

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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3 In the matter of the
4 Application of Duke Energy Case No.
5 Ohio to Adjust and Set 09-543-GE-UNC
6 its Gas and Electric Recovery Rate for SmartGrid
7 Deployment under Riders AU
8 and DR-IM.

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

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

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17 PROCEEDINGS

18 Before Christine Pirik and Rebecca Hussey,
19 Hearing Examiners, at The Public Utilities
20 Commission of Ohio, 180 East Broad Street,
21 Columbus, Ohio, Hearing Room 11C, on Friday,
22 November 20, 2009, at 10:45 a.m.

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24 ARMSTRONG & OKEY, INC.
25 222 East Town Street, 2nd Floor
 Columbus, Ohio 43215-5201
 (614) 224-9481/(800) 223-9481
 Fax (614) 224-5724

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1 APPEARANCES:

2 Elizabeth H. Watts
3 Assistant General Counsel
4 Duke Energy Ohio, Inc.
5 155 East Broad Street, 21st Floor
6 Columbus, Ohio 43215

7 On behalf of the Applicant.

8 Ohio Attorney General, Richard Cordray
9 Duane Luckey, Section Chief
10 By Thomas G. Lindgren
11 Assistant Attorney General
12 180 East Broad Street, 9th Floor
13 Columbus, Ohio 43215

14 On behalf of the Staff of the Public
15 Utilities Commission of Ohio.

16 Colleen L. Mooney and David C. Rinebolt
17 231 West Lima Street
18 Findlay, Ohio 45840

19 On behalf of Ohio Partners for
20 Affordable Energy.

21 Ohio Consumers Counsel Janine
22 Migden-Ostrander
23 By Ann M. Hotz
24 10 West Broad Street
25 Suite 1800
Columbus, Ohio 43215

On behalf of Ohio Consumers Counsel.

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1 Friday Morning Session,

2 November 20, 2009.

3 - - -

4 HEARING EXAMINER PIRIK: The Public
5 Utilities Commission of Ohio has called for
6 hearing at this time and place Case Nos. 09-543,
7 544, and 545 being in the matter of the
8 applications of Duke Energy Ohio to adjust and
9 set its gas and electric recovery rate for
10 SmartGrid deployment under Riders AU and DR-IM,
11 for tariff approval, and to change its
12 accounting methods.

13 My name is Christine Pirik. With me
14 is Rebecca Hussey, and we are the Attorney
15 Examiners assigned by the Commission to hear
16 this case.

17 At this time I'll take appearances
18 on behalf of the parties. On behalf of the
19 Company?

20 MS. WATTS: Thank you, Your Honor.
21 On behalf of Duke Energy Ohio, Elizabeth Watts,
22 155 East Broad Street, Columbus, Ohio 43215.

23 HEARING EXAMINER PIRIK: On behalf
24 of the Staff?

25 MR. LINDGREN: On behalf of the

1 Commission Staff, Ohio Attorney General Richard
2 Cordray and Duane Luckey, section chief of the
3 Public Utilities Section, by Thomas G. Lindgren,
4 Assistant Attorney General, 180 East Broad
5 Street, 6th Floor, Columbus, Ohio 43215.

6 MS. HOTZ: On behalf of the
7 residential consumers of Duke Energy Ohio,
8 Janine Migden-Ostrander by Ann Hotz, that's
9 H-o-t-z, 10 West Broad Street, Columbus, Ohio
10 43215. Thank you.

11 MS. MOONEY: On behalf of Ohio
12 Partners for Affordable Energy, David C.
13 Rinebolt and Colleen L. Mooney, Attorneys, 231
14 West Lima Street, Findlay, Ohio.

15 HEARING EXAMINER PIRIK: Let the
16 record reflect that we started rather late this
17 morning because we were concerned about the
18 notice of hearing and making sure all the
19 parties had notice. We did contact Kroger's
20 counsel informally and they will not be
21 attending today's hearing, so that that's clear
22 on the record.

23 I'll turn now to the Company, or I
24 believe there's a statement or some information
25 you'd like to put on record?

1 MS. WATTS: Yes, Your Honor.
2 There's a stipulation in this case which we'd
3 like to have marked and we'll provide to the
4 Bench and there's a number of exhibits that we'd
5 like to offer to the record, if now would be an
6 appropriate time for that.

7 HEARING EXAMINER PIRIK: Yes. Why
8 don't we mark all the exhibits that you would
9 like to propose.

10 MS. WATTS: Okay. Starting with
11 Duke Energy Ohio Exhibit 1, the direct testimony
12 of Todd Arnold which was docketed on June 30,
13 2009. We'd ask that be marked as Duke Energy
14 Ohio 1.

15 HEARING EXAMINER PIRIK: That
16 document will be so marked. Why don't you go
17 through your whole list and then at the
18 conclusion I'll just verify that those are, in
19 fact, the correct exhibit numbers.

20 MS. WATTS: Very good. Duke Energy
21 Ohio Exhibit 2 would be the direct testimony of
22 William Don Wathen, Jr., which was docketed on
23 June 30, 2009.

24 Duke Energy Ohio Exhibit 3 would be
25 the direct testimony of Donald H. Denton which

1 was also docketed on June 30, 2009.

2 Duke Energy Exhibit 4 is a letter
3 with attachments which was docketed on September
4 4, 2009, and contains some updated schedules
5 provided by Mr. Wathen.

6 Duke Energy Exhibit 5 is the
7 supplemental direct testimony of William Don
8 Wathen, Jr., which was docketed on November 19,
9 2009.

10 Exhibit 6 -- I'm sorry. One moment
11 please. Duke Energy Exhibit 6 would be the
12 Company's application in this matter which was
13 docketed on June 30, 2009.

14 And Duke Energy Exhibit 7 are Duke
15 Energy's reply comments to the Staff comments
16 which were docketed October 15, 2009.

17 And then in addition to those items,
18 we have a Joint Exhibit 1 which is the
19 stipulation and recommendation in this case, and
20 Joint Exhibit 2 which are attachments that
21 should have been included with the stipulation
22 but were filed later yesterday.

23 HEARING EXAMINER PIRIK: I believe
24 also we had a confidential piece to Mr. Denton's
25 testimony that was filed on June 30, 2009.

1 MS. WATTS: That's right, Your
2 Honor, and that -- does the Bench have a
3 recommendation about how that should be marked?

4 HEARING EXAMINER PIRIK: Since it's
5 part of his initially filed testimony, I would
6 mark it as 3A, Duke Exhibit 3A.

7 MS. WATTS: I would ask that it be
8 marked as Duke Exhibit 3A then.

9 HEARING EXAMINER PIRIK: All those
10 exhibits shall be so marked.

11 (EXHIBITS HEREBY MARKED.)

12 HEARING EXAMINER PIRIK: Ms. Watts,
13 do you have anything further or should I turn to
14 the other parties to see if they have any?

15 MS. WATTS: Do you want to mark
16 everything now or do you want -- we have a
17 witness that we'd like to offer today. We can
18 do that now if you'd like.

19 HEARING EXAMINER PIRIK: I think
20 that's probably a good idea is go ahead and mark
21 everything that parties want to submit on the
22 record, and then we will move forward with
23 witnesses.

24 MS. WATTS: Very good

25 HEARING EXAMINER PIRIK: Is there

1 any other party?

2 MR. LINDGREN: Yes, Your Honor.

3 The Staff has several documents we'd like to
4 offer into the record. I would ask to have
5 marked as Staff Exhibit 1 the comments of the
6 Staff that were filed with docketing on October
7 8 of 2009.

8 I would ask to have marked as Staff
9 Exhibit 2 the prepared testimony of Peter K.
10 Baker that was filed on November 2, 2009.

11 I would ask to have marked as Staff
12 Exhibit 3 the testimony of Stephen Puican that
13 was also filed on November 2, 2009.

14 I would ask to have marked as Staff
15 Exhibit 4 the pre-filed testimony of L'nard E.
16 Tufts, that was filed on November 2, 2009.

17 And finally I would like to have
18 marked as Staff Exhibit 5 the prepared testimony
19 of Gregory C. Scheck that was also filed on
20 November 2, 2009.

21 HEARING EXAMINER PIRIK: Thank you,
22 Mr. Lindgren. Those documents shall be so
23 marked.

24 (EXHIBITS HEREBY MARKED.)

25 MS. HOTZ: Your Honor, OCC would

1 like to have marked as OCC Exhibit 1 comments
2 that were filed. Unfortunately, I don't have
3 them with me and I can't tell you what day it
4 was.

5 HEARING EXAMINER PIRIK: I believe
6 they were filed on October 8.

7 MR. HOTZ: Filed on October 8.

8 HEARING EXAMINER PIRIK: And it's
9 fine you don't have them here. Since they were
10 filed they can be pulled off. We don't need
11 actual copies.

12 MS. HOTZ: Okay. Thank you. And as
13 OCC Exhibit 2, OCC would like to have marked the
14 letter filed November 19. Thank you, Your Honor.

15 HEARING EXAMINER PIRIK: Thank you.

16 MS. HOTZ: And I guess we would like
17 to have marked as OCC Exhibit 3 the reply
18 comments filed by OCC.

19 HEARING EXAMINER PIRIK: The
20 documents will be so marked.

21 (EXHIBITS HEREBY MARKED.)

22 MS. HOTZ: Thank you.

23 HEARING EXAMINER PIRIK: Are there
24 any other exhibits that we need to mark before
25 we take the witness. Ms. Watts?

1 MS. WATTS: Your Honor, Duke Ohio
2 would like to call a witness, William Don
3 Wathen, Jr.

4 HEARING EXAMINER PIRIK: Thank you.
5 Please raise your right hand.

6 (Witness sworn.)

7 HEARING EXAMINER PIRIK: Please be
8 seated.

9 - - -

10 WILLIAM DON WATHEN, JR.
11 Called as a witness on behalf of the Applicant,
12 being first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 By Ms. Watts:

15 Q. Mr. Wathen, would you state your
16 name and business address, please.

17 A. My name is William Don Wathen,
18 W-a-t-h-e-n. My business address is 201 East
19 4th Street, Cincinnati, Ohio 45202.

20 Q. Mr. Wathen, do you have with you a
21 copy of your testimony which we have just had
22 marked Duke Energy Exhibit 5?

23 A. I do.

24 Q. And is that your prepared direct --
25 or prepared supplemental direct testimony and

1 was it prepared under your direction and
2 supervision?

3 A. It is and it was, yes.

4 Q. And do you have any changes or
5 clarifications to make to that testimony today?

6 A. Not at this time.

7 MS. WATTS: Mr. Wathen is available
8 for cross-examination.

9 HEARING EXAMINER PIRIK: Thank you.
10 Is there any cross-examination on behalf of any
11 of the parties?

12 MR. LINDGREN: No.

13 MS. MOONEY: No.

14 MS. HOTZ: No.

15 HEARING EXAMINER PIRIK: Thank you.

16 - - -

17 EXAMINATION

18 By Hearing Examiner Pirik:

19 Q. Mr. Wathen, you are here to support
20 the stipulation that has been filed in this case
21 so if we ask you substantive questions and
22 clarifications with regard to the stipulation,
23 are you the correct witness for us to approach
24 those questions to?

25 A. We'll see. Depends on the

1 question.

2 Q. Okay. That's an honest answer. I
3 think in your pre-filed testimony, I think you
4 did an excellent job of delineating at least two
5 of the three prongs that's the test that the
6 Commission reviews in considering the
7 stipulation in this case. I don't know and I'm
8 not asking you, you know, specifically for a
9 legal opinion or anything in that regard. I'm
10 just asking with regard to the prong that talks
11 about regulatory principle or practice, is there
12 specific statutory support for these types of
13 applications and the implementation of
14 SmartGrid?

15 Are you aware of whether or not
16 that's where this initiative came from or is it
17 just --

18 A. Well, I think the statement is that
19 it didn't violate any principle. I don't know
20 that I can say it complies with one
21 particularly.

22 Q. Right. I'm not really even asking
23 whether it complies with one. I'm just asking
24 whether or not you're aware if there's some
25 statutory, I guess support, for the

1 implementation of this type of technology?

2 A. I only know that it was mentioned in
3 Senate Bill 221 but I don't know exactly
4 specifics offhand.

5 Q. So perhaps it's part of the policy
6 section of Senate Bill 221 --

7 A. Yes.

8 Q. -- that would lend some support for
9 this type of initiative?

10 A. Again, a lay person's opinion,
11 that's what I would say, yes.

12 Q. So that's where we'll look for
13 that. Thank you. With regard to my other
14 questions, both Examiner Hussey and myself have
15 some clarification questions with regard to the
16 stipulation. Realizing that this is both a gas
17 and electric initiative and that perhaps some of
18 the underlying background information came out
19 of previous cases that have been decided by the
20 Commission, we want to be sure that this record
21 in particular has all of the necessary
22 information in it or at least we can figure out
23 where it is if we need to look to see what the
24 Commission has decided and the Commission can
25 refresh their memory on their decisions.

1 But if you turn to page 6 of the
2 stipulation, it talks about the dynamic rate
3 program. I have looked through the docket in
4 hopes of finding some type of a tariff or rates.
5 I'm trying to figure out -- I mean, this section
6 in particular talks about a pilot program to
7 approximately a hundred customers that the
8 Company is hoping to roll out by the end of
9 2009. So what I'm trying to figure out is what
10 rates are those customers going to be charged?
11 Is there going to be a tariff provision that
12 that's going to be set forth in?

13 And then it also talks about the
14 collaborative going forward and the rate design
15 and discussing rate design, so I'm trying to
16 figure out how all that works practically,
17 what's the process and how is all of that
18 specifically implemented?

19 A. Well, I'll tell you where we are on
20 it. This is all evolved from the commitment we
21 made in a stipulation that we reached in the ESP
22 plan, Case 08-920, to have this particular type
23 of rate available by the end of the year of this
24 year. We don't have a tariff. We have a time
25 of day tariff right now but the desire of the

1 parties in this market collaborative that we do
2 have is to create more differentiation in the
3 time of day, essentially. So we have been
4 working on a tariff. We plan to roll it out, I
5 think, on December 9 to the collaborative
6 group. We do plan to file it by the end of the
7 year. It will be -- I'm not sure exactly what
8 the title of it will be but something along the
9 lines of time of day. We tried to accommodate
10 some of the principles we got from the
11 collaborative members to attempt the types of --
12 the relation between the low and high price, the
13 number of hours that are going to be in the
14 various time differentiated pricing. It's,
15 right now, all I can say it's work in progress.
16 We have been working with all the other parties
17 to the ESP and any other interested stakeholder
18 through the collaborative group, so it's on its
19 way.

20 Q. So the concept, essentially, the
21 concept is being laid out here in the
22 stipulation, but the actual process, the actual
23 approval of actual rates and actual rate design
24 and how all of that is actually going to
25 function is for a later time in tariffs to be

1 filed?

2 A. Yeah. I would expect either a
3 filing in this docket or in the TRF filing to
4 approve the tariff. Again, it's going to be a
5 limited enrollment to start with but it will be
6 forthcoming soon.

7 Q. So until that tariff is actually
8 approved and gone through the process with the
9 Commission, this pilot program wouldn't be
10 implemented?

11 A. It won't be implemented immediately
12 from this order, an order in this case,
13 necessarily. It may be contemporaneous just
14 because of the timing, but we do plan to file it
15 soon.

16 Q. On page 7 of the stipulation, the
17 first full paragraph, the first sentence says
18 "This pilot will be designed to be revenue
19 neutral at the time." How does that -- I mean,
20 is that like part of what you are going to be
21 rolling out on December 9 and everyone is going
22 to be discussing in the rate design? I'm trying
23 to figure out how that plays in. I mean, you
24 have a specific revenue requirement. So the
25 thought is that it's going to be revenue neutral

1 to the Company and then in this rate design?

2 A. Well, I can talk a little bit of
3 what that means. The revenue neutrality issue
4 is we want to take a typical customer's usage
5 and design a rate that would generate, without a
6 change in their behavior, that would generate
7 the same amount of revenue. So that if we move
8 with the price to a lower price in the off peak
9 and a higher price in the on peak, if they don't
10 change their behavior we'd get the same amount
11 of revenue in a year. The idea is that if we do
12 create some incentives to change their behavior,
13 then ultimately they would be able to reduce
14 their overall price, their overall cost, but we
15 have to have a starting point which is to design
16 it on a revenue neutral basis and that is
17 something that was taken up with the
18 collaborative and I think it is something we all
19 agreed to.

20 Q. So this says revenue neutral for the
21 Company. That's on a customer-by-customer
22 basis?

23 A. In this it's an average customer.
24 We can't really do it on a customer-by-customer
25 basis, so it's a typical customer. So one

1 customer may get better benefits than another
2 depending on how they change their behavior and
3 it would be revenue neutral. Again, assuming
4 they made no change in their behavior, then the
5 Company would get exactly the same revenue
6 whether they took the standard residential
7 service or this time differentiated price.

8 Q. So for the customer that actually
9 takes advantage and actually changes their
10 behavior and reduces the costs, then for those
11 who don't change their behavior, will they be
12 paying more? That's what the Company revenue
13 neutral --

14 A. No. The idea is that if they don't
15 change their behavior at all, they would pay
16 exactly the same as they did.

17 Q. As they did before?

18 A. Right.

19 Q. So then you have some customers who
20 don't change their behavior and they pay the
21 same as they paid before, and you have some
22 customers that do change their behavior and they
23 pay less, so then actually the Company will be
24 getting less revenues?

25 A. We would expect to get less revenue.

1 It doesn't necessarily mean we'll get less
2 earnings because we may avoid costs ourselves
3 because if the demand is not there at the peak,
4 then maybe we avoided costs. As far as how we
5 balance out the customer's interest and ours in
6 that situation, that really is a topic to be
7 discussed in the collaborative because we really
8 haven't worked that out yet.

9 Q. Okay. I think I understand what
10 that means. Looking at paragraph 4 on page 7,
11 I just wondered if you could just explain that
12 paragraph to me in a little bit more detail on
13 the record.

14 A. After we filed the case it turned
15 out -- well, let me go back. The case that's
16 referred to here is our last electric
17 distribution case. The test rate in that case
18 used actual data through March 31, '08 and
19 budgeted data for the balance of the calendar
20 year '08. It turned out that we had some costs
21 that we initially included in our rider DR-IM
22 calculation that were on our books at March 31,
23 '08 and this would have been part of the rates
24 that were in the distribution rates. So to
25 avoid double counting, we had to make an

1 adjustment in our current filing to eliminate
2 the costs that were already in base rates.

3 The year in question for the current
4 rider DR-IM is contemporaneous, essentially.
5 It's 12-31-08. So if we had something on the
6 books that was money spent prior to 3-31-08, we
7 would have double counted in here which is what
8 we did. As you can see, it wasn't very much
9 money, \$43,000.

10 HEARING EXAMINER PIRIK: Thank you.
11 I believe Examiner Hussey has some questions.

12 HEARING EXAMINER HUSSEY: Yes, I
13 do.

14 - - -

15 EXAMINATION

16 By Hearing Examiner Hussey:

17 Q. Paragraph 13 of the stipulation on
18 page 11, if you could turn to that for me, in
19 essence, it looks like it says the parties agree
20 that all other elements related to the revenue
21 requirements for Rider DR-IM and Rider AU as set
22 forth in Duke's application shall be resolved as
23 set forth in Staff's comments. For purposes of
24 the record, could you tell us or explain which
25 issues or elements the stipulation is speaking

1 to under that paragraph?

2 A. I don't have a long list of the
3 topics listed in there, and I honestly don't
4 have a checklist of which one we did and didn't
5 agree to offhand, but if it wasn't mentioned in
6 the stipulation, then because the Staff made a
7 number of corrections and adjustments to our
8 filing, to the extent they weren't addressed
9 here, we accepted them in our application and
10 that is reflected in the attachments 1 and 2 to
11 the stipulation.

12 Q. If you could turn to paragraph 10 on
13 page 10, I wanted to talk a little bit about the
14 200 million in Federal stimulus funding for
15 SmartGrid investments. Could you explain what
16 the Ohio portion is, if it's maybe a percentage
17 of the funds that may be received, what can be
18 attributed to Ohio?

19 A. We don't know yet, honestly. We
20 are negotiating as we speak with the DOE, and
21 the exact details of that allocation have not
22 been worked out yet.

23 Q. Okay. If you look on page 9,
24 paragraph 10, that talks about the obscurity of
25 some of the benefits of SmartGrid just

1 generally, and that traditional ratemaking
2 principles are of limited use. Could you maybe
3 elaborate on that or give that statment some
4 context for the record?

5 A. Well, the benefit -- there's a
6 number of benefits that are really not easily
7 measured that customers will never see
8 economically. And the best example I can think
9 of is outages. One of the very important
10 components of our overall program is the
11 distribution automation that we're going to have
12 and along with the smart meters will help us
13 mitigate, minimize, hopefully avoid some outages
14 to customers. To the extent we have them, the
15 idea is to make them shorter and less
16 widespread. We have already had instances where
17 we have seen that, that we've had outages that
18 were avoided to a large group of customers
19 because of the equipment we have already put on.
20 I can't think of a way to quantify that and put
21 it into a rider. It's a benefit to customers.
22 They get to keep their lights on. But it's not
23 something that in a typical rider mechanism can
24 be tracked. It's real. It's difficult to
25 measure and difficult to quantify.

1 The meter reading savings, for
2 example, are easy to quantify. We can eliminate
3 two or three meter readers and save a few
4 hundred thousand dollars and that will flow
5 right to the customers. But somewhere in
6 between there's a lot of other benefits that are
7 very difficult to quantify.

8 HEARING EXAMINER HUSSEY: Thank
9 you.

10 HEARING EXAMINER PIRIK: The
11 Examiners are concerned, we're concerned about
12 paragraph 13 on page 11 in that obviously we
13 haven't, having received the attachments 1 and 2
14 this morning essentially, we haven't had a
15 chance to compare it to Staff's comments to know
16 specifically what's being adopted as part of the
17 stipulation and what's not being adopted. So I
18 guess the question is I don't think the witness
19 has a list in order to be able to respond to
20 that. I don't know if there's another witness
21 that we could have explain to us what in the
22 Staff comments is essentially incorporated into
23 attachment 1 and attachment 2 so the record is
24 clear what's being adopted. We just don't want
25 to get down the road and not have something

1 specifically written that says this is what
2 everyone agreed to.

3 MS. WATTS: Your Honor, if the
4 parties would agree, we could prepare a list of
5 those items and file them later in the docket
6 for the Bench to understand what specifically
7 those issues are. They would essentially be all
8 of the Staff's comments except for the ones that
9 we've altered by agreement. But we would be
10 happy to prepare such a list and I think all the
11 parties would likely concur in what those items
12 are.

13 HEARING EXAMINER HUSSEY: I think a
14 more definitive list would be helpful as a
15 late-filed exhibit.

16 MS. WATTS: Then we will be happy to
17 prepare such a thing. We'll make sure
18 everybody's in agreement on that exhibit and
19 we'll provide it.

20 HEARING EXAMINER PIRIK: I just want
21 to be sure that the late-filed exhibit then, if
22 you could have that signed by all the parties
23 that signed the stipulation so it's clear that
24 everyone who signed the stipulation is in
25 agreement that that was, in fact, you know, the

1 part of the Staff comments, those were the
2 comments that were being accepted, I think that
3 would clarify the stipulation for us.

4 MS. WATTS: We will make sure that
5 you have signatures from all the parties.

6 HEARING EXAMINER PIRIK: Okay.

7 HEARING EXAMINER HUSSEY: I just
8 had one follow-up about the Federal stimulus
9 funding. Could you maybe explain where in the
10 process you are. I know, you're in negotiations
11 right now speaking with the DOE. I guess it
12 would be helpful for us to know perhaps when you
13 might know about this funding, and I know for
14 your purposes it's probably helpful to you when
15 you might know about it as well, but just
16 generally if you could give us some sense.

17 THE WITNESS: Well, I'm not
18 actively involved in that negotiation so I
19 really can't tell you for sure. I know that
20 there's a 30 to 45-day window here we're working
21 in. I don't know that we're negotiating in.
22 I'm not sure when the announcement would come
23 even if that's concluded. We could certainly
24 give you, you know, an indication in the letter
25 where we are.

1 HEARING EXAMINER HUSSEY: Other than
2 Ohio, what states are involved?

3 THE WITNESS: It's pretty much just
4 Ohio and Indiana. We have a small, very small
5 part of Kentucky, but the 200 would be allocated
6 between Ohio and Indiana.

7 HEARING EXAMINER HUSSEY: Thank you.
8 That's helpful. I don't think I have any
9 further questions.

10 HEARING EXAMINER PIRIK: I don't
11 think I do either. Thank you very much.

12 MS. MOONEY: Could we have recross?

13 HEARING EXAMINER PIRIK: No. I
14 think the Examiners ask the last questions. I
15 gave an opportunity for cross and then we asked
16 our questions, but, no, I never allow recross
17 after Examiner's questions. That's never been
18 the process, at least in my hearing room it
19 hasn't. Okay. With regard to the exhibits that
20 have been submitted --

21 MS. WATTS: Your honor, Duke Energy
22 Ohio would move admission of the Exhibits marked
23 Duke Energy Ohio 1, 2, 3, 4, 5, 6. I don't know
24 how many we have totally.

25 HEARING EXAMINER PIRIK: And 3A.

1 MS. WATTS: And 3A, and Joint
2 Exhibits 1 and 2.

3 HEARING EXAMINER HUSSEY: We marked
4 Exhibit 7 as your reply comments.

5 MS. WATTS: Then we would move
6 admission of that exhibit as well.

7 HEARING EXAMINER PIRIK: Are there
8 any objections to these exhibits?

9 MR. LINDGREN: No objections.

10 MS. MOONEY: No.

11 HEARING EXAMINER PIRIK: Hearing
12 none, Exhibits Duke 1 through Duke 7, including
13 Duke 3A as well as Joint Exhibits 1 and 2 shall
14 be admitted into the record.

15 (EXHIBITS HEREBY ADMITTED.)

16 HEARING EXAMINER PIRIK: Mr.
17 Lindgren?

18 MR. LINDGREN: Your Honor, I move
19 the admission of Staff Exhibits 1 through 5.

20 HEARING EXAMINER PIRIK: Are there
21 any objections? Hearing none, Staff Exhibits 1
22 through 5 shall be admitted into the record.

23 (EXHIBITS HEREBY ADMITTED.)

24 HEARING EXAMINER PIRIK: Ms. Hotz?

25 MS. HOTZ: OCC moves the admission

1 of OCC Exhibits 1 through 3 please.

2 HEARING EXAMINER PIRIK: Objections?
3 Ms. Watts?

4 MS. WATTS: Your Honor, which of
5 those three is the letter that was late filed
6 yesterday?

7 HEARING EXAMINER PIRIK: I believe
8 it was OCC Exhibit 2.

9 MS. HOTZ: Yes.

10 MS. WATTS: Duke Energy Ohio has an
11 objection to that exhibit in that it purports to
12 state a number of facts which are contrary to
13 what's in the record, and we have not had an
14 opportunity to cross-examine anyone on the facts
15 that are asserted in that letter and don't
16 believe it should be treated as record in this
17 case; and if Your Honor intends to accept it
18 into the record, we'd like an opportunity to
19 respond to it.

20 HEARING EXAMINER PIRIK: Ms. Hotz?

21 MS. HOTZ: OCC would disagree that
22 it includes facts that are not in the record.
23 We believe that it reflects statements that are
24 in the stipulation.

25 HEARING EXAMINER PIRIK: Are there

1 any other objections to this exhibit?

2 MR. LINDGREN: Your Honor, the Staff
3 had not had adequate time to review this letter
4 as well, so at this time I would have to object
5 to its submission.

6 MS. HOTZ: Your Honor, I don't
7 believe that that is a basis for objection.
8 It's been filed and they had an opportunity to
9 look at it.

10 MS. WATTS: Mr. Lindgren, were you
11 served a copy of this document yesterday
12 afternoon?

13 MR. LINDGREN: I was not, no.

14 MS. HOTZ: Your Honor, I believe
15 OCC did mail a copy of that letter.

16 HEARING EXAMINER PIRIK: E-mailed a
17 copy?

18 MS. HOTZ: No, we did not E-mail; we
19 mailed it.

20 HEARING EXAMINER PIRIK: So they'll
21 probably get it tomorrow. I think based upon,
22 you know, we understand that the comments that
23 are in the letter essentially set forth, you
24 know, OCC's opinion in general, but the
25 Commission is going to be considering the

1 stipulation and, you know, will consider this
2 letter for what it's worth, which is a document
3 that was not subject to cross-examination or
4 rebuttal in fact, and we don't really want to
5 open the floodgates to have responses filed in
6 the docket because, there again, we're not going
7 to have the opportunity for response and
8 cross-examination of those documents. So we're
9 going to allow OCC Exhibits 1 through 3 in the
10 record noting that OCC Exhibit 2 is being
11 submitted to clarify OCC's signature status or
12 lack thereof on the stipulation, but not
13 necessarily for the truth of the matter asserted
14 within that letter. So we will clarify the
15 record to that extent. That being said, they're
16 admitted into the record and they will not have
17 a response time.

18 MS. WATTS: Thank you, Your Honor,
19 and again, I'd just like the record to reflect
20 the fact that the letter was, in fact, docketed
21 yesterday afternoon but not provided to counsel
22 at any time between then and this morning, so we
23 have not really had adequate time to respond to
24 it otherwise anyway. So with that, thank you.

25 (EXHIBITS HEREBY ADMITTED.)

1 HEARING EXAMINER PIRIK: Thank you.

2 I believe those are all the exhibits.

3 THE WITNESS: Am I excused?

4 HEARING EXAMINER PIRIK: Yes, you
5 are excused. Thank you very much. I'm sorry.
6 I thought I said that. Is there any other
7 procedural matter that needs to come before us?

8 MR. LINDGREN: You Honor, I just
9 wanted to let you know that several Staff
10 members are present this morning. If you had
11 any additional questions that Mr. Wathen was not
12 able to address, they would be happy to take the
13 stand.

14 HEARING EXAMINER PIRIK: I think in
15 light of the fact that the parties are willing
16 to -- actually, we should consider it a
17 late-filed exhibit and actually move and admit
18 that into the record, I believe. That was
19 really the outstanding question is what part of
20 Staff comments is really the residual phrase in
21 the stipulation referring to, but I think if all
22 the parties can come together and come to an
23 understanding of what that list is, then I think
24 we can forego having a witness take the stand.
25 We just wanted to be sure the record was clear

1 with that. So I think we would need to mark
2 that as a late-filed Joint Exhibit 3.

3 MS. WATTS: Your Honor, one other
4 thing in terms of late-filed exhibits. Did Your
5 Honor want Duke Energy to file a status report
6 on the stimulus funds?

7 HEARING EXAMINER PIRIK: Yes. I
8 believe Examiner Hussey would like to have that.

9 MS. WATTS: We would propose to mark
10 that Joint exhibit -- well, we would call that
11 Duke Energy Exhibit 8 then, right?

12 HEARING EXAMINER PIRIK: Yes.

13 HEARING EXAMINER HUSSEY: Does
14 anyone have a calendar in the room?

15 HEARING EXAMINER PIRIK: We're
16 trying to nail down a date, but I think an
17 appropriate date for the filing of the
18 late-filed exhibits, we'd like to put a deadline
19 on that so we can have the information,
20 understanding that everyone is hoping to move
21 forward before the end of the year, which means
22 we have a very limited amount of time that we're
23 actually going to be able to present this before
24 the Commission. The Tuesday after Thanksgiving,
25 would we be able to have the late-filed exhibits

1 by that date? Is that December 1?

2 MS. WATTS: That's acceptable to
3 Duke Energy.

4 HEARING EXAMINER HUSSEY: Does
5 anyone have any objection to that date?

6 MS. HOTZ: No.

7 HEARING EXAMINER PIRIK: Okay. Then
8 with regard to late-filed Joint Exhibit 3, which
9 will be the list of the items in Staff's
10 comments as well as late-filed Duke Exhibit 8,
11 are there any objections to these documents
12 being submitted as late-filed exhibits?

13 MS. HOTZ: Your Honor, what was the
14 second one you just said?

15 HEARING EXAMINER PIRIK: It's a
16 status on the stimulus, the Federal stimulus
17 money.

18 MS. HOTZ: No objection.

19 MR. LINDGREN: No objections.

20 MS. MOONEY: No.

21 HEARING EXAMINER PIRIK: Hearing no
22 objections, those late-filled exhibits will be
23 admitted in the record and should be filed on or
24 before December 1st.

25 (EXHIBITS HEREBY ADMITTED.)

1 HEARING EXAMINER PIRIK: If there's
2 nothing else --

3 MS. MOONEY: Your Honor, I do think
4 that the witness misspoke when he was answering
5 one of your questions, which is why I wanted to
6 recross is to clarify that. I do think that
7 right now the record is not accurate. One of
8 the answers he gave I believe was just
9 incorrect. That's what I was going to clarify.
10 How could I handle that then, because I don't
11 think the answer on the record is correct.

12 HEARING EXAMINER PIRIK: Why don't
13 you state on the record what you believe the
14 inaccuracy is.

15 MS. MOONEY: Well, I think that in
16 the revenue neutrality concept that the idea
17 would be when the rate is designed, it will be
18 designed at the outset to be revenue neutral,
19 but then if the customer does not change his
20 behavior, he could very easily pay much more.
21 Mr. Wathen said that if he doesn't change his
22 behavior, he would pay the same, but that's not
23 correct. If you redesign the rate -- you know
24 what I'm saying?

25 MR. WATHEN: I know what you're

1 saying but that's not correct.

2 HEARING EXAMINER PIRIK: I think
3 what we need to do, I do understand what you're
4 saying. In light of the fact that we don't have
5 tariffs filed right now, we didn't have really
6 anything before us that we can look at to
7 determine exactly how all of that works, I think
8 I'll stop it right now and say that I do
9 understand that you may not agree with
10 necessarily what the witness is saying. There
11 really isn't a process and we have a stipulation
12 that's signed by all the parties whereby we can
13 clarify something like that off the record, and
14 we don't allow recross after the Examiners ask
15 their questions.

16 MS. WATTS: Your Honor, I think you
17 correctly recognize that the tariff on that rate
18 is not before you right now, and when we bring
19 the tariff to you we will have those kinds of
20 issues flushed out in detail and firmly
21 understood by all the parties, but what's in the
22 stipulation right now was just a principle that
23 we would all agree to work toward those tariffs.

24 MS. MOONEY: Yes, I agree with that.
25 When we see the tariffs and we see what the kwh

1 and time of day is, we'll see whether or not --
2 and we design to be revenue neutral and then if
3 the customer, his behavior doesn't change, you
4 know, whether he pays more or less is something
5 you will be able to absolutely see when we see
6 the tariffs.

7 HEARING EXAMINER PIRIK: Okay.

8 Well, that issue then will need to be taken up
9 at that time as to how that's addressed.

10 MS. MOONEY: That's fine with me.

11 Thank you.

12 HEARING EXAMINER PIRIK: Thank you.

13 All right. Having nothing further on the
14 record, we will close the record in this
15 proceeding and submit the record to the
16 Commission subject to the late-filed exhibits.
17 We're adjourned.

18 - - -

19 Thereupon, at 11:35 a.m. the hearing
20 was adjourned.

21 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter before The Public
Utilities Commission of Ohio on Friday, November
20, 2009.

Iris I. Dillion, Registered
Professional Reporter.

- - -

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