

**FILE**

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application	)	
for Recovery of Costs, Lost	)	
Margin, and Performance Incentive	)	Case No. 08-1227-EL-UNC
Associated with the Implementation	)	
Of Electric Residential Demand Side	)	
Management Programs	)	
by Duke Energy Ohio	)	
	)	
In the Matter of the Application	)	
for Recovery of Costs, Lost	)	
Margin, and Performance Incentive	)	Case No. 08-1228-EL-UNC
Associated with the Implementation	)	
Of Electric Non-Residential Demand Side	)	
Management Programs	)	
by Duke Energy Ohio	)	

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STIPULATION AND RECOMMENDATION

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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 Duke Energy Ohio (DE-Ohio) in these cases relative to implementation of residential and non-residential demand side management programs.

This Stipulation is supported by adequate data and information, 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

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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,<sup>1</sup> to resolve the aforementioned issues. Although 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 dispute resolution and enforcement 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. This Stipulation is a reasonable compromise involving a balancing of competing positions, and it does not necessarily reflect the position that one or more of the Parties would have taken if these issues had been fully litigated.

This Stipulation is expressly conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification. Should the Commission reject or modify all or any part of this Stipulation, the Parties shall have the right within thirty (30) days of the issuance of the Commission's order, to file an application for rehearing. The parties agree that they will not oppose or argue against any other Party's application for rehearing that seeks to uphold the original, unmodified Stipulation. If the Commission does not adopt the Stipulation 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

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<sup>1</sup> Staff will be considered a party for the purpose of entering into this Stipulation by virtue of O.A.C. Rule 4901-1-10(c).

Entry on Rehearing. Upon the filing of such notice, 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, to file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, the Commission shall 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. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, some, or all, of the Parties shall submit the amended Stipulation to the Commission for approval.

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

WHEREAS, DE-Ohio submitted its application to reconcile and update its DSM Riders on November 17, 2008 in this matter and for recovery of program costs, lost margins, and shared savings associated with the implementation of a set of demand side management programs for residential and small/medium sized business consumers and;

WHEREAS, the Parties stipulated and agreed in Case No. 08-920-EL-SSO, that DE-Ohio would eliminate the existing charge in customer rates for Rider DSM and;

WHEREAS, this stipulation will true-up and provide cost recovery for the time period ending on June 30, 2008 and;

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 that 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;

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 DE-Ohio's Application to Increase Electric Distribution Rates;

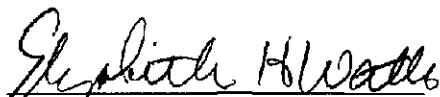
NOW, THEREFORE, the Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

1. The Parties agree and recommend that DE-Ohio's reconciliation and update submitted in this docket provides sufficient data in order for the Parties to adequately monitor progress of DE-Ohio's implementation of electric residential and non-residential demand side management programs.

2. The Parties agree and recommend that the Commission should adopt DE-Ohio's Application in its entirety except that ratepayers shall not be required to pay \$37,187 of the shared savings included in the Application in order to reflect that most of the programs have not yet met 65% of their energy savings targets, the threshold level for permitting the Company recovery of shared savings.

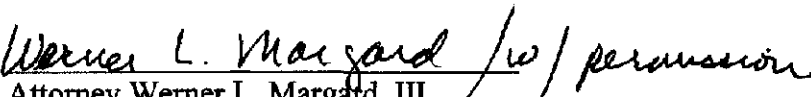
THE UNDERSIGNED PARTIES hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this \_\_\_\_ day of August 2009.

On Behalf of Duke Energy Ohio, Inc.



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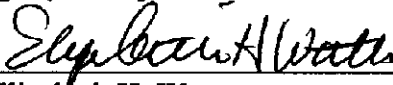
On Behalf of The Ohio Energy Group

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via hand delivery, ordinary mail or overnight delivery on the following parties this <sup>m</sup> 10 day of September 2009.

  
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