

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke) Case No. 07-974-EL-UNC
Energy Ohio, Inc. to Establish its Fuel and)
Purchased Power Component of its Market-)
Based Standard Service Office for the Period)
of July 1, 2007, through December 31, 2008.)

In the Matter of the Application of Duke) Case No. 07-975-EL-UNC
Energy Ohio, Inc. to Establish its 2008)
System Reliability Tracker of its Market-)
Based Standard Service Offer.)

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STIPULATION AND RECOMMENDATION

Rule 4901-1-30, Ohio Administrative Code ("O.A.C.") provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the Parties who have signed below ("Parties") and to recommend that the Public Utilities Commission of Ohio ("Commission") approve and adopt this Stipulation and Recommendation ("Stipulation"), which resolves all of the issues raised by Parties in these cases relative to establishing Duke Energy Ohio's Fuel and Purchased Power Rider ("Rider FPP") for the audit period of July 1, 2007, through December 31, 2008, and its System Reliability Tracker ("Rider SRT").

This Stipulation is supported by adequate data and information including, but not limited to: (1) Duke Energy Ohio's quarterly Rider FPP filings from July 1, 2007 through December 31, 2008; (2) Application and testimony filed on March 1, 2009; and (3) the Final Report Management/ Performance Audit and Financial Audit Duke Energy Ohio ("Final Audit Report")

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dated May 15, 2009. The Commission Staff shall offer the Final Audit Report for the evidentiary record in the above-captioned case, and the Stipulating Parties agree not to oppose the introduction of such document into the record. Duke Energy Ohio shall offer its quarterly Rider FPP filings, the Application, and its testimony filed on March 1, 2009 for the evidentiary record in the above-captioned case, and the Stipulating Parties agree not to oppose the introduction of such documents into the record.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission's Staff, to resolve the aforementioned issues. While this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Parties stipulate, agree and recommend as set forth below.

Except for purposes of enforcement of the terms of this Stipulation, neither this Stipulation, nor the information and data contained therein or attached, shall be cited as precedent in any future proceeding for or against any Party, or the Commission itself. This Stipulation and Recommendation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position which one or more of the Parties would have taken if these issues had been fully litigated.

This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Should the Commission reject or materially modify all or any part of this Stipulation, the Parties shall have the right, within 30 days of issuance of

the Commission's Order, to file an application for rehearing. Upon the Commission's issuance of an Entry on Rehearing that does not adopt the Stipulation in its entirety without material modification, any Party may terminate and withdraw from the Stipulation by filing a notice with the Commission, including service to all Parties, in the docket within thirty (30) days of the Commission's Entry on Rehearing. Other Parties to this Stipulation agree to defend and shall not oppose the withdrawal and termination of the Stipulation by any other Party.¹ Upon such notice filing, the Stipulation shall immediately become null and void.

Prior to the filing of this notice, the Party wishing to terminate agrees to work in good faith with the other Parties to achieve an outcome that substantially satisfies the intent of the Stipulation and, if a new agreement is reached that includes the Party wishing to terminate, then the new agreement shall be filed for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful in reaching a new agreement that includes all signatory Parties to the present Stipulation, the Commission will convene an evidentiary hearing such that the Parties will be afforded the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if this Stipulation had never been executed. Some, or all, of the Parties may submit a new agreement to the Commission for approval if the discussions achieve an outcome they believe substantially satisfies the intent of the present Stipulation.

All the Signatory Parties fully support this Stipulation and urge the Commission to accept and approve the terms herein.

¹ Any signatory Party has the right, in its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

The Signatory Parties agree that the settlement and resulting Stipulation is a product of serious bargaining among capable, knowledgeable parties. This Stipulation is the product of an open process in which all parties were represented by able counsel and technical experts. The Stipulation represents a comprehensive compromise of issues raised by Parties with diverse interests. Duke Energy Ohio, The Office of the Ohio Consumers' Counsel ("OCC"), Ohio Energy Users Group ("OEG"), Ohio Partners for Affordable Energy ("OPAE"), and the Commission Staff² have signed the Stipulation and adopted it as a reasonable resolution of all issues.³ The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits ratepayers and is in the public interest. Except as modified below, the Stipulation adopts all of the recommendations in the Final Audit Report that was prepared by The Liberty Consulting Group and dated May 15, 2009.

The Signatory Parties agree that the settlement package does not violate any important regulatory principle or practice.

WHEREAS, all of the related issues and concerns raised by the Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues. This Stipulation is the product of the discussions and negotiations of the Parties, and is not intended to reflect the views or proposals which any individual Party may have advanced acting unilaterally. Accordingly, this Stipulation represents an accommodation of the diverse interests represented by the Parties, and is entitled to careful consideration by the Commission;

² The Commission Staff is a party for the purpose of entering into this Stipulation by virtue of O.A.C. 4901-1-10(C).

³ The other intervening Party to the case, Industrial Energy Users—Ohio, because of its limited interest in the case, did not actively participate in the settlement discussions and takes no position on the Stipulation.

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Parties believe that the agreements herein represent a fair and reasonable solution to the issues raised in the cases set forth above concerning Duke Energy Ohio's Application to establish its Rider FPP and Rider SRT;

NOW, THEREFORE, the Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

1. The Parties agree that during the audit period beginning July 1, 2007 and ending December 31, 2008, margins associated with coal sales for Rider FPP should be allocated based on the generation ratio share between standard service offer ("SSO") customers and non-SSO customers. The resulting adjustment is \$5.7 million in margins that should be allocated to the non-SSO share of generation is shown in Attachment 1. The Parties further agree that Duke Energy Ohio shall refund to SSO customers \$1.8 million associated with auction revenue rights ("ARRs") for the period January 1, 2008, through December 31, 2008, that were allocated to non-SSO customers. The net adjustment of the two issues is an increase to Rider PTC-FPP of \$3.9 million, which shall be allocated to SSO customers evenly over the next four quarterly filings for Rider PTC-FPP.⁴ The Parties agree that any non-allocated coal margins for Rider FPP audit periods prior to July 1, 2007 will not be included in Rider PTC-FPP calculations.⁵

⁴ After December 31, 2008, the fuel and purchased power rider is known as Rider PTC-FPP, where "PTC" means "price to compare."

⁵ Approximately \$4.4 million of prior period margins will not be collected from SSO customers.

2. The Parties agree that Duke Energy Ohio shall "[d]evelop a process for initial approval of the new CAM [i.e. Commercial Asset Management] Portfolio Risk Management Policy and Procedures document by the other Duke [Energy Corp.] departments having ultimate responsibility for corporate risk management and accounting controls."⁶ Duke Energy Ohio shall document the initial approval process for review for the 2009 audit period, and shall thereafter document ongoing approval by these departments when revisions are made to the document. (*Recommendation 1, Chapter I, pg I-12*).
3. The Parties agree that Duke Energy Ohio will ensure that the corporate Human Resources Department "[d]evelop[s] a formalized system for performance management of individuals in the CAM organization."⁷ Duke Energy Ohio shall provide written documentation of such system, which shall be available to the auditor selected for review of the 2009 audit period. (*Recommendation 2, Chapter I, pg. I-12*).
4. The Parties agree that Duke Energy Ohio will rigorously adhere to its board-approved delegation of authority ("DOA") for contract and transaction approval. Duke Energy Ohio will document that detailed contract information, including justification for requested approval for the transaction, has been provided and DOA approval has been obtained at the appropriate DOA level before each contract is executed.⁸ (*Recommendation 3, Chapter I, pg I-13*).
5. The Parties agree that Duke Energy Ohio will rigorously adhere to its contract approval process for transactions that must be brought before the Transaction Review Committee ("TRC"). Duke Energy Ohio will provide documentation in future audits to show TRC

⁶ *In re Duke Energy Ohio FPP-SRT Audit*, Case Nos. 07-974-EL-UNC, et al., Final Report, Management/Performance Audit and Financial Audit, Auditor Detailed Recommendations at ES-4, Chapter One, 1. (May 15, 2009) ("Final Audit Report").

⁷ *Id.* at ES-4 Chapter One, 2.

⁸ Based upon issue identified in the Final Audit Report. *Id.* at ES-4, Chapter One, 3.

approval was obtained before the contract administrator signs the contract. The documentation may include, but is not limited to, meeting minutes or other electronic affirmation of member approvals.⁹ (*Recommendation 4, Chapter I, pg I-13*).

6. The Parties agree that Duke Energy Ohio will make sure the corporate "Human Resources Department immediately update[s] its information related to the organizational structure of the Commercial Asset Management organization"¹⁰ such that the Department's records reflect the correct organizational structure of the CAM. (*Recommendation 5, Chapter I, pg I-13*).
7. The Parties agree that Duke Energy Ohio shall "[d]evelop formalized procedures for administration of fuel contracts."¹¹ Such procedures shall consist of systems, job descriptions, and processes that document the administration of fuel contracts. The documentation shall be available to the auditor selected for review of the 2009 audit period. (*Recommendation 6, Chapter I, pg I-13*).
8. The Parties agree that Duke Energy Ohio will continue to actively manage its portfolio during the existing electric security plan ("ESP"), as agreed to in the Stipulation in Case No. 08-920-EL-SSO concerning the existing ESP. Duke Energy Ohio shall work with the Commission Staff and future auditors to develop a reasonable process to audit Duke Energy Ohio's portfolio and to "[d]emonstrate the economic effectiveness of Active Management."¹² (*Recommendation 1, Chapter II, pg II-23*).
9. The Parties agree that, as part of the next Rider PTC-FPP audit for the 2009 period, Duke Energy Ohio will prepare a "detailed report on controls applicable to affiliate

⁹ Based upon issue identified in the Final Audit Report. Id. at ES-4, Chapter One, 4.

¹⁰ Final Audit Report at ES-4, Chapter One, 5.

¹¹ Id. at ES-4, Chapter One, 6.

¹² Id. at ES-4, Chapter Two, 1.

transactions.”¹³ The auditor shall examine and report upon the controls in place that are applicable to the CAM organization and affiliate transactions regarding commodity portfolio management. (*Recommendation 2, Chapter II, pg II-23*).

10. The Parties agree that Duke Energy Ohio shall “[f]orm a multi-disciplined task force to evaluate the consistent variation in coal inventory at the Zimmer Station where book inventory has been greater than measured physical inventory since 1995.”¹⁴ Duke Energy Ohio shall report the results of this investigation as part of its 2010 Rider PTC-FPP annual filing. (*Recommendation 1, Chapter III, pg III-18*).
11. The Parties agree that Duke Energy Ohio will document all fuel contract renegotiations, including in such documentation the appropriate analyses and the approvals of appropriate personnel.¹⁵ (*Recommendation 2, Chapter III, pg III-19*).
12. The Parties agree that Duke Energy Ohio will “[i]nstitute an aggressive housekeeping program, at the Zimmer Station in coal handling areas.”¹⁶ Duke Energy Ohio will report for each of the audit periods provided for in the existing ESP on actions taken and results of regular inspections by Station Management to Parties as part of the testimony in its annual Rider PTC-FPP audit. (*Recommendation 3, Chapter III, pg III-19*).
13. The Parties agree that Duke Energy Ohio shall “[f]ile a multi-year boiler recovery plan with the . . . Public Utilities Commission prior to the next audit.”¹⁷ The prioritized plan shall address “[b]oiler related problems [that] are the major contributor to outages at Duke Energy Ohio’s [generating] units.”¹⁸ The plan shall include projects and the

¹³ Id. at ES-4, Chapter Two, 2.

¹⁴ Id. at ES-4, Chapter Three, 1.

¹⁵ Based upon issue identified in the Final Audit Report. Id. at ES-5, Chapter Three, 2.

¹⁶ Id. at ES-5, Chapter Three, 3.

¹⁷ Id. at ES-5, Chapter Five, 1.

¹⁸ Id. at V-19, Conclusions, 1.

coordination of boiler improvements, “consistent with the projected outage schedules for generating units.”¹⁹ (*Recommendation 1, Chapter V, pg V-22*).

14. The Parties agree that Duke Energy Ohio shall work with co-owners of generating units not operated by Duke Energy Ohio and use its best efforts to achieve consistent generation availability data system (“GADS”) reporting for both Duke Energy Ohio operated and non-operated units as well as understand and document the differences between them.²⁰ (*Recommendation 2, Chapter V, pg V-22*).

15. The Parties agree that Duke Energy Ohio shall “[p]erform a survey of peer generating stations and develop an action plan to help address the situation where wet coal conditions exist at each Duke Energy Ohio plant.”²¹ Duke Energy Ohio shall report on the progress of the survey and action plan development as part of the 2009 Rider PTC-FPP audit. The action plan shall be finalized and be available to the auditor selected for review during the 2010 Rider PTC-FPP audit period. (*Recommendation 3, Chapter V, pg V-22*).

16. The Parties agree that “[r]eplacement power costs associated with the Zimmer Spring 2007 planned outage extension should not be excluded from [Rider PTC-]FPP recovery due to imprudence.”²² (*Recommendation 4, Chapter V, pg V-23*).

17. The Parties agree that Duke Energy Ohio shall “[m]aintain high expectations for safety consciousness, cleanliness, and employee attitude at Beckjord Station.”²³ Duke Energy Ohio will identify and post all smoking areas for its employees at the Beckjord Station.

¹⁹ Id.

²⁰ Based upon issue identified in the Final Audit Report. Id. at ES-5, Chapter Five, 2.

²¹ Id. at ES-5, Chapter Five, 2.

²² Id. at ES-5, Chapter Five, 3.

²³ Id. at ES-5, Chapter Five, 4.

²⁴ Id. at ES-5, Chapter Five, 5.

Duke Energy Ohio will send written communication of the smoking and non-smoking designation to all Beckjord employees identifying the designated smoking areas and enforce the ban on smoking in non-smoking areas to rectify the concerns stated in the Final Audit Report.²⁴ Duke Energy will also issue hard hats at the administration building to the Beckjord Station to persons not so equipped, and shall enforce the hard hat designation in designated hard hat areas at its Beckjord Station.²⁵ (*Recommendation 5, Chapter V, pg V-23*).

18. The Parties agree that Duke Energy Ohio shall “[p]rovide further capital and O&M budget support beyond 2008 for Beckjord Station performance.”²⁶ (*Recommendation 6, Chapter V, pg V-23*).

19. The Parties agree that Duke Energy Ohio shall “[p]erform economic market analyses to determine the level of spare parts at each unit at Duke Energy Ohio generating stations and the use of on line maintenance/redundant equipment at [each of] its generating stations.”²⁷ Duke Energy Ohio shall report on the progress of the analysis as part of the 2009 audit, and the final analysis shall be filed with the Public Utilities Commission prior to the 2010 audit. (*Recommendation 7, Chapter V, pg V-23*).

20. The Parties agree that the bankruptcy settlement (identified in *Recommendation 1, Chapter VII, pg VII-9*²⁸) shall not be refunded back to the [SSO] customers due to the settlement recovery’s connection with a period when electricity rates were frozen following enactment of Sub. S.B. 3.

²⁴ Based upon issue identified in the Final Audit Report. *Id.* at V-12.

²⁵ *Id.*

²⁶ *Id.* at ES-5, Chapter Five, 6.

²⁷ *Id.* at ES-5, Chapter Five, 7.

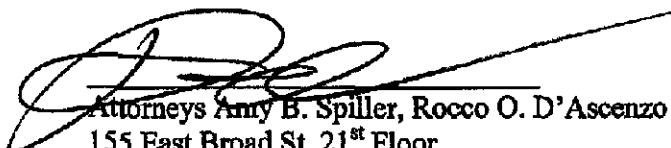
²⁸ See also, *id.* at ES-5, Chapter Seven, 1.

21. The Parties agree that the merits of refunding the margins of \$612,970 resulting from 2010 vintage emission allowance transactions shall be reviewed during the audit for 2010.²⁹ (*Recommendation 2, Chapter VII, pg VII-10*).


22. The Parties agree that Rate Schedules RS, GS-FL, EH & DM shall not be combined into a single group for Rider SRA-SRT³⁰ rate calculations. (*Recommendation 1, Chapter VIII, pg VII I-5*).

The undersigned Parties hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this 28th day of August 2009.

On Behalf of Duke Energy Ohio, Inc.


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On Behalf of Staff of the Public Utilities Commission of Ohio


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²⁹ Based upon issue identified in the Final Audit Report. Id. at ES-6, Chapter Seven, 2.

³⁰ After December 31, 2008, the ESP includes Rider SRA-SRT where "SRA" means "System Reliability Adjustment." The Final Audit Report suggested that the combination be "[c]onsider[ed]". Final Audit Report at ES-6, Chapter Eight, 1.

On Behalf of the Office of the Ohio Consumers' Counsel

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Stipulation and Recommendation was served on the following parties this 28th day of August 2009, by regular U.S. Mail or overnight delivery, and by electronic delivery.



Rocco O. D'Ascenzo

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Attachment 1
Duke Energy Ohio, Inc
Rider FPP Coal Margin Allocation by Generation Ratio

<i>Audit Period</i>	<i>Total Period Coal Margin Dollars</i>	<i>Native Allocation</i>	<i>Non- Native Allocation</i>
<i>Rider FPP Period 4: July 2007-Dec. 2008</i>	<i>(91,297,440)</i>	<i>(85,595,752)</i>	<i>(5,701,688)</i>