

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2008 NOV 10 PM 4:10

PUCO

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. 08-1025-EL-UNC

COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On August 28, 2008, Duke Energy, Ohio ("Duke" or "Company") filed an Application with the Public Utilities Commission of Ohio ("Commission" or "PUCO") for the approval of an Annually Adjusted Component ("AAC") charge for 2009. The approval of the Application could permit the Company, under certain circumstances, to increase rates paid by the Companies' approximately 607,000 residential consumers.

The Office of the Ohio Consumers' Counsel ("OCC") filed a motion to intervene and a motion to dismiss the application on September 8, 2008, because the Company did not have approval from the Commission to continue to adjust and charge the AAC after 2008.¹ The Company filed a Memorandum Contra on September 19, 2008, that the Commission does have the authority to approve an adjustment to the AAC at any time. The Commission determined that it does have authority to adjust the AAC during 2008

¹ OCC Motion to Intervene and Motion to Dismiss at 4-7.

This is to certify that the images appearing are an accurate and complete reproduction of a case file as document delivered in the regular course of business.
Technician [Signature] Date Processed 11-12-08

and did not dismiss the case but did request comments on the Company's application.²
Accordingly, OCC submits these comments.

II. THE STIPULATION IN CASE NO. 08-920-EL-SSO

Since OCC filed its Reply on September 24, 2008, the OCC entered into an agreement in Case Nos. 08-920-EL-SSO that temporarily resolved the issues pending in this case:

Subject to Commission approval in these proceedings and Case No. 08-1025-EL-UNC, Rider PTC-AAC rate, currently known as Rider AAC, will be updated effective December 1, 2008.

OCC has been told by the PUCO Staff³ that it is currently conducting a financial audit on the application and the Commission's approval will be subject to the result of the financial audit. Additionally, pursuant to the Stipulation and Recommendation in Case Nos. 08-920-EL-SSO:

Annually thereafter during the ESP time period as proposed in DE-Ohio's application, DE-Ohio may request subject to due process, including an opportunity for a hearing and Commission approval, the recovery of net incremental costs or credits associated with environmental compliance, homeland security, and changes in tax law. . . the supporting Parties reserve the right to oppose any such application.⁴

Because the AAC involves a true-up mechanism for environmental reagents, future AAC filings should reflect adjustments to the reagent amounts recovered in Case No. 08-1025-EL-UNC. Additionally, OCC understands that any issues that could have been raised in

² Entry (October 29, 2008).

³ OCC conversation with Tamara Turkenton.

⁴ Stipulation and Recommendation (October 27, 2008) at 8 ¶9.

Case No. 08-1025-EL-UNC, may be raised in future AAC cases and that there will continue to be audits conducted annually with the opportunity for a hearing.

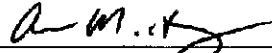
III. CONCLUSION

Although OCC moved the Commission to dismiss this application as inappropriately filed, OCC has entered into a stipulation with Duke and other parties in Case No. 08-920-EL-SSO. That stipulation allows Duke to implement changes to the AAC by December 1, 2008, if approved by the Commission. Under that stipulation Duke may continue to file for adjustments to the AAC but the AAC will be subject to annual audits and parties will have an opportunity for a hearing. Moreover, any issue that could have been pursued by parties in Case No. 08-920-EL-SSO may be pursued in future cases.

Therefore, if the Commission approves the Stipulation in Case No. 08-920-EL-SSO, OCC believes that its concerns with respect to this issue will be satisfactorily resolved since OCC will have the opportunity to ultimately challenge any of these costs in an annual audit and hearing. On the other hand, if the Stipulation is either not approved or materially modified such that this protection is no longer in place, OCC would respectfully request that the issue of the proposed adjustment in the instant proceeding be reconsidered and that at that time, parties have the right to present additional argument as to the appropriateness of these adjustments.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL



Ann M. Hotz, Counsel of Record
Jeffrey L. Small

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
hotz@occ.state.oh.us
small@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Comments* was served on the persons stated below, via First Class U.S. Mail, postage prepaid, this 10th day of November, 2008.



Ann M. Hotz
Assistant Consumers' Counsel

SERVICE LIST

Paul A. Colbert
Associate General Counsel
Duke Energy Ohio
2500 Atrium II
P.O. Box 961
Cincinnati, OH 45201

Duane Luckey
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, OH 43215

Duke Energy Ohio, Inc.

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Ohio Energy Group