

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. 08-1025-EL-UNC
 Annually Adjusted Component of its Market)
 Based Standard Service Offer.)

FINDING AND ORDER

The Commission finds:

- (1) On October 24, 2007, the Commission issued an order on remand, approving a standard service offer rate stabilization plan (RSP) for Duke Energy Ohio, Inc., (Duke) in Case No. 03-93-EL-ATA (03-93). As part of the RSP, the Commission found that it was reasonable to allow Duke to collect for expenditures in the areas of environmental compliance, homeland security, and taxes, to the extent that calculations of incremental expenditures are based on changes in costs after December 31, 2000, through a rider known as the annually adjustable component (AAC). This AAC rider is comparable to the identically named rider that had previously been approved by the Commission in the same proceeding, prior to remand by the Supreme Court of Ohio.
- (2) Prior to the issuance of the order on remand in 03-93, Duke twice applied for adjustments to the AAC rate, which adjustments were considered by the Commission in Case Nos. 06-1085-EL-UNC and 07-973-EL-UNC.
- (3) On August 28, 2008, Duke filed an application to adjust the AAC rate, in order to incorporate and account for changes in underlying portions of the AAC. Duke states that the current AAC rate is based on recovery of investments and operating expenses as of the twelve months ended May 31, 2007, and that it has experienced changes since that date.
- (4) On September 5, 2008, the Ohio Energy Group (OEG) filed a motion to intervene. On September 8, 2008, the Ohio Consumers' Counsel (OCC) filed a motion to intervene and a motion to dismiss the application. No opposition to OEG's or OCC's motion to intervene was filed and those motions were granted, on October 29, 2008. In that same entry, OCC's

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motion to dismiss was denied on the grounds that the application made by Duke is an application for a current adjustment of the AAC rate and there is no prohibition against modification of the rate of recovery of those expenditures or limitation of such modifications to any particular times. Comments by interested parties were allowed and were required to be filed no later than November 10, 2008.

- (5) On November 7, 2008, Duke filed comments to its own application, as well as supplemental direct testimony of William Don Wathen, Jr. In its comments, Duke asserts that OCC, OEG, and Duke are in agreement as to Duke's application in this docket, as set forth in a stipulation submitted in *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan, Case No. 08-920-EL-SSO, et al. (08-920)*. Duke points out that any issues arising from the audit of the AAC may be raised at the next AAC hearing by any party. Duke also states that counsel for OEG has agreed to Duke's comments and granted permission that its agreement be noted.
- (6) The supplemental testimony filed by Duke's witness, Mr. Wathen, describes two updates that Duke is making to its application. First, Mr. Wathen explains that, at the time of Duke's initial filing, only an estimate of the Section 199 tax deduction was available. He notes that Duke had indicated that it would update that information as actual data became available. His prefiled testimony indicates that this tax change results in an increase in the AAC revenue requirement of \$5,600,000. Mr. Wathen's prefiled supplemental testimony also describes a revision of the projected 2009 environmental reagent expenses, stating that this change would reduce the AAC revenue requirement by \$11,000,000. On November 13, 2008, Duke filed an amendment to its application, to incorporate these two modifications.
- (7) On November 10, 2008, OCC filed comments on the application. OCC states that it has entered into a stipulation in 08-920 that has temporarily resolved the issues pending in this case. It points out that, under that stipulation, the AAC will involve a true-up mechanism for environmental reagents and that, therefore, future AAC filings should reflect adjustments to

the reagent amounts recovered in this case. Additionally, it notes, any issues that could have been raised in this case may be raised in future AAC cases and that there will continue to be audits that are conducted annually, with the opportunity for a hearing. Therefore, OCC believes that, if the Commission approves the stipulation in 08-920, its concerns with respect to the AAC will be satisfactorily resolved. OCC also requests that, if the Commission does not approve the stipulation without material modification, the Commission reconsider this case so that parties can present additional arguments as to the appropriateness of these adjustments.

- (8) Following Duke's filing of its amendment to the application, the attorney examiner allowed parties to file additional comments on the modifications to the application. No such comments were filed.
- (9) The Commission understands that no intervenor in this proceeding has commented on the substance of the filing, due to the existence of the stipulation that is under consideration in 08-920. The Commission finds the requested modification of the AAC rate to be reasonable and appropriate, in light of the provisions of that stipulation. Therefore, the Commission will approve the application in this proceeding, subject to reconsideration if the stipulation in 08-920 is not approved by us without material modification. That stipulation will be deemed to be materially modified only if the modifications result in the provisions of the stipulation that relate to the AAC being ineffective.

It is, therefore,

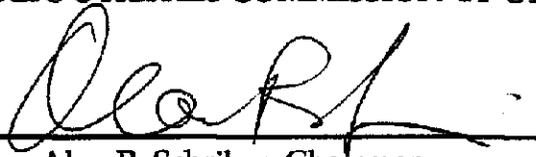
ORDERED, That Duke's application to set the level of rider AAC, as of December 1, 2008, be approved, to the extent set forth herein, effective with the filing of revised tariffs, on a services rendered basis. It is, further,

ORDERED, That Duke file, in final form, four complete copies of tariffs consistent with this opinion and order. Duke shall file one copy in this case docket and one copy in its TRF docket (or may make such filing electronically, as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to Commission staff. It is, further,

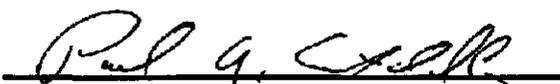
ORDERED, That nothing in this decision shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

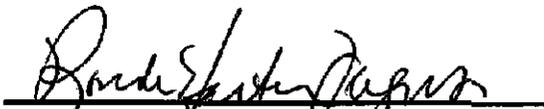
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



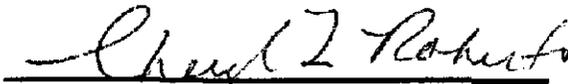
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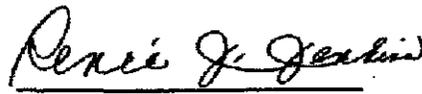


Cheryl L. Roberto

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Renee J. Jenkins
Secretary