

FILE

PUCO EXHIBIT FILING

Date of Hearing: 10/15/09

Case No. 08-1227-EL-UNC
08-1228-EL-UNC

PUCO Case Caption: In the Matter of the Application
for Recovery of Costs, Lost Margin & Performance
Incentives Associated with the Implementation
of Electric Residential Demand Side
Management by Duke Energy Ohio.

List of exhibits being filed:

- Joint Stipulation 1
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____
- _____

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business on 10/21/09 Date processed am technician

PUCO

RECEIVED-DOCKETING DIV
2009 OCT 29 PM 2:39

Reporter's Signature: Juliana Hernandez
Date Submitted: 10/21/09

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Scott Farkas and Ms. Katie Stenman,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-F, Columbus,
Ohio, called at 10:00 a.m. on Thursday, October 15,
2009.

- - -

10/22/09 Transcript dictated electronically

ARMSTRONG & OKEY, INC.
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

8

FILE

RECEIVED-DOCKETING DIV
2009 SEP 10 PM 12:48
PUCO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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)

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 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

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician _____ Date Processed SEP 10 2009

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,¹ 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

¹ 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;

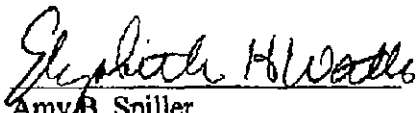
NOW, THEREFORE, the Parties stipulate, agree and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

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.



Amy B. Spiller
Rocco O. D'Ascenzo
Elizabeth H. Watts
2500 Atrium II, 139 East Fourth Street
P. O. Box 960
Cincinnati, Ohio 45201-0960
(513) 419-1827 (telephone)
(513) 419-1844 (facsimile)

On Behalf of Staff of the Public Utilities Commission of Ohio


Attorney Werner L. Margard, III
Assistant Attorney General
Office of Attorney General Richard Cordray
180 East Broad Street, 9th Floor
Columbus, OH 43215

On Behalf of the Office of the Ohio Consumers' Counsel

Attorney Ann Hotz
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

On Behalf of Ohio Partners for Affordable Energy

Colleen L. Mooney /w permission
Attorneys David C. Rinebolt
Colleen L. Mooney
231 West Lima St.
PO Box 1793
Findlay OH 45839

On Behalf of The Kroger Company


Attorneys John W. Bentine, Mark S. Yurick, Matthew M. White
Chester Wilcox & Saxbe LLP
65 East State St, Suite 1000
Columbus OH 43215

On Behalf of The Ohio Energy Group

**Attorneys David F. Boehm, Michael L. Kurtz
Boehm Kurtz & Lowry
36 East Seventh St, Suite 1510
Cincinnati OH 45202**

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 th 10 day of September 2009.


Elizabeth H. Watts

Ohio Consumers' Counsel
Ana M. Hotz,
Larry S. Sauer
10 W Broad Street
Suite 1800
Columbus, OH 43215-3420

Boehm, Kurtz & Lowry
David Boehm/ Michael Kurtz
36 East 7th Street
URS Building
Suite 1510
Cincinnati, OH 45202-4454

Chester, Willcox & Saxbe LLP
John W. Bentine/ Mark Yurick
65 E State Street
Suite 1000
Columbus, OH 43215-4216

PUCO
Werner L. Margard III
Attorney General's Office
180 East Broad Street
9th Floor
Columbus, OH 43215-3707

David Rinebolt/ Colleen Mooney
231 West Lima Street
Findlay, OH 45840-3033