

FILE

## PUCO EXHIBIT FILING

12

Date of Hearing: June 25, 2012Case No. 12-1280-EL-UNC

PUCO Case Caption: In the matter of The Application  
of Duke Energy Ohio Inc for Administration of the  
Significantly Excessive Earnings Test under Section  
4908.143(F) Revised Code & Rule 4901:1-35-10 Ohio

Administrative Code

## List of exhibits being filed:

Staff 1 Testimony of Joseph Bickley

Staff 1 - Staff Recommendation

Duke 1, 2, 3

already filed

Reporter's Signature: Daniel Guzzo

Date Submitted: 6/26/12

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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the matter of the :  
 Application of Duke :  
 Energy Ohio, Inc. for :Case. No. 12-1280-EL-UNC  
 Administration of the :  
 Significantly Excessive :  
 Earnings Test under Section :  
 4928.143(F), Revised :  
 Code, and Rule 4901:1-35-10 :  
 Ohio Administrative Code :

- - -

PROCEEDINGS

before Ms. Katie Stenman, Hearing Examiner, at the  
 Public Utilities Commission of Ohio, 180 East  
 Broad Street, Room 11-C, Columbus, Ohio, called at  
 10:00 a.m. on Monday, June 25, 2012.

- - -

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

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for Administration of	)	
the Significantly Excessive Earnings Test	)	Case No. 12-1280-EL-UNC
under Section 4928.143(F), Revised Code,	)	
and Rule 4901:1-35-10, Ohio	)	
Administrative Code.	)	

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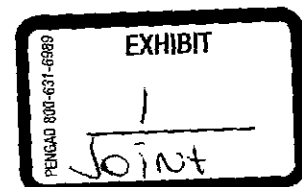
**STIPULATION AND RECOMMENDATION**

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**INTRODUCTION**

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 (the Signatory Parties) and to recommend that the Public Utilities Commission of Ohio (the Commission or PUCO) approve and adopt the Stipulation and Recommendation (Stipulation), as part of its Opinion and Order in this proceeding, resolving all of the issues in the proceeding.

This Stipulation is supported by adequate data and information; represents a just and reasonable resolution of the issues in this proceeding; violates no regulatory principle or precedent; and is the product of serious bargaining among knowledgeable and capable Signatory Parties in a cooperative process and undertaken by the Signatory parties representing a wide range of interests to resolve the aforementioned issues. For purposes of resolving the issues raised by this proceeding, the Signatory parties stipulate, agree, and recommend as set forth below.



## **PARTIES**

This Stipulation is entered into by and between Duke Energy Ohio, Inc., (Company) and the Staff of the Public Utilities Commission of Ohio (Staff) (collectively the Stipulating Parties).

## **STIPULATION**

The Company has calculated its earned return on average electric common equity for the year ended December 31, 2011, to be 5.84 percent, including deferred expenses authorized as part of the Company's Electric Security Plan (ESP), filed under Case No. 08-920-EL-SSO, *et al.* Excluding these deferrals, the earned return is 6.21 percent. Consistent with the Stipulation and Recommendation filed in Case No. 08-920-EL-SSO, *et al.*, because this return does not exceed 15 percent, the Company's return on common equity is not significantly in excess of the return on common equity earned during 2011 by publicly traded companies facing comparable business and financial risk. The Signatory Parties stipulate, agree, and recommend that the Commission admit the Company's Application and accompanying materials filed May 7, 2012, into the record of this proceeding and issue its Opinion and Order in this proceeding determining that significantly excessive earnings under Revised Code Section 4928.143(F) did not occur with respect to the Company's ESP in 2011.

## **PROCEDURAL ISSUES**

This Stipulation is submitted for purposes of this proceeding only and is not deemed binding in any other proceeding, nor is it to be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation. The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission. The Signatory Parties agree that if the Commission or any court of competent jurisdiction rejects all or any material part of this Stipulation, or

otherwise materially modifies its terms, any adversely affected Signatory Party shall have the right to file an application for rehearing or motion for reconsideration. If such application or motion is filed, and if the Commission or court does not, on rehearing or reconsideration, accept the Stipulation without material modification within forty-five days of the filing of such motion, then anytime thereafter the adversely affected Signatory Party may terminate its Signatory Party status without penalty or cost and regain its rights as a non-Signatory Party as if it had never executed the Stipulation by filing a notice with the Commission and the other Signatory Parties. Unless the Signatory party exercises its right to terminate its Signatory Party status as described above, each Signatory Party agrees to and will support the reasonableness of this Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation. The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

**IN WITNESS WHEREOF**, this Stipulation has been signed by the authorized agents of the undersigned Parties this 22<sup>nd</sup> day of June 2012. The undersigned Parties respectfully request the Commission to issue its Opinion and Order determining that significantly excessive earnings did not occur with respect to the Company's ESP in 2011. The Stipulation will be held open for additional intervenors and parties to sign on as Signatory parties until the issuance of an Order by the Commission.

STAFF OF THE PUBLIC UTILITIES  
COMMISSION OF OHIO

By: Thomas McNamee / EHW  
Thomas McNamee, Assistant Attorney General  
its Attorney

DUKE ENERGY OHIO, INC.

By: Amy B. Spiller / EHW  
Amy B. Spiller, Deputy General Counsel  
its Attorney

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of **Duke Energy** :  
**Ohio, Inc.** for Administration of the Significantly : Case No. **12-1280-EL-UNC**  
Excessive Earnings Test Under Section :  
4928.143(F), Revised code, and rule 4901:1-35- :  
10, Ohio Administrative Code, for 2011. :

**PREFILED TESTIMONY  
OF  
JOSEPH P. BUCKLEY  
CAPITAL RECOVERY & FINANCIAL ANALYSIS DIVISION  
UTILITIES DEPARTMENT  
PUBLIC UTILITIES COMMISSION OF OHIO**



**June 20, 2012**

1 1. Q. Please state your name and place of business.

2 A. My name is Joseph P. Buckley. My business address is 180 E. Broad  
3 Street, Columbus, Ohio 43215.  
4

5 2. Q. By who are you employed?

6 A. I am employed by the Public Utilities Commission of Ohio (PUCO).  
7

8 3. Q. Would you please state your background?

9 A. I received a Bachelor of Science Degree in Economics from the Ohio State  
10 University and a Master's Degree in Business Administration from the  
11 University of Dayton. In 2000, I earned the Certified in Financial  
12 Management (CFM) designation, awarded by the Institute of Management  
13 Accountants. Also I attended, The Annual Regulatory Studies Program  
14 sponsored by The National Association of Regulatory Utility Commission-  
15 ers (NARUC) and The Training for Utility Management Analyst also spon-  
16 sored by NARUC. I have been employed by the PUCO since 1987. Since  
17 that time I have progressed through various positions and was promoted to  
18 my current position of Utility Specialist 3, in 2000. In addition, I have  
19 worked on several joint Federal Communication Commission (FCC) and  
20 NARUC projects and audits and served on the Midwest ISO's Finance  
21 Committee as Vice-Chairman and Chairman. Also, in 2011, I was awarded  
22 the professional designation Certified Rate of Return Analyst (CRRA) by



1 the Society of Utility and Regulatory Financial Analysts. This designation  
2 is awarded based upon experience and successful completion of a written  
3 examination.  
4

5 4. Q. What is your involvement in this proceeding?

6 A. I am responsible for determining if Duke Energy Ohio exceeded the com-  
7 mon equity threshold to be used in its Significantly Excessive Earnings  
8 Test (SEET). Duke Energy Ohio's ESP established certain provisions for  
9 the calculation of SEET and established for Duke Energy Ohio a SEET  
10 threshold of 15%<sup>1</sup>. Based on Staff's review of the information provided in  
11 Duke Energy Ohio's SEET application Staff concurs with Duke Energy  
12 Ohio that its return on common equity for 2011 does not exceed 15%.  
13

14 5. Q. What is the Staff's recommendation to the Commission in this proceeding?

15 A. The Staff recommends that the Commission find that Duke Energy Ohio's  
16 2011 earnings were not excessive.  
17

18 6. Q. Has Duke included in its calculation all ESP deferrals and Off System Sales  
19 (OSS)?

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<sup>1</sup> *In re Duke Energy Ohio, Case No. 08-920-EL-SSO (Stipulation and Recommendation at 35, 36) (October 27, 2008). These provisions were approved, unchanged, by the Commission on December 17, 2008.*

1           A.     Yes. Duke Energy Ohio filed, as detailed in the direct testimony of Com-  
2                   pany witness Peggy Laub, return on equity information that included defer-  
3                   rals. Duke Energy Ohio's earnings were 5.84% if the deferrals are used and  
4                   6.21% with out deferrals. Both of which are still well below the 15%  
5                   SEET threshold established in Case No. 08-920-EL-SSO.

6  
7     9.     Q.     Has the Staff reviewed Duke's 2011 earnings calculation and concur with  
8                   its results?

9           A.     Yes. The Staff has reviewed Duke Energy Ohio's calculations and support-  
10                  ing information and finds them to be in conformance with the SEET calcu-  
11                  lation provisions contained in Duke Energy Ohio's ESP and are an accurate  
12                  representation of Duke Energy Ohio's 2011 earnings.

13  
14    10.    Q.     If Staff would have used the methodology that it employed in cases 11-  
15                  4571-EL-UNC and 11-4572-EL-UNC (Columbus and Southern and Ohio  
16                  Power 2011 SEET cases) what would have been the significant excess  
17                  earnings threshold?

18          A.     If Staff used the companies that comprise the SPDR Select Sector Fund --  
19                  Utility (XLU) as its comparable group as it did in 11-4571-EL-UNC and  
20                  11-4571-EL-UNC, and totaled the net income earned by those companies  
21                  and divided it by the total average common equity of each of the companies  
22                  in 2010 and 2011 it would have produced a return of 10.60 percent.

1 In case 10-1261-EL-UNC, the Commission opinion and order stated that  
2 “50 percent is a reasonable guide for establishing an adder.” Therefore  
3 Staff believes the threshold value of 15.90 percent (10.60 percent x 1+ 50  
4 percent) is reasonable. This number may be adjusted either upwards or  
5 downwards based on the factors the Commission deems relevant.  
6

7 11. Q. Does this conclude your testimony?

8 A. Yes, it does. However, I reserve the right to submit supplemental testi-  
9 mony as described herein, as new information subsequently becomes avail-  
10 able or in response to positions taken by other parties.

### **PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing Prefiled Testimony of Joseph P. Buckley, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, hand-delivered, and/or delivered via electronic mail, upon the following parties of record, this 20<sup>th</sup> day of June, 2012.

/s/ Thomas W. McNamee

**Thomas W. McNamee**  
Assistant Attorney General

#### **Parties of Record:**

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