IN THE
SUPREME COURT OF OHIO

The Office of the Ohio Consumers' Counsel,	:	Case No. 08-1837
Appellant,	:	Appeal from the Public Utilities Commission of Ohio, Docket Nos. 07-589-GA-AIR, *et al.*, 07-590-GA-ALT, 07-591-GA-AAM
v.	:	
The Public Utilities Commission of Ohio,	:	
Appellee.	:	

MERIT BRIEF OF INTERVENING APPELLEE,
DUKE ENERGY OHIO

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FILED
FEB 02 2009
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

PAGE No.

I. INTRODUCTION 1

II. STANDARD OF REVIEW 4

III. STATEMENT OF THE FACTS 4

IV. ARGUMENT 5

A. THE COMMISSION PROPERLY DETERMINED THAT DE-OHIO'S NOTICE MET THE REQUIREMENTS OF R.C. 4909.18, R.C. 4909.19, AND R.C. 4909.43 AS A MATTER OF FACT AND THE OCC FAILED TO CHALLENGE THIS FACTUAL FINDING AT HEARING 5

B. THE COMMISSION PROPERLY SUPPORTED ITS ORDER ADOPTING A LEVELIZED RATE DESIGN WITH REASONING AND RECORD EVIDENCE 9

1. The Commission properly considered its precedent and the regulatory principle of gradualism in rendering its Order. 9

2. The Commission's Order is consistent with the statutory policy of this State 11

3. The manifest weight of the evidence supports the Commission's Order. 13

V. CONCLUSION 14

TABLE OF AUTHORITIES

Page No.

Cases

Elyria Foundry Company v. Pub. Util Comm'n, 2008 Ohio 2230 at 12 ..... 4, 13

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (DE-Ohio Ex. 29 at 6) (February 29, 2008) 13

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Entry at 2-3) (September 5, 2007) 5, 8

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Entry on Rehearing at 5-6) 7

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Joint Ex. 1 at Ex. 2) (February 28, 2008) 4

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (OCC's Application for Rehearing at 1) (June 27, 2008) 5

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Order at 13) (May 28, 2008) 13

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Order at 14) (May 28, 2008) 9

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Order at 17-20) (May 28, 2008) 10

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Order at 19) (May 28, 2008) 4, 5, 12

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Order at 19-20) (May 28, 2008) 10

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Order at 20) (May 28, 2008) 4

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Pre-filing Notice) (June 18, 2007) 8

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Schedule E through S-3, part 3) (July 18, 2007) 8

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Staff Report of Investigation) (December 20, 2007) 7

In re DE-Ohio Gas Rate Application, Case No. 07-589-GA-AIR *et al.*, (Tr. I at 170) (March 7, 2008) 4

In re DE-Ohio's DSM, Case No. 06-91-EL-UNC (Finding and Order at 1) (July 11, 2007) 4, 13

Statutes

Ohio Rev. Code Ann. § 4909.18 (Baldwin 2009) 6

Ohio Rev. Code Ann. § 4909.19 (Baldwin 2009) 6

Ohio Rev. Code Ann. §§ 4909.18, 4909.19 (Baldwin 2009) 6

MERIT BRIEF OF INTERVENING APPELLEE, DUKE ENERGY OHIO

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) appeal from a decision by the Public Utilities Commission of Ohio (Commission) implementing a levelized rate design as part of the Commission's Opinion and Order (Order) permitting Duke Energy Ohio (DE-Ohio or the Company) to implement a rate increase agreed upon by the intervening parties.[1] The overall increase, agreed upon by all parties, including OCC and OPAE (together Appellants), and approved by the Commission, was a modest 3.05%.[2] Also agreed upon by all parties, including Appellants, was a rate design to properly reflect the cost of service that shifted $6 million of rates from non-residential customers to residential customers.[3] Neither Appellant therefore objects to a rate design that causes residential customers to pay a larger portion of the rate increase approved by the Commission than they would pay if the increase were proportional. Appellants do object to the implementation of a levelized rate design.

Fundamentally, natural gas utility rate structures include a fixed component known as a customer charge and a variable component based upon the volume of natural gas consumed. A levelized rate design closely aligns the fixed and variable components

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1 The Appellants are joined by Amicus, The Natural Resources Defense Fund (NRDC). The NRDC was not a party in the case before the Commission. Intervening Appellee did not specifically respond to Amicus in this Brief because its arguments are the same or similar to those of the Appellants.

2 OPAE's Appendix will be referenced as "App. At __", OPAE's Supplement will be referenced as "Supp. at __", OCC's Supplement will be referenced as "OCC's Supp. at __", DE-Ohio's Appendix will be referenced as "DE-Ohio's App. at __", and DE-Ohio's Supplement as "DE-Ohio's Supp. at __", the Record will be referenced as "Rec. at ICN __"; *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 6) (May 28, 2008); Rec. at ICN 202 at 6; App. at 20.

3 *Id.*

with the actual costs of providing service to customers, charging customers a greater fixed monthly charge that more accurately reflects the fixed costs of providing service and a variable charge that is more closely aligned with consumption. The rate design at issue is modified because the customer charges include a greater portion, but not all, of the fixed monthly cost. The OCC and OPAE wish to maintain subsidies for residential customers and have contrived four incorrect arguments to maintain improper subsidies for residential customers.

The OCC first argues that DE-Ohio gave an improper notice because it did not notice customers that a levelized rate design was being considered as part of its rate request. The OCC's argument is incorrect because DE-Ohio properly noticed customers about the rate design it proposed in its application for a rate increase. It did not, and could not, notice customers of alternative rate designs the Commission might order as part of its Order amending DE-Ohio's application. All customers were notified that rate design was an issue and all customers could have fully participated in the proceedings. The OCC did participate, representing the interests of residential customers. No statute requires the Commission to provide notice of the substance of an order before it is issued. OCC's allegation of improper notice is without merit.

Next, Appellants argue that the Commission ignored its own precedent regarding rate design. The Commission did no such thing. In these proceedings, the Commission moved in gradual increments to a new rate design and fully explained the reasons for implementing the new rate design. The Commission's Order is consistent with past precedent and its reasoning is based upon the record evidence.

Ignoring the record evidence, Appellants also argue that the levelized rate design is contrary to public policy because it discourages customer investment in energy efficiency. Appellants' myopic position conveniently ignores the evidence that the Commission found persuasive in approving DE-Ohio's rate design. The record confirms that a levelized rate design removes impediments that otherwise prohibit utility investments in gas energy efficiency, a complimentary low-income program acts to encourage low-income users to invest in energy efficiency, the variable component of the levelized rate design still comprises more than 75% of residential customers rates and cross-subsidies among customers are significantly reduced, all in furtherance of state policy. The Commission, unlike the Appellants, recognized the benefits of the levelized rate design proposed by its Staff. The Commission's Order fully explains the benefits and how the levelized rate design rate design implements the statutory state policy.

Finally, the Appellants incorrectly allege that the levelized rate design is not supported by the evidence. Appellants ignore the fact that the Staff Report, admitted into evidence, recommends the levelized rate design methodology and that Staff and DE-Ohio supported the rate design in testimony also admitted into evidence. The Commission properly reviewed the evidence and stated its reasoning in support of its Order. Its reasoning is consistent with and fully supported by the manifest weight of the evidence.

II. STANDARD OF REVIEW

The Court has long held that when reviewing factual decisions of the Commission, the proper standard of review is that the Court will not substitute its judgment for that of the Commission's unless the decision is against the manifest weight of the evidence.[4] The Commission's Order does not raise any legal issues for consideration by this Court. The Commission's Order is fully supported by the record evidence and, therefore, must be affirmed.

III. STATEMENT OF THE FACTS

DE-Ohio disagrees with one factual assertion of Appellants. Appellants assert that as a result of the change to a levelized rate design, the Commission's Order changes the residential customer charge from $6 per month to $25.33 per month.[5] The real change is from a residential fixed charge of $11.77 per month,[6] to a residential fixed charge of $15.00 per month through September 2008,[7] to a residential fixed charge of $20.25 for the balance of the first year,[8] and a residential fixed charge of $25.33

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4 *Elyria Foundry Company v. Pub. Util Comm'n*, 2008 Ohio 2230 at ¶ 12, 2008 Ohio LEXIS 1212 at ¶ 12 (2008); *Industrial Energy Users-Ohio v. Pub. Util. Comm'n*, 117 Ohio St. 3d 486, 489, 885 N.E.2d 195, 199 (2008); *MCI Telecommunications Corporation v. Pub. Util. Comm'n*, 32 Ohio St. 3d 306, 310, 513 N.E.2d 337, 342 (1987). DE-Ohio's App. at 1.

5 OPAE's Merit Brief at 3; OCC's Merit Brief at 5.

6 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Tr. I at 170) (March 7, 2008).

7 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 20) (May 28, 2008); Rec. at ICN 202 at 20; App. at 34.

8 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 19) (May 28, 2008); Rec. at ICN 202 at 19; App. at 33; *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Joint Ex. 1 at Ex. 2) (February 28, 2008); Rec. at ICN 176 at Ex. 2; OCC's Supp. at 27.

thereafter.[9] DE-Ohio will also assess an incremental residential fixed charge associated with accelerated main replacement program (AMRP) costs incurred subsequent to these cases. Together, these charges represent the fixed costs approved by the Commission through its Order that result in a fixed charge to residential customers. Appellants' assertion that the entirety of residential fixed charges associated with fixed costs is the tariffed residential customer charge is inaccurate.

IV. ARGUMENT

A. The Commission properly determined that DE-Ohio's notice met the requirements of R.C. 4909.18, R.C. 4909.19, and R.C. 4909.43 as a matter of fact and the OCC failed to challenge this factual finding at hearing.

On September 5, 2007, the Commission, with one amendment inviting the public to review the filing at DE-Ohio's or the Commission's office and on the internet or by telephone, approved DE-Ohio's notice as compliant with R.C. 4909.18 and R.C. 4909.19.[10] The OCC did not file an interlocutory appeal of the Commission's Entry. The OCC did not offer any evidence demonstrating that the notice failed to address any issue raised by DE-Ohio's application for a rate increase. Instead, the OCC waited silently until raising this issue in its Application for Rehearing. In its Application for Rehearing, in a desperate attempt to create a legal issue for the Court's review, the OCC alleged that DE-Ohio's notice was deficient because it failed to include a description of the levelized rate design proposed by the Staff and adopted by the Commission.[11]

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[9] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 19) (May 28, 2008); Rec. at ICN 202 at 19; App. at 33; *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Joint Ex. 1 at Ex. 2) (February 28, 2008); Rec. at ICN 176 at Ex. 2; OCC's Supp. at 28.

[10] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Entry at 2-3) (September 5, 2007); Rec. at ICN 54 at 2-3; DE-Ohio's App. at 7-8.

[11] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 19) (May 28, 2008); Rec. at ICN 202 at 19; App. at 33; *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (OCC's Application for Rehearing at 1) (June 27, 2008); Rec. at ICN 208 at 1; OCC's App. at 56.

Revised Code Section 4909.18 requires DE-Ohio to file a notice in a newspaper "fully disclosing the substance of the application" and including "the average percentage increase in rate that a representative industrial, commercial, and residential customer will bear should the increase be granted in full."[12] There is no dispute that DE-Ohio filed a notice that referred to its rate design decoupling proposal. This proposal included the $15.00 residential customer charge that would result from the proposal and that was ultimately adopted by the Commission as the initial residential customer charge.[13]

Revised Code Section 4909.19, also relied upon by the OCC, requires DE-Ohio to publish a notice approved by the Commission.[14] It requires the Commission to cause the publication of a written report concerning the application and to provide notice of the report to municipal corporations and other persons deemed interested by the Commission.[15] The OCC failed to mention this notice requirement in its Application for Rehearing to the Commission and in its Merit Brief to the Court. On December 20, 2007, the Staff Report of Investigation (Report) required by R.C. 4909.19 was docketed at the Commission and served upon municipalities and other interested parties throughout DE-Ohio's service territory, including the OCC.[16] The statutory notice requirement of the Commission regarding its Report is substantially identical to the notice requirement applicable to DE-Ohio regarding its application for a rate increase.[17]

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12 Ohio Rev. Code Ann. § 4909.18 (Baldwin 2009); App. at 55.

13 OCC's Merit Brief at 8.

14 Ohio Rev. Code Ann. § 4909.19 (Baldwin 2009); App. at 56.

15 *Id.*

16 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Staff Report of Investigation) (December 20, 2007); Rec. at ICN 65; OCC's Supp. at 183A.

17 Ohio Rev. Code Ann. §§ 4909.18, 4909.19 (Baldwin 2009); App. at 55-56.

The Staff Report recommends the levelized rate design to which the OCC objects.[18] Staff set forth a table showing the effects of the proposed rate design upon residential customers.[19] Staff also set forth its reasoning supporting its rate design proposal.[20] And, pursuant to statute, Staff provided notice of the Report to municipalities and all interested parties.[21] Thus, contrary to the OCC's unfounded assertion, all interested parties had actual notice of the levelized rate design ultimately adopted by the Commission. It is not surprising that the notice did not come from DE-Ohio because DE-Ohio did not propose the rate design at issue. The Commission properly noticed, pursuant to statute, interested parties of the rate design recommended by its Staff.

The OCC improperly relies upon *Committee Against MRT, et al. v. Pub. Util. Comm'n,* 52 Ohio St.2d 231, 371 N.E.2d 547 (1977) (*Committee*) for the proposition that DE-Ohio violated its notice requirement in these cases.[22] As the Commission correctly stated in its Entry on Rehearing, *Committee* is inapposite to this proceeding because the utility in that case failed to include a description of a proposed service in its notice and instead described the service in exhibits filed with the case.[23] In *Committee,* the utility failed to fully describe its own rate proposal in its notice. In this case, DE-Ohio fully described its rate proposal in its notice and the Staff fully described the proposed rate design ultimately adopted by the Commission in its notice. All interested parties had

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18 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Staff Report of Investigation at 30-33) (December 20, 2007); Rec. at ICN 65 at 30-33; OCC's Supp. at 183D-183G.

19 *Id.*

20 *Id.*

21 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Staff Report of Investigation at i) (December 20, 2007); Rec. at ICN 65 at i.

22 OCC's Merit Brief at 9.

23 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Entry on Rehearing at 5-6) (July 23, 2008); Rec. at ICN 213 at 5-6; App. at 12-13.

actual notice of the levelized rate design and an opportunity to object to such rate design proposal and participate at hearing.

Finally, OCC inappropriately relies upon *In re Pike Decoupling Plan*, Case No. 08-940-GA-ALT, where the utility failed to properly notice and describe its rate design proposal.[24] Just as *Committee* is inapplicable to this proceeding so is *In re Pike Decoupling*. In *In re Pike Decoupling*, the Commission determined pursuant to O.A.C. 4901:1-19-06, that the utility failed to provide the information required to comply with O.A.C. 4901:1-19-05, including a written notice of intent. In fact, the utility completely ignored the notice requirements and did not request a waiver from those requirements.

In this case, on June 18, 2007, DE-Ohio filed its notice of intent to file a rate case pursuant to R.C. 4909.18, O.A.C. 4901:1-19-05(A) and Chapter 1, General Instructions (B) of the Standard Filing Requirements, O.A.C. 4901-7-01.[25] On July 19, 2007, DE-Ohio filed its Application along with a Motion to Approve the form of Notice contained in Schedule S-3 of the Application.[26] On September 5, 2007, the Commission found DE-Ohio's Application complete, commending the Company for including electronic data not required under the rules and approving the form of legal notice for publication.[27] On December 20, 2007, the Commission issued its Staff Report of Investigation, which discussed the levelized rate design, and served it on all Parties of record as well as each and every mayor and municipality in DE-Ohio's service territory.[28]

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[24] OCC's Merit Brief at 10-11.

[25] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Pre-filing Notice) (June 18, 2007); Rec. at ICN 5 at Tab 1, PFN Ex.1; DE-Ohio's App. at 18.

[26] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Schedule E through S-3, part 3) (July 18, 2007); Rec. at ICN 17 at 159; DE-Ohio's App. at 20-31.

[27] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Entry at 2-3) (September 5, 2007); Rec. at ICN 54 at 2-3; DE-Ohio's App. at 7-8.

[28] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Staff Report of Investigation at 30-33) (December 20, 2007); Rec. at ICN 65 at 30-33; OCC's Supp. at 183D-183G.

DE-Ohio and the Commission each presented proper notice to all interested parties and all such parties had an opportunity to object and participate at hearing. The fact of notice and content of DE-Ohio's notice and the Staff Report and Commission's notice of its Staff Report were not contested in any respect by either Appellant in this case. Appellants' argument on this issue is hollow. The Court should sustain the Commission's Order.

B. The Commission properly supported its Order adopting a levelized rate design with reasoning and record evidence.

The remainder of Appellants' allegations rest with their disagreement over the Commission's reasoning set forth in its Order and Entry on Rehearing and the record evidence upon which the Commission relied to support the levelized rate design at issue in this proceeding. Specifically, Appellants allege that: (1) the Commission improperly deviated from its precedent regarding the regulatory principle of gradualism;[29] (2) the adopted rate design is contrary to state policy because it allegedly discourages energy conservation;[30] and (3) the manifest weight of the evidence does not support the Commission's Order.[31] In each instance, the Appellants not only reject the Commission's reasoning but completely ignore the evidence it relies upon. Appellants' position is unsupportable because the Commission's reasoning and the evidence in support thereof, is compelling and sufficient to sustain its Order.

1. The Commission properly considered its precedent and the regulatory principle of gradualism in rendering its Order.

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29 OPAE's Merit Brief at 7-15; OCC's Merit Brief at 12-22.

30 OPAE's Merit Brief at 16-20; OCC's Merit Brief at 22-36.

31 OPAE's Merit Brief at 20-24; OCC's merit Brief at 37-49.

In its Order, the Commission recognizes and addresses the Appellants' objections to a levelized rate design.[32] In approving the rate design, the Commission notes the need for stability and transparency due to price volatility and sustained price increases in the natural gas market in recent years.[33] The Commission also states that because of the volatility, there is a decrease in gas usage, thereby eroding the utility's ability to try to earn its authorized return through a more traditional rate design with a greater portion of fixed costs in the volumetric rate component.[34] The Commission cites evidence demonstrating why the recommended rate design is a necessary evolution from the traditional rate design. The Commission also describes how the implementation of the rate design, through the approved Stipulation, is consistent with the principle of gradualism, recommending a customer charge less than justified by DE-Ohio's fixed costs, a phase-in of the customer charge over a two-year period, and minimizing the impact on low-income customers through a two-tiered variable rate component and a new low-income program.[35] Ultimately, the Commission addressed Appellants' concerns for rate shock by adopting a lower initial customer charge of $15, phasing in the remaining customer charge over two years, and adopting an expanded low income program.[36]

The Commission, however, did not stop there. The Commission also explained the benefits of the levelized rate design, such as better price signals to customers, a more stable and level bill, especially during winter months when gas commodity prices are traditionally higher, and the removal of disincentives for DE-Ohio to invest in energy

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32 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 14) (May 28, 2008); Rec. at ICN 202 at 14; App. at 28.

33 *Id.*

34 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 17-20) (May 28, 2008); Rec. at ICN 202 at 17-20; App. at 31-34.

35 *Id.*

36 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 19-20) (May 28, 2008); Rec. at ICN 202 at 19-20; App. at 33-34.

efficiency measures. The fact that the OCC's witnesses have a different opinion from the findings of the Commission is insufficient to overturn the Commission. The Commission's record supports its Order. DE-Ohio and Staff provided witnesses who support the Commission's Order and upon which the Commission relied.[37] Combined with the Commission's review of the evidence and statement of its reasoning, the Record clearly supports the Commission's Order.

2. The Commission's Order is consistent with the statutory policy of this State.

Appellants inaccurately allege that the Commission's Order is contrary to the statutory policy set forth in R.C. 4929.02, because the levelized rate design adopted by the Commission does not encourage customer investment in energy efficiency.[38] DE-Ohio agrees that energy efficiency is a goal of R.C. 4929.02, and asserts that the Commission's Order is consistent with that policy. Appellants' position ignores two key facts found persuasive by the Commission.

First, the Commission found that the levelized rate design promotes energy efficiency by removing barriers to energy efficiency investment by DE-Ohio.[39] In making this finding, the Commission relied upon record evidence committing a gas energy efficiency investment by DE-Ohio of $3 million.[40] The OCC asserts that this $3 million investment is of no consequence because the Commission already approved a three-year demand-side management program for DE-Ohio in another case and, therefore

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[37] *Id.*

[38] OPAE's Merit Brief at 16-20; OCC's Merit Brief at 22-36.

[39] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 18) (May 28, 2008); Rec. at ICN 202 at 18; App. at 32.

[40] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 18) (May 28, 2008); Rec. at ICN 202 at 18; App. at 32; *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Joint Ex. 1 at 12-14) (February 28, 2008); Rec. at ICN 176 at 12-14; Supp. at 12-14; OCC's Supp. at 12-14.

DE-Ohio already had incentive to conserve and did not need additional incentive.[41] This is simply not true as to gas demand-side management – or energy efficiency – programs. DE-Ohio does actively promote energy efficiency in concert with state and local community action agencies. These efforts represent a starting point and are complementary to the efficiencies enabled by the rate design which the Commission ordered in this case.

In Case No. 06-91-EL-UNC *et al.*, DE-Ohio applied for approval of thirteen energy efficiency programs, including three gas energy efficiency programs.[42] The Commission was skeptical that any gas energy efficiency program could meet the criteria for approval of an energy efficiency program; therefore, it denied recovery through gas rates and approved only limited pilot programs recovered through electric rates.[43] DE-Ohio has no Commission approved energy efficiency program dedicated solely to natural gas energy efficiency efforts. Further, the pilot programs approved by the Commission represent minor investments. Having removed barriers to investment, DE-Ohio hopes to develop and implement gas energy efficiency programs in the future.

Second, Appellants ignore the fact that more than 75% of the residential customer rates remain on a variable volumetric charge.[44] This means that all customers, including residential customers, retain an incentive to save because the less they use, the smaller their bill. Thus, even from a customer perspective, the Commission has retained a rate design that includes an incentive for customers to invest in energy efficiency. Appellants

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41 OCC's Merit Brief at 30.

42 *In re DE-Ohio's DSM*, Case No. 06-91-EL-UNC (Finding and Order at 1) (July 11, 2007); DE-Ohio's Supp. at 1.

43 *In re DE-Ohio's DSM*, Case No. 06-91-EL-UNC (Finding and Order at 4) (July 11, 2007); DE-Ohio's Supp. at 1.

44 *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 19) (May 28, 2008); Rec. at ICN 202 at 19; App. at 33.

simply want a bigger incentive. The Commission's policy is consistent with the statutory policy and must be affirmed.

3. The manifest weight of the evidence supports the Commission's Order.

Appellants oppose the levelized rate design approved by the Commission below. This is not enough for the Court to overturn the Commission. Appellants must show that the Commission's Order is against the manifest weight of the evidence.[45] This, Appellants cannot do.

In its Order, the Commission listed the evidence supporting and opposing the levelized rate design that it ultimately approved.[46] The Commission stated that Staff and DE-Ohio supported the levelized rate design while Appellants opposed it.[47] The Commission cited the Report, the Stipulation and Recommendation, the testimony of DE-Ohio witness Paul G. Smith, and testimony on cross-examination of DE-Ohio witnesses Donald L. Storck and Paul G. Smith.[48] That evidence explained the benefits of a levelized rate design, including the impact on customers, the price signals seen by customers, simplicity of administration, and the mitigation of declining average customer usage.[49] The Commission recognized that Appellants did not agree that declining usage required a new rate design but noted in response, evidence that clearly demonstrated there

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[45] *Elyria Foundry Company v. Pub. Util Comm'n*, 2008 Ohio 2230 at ¶ 12, 2008 Ohio LEXIS 1212 at ¶ 12 (2008); *Industrial Energy Users-Ohio v. Pub. Util. Comm'n*, 117 Ohio St. 3d 486, 489, 885 N.E.2d 195, 199 (2008); *MCI Telecommunications Corporation v. Pub. Util. Comm'n*, 32 Ohio St. 3d 306, 310, 513 N.E.2d 337, 342 (1987). DE-Ohio's App. at 1.

[46] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 12-15) (May 28, 2008); Rec. at ICN 202 at 12-15; App. at 26-29.

[47] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 12-13) (May 28, 2008); Rec. at ICN 202 at 12-13; App. at 26-27.

[48] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 12) (May 28, 2008); Rec. at ICN 202 at 12; App. at 26.

[49] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (DE-Ohio Ex. 29 at 6) (February 28, 2008); Rec. at ICN 180 at 6; DE-Ohio's Supp. at 16; *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Staff Report of Investigation at 30-33) (December 20, 2007); Rec. at ICN 65 at 30-33; OCC's Supp. at 183D-183G.

was a real problem with DE-Ohio's revenue erosion.[50] The Commission's Order is replete with support for its policy at pages 12-15. Each objection by Appellants is answered by evidence offered by Staff or DE-Ohio. The Commission's Order is not against the manifest weight of the evidence. The Court must affirm the Commission.

V. CONCLUSION

For the reasons more thoroughly discussed above, Duke Energy Ohio respectfully requests that the Court affirm the Order of the Commission.

Respectfully submitted,

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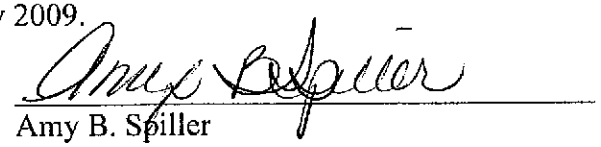
[50] *In re DE-Ohio Gas Rate Application*, Case No. 07-589-GA-AIR *et al.*, (Order at 13) (May 28, 2008); Rec. at ICN 202 at 13; App. at 27.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on the following either by first class U.S. mail, postage prepaid, or via overnight mail upon the following, this 30th day of January 2009.



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