are knowledgeable in regulatory matters, and  
13 were represented by experienced, competent counsel. Furthermore, the  
14 Stipulating Parties represent a broad range of interests and cover all of DE-Ohio's  
15 customer classes, including some of the largest consumers of energy within those  
16 customer classes, as well as Competitive Retail Electric Service (CRES)  
17 providers.

18 The Staff thoroughly reviewed DE-Ohio's application and DE-Ohio  
19 responded to numerous data requests received from several parties. Many of the  
20 Parties who signed the Stipulation were also involved in the Company's 1999  
21 electric transition proceeding (Case No. 99-1658-EL-ETP, *et al.*) in which the  
22 current unbundled base rates were established, and in the Company's Rate  
23 Stabilization Plan (RSP) proceeding (Case No. 03-93-EL-ATA, *et al.*). The

1 Stipulating Parties are knowledgeable about DE-Ohio's electric operations and  
2 unbundled electric rate structure.

3 All Parties were invited to attend all of the settlement discussions  
4 regarding the ESP application. DE-Ohio held its first settlement conference at the  
5 office of the Commission on August 28, 2008. Several subsequent settlement  
6 discussions occurred at the office of the Commission and via teleconference, and  
7 I personally attended all of the settlement meetings. All of the issues in these  
8 proceedings were addressed during the meetings and, despite the sometimes  
9 divergent interests among the Parties, all had opportunity to express their opinions  
10 in the negotiating process. For all of these reasons, I believe that the Stipulation  
11 is a compromise resulting from those discussions and therefore represents a  
12 product of capable, knowledgeable parties.

13 As a result of the Stipulation, DE-Ohio will recover substantially less  
14 revenue than it requested in its application in these proceedings. In addition, the  
15 Stipulation contains many other provisions that benefit consumers but were not  
16 part of DE-Ohio's application. These additional provisions are the product of the  
17 serious bargaining engaged in by all of the other Parties and, therefore, the  
18 Stipulation represents a reasonable compromise among the Stipulating Parties.

19 **Q. DOES THE STIPULATION VIOLATE ANY IMPORTANT**  
20 **REGULATORY PRINCIPLE OR PRACTICE?**

21 **A.** No. Based on the advice of counsel, my understanding is that the Stipulation  
22 complies with all relevant and important principles and practices, including the  
23 provisions of Amended Substitute Senate Bill 221 (SB-221). Based upon my

1 examination of the Stipulation as Vice President Rates for DE-Ohio, I have also  
2 concluded that the Stipulation does not violate any regulatory ratemaking  
3 principle. The Stipulation is fully supported by all of the evidence presented to  
4 the Commission in this case.

5 **Q. HOW DOES THE STIPULATION COMPLY WITH IMPORTANT**  
6 **REGULATORY PRINCIPLES AND PRACTICES?**

7 A. The Stipulation will result in DE-Ohio ending its RSP standard service offer on  
8 December 31, 2008, and implementing its ESP standard service offer (ESP-SSO)  
9 on January 1, 2009. The Stipulation also provides that DE-Ohio will terminate its  
10 regulatory transition charges per the dates established by the Commission's orders  
11 in Case No. 03-93-EL-ATA, *et al.* The types of pricing mechanisms contained in  
12 the ESP-SSO are allowed under SB-221. The Stipulation demonstrates that DE-  
13 Ohio's ESP-SSO rates, as modified by the Stipulation, are more favorable in the  
14 aggregate as compared to the expected results that would otherwise apply as  
15 demonstrated in: (1) the testimony of Judah L. Rose, and (2) the fact that the  
16 Stipulating Parties, representing willing buyers from all customer classes, have  
17 agreed that they would take service under these rates, negotiated with DE-Ohio as  
18 the seller in an arms-length process.

19 **Q. DOES THE STIPULATION BENEFIT CONSUMERS AND THE PUBLIC**  
20 **INTEREST?**

21 A. Yes. The Stipulation provides numerous significant benefits across all customer  
22 groups and other interested stakeholders, including:

1           1.       The Stipulation provides a reasonable balancing of the Commission's  
2           three stated and proven objectives for deregulated power prices: rate stability for  
3           customers, financial stability for the Company, and continued development of the  
4           competitive market. In the history of deregulation in Ohio, these objectives have  
5           proven invaluable to all electric supply stakeholders. Several states enacted  
6           electric deregulation legislation that provided for a rate freeze followed by a  
7           "flash cut" to purely deregulated prices. These states subsequently encountered  
8           significant price volatility and supply uncertainty, with several states deciding to  
9           return to regulation. Ohio has avoided this result by balancing these three  
10          objectives. In fact, Ohio's average electric price has actually decreased 16%<sup>2</sup>  
11          relative to the national average since deregulating electric supply in 2000, while  
12          also affording its residents and businesses the opportunity to purchase electric  
13          supply in a free-market environment.

14          2.       Consumers will continue to receive service through 2011 at stable rates,  
15          which include modest, annual, predictable increases. As a result, consumers are  
16          afforded the option to take service at DE-Ohio's capped rates, which will provide  
17          protection from the price uncertainty that often exists in the market. This option  
18          would not exist if DE-Ohio were to be pressured into providing a market rate  
19          option.

20          3.       Consumers will experience a substantially lower price increase than DE-  
21          Ohio had supported in its ESP application. For residential consumers, the  
22          Stipulation calls for a cumulative price increase of 2%, 4% and 4% (of total bill)

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<sup>2</sup> Ohio average residential monthly bill for 1,000 kWh was 10% above the U.S. average in 2000, but 6% below the U.S. average in 2008. Source: EEI Typical Bills and Average Rates Report.



1 in 2009, 2010 and 2011, respectively, which is much lower than the 4%, 5%, and  
2 6% cumulative increase DE-Ohio originally sought. For non-residential  
3 consumers, the Stipulation calls for a cumulative price increase of 2%, 4% and  
4 6% (of total bill) in each year of the ESP three-year period, whereas the original  
5 application proposed increases of 9%, 11% and 6%, respectively.

6 4. The Stipulation provides for a simplified, transparent price structure.  
7 Clearly labeling each charge as either an avoidable component of the price-to-  
8 compare, or as an unavoidable charge, facilitates a consumers' ability to consider  
9 an alternative electric supply offering. Additionally, price transparency is  
10 enhanced by consolidating all fuel and emission allowance costs in a single price  
11 component.

12 5. The Stipulation continues the existing riders and due process for recovery  
13 of costs related to fuel, purchased power, emission allowances, environmental  
14 compliance, homeland security, changes in tax law, capacity purchases, and  
15 transmission.

16 6. Consumers will receive a defined allocation or assignment of the  
17 Company's generation-related commodity portfolio including fuel, purchased  
18 power, emission allowances and capacity.

19 7. The Stipulation provides for the timely implementation of the updated  
20 environmental rate (Rider PTC-AAC), to be effective December 1, 2008. Further,  
21 the Stipulation allows for future consideration of economic expenditures that will  
22 improve fuel flexibility, thereby reducing net fuel costs.

1           8.       The Stipulation allows DE-Ohio to further enhance reliability by allowing  
2           it to secure capacity for the duration of the ESP.  Additionally, Rider SRA-SRT is  
3           expanded to allow procuring capacity from DE-Ohio or affiliate units not  
4           previously used and useful in serving DE-Ohio load, or from non-residential  
5           customers with qualified backup generating facilities, to the extent such capacity  
6           is economical.

7           9.       The Stipulation approves recovery of the investment and costs, net of  
8           savings, to implement SmartGrid distribution infrastructure modernization  
9           capabilities which include automated meter reading and distribution automation.  
10          The Stipulation identifies the appropriate allocation of cost recovery by customer  
11          class, provides for a cumulative revenue price cap for residential customers, and  
12          identifies annual and mid-program deployment reporting requirements.  Further,  
13          the Parties agree to convene a collaborative process to design and implement  
14          revenue-neutral critical peak pricing and enhanced power manager programs.  
15          System reliability will be enhanced by the SmartGrid deployment and the  
16          Stipulation includes commitments from the Company to enhance its system  
17          reliability targets.

18          10.       DE-Ohio agrees to withdraw, as part of this case, its proposed change in  
19          distribution customer charges, as well as its proposed annual inflation-based price  
20          adjustment.

21          11.       The Stipulation provides for an innovative compensation structure based  
22          on avoided costs for developing and implementing programs to meet or exceed  
23          aggressive energy efficiency benchmarks.  As further supported by Dr. Richard

1 Stevie, the specific attributes of the program include: customer exemption  
2 requirements, program development and implementation that allows for  
3 collaborative participation by interested parties, allocation of the cost recovery for  
4 residential and non-residential customers, a decoupling workshop, and a flexible  
5 return on investment structure that provides incentive for achieving the statutory  
6 energy efficiency benchmarks. Additionally, a collaborative will be established to  
7 identify programs for manufacturers that benefit both participants and the State of  
8 Ohio.

9 12. The Stipulation provides for tracker recovery of delta revenues for  
10 reasonable arrangements approved in advance by the Commission.

11 13. The Stipulation provides for an economic development contract and  
12 streetlight purchase agreement with the City of Cincinnati, the purchase of certain  
13 distribution facilities from Kroger, and an emergency generation capacity and  
14 energy efficiency contract with GCHC.

15 14. The Stipulation provides for the deferral and amortization of up to \$50  
16 million to be incurred at the Beckjord generating station beginning in 2009 in  
17 order to allow the continued operation of the station.

18 15. The Stipulation permits non-residential consumers that purchase  
19 competitive retail electric service from a CRES to avoid certain charges and to  
20 receive a shopping credit if they agree to not return to DE-Ohio's ESP-SSO  
21 through December 31, 2011. The Stipulation identifies the market price such  
22 consumers will be subject to if they return prior to their commitment date.  
23 Additionally, the Stipulation identifies certain terms and conditions under which a

1 consumer that purchases service from an alternative supplier can return to DE-  
2 Ohio's ESP-SSO.

3 16. The Stipulation identifies a collaborative process to design an electronic  
4 bulletin board that will further enhance the continued development of the  
5 competitive retail electric market.

6 17. The Stipulation identifies governmental aggregation terms and conditions  
7 for non-residential and residential consumers. Residential consumers continue to  
8 benefit from the flexibility to switch supplier at any time without any minimum  
9 stay provisions. This flexibility, however, means that they cannot avoid the  
10 system reliability market capacity purchase charge (Rider SRA-SRT) and are not  
11 eligible to receive a shopping credit. This provision was specifically negotiated to  
12 avoid the price volatility and uncertainty of supply that they could be exposed to  
13 under various circumstances. The Stipulation allows OCC to litigate its belief  
14 that residential consumers should be entitled to the same price avoidability,  
15 shopping credit and risk exposure as non-residential consumers, as further  
16 discussed later in my testimony.

17 18. The Stipulation provides many benefits to DE-Ohio's low-income  
18 consumers including: increased funding for Home Energy and Weatherization  
19 contracts to \$1 million per year, contribution of \$50,000 per year to be used for  
20 distributing fans and/or air conditioners to qualifying consumers, and contribution  
21 of \$700,000 per year to benefit consumers at or below 175% of poverty level who  
22 do not participate in the Percentage Income Payment Plan program.

1           19.     The Stipulation provides that DE-Ohio's Corporate Separation Plan shall  
2 remain in effect as filed in these proceedings except that DE-Ohio may transfer to  
3 an affiliate, or sell to an unaffiliated party, its gas-fired peaking and intermediate  
4 generating assets that were formerly owned by Duke Energy North America.  
5 Additionally, DE-Ohio agrees to withdraw from this proceeding, and at the  
6 Federal Energy Regulatory Commission (FERC), its request to transfer its  
7 previously used and useful legacy assets. Further, the Stipulation provides that  
8 DE-Ohio may file an application before the Commission and at the FERC to  
9 transfer its used and useful legacy assets effective no sooner than January 1, 2012.  
10 Also, DE-Ohio agrees to an annual audit of its Corporate Separation Plan.

11           20.     The Stipulating Parties recommend that the ESP-SSO is more favorable in  
12 the aggregate as compared to the expected results that would otherwise apply.

13           21.     The Stipulation provides for the application of an excessive earnings test,  
14 including a prescriptive calculation of DE-Ohio's return on ending common  
15 equity. The threshold for such test shall be 15% on an after-tax basis, which is  
16 significantly below the threshold included in the testimony of Mr. Judah L. Rose.  
17 To the extent the calculated after-tax return on ending common equity is equal to  
18 or less than 15% during any year of the ESP period, then the earnings shall be  
19 deemed to not be significantly in excess of the return on common equity that was  
20 earned during the same period by publicly traded companies that face comparable  
21 business and financial risks. However, to the extent the calculated return exceeds  
22 15%, the Stipulation specifically provides for the process to rebate any such  
23 excess.

1           22.     The Stipulation provides for the continuation of the GoGreen program and  
2           for DE-Ohio to work with interested parties to revise the program, including the  
3           development of a Renewable Energy Credit tariff price that is commensurate with  
4           current market conditions.

5           23.     All Stipulating Parties agree that all provisions of the Stipulation shall  
6           conform to the Commission's rules as approved.

7     **Q.    DO YOU BELIEVE THE STIPULATION MEETS THE THREE-PART**  
8     **TEST REGARDING CONSIDERATION OF STIPULATIONS AND**  
9     **THEREFORE SHOULD BE ADOPTED BY THE COMMISSION?**

10    A.    Yes, I do.

11    **Q.    DOES THE STIPULATION RESOLVE ALL OF THE ISSUES IN THIS**  
12    **PROCEEDING?**

13    A.    No, it does not. As I previously mentioned, the Stipulation resolves most, but not  
14    all, of the issues in this proceeding. Specifically, OCC explicitly reserved the  
15    right to litigate that residential governmental aggregation consumers should  
16    receive the same opportunity as non-residential governmental aggregation  
17    consumers, *i.e.*, to avoid Rider SRA-SRT and to receive a shopping credit  
18    equivalent to 6% of Little 'g' if they agree to not return to DE-Ohio's ESP-SSO  
19    and, if they do return, the residential consumers should pay the same market price  
20    as non-residential consumers, equivalent to 115% of the ESP-SSO. OCC does not  
21    dispute the market price which returning residential governmental aggregation  
22    consumers must pay, but does dispute the price that residential governmental

1 aggregation consumers must pay while served by the alternative supplier (as  
2 specified in footnote 11 of the Stipulation).

3 **Q. DOES THE STIPULATION AND/OR THE OTHER STIPULATING**  
4 **PARTIES SUPPORT THE OCC'S POSITION?**

5 A. No, they do not. This issue was thoroughly discussed during negotiations, and  
6 although the Stipulating Parties ultimately agreed to specific terms and conditions  
7 for non-residential consumers, it was decided by all Stipulating Parties except  
8 OCC that similar terms would not be in the best interest of DE-Ohio's residential  
9 consumers. Specifically, it was discussed that the benefit to residential consumers  
10 of avoiding Rider SRA-SRT and receiving the shopping credit would provide  
11 minimal financial benefit that does not outweigh the risks of price volatility and  
12 system reliability that could occur should the residential consumer desire to return  
13 to DE-Ohio for supply service. This imbalance of benefits and risks associated  
14 with the OCC's proposal was considered unacceptable to all of the other  
15 Stipulating Parties.

16 **Q. PLEASE FURTHER DESCRIBE THE ADDITIONAL RISKS.**

17 A. When a consumer communicates their intent to stay off of the DE-Ohio system  
18 through a specific date, DE-Ohio is no longer obligated to maintain the capacity,  
19 or the commodities to supply energy, to the departing consumer. As part of the  
20 active portfolio management process, DE-Ohio liquidates the related positions to  
21 serve such a consumer. If the consumer subsequently returns before their  
22 commitment date, DE-Ohio is compelled to secure the capacity and commodities,  
23 often with very little advance notice. Such procurement of capacity and

1 commodities, if available at all, often costs significantly more than the average  
2 cost to serve the consumers that have remained. Consequently, the Stipulating  
3 Parties agreed that a returning non-residential consumer that previously  
4 committed to remain off of DE-Ohio supply could avoid DE-Ohio's charges for  
5 system reliability but would pay 115% of the ESP-SSO price upon returning to  
6 DE-Ohio's supply service. If the capacity or commodities are not available to  
7 serve the incremental returning load, the ability to provide reliable generation  
8 supply to all consumers will be jeopardized. All Parties to the Stipulation,  
9 excluding OCC, recognized that because the potential risks to system reliability so  
10 significantly outweighed the benefits of avoiding a relatively small charge, it was  
11 in the best interests of residential consumers that they not be allowed to fall into  
12 that unenviable position.

13 **Q. ARE THE TERMS OF THE STIPULATION REGARDING AVOIDABLE**  
14 **CHARGES BY RESIDENTIAL GOVERNMENTAL AGGREGATION**  
15 **CONSUMERS THE SAME AS EXIST UNDER DE-OHIO'S CURRENT**  
16 **RSP?**

17 **A.** Yes. The Stipulation terms regarding residential governmental aggregation  
18 consumer charges are the same as currently exist, and were approved by the  
19 Commission, under DE-Ohio's RSP. Residential governmental aggregation  
20 consumers are required to continue to pay for market capacity purchases (Rider  
21 SRA-SRT) and do not receive a shopping credit, but they are also allowed to  
22 return for service at DE-Ohio's ESP-SSO price without a minimum stay  
23 requirement.



1 **Q. DOES THE STIPULATION REFLECT ANY OF THE INPUT RECEIVED**  
2 **FROM THE PUBLIC DURING THIS PROCEEDING?**

3 A. Absolutely. In addition to receiving input at each of four public hearings or  
4 meetings held in DE-Ohio's service territory, there were numerous letters from  
5 consumers filed in this case. A consistent theme in many of the comments was  
6 that the filing was coming at a time of financial hardship. In recognition of the  
7 troubling economic times for Ohio families and businesses, DE-Ohio willingly  
8 accepted a much lower increase than originally proposed, agreed to spread the  
9 increase over the three-year period, and eliminated the increase to residential  
10 consumers that otherwise would have taken place in the third year of the ESP  
11 period. Eliminating the 2011 increase to residential consumers represents a DE-  
12 Ohio concession of approximately \$15 million.

13 **III. CONCLUSION**

14 **Q. DOES THIS CONCLUDE YOUR SETTLEMENT SUPPORTING**  
15 **TESTIMONY?**

16 A. Yes.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 28th day of October, 2008 by regular U.S. Mail, overnight delivery or electronic delivery.



PAUL A. COLBERT

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