

FILE

PAGE 1 OF 23 PAGES **ALBERT E. LANE**

RES: 7200 FAIR OAKS DRIVE , CINCINNATI, OHIO 45237-2922
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July 21, 2009

THE PUBLIC UTILITIES COMMISSION OF OHIO
ATTENTION DOCKETING DIVISION, MS. RENEE JENKINS
80 EAST BROAD STREET
13TH FLOOR
COLUMBUS, OHIO 43215-3793

2009 JUL 21 AM 10:11

PROCEEDINGS DOCKETING DIV

PUCO

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates.) Case No.08-709-EL-AIR
- In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.) Case No. 08-710-EL-ATA
- In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.) Case No. 08-711-EL-AAM
- In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point,) Case No. 06-718-EL-ATA
- In the Matter of the Application of the Cinergy Corp/Cincinnati Gas & Electric Co./Deer Holding Corp-Application for merger) Case No. 05-0732-EL-MER

**APPLICATION FOR REHEARING of PUCO Case # 08-0709-EL-AIR
BY INTERVENER, ALBERT E. LANE
A DUKE ENERGY OF OHIO, INC, RESIDENTIAL
CUSTOMER CONSUMER -ACCOUNT # 7170-0391-20-0.**

LOCATED AT 7200 FAIR OAKS DRIVE, CINCINNATI, OH. 45237-2922
Format for this document was 1/20/2006 rehearing request by the OCC docket # 05-0732-EL-MER
Service list attached- page 13 & 14

PURSUANT TO O.R.C. 4903.10 AND OHIO ADM. CODE 4901-1-35 ALBERT E. LANE, INTERVENOR, APPLICANT (I am not an attorney) ON BEHALF OF MYSELF, A CUSTOMER OF DUKE ENERGY OF OHIO, INC. (DUKE OH), APPLIES FOR A REHEARING OF THE JULY 8, 2009 PUCO Commission Opinion and order which stated that the stipulation be adopted in its entirety; ie.(the application of Duke for authority to increase its rates and charges for electric distribution service, and related application considered herein, be granted to the extent provided in this opinion and order.)

Under Chapter 4903.10 O.R.C. I, ALBERT E. LANE CLAIM THAT MY INTERESTS AND THE INTERESTS OF 650,000 OTHER DUKE OH RESIDENTIAL CUSTOMERS, WERE NOT ADEQUATELY CONSIDERED IN THE Case # 08-0709-EL-AIR opinion & order signed 7/8/2009. I further ask that Ohio Attorney General Cordray appoint a replacement for Asst. Attorney General Steven Reilly on the PUCO staff to consider MY application for an appeal.

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The Public Utilities Commission Conclusions of Law & ORDER for Duke Energy Ohio, Inc and Cincinnati Gas & Electric Co are as follows: as filed within (Case No.08-709-EL-AIR, Case No. 08-710-EL-ATA, Case No. 08-711-EL-AAM & Case No. 06-718-EL-ATA PUCO Case Dockets) and signed by four of the five PUCO Commissioners on a consolidated opinion and order on 7/8/2009) to be known in this rehearing application as Order-7/8/2009, as follows:

CONCLUSIONS OF LAW

(1) Duke's application to increase rates was filed pursuant to, and the PUCO Commission has jurisdiction of the application under, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code, and the application complies with the requirements of these statutes.

(2) A staff investigation was conducted, reports of that investigation were duly filed and mailed, and public hearings were held, the written notice of which complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.

It is, therefore, ORDERED, That the stipulation be adopted in its entirety. It is, further,

ORDERED, That the application of Duke for authority to increase its rates and charges for electric distribution service, and related applications considered herein, be granted to the extent provided in this opinion and order. It is, further,

ORDERED, That Duke be authorized to file in final form four complete copies of its tariffs consistent with this opinion and order, and to cancel and withdraw its superseded tariffs upon the effective date of the revised tariffs. One copy shall be filed with this case docket, one copy shall be filed with Dukes TRF docket, and the remaining two copies shall be designated for distribution to the rates and tariffs division of the Commission's utilities department. Duke shall also update its tariffs previously filed electronically with the Commission docketing division. It is, further

ORDERED, That Duke shall notify its customers of the changes to the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That the effective date of the revised tariffs shall be a date not earlier than the date of this opinion and order, the date upon which four complete copies of final tariffs are filed with the Commission, and the date on which the proposed customer notice is filed with the Commission. The revised tariffs shall be effective for services rendered on or after such effective date. It is, further,

ORDERED, That Duke's motion for admission of proofs of publication be granted and that Duke's motion to strike be denied. It is, further,

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

Albert E. Lane re-cap of PUCO Commissioners comments about Albert E. Lane intervener opposition to the Duke Oh. Electric distribution rate hike request. Case # 08-0709-EL-AIR, within order 7/8/2009.

The four signers of the PUCO Commission stated in their paragraph within the Order of 7/8/2009 copied verbatim as follows: "In various filings made by Mr. Lane prior to the second hearing, he referenced his opposition to the merger that gave rise to Duke, in In the Matter of the *Joint Application of Cinergy Corp., on Behalf of the Cincinnati Gas & Electric Company, and Duke Energy Holding Corp. for Consent and Approval of a Change of Control of The Cincinnati Gas & Electric Company*, Case No. 05-732-EL-MER (*Duke N.C.-Cinergy merger case*). We would note that the merger case is not an open proceeding and that the time for opposing either the merger or the Commission's determination in that proceeding is long since past. Mr. Lane has also indicated his belief that Commissioners who voted in favor of approving the merger, in the merger case, have a current conflict of interest and should not vote in these proceedings. (E-mails docketed on March 26,2009; May 1,2009.) As to Mr. Lane's assertions regarding conflicts of interest, he provided no evidence or testimony to support his contention that any member of the Commission who voted in favor of the merger application should recuse himself from these proceedings"

(1) The four PUCO Commissioners present who voted and signed in favor of the consolidated stipulation opinion and order on 7/8/2009 & the PUCO legislative staff **erred** when they wrote within the 7/8/2009 opinion and order that the content of my filings on Case # 05-0732-El-MER merger case are "long since past". All of the comments filed by me within that merger case (Duke Energy of North Carolina & Cinergy of Ohio) are within my mind-set in case # 08-709-EL-AIR Duke Oh request for an electric distribution rate hike request and simultaneously with Duke Energy of North Carolina, Duke Ohio's parent Corporation, the same as when I originally filed same on the PUCO Docket when Cinergy existed and the Duke Energy of North Carolina merger was being commented upon. The PUCO Commission and legislative staff ignored my comments then when they did not have discovery under ORC-4903.082. Reference, DOCKET CASE # 05-0732-EL-MER. 7/26/05; 8/19/05; 11/21/05; 1/10/06 request for a rehearing ; 2/27/07; & 3/26/07.

My same comments were repeated to the PUCO with additions in Case # 08-709-EL-AIR within the following filings dates on said Docket. 12/31/08; 1/13/09; 1/15/09;2/2/09; 3/04/09; 3/26/09; 5/01/09; 5/04/09; 5/12/09;5/19/09. The four PUCO Commissioners present on 7/8/2009 and the PUCO legislative staff **erred** when they ignored my request for a full and complete outside neutral audit of Duke Oh at Duke Oh expense as part of my request of discovery within the above filings.

There is a definite connection with the parent Duke N.C. past recent pattern of recorded accounting and external transactions with its consent decrees from the FERC & SEC that were not considered by the PUCO Commissioners and PUCO staff and the OCC, as a reason for an outside audit of the Duke Oh electric distribution rate hike request. My request for the audit was recited in my filings within case No. 08-790-EL-AIR stated within my filing of this # 1, Jan 19, 2009, May 1, 2009.

After all, the parent Duke N.C. has two Federal consent decrees caused by improper accounting parallel to the national Enron case time frame, referenced in 08-0709-el-Air as stated previously in this application for a rehearing. Duke energy at that time had two **fresh** Federal consent decrees (that I wrote to the PUCO as a commenter about on Docket # 05-0732-EL-MER on July 26, 2005) for faulty accounting at the time of the Enron 2001 scandal in the western U.S. **Duke energy paid as a settlement \$212,000,000 million dollars to the FERC in the fall of 2004 for round trip, wash deals & keeping two sets of books. Duke Energy of North Carolina also signed a cease and desist order with the Federal Securities and Exchange Commission (SEC) on July 8, 2005 for keeping two sets of books in accounting. This was during the 2005 Duke Energy of North Carolina and Cinergy merger hearing comment period from which Duke Oh was born. This information must be considered by the PUCO and PUCO staff and the OCC when making an accounting rate hike decision now.**

The PUCO legislative staff and the Office of Ohio Consumer Counsel did not request nor initiate an **outside neutral audit** in Case # 08-0709-El-Air as asked for by me, an intervenor. The PUCO Commissioners **erred** as they should have initiated an external neutral audit the same as they did in Case Docket # 07-0974 EL-UNC & Case # 07-0975 EL-UNC. The PUCO Commissioners asked for an audit by qualified independent auditors in these two cases. I can see no reason why an outside neutral audit of Duke Oh should not have been ordered in the current action at Duke Oh expense. In view of parent Duke of N. C. **fresh** past performance, the figures submitted by Duke Oh on joint exhibit 2, Schedule A-1 in this electric distribution rate increase should be met with some skepticism.

(2) The OCC **erred** after March 31, 2009 in not providing counsel for the 650,000 remaining disenfranchised by the OCC, Duke Ohio residential customers including me when they signed the settlement stipulation. Joint exhibit 1

The PUCO staff **erred** by knowingly signing an illegal joint exhibit 1 stipulation on behalf of itself with the OCC, Duke Oh and the other intervenors for the benefit of a minority 10,000 OCC constituent Duke Oh residential customers and overlooked their **due diligence** over the remaining 650,000 OCC constituent Duke Oh residential customers who represent a vast majority.

After March 31, 2009, the stipulation,(settlement increase (joint exhibit 1) with Duke Oh of \$55.3 million was signed in concert by Duke Energy of Ohio, the OCC, the PUCO legislative staff & others) except for Time-Warner Telecom and me. I and the other 650,000 Duke Energy of Ohio residential customers had no one representing us henceforth in Case # 08-709-El-AIR. See my entry of May 19, 2009 in case # 08-709-EL-AIR. The stipulations of March 31, 2009 (on docket # 08-709-EL-AIR) are in favor of 10,000 electric customers who are at or below 200% of the Federal poverty level. The OCC boasts it is the residential consumer advocate, but the OCC signed off on the stipulation with regard to those 10,000 customers without regard to the 650,000 residential paying customers of Duke OH.

OCC, then claimed the stipulation increase were beneficial to all residential customers, without obtaining the neutral external auditing accounting facts on whether or not an electric distribution rate increase including the yearly amount, or rate decrease including the yearly amount was warranted.

The Duke Energy monthly statement says that “assessments to assist in the support of the PUCO and the Office of Consumers Counsel have been in effect since 1912 and 1977 respectively. Chapter 4911 (4911.01) of the Ohio Revised Code defines a “residential consumer” means urban, suburban and rural patrons of public utilities in so far as their needs for utility services are limited to their residence. (patrons is the plural). In the Duke Oh hearing of June 17, 2009 Duke Energy of Ohio witness, Don Wathen Jr. stated that Duke Oh has 660,000 residential customers. (The transcript of this hearing was posted to case # 08-0790-EL-AIR on June 19, 2009)

As stated earlier in this No 2, the PUCO & the OCC were accommodating 10,000 Duke Oh residential customers. OCC had a press release on March 31, 2009 that this proposed electric distribution rate increase would be a benefit to Duke customers. OCC erred in making the previous statement, I wrote about this in my May 1, May 4, & May 19, 2009 filing on Docket # 08-0709 El-Air. A copy of this OCC benefit rate increase news release is attached to my May 19, 2009 entry on that case docket and also attached to this request for a rehearing. There was no response to my questioning of the stipulation use of the words “Duke Energy’s residential consumers to benefit...” quoted OCC news release of March 31, 2009 in the order of 7/8/2009 by the PUCO who erred in this regard.

(3) The four Commissioners erred when they found no necessity for the holding of additional local PUCO public rehearings, before their approval of the opinion and order of 7/8/2009 within Case # 08-709-EL-AIR.

The PUCO legislative staff erred in not requiring the three rehearings in Clermont, Hamilton and Butler Counties (under 4903.083 ORC) as requested by me on May 1, May 4, May 19, 2009 on docket # 08-709-EL-AIR. The PUCO Lawyer Examiner Scott Farkas had filed a docket posting on Mar 02, 2009 for three required public hearings on Case # 08-709-El-Air for the original public hearings scheduled for Monday, March 16 2009, at 6:00 p.m., at the Union Township Civic Center Hall, 4350 Aicholtz Road, Cincinnati, Ohio 45245. Thursday, March 19, 2009, at 12:30 p.m., at Cincinnati City Hall, Council Chambers, 801 Plum Street, 8th and Plum Streets, Cincinnati, Ohio 45202. Tuesday, March 24, 2009, at 6:00 p.m., at the Lakota East High School, Freshman Campus, Auditorium, 7630 Bethany Road, Liberty Township, Ohio 45044.

I attended and spoke at the March 19, 2009 hearing for a Duke Oh requested increase in electric distribution rates for residential customers of which I am one, at Cincinnati City Hall. (Ref 106 page transcript of the Cincinnati City Hall hearing, filed 4/07/2009 within PUCO Case # 08-709-EL-AIR.) At this meeting Ms. Jeanne Kingery, Attorney Examiner for the PUCO stated that every word transcribed by the court reporter will be reviewed by the PUCO before making a decision in this case.

Ms. Kingery stated that the purpose of the hearing was for the PUCO to get your comments, thoughts & input. **This public meeting was a farce.**

Ms. Kingery announced at the Cincinnati City Hall meeting the presence in the audience (appearance) of another attorney examiner Jim Lynn. All of this information came from page 2 & 3. On page 10 & 11-Ms. Kingery also announced the presence in the audience (appearances) of Mr. D'Ascenzo, Senior Counsel of Duke Energy and Jeffrey Small of the Ohio Office of Consumer Counsel.

MR. D'ASCENZO: "Thank you. On behalf of Duke Energy Ohio, my name is Rocco D'Ascenzo. I'm senior counsel. On behalf of the company I would like to welcome you here today. Thank you for coming out. The company does have representatives here today to listen. We also have people here that can answer specific questions both on our application and if you have questions on your particular account. Because of the procedure here we will not be able to answer your questions as you're testifying but we will be able after this hearing to speak with you. Feel free to come up, approach us afterward and we would be happy to talk to you about both what we proposed here and if you have specific questions on your account. Thank you"

MR. SMALL, (Asst Consumers Counsel, office of Consumers Counsel) "Your Honor, on behalf of the residential customers of Duke Energy Ohio, Jeffrey Small, Office of the Ohio Consumers Counsel, 10 West Broad Street, Columbus, Ohio. As a representative of the PUCO stated earlier, we have representatives here today if you'd like to ask questions afterward."

The PUCO legislative staff, the OCC, Duke Oh and other interveners had a confidential rate settlement meeting On March 5, 2009. Attached is a copy of my e-mail invitation sent to me and the other interveners and the Duke Oh -Albert E. Lane, intervener confidentiality agreement sent to me by Duke Oh at my request, to be signed by me if I was to attend the settlement meeting. Time Warner Telecom and I did not attend. At this meeting a procedural settlement was determined.

The settlement parameters of the PUCO staff & OCC proposals for the Duke Oh rate request were printed on the *Cincinnati Enquirer* web site/hard copy by Mike Boyer *Enquirer* writer on March 16 & 17, 2009, (attached hereto), before the three hearings. On March 16, 2009 The *Cincinnati Enquirer*, *Cincinnati.com* web site article (page 6, June 6, 2009 filing PUCO Case # 08-0709-EL-AIR).

The publishing of this article was prior to the Clermont, Hamilton & Butler County required public hearings. The printed content of said article said that the PUCO staff recommended Duke to receive \$54.2 mil to \$62.3 mil after reviewing Duke Energy of Ohio's initial request for \$86 million per year for electric distribution rate increase. In the same *Cincinnati Enquirer* web site article the OCC, representing residential customers says, "that Duke should receive no more then \$39 million per year" source; OCC news release Mar 2, 2009.

(#3) Continued: Reasons for the three rehearings in Clermont, Hamilton & Butler County, all because of errors.

1. Attorney Examiner Ms. Kingery should have known at the time of the *Cincinnati* hearing of the Mar 02, 2009 08-709-EL-AIR entry of the PUCO attorney examiner Scott Farkas Page 3 where the "PUCO staff recommends an increase in distribution revenue of between \$53,944,677 and \$62,043,974". Never the less the OCC & PUCO staff suggested compromises (parameters) for a Duke Oh settlement in this case were also published in the *Cincinnati Enquirer* web site/hard copy on March 16 & 17, 2009. The fact that the *Cincinnati Enquirer* is widely circulated in the Counties where the three hearings took place, the three hearings must be reheard as it was superfluous as to the audiences comments, thoughts and input at the hearing I attended at *Cincinnati* City Hall meeting on March 19, 2009. Ms. Kingery erred by not announcing the parameters of the PUCO staff recommendation stated in the March 02, 2009 PUCO Attorney Examiner case entry and the OCC March 12, 2009 news release to the *Cincinnati* hearing audience.
2. The procedural of Mar 5, 2009 made irrelevant any citizen legal input for the PUCO and OCC staff to analyze which may have been forthcoming at those three public hearings. This was an error not stated in the August 8, 2009 PUCO Commission order.
3. Mr. D'Ascenzo, senior Counsel for Duke Oh and Jeffrey Small, Asst attorney of the Ohio Consumers Counsel knew on March 19, 2009 what was previously agreed upon +(The *Cincinnati Enquirer* mentioned parameters of the PUCO & OCC)in the confidential procedural settlement meeting of March 5,2009 and subsequent meetings. All of these agreed items were later to be signed as a stipulation on March

31,2009. Mr Small erred as he betrayed his constituents present at that hearing by not revealing the procedural contents to the audience.

The PUCO Staff report on the stipuation settlement (leading to the PUCO Commission order of August 8, 2009), ignored the non-revealing of known facts by the principal interveners including the PUCO staff had they attended the March 19, 2009 hearing, an obvious **error**.

The stipulation (settlement) of March 31, 2009 is the nexus for the order of the PUCO Commission order of 7/8/2009. Mr. Small of the OCC **erred** in not telling those people in the audience, (Duke Oh customers) the contents of the procedural, and the 3/12/2009 OCC news release. Thus the official

transcript of the March 19, 2009 Cincinnati City Hall hearing does not mention the March 5, 2009 procedural confidential meeting settlement procedural agreement or parameters printed in the *Cincinnati Enquirer* on March 16th & 17th, 2009 with the PUCO staff, OCC, others and Duke Oh. Again, I did not attend the March 5, 2009 Duke Oh sponsored confidential settlement meeting nor agree to any procedural.

My first sentence in No 3. Asking for rehearings of the three required public hearings Because of **errors** in known information not given at these hearings to the audience by Mr. Small of the OCC staff and the same **errors** not being reported to the PUCO Commissioners by the PUCO staff (which knew and attended the March 5, 2009 confidential procedural meeting) who also were not at the Cincinnati City Hall hearing leads to an obvious omission in the August 9, 2009 PUCO Commission order as well as the transcript entry of 4/7/2009 which omits (because it wasn't stated) the non-furnishing of the procedural settlement information and PUCO & OCC parameters information at that hearing at Cincinnati City hall.

(4) The PUCO Commission and staff **erred** by not requiring Duke Oh to have public meetings in Clermont, Hamilton and Butler Counties to make their case why the stipulation settlement of March 31, 2009 is fair and to hear public comments .

(5) The PUCO staff and the PUCO Commission **erred** in approving of an electric distribution settlement stipulation rate hike on March 31, 2009, arrived at by the signers, by **negotiation** in a **non scientific manner**. This is an **error** contrary to legal precedent even though mentioned as being in the **public interest and “cost causation” underlined ??** in a statement by Paul G. Smith, V. President , rates, Duke Oh. as follows:

7/8/2008 –from testimony in PUCO Opinion and order

Paul G. Smith Duke's Vice President, Rates - Ohio and Kentucky, testified that the stipulation is the product of serious bargaining among capable, knowledgeable parties, does not violate any important regulatory principles or practice, and will benefit customers and the public interest. He indicated that the parties to the stipulation regularly participate in rate proceedings before the Commission, are knowledgeable in regulatory matters, and were represented by experienced, competent counsel, Mr. Smith testified that there were a total of four settlement conferences and that all parties were invited to attend all of the settlement discussions regarding the applications. He also noted that all of the issues in these cases were addressed during these meetings and that the stipulation is a compromise resulting from those discussions and represents a product of capable, knowledgeable parties. He indicated that the stipulation complies with all relevant and important principles and practices and is fully supported by all of the evidence presented in these cases. He further indicated that the stipulation is consistent with the principle of cost causation in rate design in that it reduces the subsidy/excess between nearly all rate classes in order to reduce or eliminate cross-subsidies between classes. Mr. Smith also stated that the stipulation provides numerous significant benefits across all customer groups, including the availability of three-phase residential service in areas beyond where it is currently offered, a reduced depreciation rate, a lower pole-attachment charge than supported in the application, a new tracking mechanism to recover uncollectable expenses, the establishment of two new low-income programs, and allowing residential customer deposits to be funded over a three-month period. (Duke Ex.9, at 1;Duke Ex. 18, at 1-7. June 17, 2009 (from case # 05-0790-El-AIR, posted June 19, 2009) Cross examination by Albert E. Lane, of William Don Wathen Jr. witness for Duke Ohio asking how settlement For 650,000 customers rates were arrived at and compromised.

Cross examination transcript of Duke Oh witness William Don Wathen Jr. by Intervener Albert E. Lane at Duke Oh hearing on June 17, 2009. Posted on case docket 08-0709 El-Air. when describing all of the signers of the 55.3 mil settlement which included Duke Oh. (Note: Duke Oh. originally asked for

\$85.6 Mil) Mr Wathen said below that the stipulation settlement amount of \$55.3 mil was arrived at by **negotiation**, underlined.

FROM PAGE 81

Question=Q-by Albert E. Lane intervener, Cross examination of Duke Oh witness William Don Wathen Jr.

Answer=A-by Duke Oh witness William S. Wathen Jr.

Q. Precisely where do these figures in the Settlement column from Nos. 8 through 14, where do they come from, their numbers?

A. They're a product of the **negotiations** that we had with the Staff, the OCC, and the other signing parties to the settlement.

Q. Let me see if I have something clear in my mind. You came up with a figure on Schedule A-1 back in '08 of how much money -- we defined it before, 80 -- 86 --

A. It's on the schedule, \$85.6 million.

Q. your company, Duke Energy of Ohio, agrees, concurs with -- what was it? What's the other figure? It's -- it was 50 something?

A. 55.3 was the settled to amount.

The PUCO Commissioners and Staff **erred** after all of this Duke Oh **rigmarole** about an annual increase of \$85.6 million being **required** (**William Don Wathen Jr. Duke Oh witness testimony, August 8, 2008, Company Exhibit 12**) for 660,000 Duke Energy of Ohio residential electric distribution customers, they agreed to a stipulation settlement of \$55.3 million in a procedural stipulation agreement settlement (**arrived at by negotiations according to testimony at Duke Ohio hearing on June 17, 2009, Case No 08-0790-EL-AIR, from cross examination of Duke Oh witness William Don Wathen Jr. by intervener Albert E. Lane**) commencing on March 5, 2009 and signed on March 31, 2009 without having an outside neutral audit of Duke Oh at Duke Oh expense of their past 5 years years accounting of Duke Oh and its predecessor Cincinnati Gas & Electric and/or Cinergy.

LIST OF SIGNERS OF THE MARCH 31, 2009 STIPULATION

(The Stipulation and recommendation was signed on March 31, 2009 by the following entities' representatives. It is known as Joint Exhibit 1. Filed by R. D'Ascenzo on behalf of Duke Energy Ohio, Inc; S. Reilly on behalf of Staff; A. Hotz on behalf of the Office of the Ohio Consumers' Counsel; M. Christensen on behalf of the Health Council; C. Mooney on behalf of Ohio Partners for Affordable Energy; T. O'Brien on behalf of the City of Cincinnati; M. Yurick on behalf of the Kroger Company; D. Boehm on behalf of the Ohio Energy Group and S. Howard on behalf of the Ohio Cable Telecommunications Association.

(6) The PUCO staff and PUCO Commissioners **erred** by not recognizing the implication of fudging of figures by Duke Oh., reference Page 100 Albert Lane cross examination of Duke Oh witness William Don Wathen Jr. case # 08-790-E1-Air June 17, 2009 Duke hearing, posted June 19, 2009

Intervenor Cross examiner Albert E. Lane asks witness:

Q. I'm going to ask a legal term. I don't mean it in the slang, because I've looked it up. Did you ever hear of the word fudge as used in legal terms or in laymen's terms?

Witness Duke Oh. William Don Wathen Jr.

A. I've never heard it in legal terms, but --

Intervenor Cross examiner Albert E. Lane asks witness:

Q. Do you know what fudge means?

Witness Duke Oh. William Don Wathen Jr

A. It's a chocolate candy.

Intervenor Cross examiner Albert E. Lane asks witness:

Intervenor Cross examiner Albert E. Lane asks witness:

Q. There's another term. I will ask it to you.

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Did Duke Energy fudge when they asked for 86.3 million on the original application?

Witness Duke Oh. William Don Wathen Jr

A. Absolutely not. That was our best case.

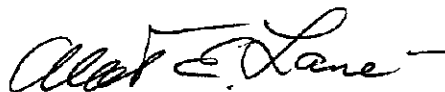
Intervener Cross examiner Albert E. Lane asks witness:

Q. Nevertheless, even though it was required, you have agreed, on the Stipulation of March 31st, '09, to settle, which is not required; is that correct?

Witness Duke Oh. William Don Wathen Jr

A. I said a number of times we agreed to settle, yes.

Respectfully submitted,



Albert E. Lane, Intervener.
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Encl:

Service list-Pages 13 & 14

Cin Enquirer.com March 16, 2009 (PUCO opens hearings on Duke increase)-Page 15

Office of Ohio Consumers' counsel news release-March 31, 2009. Page 16

(Duke Energy's residential consumers to benefit from agreement in electric distribution rate case)

Copy of Duke Oh e-mail to Albert E. Lane, intervenor (case #08-709-AIR)

Inviting Mr. Lane to a settlement conference at the PUCO on March 5, room # 379 to discuss a resolution in this case. Page 17

Copy of e-mail letter of transmittal from Duke Oh along with attachment copy of unsigned Duke confidentiality agreement. Total 6 pages. Pages 18 to 23

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PUCO opens hearings on Duke increase

By Mike Boyer • mboyer@enquirer.com • March 16, 2009

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Residential customers of Duke Energy Ohio tonight have the first of three opportunities to weigh in on the utility's request for an additional \$86 million in electric delivery rates and its plan to recover \$31 million in costs from last September's windstorm.

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The Public Utilities Commission of Ohio holds the first of three public hearings at 6 p.m. today at the Union Township Civic Center, on the rate hike. The PUCO says the rate hike, if approved by the five commissioners, would mean an additional \$4.78 a month for the typical residential customer using 1,000 kilowatt hours of power.

Duke, which said it has invested more than \$235 million in improvements to its network of wires, poles and meters since its last distribution rate hike in 2006, said the increase should result in little or no change in the typical residential customer's bill of about \$110 a month because regulator surcharges in current bills are expiring.

The PUCO staff recommended Duke get an additional \$54.2 million to \$62.3 million after reviewing the request.

The Ohio Consumers' Counsel, representing residential customers, says Duke should get no more than \$39 million. The OCC also objects to the utility's plan to increase the fixed monthly charge in bills from \$4.50 to \$10 offset by a reduction in usage charges, arguing that doesn't encourage energy efficiency.

The utility's proposal to recoup the windstorm costs over three years through a rider on customers' bills has triggered the most consumer opposition on the PUCO's web site.

"Doesn't Duke insure its infrastructure?" wrote customer Rachel Hughes, who opposed the rider. Duke says insuring against a catastrophic event like the Sept. 14 storm would be so expensive the commission has determined it wouldn't be prudent.

The commission will also accept comments Thursday at 12:30 p.m. at Cincinnati City Hall and March 24 at 6 p.m. at Lakota East High School, 7630 Bethany Road, Liberty Township.

Comments can also be submitted online at www.PUCO.ohio.gov. A decision is expected by summer.

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Contact: Ryan Lippe
(614) 466-7269

Duke Energy's residential consumers to benefit from agreement in electric distribution rate case

COLUMBUS, Ohio – March 31, 2009 – Residential customers of Duke Energy will benefit from an electric rate case agreement filed by the Office of the Ohio Consumers' Counsel (OCC), the staff of the Public Utilities Commission of Ohio (PUCO), the utility and other parties, the OCC announced today.

Among the benefits is a reduction in the annual revenue increase Duke will receive from \$85.6 million to \$55.3 million, an approximate 35 percent decrease from Duke's request pending at the PUCO. The agreement must be approved by the PUCO before it becomes effective.

The agreement also provides additional benefits for residential consumers, including a commitment by Duke to provide up to \$40,000 monthly for payment assistance to as many as 10,000 households with incomes at or below 200 percent of the federal poverty level and not enrolled in the Percentage of Income Payment Plan. Customers already enrolled in a similar payment assistance program for Duke's natural gas service will be enrolled automatically in this new electric program, while additional households will be able to sign up by contacting the utility.

"By sharply reducing the amount of the revenue increase provided to Duke, we have minimized the impact to customers' rates at a time when households know that every dollar counts," said Consumers' Counsel Janine Migden-Ostrander. "In addition, the payment assistance for low-income households is crucial, especially because it will be open to customers whose incomes exceed the level served through existing opportunities such as the Home Energy Assistance Program."

The parties also agreed that Duke will not be entitled to increase rates as part of this case for Hurricane Ike costs. Instead, Duke will have to file a separate application with the PUCO to request the recovery of costs associated with the September 2008 windstorm. Duke will have to prove whether its storm restoration activities were prudent and the costs incurred by the company were reasonable. A hearing will be held if one or more stakeholders have unresolved objections. The company is seeking \$31 million in storm-related costs that would be passed onto its customers.

About the Office of the Ohio Consumers' Counsel

The Office of the Ohio Consumers' Counsel (OCC), the residential utility consumer advocate, represents the interests of 4.5 million households in proceedings before state and federal regulators and in the courts. The state agency also educates consumers about electric, natural gas, telephone and water issues and resolves complaints from individuals. To receive utility information, brochures, schedule a presentation or file a utility complaint, residential consumers may call 1-877-PICKOCC (1-877-742-5622) toll free in Ohio or visit the OCC Web site at www.pickocc.org.

Office of the Ohio Consumers' Counsel - Your Residential Utility Consumer Advocate
10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485
1-877-742-5622 (toll-free in Ohio) or 614-466-8574
[Contact us](#)



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The Office of the Ohio Consumers' Counsel is an equal opportunity employer and provider of services.

From: Watts, Elizabeth H [mailto:elizabeth.watts@duke-energy.com]

Sent: Thursday, February 26, 2009 9:43 AM

To: 'Hotz, Ann'; 'Boehm David' (dboehm@bklawfirm.com); 'Bentine, John'; 'Yurick, Mark'; 'Tom O'Brien' (tobrien@bricker.com); 'Rnebolt, Dave'; 'Mooney, Colleen'; 'Hart, Doug'; 'Petricoff, Howard'; smhoward@vorys.com; 'Relly, Stephen'; 'Mary W. Christensen'; gfoillespie@hhlaw.com; pamela.sherwood@twtelecom.com; 'mkurtz@bklawfirm.com'; AELMICTEN@aol.com

Cc: Smith, Paul G (Rates); Spilfer, Amy B; D'Ascenzo, Rocco O

Subject: Duke Energy's Case No. 08-709-EL-AIR

Dear Counsel:

Duke Energy requests your presence at a settlement conference at the Public Utilities Commission of Ohio on Thursday, March 5, 2009, at 10:00 a.m. in room 379. We look forward to seeing you there and discussing a resolution of this case. Thank you.

Elizabeth H. Watts

Assistant General Counsel

Duke Energy Ohio

155 East Broad Street

21st Floor

Columbus, Ohio 43215

(614) 222-1330

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From: Kuhnell, Dianne B <dianne.kuhnell@duke-energy.com>

To: aelmicten@aol.com <aelmicten@aol.com>

Cc: Watts, Elizabeth H <elizabeth.watts@duke-energy.com>; Spiller, Amy B <amy.spiller@duke-energy.com>;
D'Ascenzo, Rocco O <rocco.d'ascenzo@duke-energy.com>

Subject: Confidentiality Agreement 08-709

Date: Tue, 3 Mar 2009 9:27 am

Attachments: MAIN3LEGAL-#262244-v1-CA_- Lane_- 08-709.DOC (41K)

Attached is a copy of the Confidentiality Agreement used by DE-Ohio in prior cases. If you are planning to attend the Settlement Conference on Thursday, please review and if you are able to execute the agreement and fax it to us prior to the meeting we would be grateful. We would like to have these agreements in hand prior to the settlement conference so there is no problem with confidentiality in our discussions. Thank you.

Dianne B. Kuhnell
Senior Paralegal
Duke Energy Business Services, Inc.
139 E. Fourth Street EA025
P.O. Box 960
Cincinnati, Ohio 45201
Ph: (513) 419-1837
Fax: (513) 419-1846

CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT, dated as of March ___, 2009, between Duke Energy Ohio, Inc., an Ohio corporation (DE-Ohio) with offices at 139 East Fourth Street, Cincinnati, Ohio 45201, and Albert E. Lane (Lane).

WITNESSETH:

WHEREAS, DE-Ohio and Lane each individually referred to as Party, or collectively as Parties) have entered into an agreement for Lane and to receive confidential information in Case No. 08-709-GA-AIR, 08-710-GA-ALT, 08-711-GA-AAM, 06-718-EL-ATA ("The Cases"); and

WHEREAS, the Parties desire to ensure the confidentiality of such confidential information provided or to be provided by DE-Ohio (the Providing Party) to Lane (the Receiving Party);

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties hereto, intending to be legally bound, agree as follows:

1. CONFIDENTIAL AND PROPRIETARY NATURE OF THE CONFIDENTIAL INFORMATION

The Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information (as defined below) and that any unauthorized disclosure or unauthorized use thereof by the Receiving Party will injure the Providing Party's business and/or the business of customer(s) of the Providing Party. The Receiving Party agrees to hold and keep the Confidential Information as provided in this Agreement and otherwise agrees to each and every restriction and obligation set forth in this Agreement.

2. CONFIDENTIAL INFORMATION

As used in this Agreement, the term Confidential Information means and includes any and all information that meets both of the following requirements:

- a. The information concerning the business and affairs of the Providing Party, however documented, that has been or may hereafter be provided or shown to the Receiving Party by the Providing Party or by the directors, officers, employees, agents, consultants, advisors, or other representatives including legal counsel, accountants and financial advisors (each, a Representative) of the Providing Party (collectively, the Providing Party Representatives) or is otherwise obtained from review of Providing Party documents or property or discussions with Providing Party Representatives by the Receiving Party or its Representatives irrespective of the form of the communication, and also includes all notes, analyses, compilations, studies, summaries, and other material prepared by the Receiving Party or the Receiving Party's

Representatives containing or based, in whole or in part, on any information included in the foregoing; and

- b. The information contains trade secrets concerning the business and affairs of the Providing Party and or its customers, plant and product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures (and related processes, formulae, composition, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), contracts, and any other information, however documented, that is a trade secret within the meaning of applicable law.

Confidential Information shall not include any oral information exchanged between the parties that is not promptly reduced to writing and confirmed by the applicable parties.

Further, Confidential Information shall not include any information of the Providing Party which:

- a. was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or the Receiving Party's Representatives;
- b. was available, or becomes available, to the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Providing Party or a Providing Party Representative, but only if (i) to the best of the Receiving Party's knowledge after due inquiry, the source of such information is not bound by a confidentiality agreement with the Providing Party or is not otherwise prohibited from transmitting such information to the Receiving Party or the Receiving Party's Representatives by a contractual, legal, fiduciary or other obligation, and (ii) the Receiving Party provides the Providing Party with prompt written notice of such prior possession; or
- c. was independently acquired or developed by the Receiving Party without violating any of its obligations under this Agreement.

3. RESTRICTED USE OF CONFIDENTIAL INFORMATION

The Receiving Party agrees that (a) it will keep confidential any and all Confidential Information and, except as provided in the following paragraph or as otherwise expressly permitted by the terms of this Agreement, will neither, without the specific prior written consent of the Providing Party, disclose any Confidential Information to any person (including the fact that the Confidential Information has been made available to the Receiving Party or that the Receiving Party has inspected any portion of the Confidential Information); and (b) it will not use any of the Confidential

Information for any reason or purpose other than to perform its obligations, if any, in The Cases.

The Receiving Party may disclose Confidential Information to those Representatives of the Receiving Party who (i) in the judgment of the Receiving Party, require access to such material for the purpose of assisting the Receiving Party in performing work directly associated with the Relationship and (ii) are informed by the Receiving Party of the confidential nature of the Confidential Information and the obligations of this Agreement and agree to be bound by all the provisions hereof applicable to the receipt and use of Confidential Information by the Receiving Party. The Receiving Party agrees to be fully responsible for enforcing as to the Receiving Party's Representatives the obligations of this Agreement applicable to the Receiving Party and to take such action, legal or otherwise, to the extent necessary (including all actions that the Receiving Party would take to protect its own confidential information and trade secrets) to cause its Representatives to comply with such obligations.

4. DISCLOSURE REQUIRED BY LAW

If the Receiving Party or any of the Receiving Party's Representatives are requested or become legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body to make any disclosure that is prohibited or otherwise constrained by this Agreement, the Receiving Party or such Representative, as the case may be, will provide the Providing Party with prompt notice of such request so that it may seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the Receiving Party or such Representative may furnish that portion (and only that portion) of the Confidential Information that, in the written opinion of its counsel, reasonably acceptable to the Providing Party, the Receiving Party is legally compelled or is otherwise required to disclose. In addition, the Receiving Party or such Representative shall use reasonable efforts to obtain reliable assurances that confidential treatment will be accorded any Confidential Information so disclosed.

5. RETURN OF CONFIDENTIAL INFORMATION

At the conclusion of The Cases, or if the Receiving Party determines that it does not wish to proceed with The Cases, then the Receiving Party, upon request of the Providing Party, (a) (i) will promptly deliver to the Providing Party all documents or other materials furnished by the Providing Party or any Providing Party Representative to the Receiving Party or the Receiving Party's Representatives constituting Confidential Information, together with all copies and summaries thereof in the possession or under the control of the Receiving Party or the Receiving Party's Representatives, and (ii) will destroy materials generated by the Receiving Party or the Receiving Party's Representatives that include or refer to any part of the Confidential Information, without retaining a copy of any such material; or (b) as an alternative to the procedure described in the preceding clause (a) if the Providing Party gives its prior written consent, the Receiving Party will promptly destroy all documents or other matters constituting Confidential Information in the possession or under the control of the Receiving Party or

the Receiving Party's Representatives and shall promptly certify the same in writing to the Providing Party (including in such certification a list of the destroyed materials).

6. REMEDIES

The Receiving Party agrees to indemnify and hold the Providing Party and its customer(s) harmless from any damages, loss, cost, or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure by the Receiving Party or the Receiving Party's Representatives of the Confidential Information or other violation of this Agreement. In addition, because an award of money damages (whether pursuant to the foregoing sentence or otherwise) would be inadequate for any breach of this Agreement by the Receiving Party or the Receiving Party's Representatives and any such breach would cause the Providing Party irreparable harm, the Receiving Party also agrees that, in the event of any breach or threatened breach of this Agreement, the Providing Party will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to the Providing Party.

7. MISCELLANEOUS

(a) Modification. The agreements set forth in this Agreement may be modified or waived only by a separate writing signed by the Providing Party and the Receiving Party expressly modifying or waiving such agreements.

(b) Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

(c) Person. The term person means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization or other entity.

(d) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any of the covenants or

provisions of this Agreement are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement.

(e) Costs. The Receiving Party agrees that if it is held by any court of competent jurisdiction to be in violation, breach, or nonperformance of any of the terms of this Agreement, then it will pay all costs of such action or suit, including reasonable attorneys' fees.

(f) Assignment. Neither party may assign any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

(g) Governing Law. This Agreement shall be governed by the laws of the State of Ohio without regard to conflicts of laws principles thereof.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by an appropriate officer thereunto duly authorized, all as of the date set forth at the beginning of this Agreement.

Duke Energy Ohio, Inc.

Rocco D' Ascenzo
Senior Counsel

Albert E. Lane