

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Duke Energy:
Ohio, Inc. for an Increase: Case No. 08-709-EL-AIR
in Electric Distribution :
Rates. :

- - -

In the Matter of the :
Application of Duke Energy: Case No. 08-710-EL-ATA
Ohio, Inc. for Tariff :
Approval. :

- - -

In the Matter of the :
Application of Duke Energy: Case No. 08-711-EL-AAM
Ohio, Inc. for Approval to:
Change Accounting Methods.:

- - -

In the Matter of the :
Application of Duke Energy:
Ohio, Inc. for Approval of: Case No. 06-718-EL-ATA
Its Rider BDP, Backup :
Delivery Point Rider. :

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PROCEEDINGS

before Ms. Jeanne Kingery and Mr Scott Farkas,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 10:00 a.m. on Tuesday,
March 31, 2009.

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APPEARANCES (Continued)

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On behalf of the Staff of the Public
Utilities Commission.

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1		INDEX		
2		- - -		
3	COMPANY EXHIBITS		IDFD	ADMTD
4	1 - Prefiled Direct Testimony of Keith G. Butler		11	18
5				
6	2 - Prefiled Direct Testimony of Carl J. Council, Jr.		11	18
7	3 - Prefiled Direct Testimony of Stephen G. De May		11	18
8				
9	4 - Prefiled Direct Testimony of Peggy A. Laub		11	18
10	5 - Prefiled Direct Testimony of Stephen R. Lee		11	18
11				
12	6 - Prefiled Direct Testimony of James E. Mehring		11	18
13	7 - Prefiled Direct Testimony of Sandra P. Meyer		11	18
14				
15	8 - Prefiled Direct Testimony of Roger A. Morin		11	18
16	9 - Prefiled Direct Testimony of Paul G. Smith		11	18
17				
18	10 - Prefiled Direct Testimony of John J. Spanos		11	18
19	11 - Prefiled Direct Testimony of Donald L. Storck		11	18
20				
21	12 - Prefiled Direct Testimony of William Don Wathen, Jr		11	18
22	13 - Prefiled Direct Testimony of James E. Ziolkowski		11	18
23				
24	14 - Supplemental Direct Testimony of Roger A. Morin		11	18
25	15 - Supplemental Direct Testimony of Paul G. Smith		12	18

1	COMPANY EXHIBITS	IDFD	ADMTD
2	16 - Supplemental Direct Testimony of William Don Wathen, Jr.	12	18
3			
4	17 - Supplemental Direct Testimony of James E. Ziolkowski	12	18
5	18 - Testimony in Support of Settlement of Paul G. Smith	12	18
6			
7	19 - Supplemental Direct Testimony of Donald L. Storck	12	18
8	STAFF EXHIBITS	IDFD	ADMTD
9	1 - Staff Report	13	20
10	JOINT EXHIBITS	IDFD	ADMTD
11	1 - Stipulation	18	20
12	PREFILED EXHIBITS	ADMITTED	
13	Prefiled Testimony docketed by 3/31/09		20

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1 Tuesday Morning Session,
2 March 31, 2009.

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4 EXAMINER KINGERY: Good morning. The
5 Public Utilities Commission of Ohio has called at
6 this time and place Case No. 08-709-EL-AIR, being In
7 the Matter of the Application of Duke Energy Ohio,
8 Inc. for an Increase in Electric Distribution Rates
9 and associated cases.

10 My name is Jeanne Kingery. This is Scott
11 Farkas. We are attorney examiners appointed by the
12 Commission to hear these cases.

13 At this point I would like to take
14 appearances of the parties beginning with Duke.

15 MS. WATTS: On behalf of Duke Energy
16 Ohio, Elizabeth Watts, Mr. Rocco D'Ascenzo, and
17 Michael Dortch. Thank you.

18 EXAMINER KINGERY: Thank you.

19 PARTICIPANT: Douglas Hart for the
20 Greater Cincinnati Health Council.

21 MS. CHRISTENSEN: Mary Christensen, on
22 behalf of People Working Cooperatively.

23 MR. BOEHM: David Boehm from the law firm
24 of Boehm, Kurtz & Lowry for the Ohio Energy Group.

25 MR. O'BRIEN: On behalf of the City of

1 Cincinnati, Bricker & Eckler, LLP, by Thomas J.
2 O'Brien, 100 South Third Street, Columbus, Ohio.

3 MR. YURICK: On behalf of Kroger Company
4 John Bentine, Mark Yurick and Matthew White, from the
5 law firm of Chester, Willcox & Saxbe.

6 MS. KAHN: On behalf of the Ohio
7 Telecommunications Association, Benita Kahn, Vorys,
8 Sater, Seymour and Pease.

9 MS. MOONEY: On behalf of Ohio Partners
10 for Affordable Energy, Dave Rinebolt and Colleen
11 Mooney.

12 PARTICIPANT: On behalf of the
13 residential customers of Duke Energy Ohio, by Ann M.
14 Hotz, Larry Sauer, and Jeff Small. Thank you.

15 MR. REILLY: On behalf of the staff of
16 the Public Utilities Commission, Richard Cordray,
17 Attorney General, Duane Luckey, section chief, Steve
18 Reilly and Bill Wright, assistant attorneys general,
19 180 East Broad Street, Columbus, Ohio.

20 EXAMINER KINGERY: Thank you.

21 Going down our list of parties, is IEU
22 present today?

23 (No response.)

24 EXAMINER KINGERY: And TW Telecom?

25 (No response.)

1 EXAMINER KINGERY: And Mr. Albert E.
2 Lane?

3 (No response.)

4 EXAMINER KINGERY: Let the record reflect
5 those three parties are not present this morning.

6 MS. WATTS: Your Honor, I believe IEU has
7 withdrawn as a party to this matter.

8 EXAMINER KINGERY: Thank you. I believe
9 you're right.

10 Duke, are we ready to proceed, or is
11 there anything you need to do before witnesses?

12 MS. WATTS: Your Honor, we believe we
13 have a stipulation in principle with all of the
14 parties in the case. We need an additional 45
15 minutes or so to wrap up some very minor details in
16 the document we are working on, and we would
17 appreciate reconvening in order to present a
18 stipulation to you.

19 EXAMINER KINGERY: Okay. When you say
20 apparently going to be among all the parties, you
21 mean every one of the parties?

22 MS. WATTS: All of parties present here
23 today, not including Mr. Lane and Time Warner
24 Telecom.

25 EXAMINER KINGERY: Any objections?

1 (No response.)

2 EXAMINER KINGERY: You said a half an
3 hour?

4 MS. WATTS: 45 minutes.

5 EXAMINER KINGERY: Let's call it
6 11:00 o'clock we will be back.

7 MS. WATTS: Thank you very much.

8 (Recess taken.)

9 EXAMINER KINGERY: How are back on the
10 record.

11 MS. WATTS: We have a signed stipulation,
12 which is at this moment being copied two floors up,
13 so we should have it. If we can go ahead with the
14 procedural things, we could complete that while
15 waiting for the copies.

16 EXAMINER KINGERY: That would be
17 wonderful.

18 MS. WATTS: Your Honor, the first
19 procedural thing is we would like to offer into
20 evidence our testimony in the case.

21 EXAMINER KINGERY: Okay.

22 MS. WATTS: We have Exhibits 1 through
23 17, and Exhibit 19, 20, and 21, which I will
24 identify.

25 EXAMINER KINGERY: Okay. You may

1 proceed.

2 MS. WATTS: Exhibit 1 is the direct
3 testimony of Keith G. Butler.

4 Exhibit 2 is the testimony of Carl J.
5 Council, Jr.

6 EXAMINER KINGERY: Okay.

7 MS. WATTS: Exhibit 3 is the direct
8 testimony of Stephen G. De May.

9 EXAMINER KINGERY: Okay.

10 MS. WATTS: Exhibit 4 is the direct
11 testimony of Peggy Laub.

12 EXAMINER KINGERY: Okay.

13 MS. WATTS: Exhibit 5 is the direct
14 testimony of Stephen R. Lee.

15 Exhibit 6 is the direct testimony of
16 James E. Mehring.

17 Exhibit 7 the testimony of Sandra P.
18 Meyer.

19 8 is Roger A. Morin.

20 9 is Paul G. Smith, direct testimony.

21 10 is John J. Spanos.

22 11 is Donald L. Storck.

23 12 is William Don Wathen, Jr.

24 13 is James E. Ziolkowski.

25 14 is the supplemental direct testimony

1 of Roger Morin.

2 15 is the supplemental direct testimony
3 of Paul G. Smith.

4 16 is the supplemental direct testimony
5 of William Don Wathen.

6 17 is the supplemental direct testimony
7 of James Ziolkowski.

8 19 is the supplemental direct testimony
9 of Donald L. Storck.

10 Duke Energy Exhibit 20 would be proof of
11 publications in Hamilton County, which was docketed
12 on March 11.

13 Duke Energy 21 would be proof of
14 publications in Butler County which was docketed on
15 March 13.

16 EXAMINER KINGERY: Those exhibits will be
17 so marked.

18 MS. WATTS: Your Honor, in addition to
19 those, we have testimony in support of the settlement
20 offered by Paul G. Smith, and that would be Duke
21 Energy Ohio 18.

22 EXAMINER KINGERY: That has not been
23 docketed at this point, correct?

24 MS. WATTS: That's correct, it has not
25 been docketed.

1 Your Honor, the stipulation in this case
2 would be Joint Exhibit 1.

3 EXAMINER KINGERY: It will be so marked,
4 as 18.

5 At this point are there other parties who
6 will to want make any testimony or have any testimony
7 marked as exhibits?

8 MR. REILLY: Yes. Staff would like to --
9 staff has the direct testimony of David Hodgen to
10 identify in support of the stipulation, and staff
11 would like the Staff Report marked as Staff Exhibit
12 No. 1 and would ask the Bench to take administrative
13 notice of the Staff Report filed in the docket on
14 January 27 of this year.

15 I have a courtesy copy for the court
16 reporter to mark as Staff Exhibit 1. I would move
17 the introduction of Staff Exhibit 1. I think the
18 fact of the administrative notice, if your Honor is
19 willing to take it, it speaks to the identification
20 and authentication of the document. The relevance of
21 the document is spoken to by the Ohio Revised Code.
22 It is a document ordered under the Revised Code and
23 actually forms the basis for the issues in this case,
24 along with the objections. On that basis I would
25 move the introduction of the Staff Report Staff

1 Exhibit No. 1.

2 EXAMINER KINGERY: Okay. Anybody have
3 any objections to administrative notice of the Staff
4 Report?

5 (No response.)

6 EXAMINER KINGERY: We will take
7 administrative notice of that.

8 MR. REILLY: If your Honor is taking
9 notice of proposed exhibits, staff has a response to
10 Duke's proposed exhibits.

11 EXAMINER KINGERY: First, we will mark
12 the Staff Report as Staff Exhibit 1.

13 MR. REILLY: And Mr. Hodgden's testimony
14 as Staff Exhibit 2.

15 EXAMINER KINGERY: It will be so marked.

16 MR. REILLY: I would like to pass out
17 Staff Exhibit 2 at this point. It is in support of
18 the stipulation that has not been put into evidence
19 at this point.

20 EXAMINER KINGERY: You are welcome to do
21 so.

22 MR. REILLY: Thank you.

23 MS. WATTS: Your Honor, we would like to
24 pass out Duke Energy Exhibit 18 as well.

25 EXAMINER KINGERY: Feel free. Are there

1 any other items of testimony that need to be marked
2 at this point?

3 MS. HOTZ: OCC would like to reserve the
4 right to file its testimony if the stipulation should
5 fall apart.

6 EXAMINER KINGERY: If the stipulation is
7 not approved by the Commission?

8 MS. HOTZ: Exactly.

9 EXAMINER KINGERY: If the stipulation is
10 not approved by the Commission, I think all parties
11 would have the right to file testimony, and we would
12 proceed with a hearing likely on that testimony.

13 MS. HOTZ: Thank you.

14 EXAMINER KINGERY: Mr. Reilly, you said
15 you had discussion on the Duke exhibits. Is that the
16 question of marking them or their admission?

17 MR. REILLY: No, your Honor, their
18 admission.

19 EXAMINER KINGERY: We have not had a
20 motion to admit them at this point. They're just
21 marked.

22 Off the record at this point.

23 (Discussion off the record.)

24 EXAMINER KINGERY: While we were off the
25 record, we were beginning a discussion of the

1 remainder of the procedure for this hearing. We have
2 at this point apparently a stipulation. It is not
3 docketed. The examiners don't have a copy of it, and
4 there is testimony in support of the stipulation,
5 also not docketed, and we also don't have a copy of
6 that.

7 There are, I believe, two parties who are
8 not present today, and, therefore, have certainly not
9 seen the final form of the stipulation and have
10 certainly not seen the testimony that's filed in
11 support of that stipulation, so our expectation is
12 that the parties would file the testimony so that the
13 other parties and the examiners would have a chance
14 to see the testimony, review the stipulation, and
15 then we would come back for a brief hearing where we
16 would have those two witnesses.

17 Does anybody have any problems with that
18 approach?

19 MS. WATTS: Well, your Honor, the two
20 parties that are not present have, in fact, seen
21 everything, except the testimony that was just
22 submitted on behalf of staff and on behalf of the
23 company because Time Warner Telecom and Mr. Lane have
24 received copies of all the stipulations that have
25 been discussed in the process. So they are aware

1 what is proceeding, how it was intended today, and I
2 think everybody expected we would just offer our
3 witnesses to support the stipulation and finish
4 everything up today. I don't know that anybody here
5 has any issue with that. If it's not workable for
6 you, that's a different issue.

7 EXAMINER KINGERY: We generally do review
8 stipulations and review testimony in advance so we
9 have a chance to see whether we have questions. It
10 also seems since it's noon now and you all have been
11 working on the stipulation for the last two hours, it
12 would seem unlikely that the two other parties who
13 aren't here have seen the final draft. Obviously, we
14 don't know the extent to which changes were made
15 today.

16 MS. WATTS: That's correct. There was
17 nothing substantive that either party -- I can't
18 speak for Mr. Lane, but I know that Time Warner
19 Telecom sort of had finished with the process as of
20 Monday.

21 EXAMINER FARKAS: But they're not a
22 signatory.

23 MS. WATTS: No. They intend not to be
24 signatory, nor do they expect to oppose the
25 stipulation.

1 EXAMINER FARKAS: But they haven't seen
2 the final version that everybody signed.

3 EXAMINER KINGERY: Off the record.

4 (Discussion off record.)

5 EXAMINER KINGERY: After a lengthy
6 discussion off the record, the parties present in the
7 room and the examiners have agreed on the following
8 process for the remainder of this proceeding.

9 First, all exhibits that have been filed
10 by the end of the day today -- correction, all
11 prefiled testimony filed by the end of the day today
12 will be marked and referred to as "testimony of," and
13 then the last name of the person testifying or
14 supplemental testimony of and then the last name of
15 the person testifying.

16 In one case I believe there is a person
17 who has filed additional testimony and supplemental
18 testimony and testimony in support of the
19 stipulation. I would propose that the two witnesses
20 whose testimony is in support of the testimony be
21 referred to as, let's say, testimony in support of
22 the stipulation of Smith or of Hodgen. Each one of
23 those exhibits will be admitted into the record.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER KINGERY: The testimony filed

1 today in support of the stipulation with regard to
2 that testimony, I understand that all of the parties
3 present in the room and who are parties to the
4 stipulation are waiving cross-examination.

5 There are certain parties who are not
6 present. If any party who is not present today
7 wishes to cross-examine on the testimony in support
8 of the stipulation, those parties will have till the
9 end of business Monday, April 6, to inform the
10 Commission that such party wishes to cross-examine
11 either or both of those witnesses. They would do so
12 by filing a notice in the docket by the close of
13 business on the 6th.

14 With regard to the testimony filed prior
15 to today, cross-examination I understand is being
16 waived by all of the parties to the stipulation
17 provided that if the Commission determines that it
18 should either modify the stipulation or not approve
19 the stipulation in ways that are not acceptable to
20 the parties such that we have to have a hearing then
21 on the application, then cross-examination would not
22 be waived and the parties would have the right to
23 cross-examine on that testimony.

24 In the event that a hearing on the
25 stipulation testimony is necessary, that hearing

1 would be held on Tuesday, April 7 at 10:00 o'clock.

2 In addition we have discussed briefing
3 and all of the parties present have waived the filing
4 of post hearing briefs.

5 Joint Exhibit 1, the Stipulation, will be
6 referred to as Joint Exhibit 1 and it is also
7 admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER KINGERY: Staff Exhibit 1 will
10 remain the Staff Report, and I understand,
11 Mr. Reilly, you wanted to make a motion to admit that
12 at this point.

13 MR. REILLY: Yes, your Honor.

14 EXAMINER KINGERY: Any objections?

15 (No response.)

16 EXAMINER KINGERY: It will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER KINGERY: Have I missed anything
19 or is anything unclear?

20 With that, we are adjourned.

21 (The hearing adjourned at 12:31 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, March 31, 2009, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires April 5, 2009.
(RFA-8257)

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This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 08-0709-EL-AIR

Summary: Transcript Duke Energy 3/31/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.