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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio to Adjust and Set Its Gas and)
Electric Recovery Rate for SmartGrid) Case No. 09-543-GE-UNC
Deployment under Riders AU and)
DR-IM)

In the Matter of the Application of) Case No. 09-544-GE-ATA
Duke Energy Ohio for Tariff Approval)

In the Matter of the Application of)
Duke Energy Ohio to Change its) Case No. 09-545-GE-AAM
Accounting Methods)

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)¹ 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, Inc., (Duke Energy Ohio) and the Parties in these cases relative to the Application of Duke Energy Ohio to Adjust and Set Its Gas and Electric Recovery Rate for SmartGrid Deployment under Riders AU and DR-IM (Application).

¹ Although the Ohio Consumers' Counsel is not a party to this Stipulation and is therefore not included in the term "Parties" as used herein, it has indicated that it will file a letter with the Commission, addressing its decision not to oppose the Stipulation.

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This Stipulation is supported by adequate data and information, benefits ratepayers and is in the public interest, 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 Parties representing a wide range of interests, including the Commission's Staff,² 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.

This Stipulation is a reasonable compromise that balances diverse and competing interests and does not necessarily reflect the position that any one or more of the Parties would have taken if these issues had been fully litigated. This Stipulation represents an agreement by all Parties to a package of provisions rather than an agreement to each of the individual provisions included within the Stipulation. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation.

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

² Staff will be considered a party for the purpose of entering into this Stipulation by virtue of Rule 4901-1-10(c) O.A.C.

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 by the Commission of the Stipulation 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 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 Entry on Rehearing. Parties to this Stipulation agree to defend and shall not oppose the withdrawal and termination of the Stipulation by any other Party.³ 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

³ Any signatory Party has the right, in its sole discretion, to determine what constitutes a "material" change for the purpose of that Party withdrawing from the Stipulation.

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, 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 Duke Energy Ohio's Application;

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. REVENUE REQUIREMENT

The Parties agree that Duke Energy Ohio shall receive a revenue increase applicable to Rider DR-IM of \$4,225,376.00, and a revenue increase of \$593,162.00, applicable to Rider AU. The Parties recognize that the monthly charge per residential electric meter resulting from Rider DR-IM revenue requirement is below the 2009 caps set on the monthly price per residential electric meter established in the Stipulation and Recommendation approved by the Commission in Case No. 08-920-EL-SSO. The Parties further agree consistent with Staff's recommendation that the revenue requirements are based upon a cost of capital consistent with the latest approved cost of capital (from Case No. 08-709-EL-AIR and Case No. 07-589-GA-AIR) as shown on Stipulation Attachments 1 and 2.

2. DEPRECIATION RATES

The Parties agree that Duke Energy Ohio will calculate book depreciation expense by applying account-appropriate accrual rates prescribed by the Commission and in effect at the time the expense is booked.⁴ Annualized depreciation will be calculated based on the latest Commission-approved depreciation rates in effect during recovery of the revenue requirement.⁵

⁴ Electronic Data Processing Equipment – Gas (Account 29101) does not currently have an approved depreciation rate. For purposes of Rider AU calculations, the depreciation rate applied was 20% and the Parties recommend that the Commission approve this depreciation rate. An approved depreciation rate for purposes of Rider DR-IM was approved in the Company's most recent electric distribution rate case, Case No. 08-709-EL-AIR, however the depreciation rate was not explicitly approved for Rider AU in Case No. 07-589-GA-AIR.

⁵ For annualized electric depreciation, this Commission case reference is Case No. 08-709-EL-AIR and for annualized gas depreciation (with the exception of account 29101 above) the reference is Case No. 07-589-GA-AIR.

3. DYNAMIC RATE PROGRAM

The Parties have discussed dynamic rate billing and understand that the Parties' respective interests are aligned in that it is anticipated that SmartGrid will enable customers in all rate classes to receive energy cost information that will allow the customer to react in real time to facilitate energy savings and efficiencies. Duke Energy Ohio will commit to working with the Parties in an ongoing Smart Grid Collaborative⁶ to make such rates available as soon as practicable for all rate classes and so that all Parties have an opportunity to participate in rate design and implementation. Duke Energy Ohio anticipates implementing the first of these new billing rates for at least 100 customers by the end of 2009, consistent with its commitment under the Stipulation and Recommendation submitted and approved by the Commission in Case No. 08-920-EL-SSO. Specifically, a critical peak pricing (CPP) tariff will originally be available to one hundred residential customers and will be billed manually. The CPP tariff will have off-peak, shoulder, and peak pricing periods, and contain an additional critical peak pricing period called upon during specific summer hours in the year. The number of critical peak hours will be determined in the rate design SmartGrid Collaborative. The rate design, which may also contain a seasonal element, will have no less than a four-to-one ratio of the peak to the off-peak price. Once the Company has automated its customer billing system the CPP tariff will be made available on a voluntary basis and marketed to all residential customers who have the necessary and enabling technology.⁷ The Company shall continue to work with the SmartGrid Collaborative to develop other rate designs, examples of which would be regular time-of-

⁶ A SmartGrid Collaborative was established in the Commission-approved Stipulation and Recommendation in Case No. 08-920-EL-SSO, as set forth on page 15, Paragraph 11(g).

⁷ Duke Energy Ohio agrees herein to work with Parties representing commercial and/or industrial customers to design SmartGrid rates and to make them available as soon as practicable with a target for implementation of such rates at the end of 2010.

use, peak-time rebate, and real-time pricing tariffs and the Company shall provide monthly update reports on the progress it is making toward automation of customer billing for implementation of SmartGrid pricing.

This pilot will also be designed to be revenue neutral for the Company at the time the rates are designed; however, individual customers may be capable of reducing their overall bills by changing their patterns of consumption. The purpose of the pilot is to ascertain whether all the necessary systems are in place and functioning as needed and that customers can receive information.⁸

4. COSTS ALREADY RECOVERED IN RATE CASE

The Parties agree that Duke Energy Ohio shall eliminate recovery of any costs in Rider DR-IM that were included previously in Case No. 08-709-EL-AIR. The revenue recovery for Rider DR-IM would be reduced by the impacts of the amount to be excluded from plant in service in the Rider DR-IM revenue requirement calculation of \$42,578.00 and the flow through effect of that reduction.

5. REPLACEMENT OF INCOMPATIBLE GAS METERS

The Parties agree and understand that, but for the implementation of SmartGrid, gas meters now serving customers, that are incompatible with automated meter reading (AMR) devices, would continue to serve customers for some time in the future. Due to their incompatibility with SmartGrid equipment, such meters are now removed and replaced. In Staff's Comments in this matter, Staff stated its view that the costs of retirement and replacement of these meters should be recovered in normal ratemaking processes and not in Rider AU. The Parties agree that the cost of retirement and replacement of these gas meters should be recovered through normal ratemaking

⁸ Ohio Partners for Affordable Energy neither supports nor oppose Section 3.

processes and shall not be included in the Rider AU revenue requirement calculation. The Parties further agree not to oppose Duke Energy Ohio's request through normal ratemaking in its next natural gas distribution case to recover all reasonable and prudent costs associated with gas meter replacement, through the regular ratemaking process.

6. TREATMENT OF RESIDENTIAL "GAS ONLY" CUSTOMERS

The Parties agree that beginning with the next annual application for Rider DR-IM and Rider AU, Duke Energy Ohio will create a separate Rider AU rate or a rider credit rate for customers that take gas service from Duke Energy Ohio but reside outside of Duke Energy Ohio's electric service territory. Costs to be charged to these gas only customers will include only those costs specific to serving gas customers and will not include an allocation of most common costs. Examples of costs to be included are: gas modules and gas-only communication nodes and installation costs, gas specific IT systems, data transfer fees, and annual maintenance fees for above equipment and systems. Examples of costs to be excluded from these gas only customers are: project management office costs and IT costs that are common to both gas and electric. The Company will notify the Commission as soon as practicable if it encounters any difficulty in implementing the separate rate. Costs incurred to implement this separate Rider AU rate or rider credit rate into the billing system will not be included for recovery in future Rider DR-IM or Rider AU filings. All Parties agree that the creation of this intra-class rate difference is for settlement purposes only and has no precedential value.

In response to concerns in OCC comments regarding the ratio of gas and electric meters served by communication nodes, Duke Energy Ohio further agrees to provide, upon

request, actual deployment experience regarding the number of communication modules required to serve gas customers.

7. GAS POST-IN-SERVICE CARRYING CHARGES, DEFERRED O&M AND DEPRECIATION

The Parties agree that Duke Energy Ohio shall be authorized to create a regulatory asset for the purpose of deferring gas post in service carrying charges, deferred operations and maintenance expense, depreciation, and property taxes. The Company has received approval for identical accounts with respect to electric SmartGrid costs in Case No. 08-920-EL-SSO.

8. ENVISION CENTER

The Parties agree that the costs related to the Envision Center will be eliminated from Rider DR-IM revenue requirement calculation and these costs will not be recovered through any SmartGrid filings.

9. INVENTORY COSTS

The Parties agree that reasonable business practices include the necessity of having inventory on hand to enable the efficient deployment of SmartGrid to the field. Accordingly, the Parties agree to include three months of inventoried gas modules and related equipment in the Rider AU revenue requirement calculation. Adjusting the December 31, 2008, gas module inventory level to comply with this requirement results in a reduction to the gas module inventory balance included in rate base set forth in the Company's Application by \$732,322.00 as shown in Stipulation Attachment 2.

10. MEASUREMENT OF COSTS AND BENEFITS

The Parties agree that, although many of the benefits derived from SmartGrid will

be easily identifiable and measurable, other benefits are more obscure and not easily measured. Consequently, traditional ratemaking principles are of limited use in measuring the overall value and efficacy of the SmartGrid deployment. In Case No. 08-920-EL-SSO, Duke Energy Ohio committed to ensure that the Staff of the Commission would have ample opportunity to verify value and ensure that the ultimate deployment would return value to customers in measureable ways.

In order to provide the Staff of the Commission and interested stakeholders ample opportunity to verify and ensure value to customers, and in preparation for the midterm review Duke Energy Ohio will provide the Staff of the Commission and the members of the Duke Smart Grid Collaborative with such data and information as may be necessary to understand any revisions or changes to its business case for Smart Grid as set forth in Case No. 08-920-EL-SSO including information pertaining to revised projected costs, and revised projected operational benefits for the period of the business case. Duke Energy Ohio commits to provide such information prior to the midterm review described in Case No. 08-920-EL-SSO.

Duke Energy is currently negotiating the terms and conditions of receiving a \$200 million federal stimulus funding grant related to Smart Grid investments for its Midwest jurisdictions. Should Duke Energy agree to accept said funds, the Company agrees that the Ohio portion of all federal stimulus funds received (net of reasonable costs to comply with the stimulus rules and regulations and net of taxes) will be applied to offset overall SmartGrid deployment costs subject to terms and conditions that may be imposed by the U.S. Department of Energy. The Company agrees to inform the SmartGrid Collaborative of how any federal stimulus funds received will be applied and treated.

11. MAIFI STUDY AND REPORT TO COMMISSION

Duke Energy Ohio shall undertake a study of SmartGrid deployment to capture momentary interruptions and will provide the results of said study to the Commission. The study will include details as to what momentary information will be gathered by the implementation of SmartGrid. To the extent the existing plan for SmartGrid does not provide for the gathering of momentary data, Duke Energy Ohio will provide an estimate of incremental cost to accomplish the gathering of momentary data, the timing for implementation, and the impact of such costs on Rider DR-IM. Duke Energy Ohio shall file the study in this docket within 90 days following the Commission's order in the case.

12. ACCUMULATED DEFERRED TAXES

The Parties agree that the revenue requirement calculations for Rider DR-IM and Rider AU recognize the impact of accumulated deferred income taxes. The Parties agree that Duke Energy Ohio will continue to recognize accumulated deferred income taxes as an offset to rate base, and will apply a pre-tax rate of return in future Rider DR-IM and Rider AU filings.

13. REMAINING ELEMENTS SUBJECT TO STAFF'S COMMENTS

The Parties agree that all other elements related to revenue requirements for Rider DR-IM and Rider AU as set forth in Duke Energy Ohio's Application shall be resolved as set forth in the Staff's Comments in this case dated October 8, 2009.

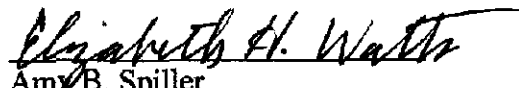
14. APPROVAL OF RIDER AU

The Parties recommend that the Commission approve Rider AU as set forth in Duke Energy Ohio's Application in Case No. 07-589-GA-AIR and as modified in this

case and this Stipulation and establish rates for Rider AU and Rider DR-IM consistent with this Stipulation

THE UNDERSIGNED PARTIES hereby stipulate and agree and each represents that it is authorized to enter into this Stipulation and Recommendation this 18th day of November 2009.

On Behalf of Duke Energy Ohio, Inc.



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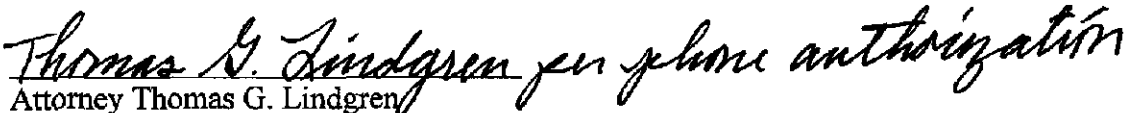
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via hand delivery, ordinary mail or overnight delivery on the following parties this 19th day of November 2009.


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