

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
v.	:	Ohio, Docket Nos. 07-589-GA-AIR,
	:	<i>et al.</i> , 07-590-GA-ALT,
The Public Utilities Commission of Ohio,	:	07-591-GA-AAM
	:	
Appellee.	:	

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**APPENDIX TO MERIT BRIEF OF INTERVENING APPELLEE,  
DUKE ENERGY OHIO**

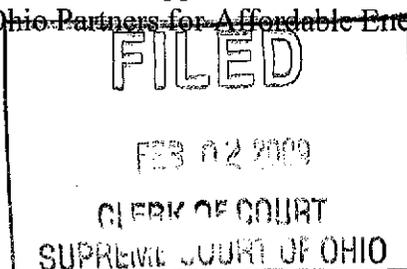
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LEXSEE 2008 OHIO LEXIS 1212

**ELYRIA FOUNDRY COMPANY, APPELLANT, v. PUBLIC UTILITIES COMMISSION OF OHIO ET AL., APPELLEES.**

No. 2007-0860

**SUPREME COURT OF OHIO**

118 Ohio St. 3d 269; 2008 Ohio 2230; 888 N.E.2d 1055; 2008 Ohio LEXIS 1212

January 22, 2008, Submitted  
May 15, 2008, Decided

**PRIOR HISTORY:**

APPEAL from Public Utilities Commission of Ohio, No. 05-796-EL-CSS.

**DISPOSITION:** Order affirmed.

**HEADNOTES**

*Public utilities -- Interruptible electric service -- Fairness of economic interruptions -- Order affirmed.*

**COUNSEL:** Craig Smith, for appellant.

Thomas R. Winters, Acting Attorney General, Duane W. Luckey, Senior Deputy Attorney General, and John H. Jones and William L. Wright, Assistant Attorneys General, for appellees.

Kathy J. Kolich, Senior Counsel, FirstEnergy Service Corporation, for intervening appellee.

**JUDGES:** CUPP, J. MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, and LANZINGER, JJ., concur.

**OPINION BY:** CUPP

**OPINION**

[\*269] [\*\*\*1056] CUPP, J.

[\*\*P1] This is an appeal as of right by Elyria Foundry Company ("Elyria") from an order of the Public Utilities Commission of Ohio ("PUCO" or "commission") concerning the interruptible electric service program offered by the Ohio Edison Company. Electric customers that contract for this program agree to have their

service subject to interruption in exchange for a discount on the cost of service. In contrast, "firm service" customers are provided a priority service without interruption. Elyria receives a portion of its electric service on an interruptible basis.

[\*\*P2] Elyria takes issue with the method that was used to determine interruptions of its service in 2005. In 2005, Elyria Foundry had a portion of its electric supply interrupted on 44 days for a total of 645 hours. Previously, Elyria had averaged about four interruptions a year. Elyria contests Ohio Edison's internal policy that resulted in these interruptions, asserting that the program is flawed and not properly filed with the commission as required by the law.

[\*\*\*1057] [\*\*P3] Elyria provides no evidence that Ohio Edison's internal policy contradicted the interruptible program outlined in the company tariffs in its appeal of the commission order. Elyria also fails to demonstrate to the court that the commission's decision is against the manifest weight of the evidence or is clearly unsupported by the record. Thus, we affirm the commission's opinion and order.

**STATEMENT OF FACTS**

[\*\*P4] In Ohio Edison's territory, customers receive interruptible service under one of three tariff provisions. The relevant section in this appeal is Rider 75 Ohio Edison's Tariff PUCO No. 11.

[\*\*P5] Under Rider 75, Ohio Edison may "interrupt service to the customer's interruptible load whenever the incremental revenue to be received from the [\*270] customer is less than the anticipated incremental expense to supply the interruptible energy for the particular hour(s) of the interruption request."

118 Ohio St.3d 269, \*; 2008 Ohio 2230, \*\*;  
888 N.E.2d 1055, \*\*\*; 2008 Ohio LEXIS 1212

[\*\*P6] When an economic interruption is requested by Ohio Edison, the interruptible customer can (1) arrange for service from another supplier; (2) purchase replacement power from Ohio Edison at a prearranged price; (3) ignore the notice and buy replacement power from Ohio Edison at the highest market price; or (4) decrease its usage in accordance with Ohio Edison's firm load responsibilities.

[\*\*P7] Ohio Edison developed a policy of not calling for an economic interruption until all of its interruptible customers are impacted ("2001 policy"). The 2001 policy invokes an interruption when, for at least three consecutive hours, incremental out-of-pocket costs to supply power exceed a "strike price" of \$ 85 per (changed to \$ 65 in 2003) megawatt hour ("MWh") and the current or expected load obligations exceed available planned resources by 300 megawatts or more. The strike price represents approximately the highest incremental revenue received from any interruptible customer.

[\*\*P8] Ohio Edison's interruptible service is administered by FirstEnergy Solutions Corp. ("FES"), an unregulated electric marketer and wholly-owned subsidiary of FirstEnergy Corp. ("FE"). FES is the owner of virtually all of the generation assets formerly owned by FE, and it provides all electricity needed by the FE operating companies under a power supply agreement ("PSA") approved by the Federal Energy Regulatory Commission ("FERC").

[\*\*P9] The number of economic interruptions Elyria Foundry experienced each year from 1995 through 2004 varied, but it was never more than 11. Elyria Foundry received a notice from Ohio Edison in 2005 warning that the number of interruptions under Rider 75 might increase. Ohio Edison explained that the previous few years had experienced fairly mild winters and that FERC's changes in the national structure of the electric system, combined with the uncertainty of prices in the power, gas, and coal markets, might trigger interruptions more frequently. Then, the state of Ohio experienced the hottest June and fifth-hottest July in the past 30 years in 2005, and the first 21 days of December 2005 were the coldest ever recorded in Ohio. In addition to the weather conditions, coal-supply issues in the Midwest and oil and natural gas shortages in the aftermath of Hurricane Katrina and other hurricanes in the Gulf region caused price increases.

[\*\*P10] Elyria filed a complaint at the commission concerning the application of the internal 2001 policy after the frequency of the interruptions increased from an average of four days a year to 44 days in 2005. On January 17, 2007, following a [\*\*\*1058] hearing and the submission of briefs, the commission issued its opinion and order in its proceeding ("*Jan. 17th Order*"). The

commission found that Elyria [\*271] did not provide sufficient evidence either that Ohio Edison's charges under Rider 75 had violated any applicable statute, regulation, or guideline or that Ohio Edison had failed to comply with any filing or notice requirement concerning its implementation of Rider 75.

[\*\*P11] On May 10, 2007, Elyria filed a notice of appeal with this court. Ohio Edison intervened as an appellee. The cause is before this court on an appeal as of right.

## STANDARD OF REVIEW

[\*\*P12] A PUCO order will be reversed, vacated, or modified by this court only when, upon consideration of the record, the court finds the order to be unlawful or unreasonable. R.C. 4903.13. See also *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004 Ohio 6767, 820 N.E.2d 885, P 50. This "court will not reverse or modify a PUCO decision as to questions of fact where the record contains sufficient probative evidence to show' that the commission's decision was not manifestly against the weight of the evidence and 'was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty.'" *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004 Ohio 6896, 820 N.E.2d 921, 29, quoting *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.* (2000), 88 Ohio St. 3d 549, 555, 2000 Ohio 422, 2000 Ohio 423, 728 N.E.2d 371. The appellant bears the burden of demonstrating that the PUCO's decision is against the manifest weight of the evidence or is clearly unsupported by the record. *Id.* Furthermore, the court will not reverse a commission order absent a showing by the appellant that it has been or will be harmed or prejudiced by the order. *Myers v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 299, 302, 1992 Ohio 135, 595 N.E.2d 873.

[\*\*P13] The court has "complete and independent power of review as to all questions of law" in appeals from the commission. *Ohio Edison Co. v. Pub. Util. Comm.* (1997), 78 Ohio St. 3d 466, 469, 1997 Ohio 196, 678 N.E.2d 922. The court has explained that it may rely on the expertise of a state agency in interpreting a law where "highly specialized issues" are involved and "where agency expertise would, therefore, be of assistance in discerning the presumed intent of our General Assembly." *Consumers' Counsel v. Pub. Util. Comm.* (1979), 58 Ohio St. 2d 108, 110, 12 O.O.3d 115, 388 N.E.2d 1370.

## ARGUMENT

### Proposition of Law No. 1

[\*\*P14] Elyria argues that the incremental costs used by Ohio Edison to determine the need for requesting economic interruptions are unlawful. Specifically, Elyria argues that the PSA (power supply agreement) and its formula were [\*272] not used to determine incremental expenses upon which to request economic interruptions. Elyria asserts instead that "the incremental expenses were based on the total, unallocated, actual purchased power costs of FES." In other words, Elyria claims that Ohio Edison included the electric load in FES's unregulated contracts when deciding whether to issue an economic interruption for Ohio Edison's regulated customers.

[\*\*P15] Elyria asserts that there are up to 3,000 megawatts of competitive market sales by FES that should not have been included in determining the need for interruptions for Ohio Edison's Rider 75 interruptible customers. Consequently, according to Elyria, the commission allowed Ohio [\*\*\*1059] Edison to request an excessive number of economic interruptions during 2005. Elyria also claims that those market customers failed to pay their portion of the increased replacement power rate.

[\*\*P16] Elyria's argument is unavailing. Elyria is an interruptible customer that chose to be a part of the discount system. Rider 75 deals with Ohio Edison's actions once the supply of electricity is in question. Implicit in the interruptible program is the belief that firm customers deserve to receive service before interruptible customers.

[\*\*P17] The commission cites its generic review of interruptible programs in which it developed guidelines to provide a base for utilities to develop these programs. *In the Matter of Interruptible Electric Service Guidelines, Pursuant to the Agreement by Participants in the Commission Roundtable on Competition in the Electric Industry* (Dec. 22, 1998), PUCO No. 95-866-EL-UNC ("Guideline Order"). In the *Guideline Order*, the commission recognized that the key to interruptible programs is the distinction between firm and interruptible service. *Id.* at 8-9. The commission also recognized that "[e]ach utility has an obligation to maintain system integrity and service to firm \* \* \* customers, and it is important to remember that [interruptible] customers receive substantial-discounts for accepting risk of service interruption." *Jan. 17th Order* at 9, quoting *Guideline Order* at 8-9.

[\*\*P18] It is this policy view that interruptible service should not be prioritized over firm service that appropriately leads the commission to find that it is not unreasonable to consider all of the firm obligations of FES, including those outside of the PSA, in determining the costs to Ohio Edison of serving interruptible customers. It was reasonable for the commission to rely on its

precedent that helped define the boundaries of the interruptible program. After discussing the *Guideline Order*, the commission determined that it is reasonable to look at all firm-service commitments of the provider to ensure that those customers are served first.

[\*273] [\*\*P19] Elyria wants the discounted rates and therefore is willing to take the risk of interruption. Once a customer gives up the right to firm service, it falls into the bucket of interruptible customers and is subject to interruptions and inconveniences during the highest peaks on the electric system. The fact that electric suppliers have regulated and unregulated responsibilities does not matter. Elyria was not required to open itself to the risk of interruptible service. In fact, in its *January 17th Order*, the commission suspended the onerous opt-out provision for interruptible customers to give Elyria and others a one-time opportunity to move back to firm service without penalty. Elyria chose to stay in the program.

[\*\*P20] Ohio Edison's actions comply with the scope of Rider 75 and previous commission decisions on interruptible programs. The commission established the reasonableness of taking FES's entire electric load into account when determining economic interruptions. Elyria failed to provide any evidence that Ohio Edison's actions or that its 2001 policy contradicts Rider 75. Elyria's proposition of law, therefore, must be rejected.

## Proposition of Law No. II

[\*\*P21] Elyria argues that Ohio Edison's utilization of its 2001 policy is a rate-setting practice that was not approved under R.C. 4909.18 and was not published under R.C. 4905.30. Elyria argues that during economic interruptions, customers are offered replacement/buy-through power rates that are not approved by the commission.

[\*\*\*1060] [\*\*P22] R.C. 4909.18 requires "a written application to establish any rate \* \* \* or to modify \* \* \* any existing rate \* \* \* or regulation or practice affecting the same \* \* \*." Elyria incorporates a number of the common definitions of the words in R.C. 4909.18 to support its position that any effect on rates in any manner is required to be included in a tariff and not in an informal policy.

[\*\*P23] We do not agree with Elyria's argument. Ohio Edison's interruptible program was approved by the commission as set forth in its tariffs under Rider 75. Elyria had the option to purchase firm electric service at the standard price. Instead, Elyria elected to accept some risk and take service under an interruptible tariff. The terms of that interruptible risk/benefit service are defined in Rider 75. The risk of accepting that discount is that at some point, the customer is subject to the highest cost of

electric service if it chooses to run at full power at peak load times. Everything is defined in the commission-approved Rider 75, and therefore no new rate is being established.

[\*\*P24] The 2001 policy is an internal operating procedure, and Elyria's attacks on the 2001 policy are misplaced. Tariff provisions define the programs offered by a regulated utility. However, tariffs are not a standard operating procedure [\*274] manual for the utility. Utilities develop internal policies to run their day-to-day business. As detailed in the record, the 2001 policy streamlines the administrative process and enables FES to act timely and efficiently when economic interruption conditions are present. The policy also minimizes the need for contact between the regulated (Ohio Edison) and the unregulated (FES) as required under R.C. 4928.17 and the commission's code of conduct rules.

[\*\*P25] The 2001 policy enumerates that all contract and tariff restrictions must be followed and that nothing in the policy undermines or diminishes tariff or contractual rates. Thus, nothing in the 2001 policy can contradict the rates and terms in Rider 75. The 2001 policy exists as a checklist, outlining the internal mechanics of Ohio Edison's process to carry out its optional right to interrupt customers' service as outlined in Rider 75. We reject Elyria's second proposition of law.

### Proposition of Law No. III

[\*\*P26] Elyria argues that it is disadvantaged by Ohio Edison's policy to interrupt all interruptible customers at the same time, for the same duration, and replace power at the same cost. Elyria argues that the uniform interruptible strike price at \$ 65 MWh discriminates against Elyria as prohibited by R.C. 4905.35. R.C. 4905.35 prohibits any utility from giving any undue or unreasonable preference or advantage to any customer. Elyria states that the use of a single interruptible price resulted in its paying a much higher incremental rate to Ohio Edison for a like and contemporaneous service that was interrupted under the same circumstances and conditions than those customers paying less.

[\*\*P27] The \$ 65/MWh strike price represents the highest incremental rate paid by any interruptible customer. The lowest rate paid by an interruptible customer is around \$ 30/MWh. Elyria takes issue with the fact that customers paying the lower rate were not interrupted until more than 100 percent of their incremental expense was surpassed. Elyria argues that that policy discriminates against customers like itself who pay \$ 51.34/MWh.

[\*\*P28] The commission rejected Elyria's argument, finding no evidence of unlawful or prejudicial treatment under R.C. 4905.35. The commission points

out that [\*\*\*1061] the strike price is not a rate but rather a trigger point used to indicate a need for service interruption. At that point, Elyria can avoid paying the higher electricity costs by seeking supply elsewhere or shutting down operations. Elyria can also choose to ignore the call for an interruption. If it chooses to ignore or "buys through" the interruption, it must pay the market replacement cost to Ohio Edison. That process was approved by the commission when Rider 75 was filed.

[\*275] [\*\*P29] Elyria fails to provide any evidence that the 2001 policy contradicts the approved tariff. Elyria also fails to demonstrate that the commission's decision is against the manifest weight of the evidence or is clearly unsupported by the record. Elyria is accepting service under an interruptible program. Elyria has a right to the interruptible rate as long as no interruption is required. Once the interruption is necessary, then Elyria's ability to negotiate or receive differentiated treatment is limited to its options of curtailing use, arranging a third-party provider, or purchasing power from Ohio Edison. Otherwise, under Rider 75, the price to secure electric service for all interruptible customers is left to the market at the time.

[\*\*P30] The 2001 policy does not discriminate against any particular interruptible customer. Ohio Edison developed a neutral policy that would not interrupt any customers until all customers being served under the plan were subject to an economic interruption. This consistent policy has the benefit of minimizing service interruptions until the problem affects the entire class of customers. The policy also sets a predetermined strike price, ensuring that no customers will be singled out. The single strike price simply recognizes the interruptible customers as a single class of customers facing interruptions under the same terms. Rider 75 is written as a neutral process to give the interruptible customer options to get through the interruption and back to its discounted interruptible rate.

[\*\*P31] We reject Elyria's third proposition of law.

### Proposition of Law No. IV

[\*\*P32] In its fourth proposition of law, Elyria argues that the commission violated R.C. 4903.09, which requires the commission to set forth the factual basis and reasoning in its decision. Specifically, Elyria argues that the commission did not include adequate record citations when adopting Ohio Edison's position in response to an argument made by Elyria on rehearing.

[\*\*P33] After the March 14th Entry on Rehearing, Elyria filed a second rehearing request arguing that the commission failed to provide the factual basis and reasoning used for agreeing with Ohio Edison's position dealing with Elyria's mathematical arguments. Elyria

argued that Ohio Edison's calculations of incremental costs were incorrect in that they failed to allocate the cost per MWh based on the percentage of total purchased power consumed by Ohio Edison's customers. Ohio Edison responded that Elyria's mathematical arguments were in error.

[\*\*P34] The commission agreed with Ohio Edison on this issue and denied the ground for rehearing, citing Ohio Edison's memorandum contra that "if the total cost is to be allocated based on the percentage of consumption to get the unit cost, so too must the volume." Elyria argues that [\*276] the commission's adoption of Ohio Edison's argument without record support violates R.C. 4903.09.

[\*\*P35] We find no merit in Elyria's fourth proposition of law. The commission pointed out the mathematical error made by Elyria. The correction to the mathematical [\*\*\*1062] formula showed all that was needed to reject the argument in the rehearing entry. The commission pointed out Elyria's mistake and reaffirmed its order.

[\*\*P36] The commission's order adequately supports its findings and provides the court with an adequate record to understand the commission's rationale underlying its decision on appeal. The commission's order sup-

ports the commission's findings in compliance with R.C. 4903.09.

## CONCLUSION

[\*\*P37] Elyria paid about \$ 450,000 less for electric service in 2005 than if it had accepted electric service as a firm service customer. In spite of these savings, Elyria challenges the basis of the interruptible system and seeks to change how the program is administered. It takes issue with the program despite the record showing the factors necessitating an increase in economic interruptions, such as the extreme weather conditions.

[\*\*P38] The interruptible program is premised on a company's business decision to pay lower rates on a regular basis in exchange for the risk of being interrupted at the highest usage or most expensive times for electric usage during the year. Complaints about how the utility enacts Rider 75 must show that the process contradicts or goes outside of the approved rider. Elyria fails to prove that Rider 75 was violated.

[\*\*P39] We affirm the commission's order.

Order affirmed.

MOYER, C.J., and PFEIFER, LUNDBERG  
STRATTON, O'CONNOR, O'DONNELL, and  
LANZINGER, JJ., concur.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for an Increase in Gas ) Case No. 07-589-GA-AIR  
Rates. )

ENTRY

The Commission finds:

- (1) Duke Energy Ohio, Inc., (Duke) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code. Duke is, therefore, subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05 and 4905.06, Revised Code.
- (2) The notice of intent to file an application for an increase in gas rates was received on June 18, 2007, pursuant to Section 4909.43(B), Revised Code, and in compliance with Rule 4901-7-01, Ohio Administrative Code (O.A.C.), Appendix A, Chapter I, paragraphs (A) and (B). (Appendix A to Rule 4901-7-01, O.A.C., may be referred to in this entry as the Standard Filing Requirements.)
- (3) With the filing of its notice of intent to file an application seeking Commission authority to increase its gas rates, Duke moved that its test period begin January 1, 2007, and end December 31, 2007, and that the date certain be March 31, 2007. Duke's proposed test period and date certain were determined to be in compliance with Section 4909.15(C), Revised Code, and were, therefore, approved by Commission entry dated July 11, 2007.
- (4) The application seeking Commission authority to increase gas rates was received by this Commission on July 18, 2007, and is subject to Sections 4909.17 to 4909.19 and 4909.42, Revised Code.
- (5) In its notice of intent to file an application for an increase in rates, Duke requested several waivers from filing various informational data required by the Commission's Standard

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Filing Requirements. By entry dated July 11, 2007 Entry, the Commission granted these waivers.

- (6) On July 18, 2007, Duke filed a motion for a waiver of the requirements of Rule 4901:1-19-05(C)(2)(g) and (h), O.A.C. On August 20, 2007, Duke filed a letter with the Commission withdrawing that waiver request and, instead, requesting a waiver of Rule 4901:1-19-05(C)(2)(h) and (i), O.A.C. These filing requirements instruct Duke to file the projected financial data required in Section F of the Standard Filing Requirements through the term of the Alternative Rate Plan, showing the effects of the Plan and showing the effects if the Plan is not adopted. Duke states it does not normally maintain the information at issue in a form that would readily allow Duke to comply with this filing requirement. Another factor in the waiver request is the expense to the utility in compiling the information. Duke estimates that it would require a substantial amount of management time to compile this information in a suitable format. Duke contends that other information submitted with the application is sufficient to allow the Commission staff to evaluate this rate application. Also, if Commission staff should require any additional information to evaluate this subject matter, Duke will provide in a timely manner such information in response to a data request, allowing the process to proceed in an effective and efficient manner.
- (7) Upon consideration of Duke's motion, the Commission finds that it is reasonable and should be granted.

Further, the Commission commends Duke for filing an active spreadsheet with its application. This format will greatly assist Staff in its investigation and is an excellent example for other companies to follow.

- (8) The application meets the requirements of Section 4909.18, Revised Code, which enumerates the statutory requirements for an application to increase rates and this Commission's Standard Filing Requirements. As such, the Staff recommends the application be accepted for filing as of July 18, 2007.
- (9) Duke's proposed notice for publication, Schedule S-3, complies with the requirements of Section 4909.18(E), Revised Code, and

should be approved, with the following modification. The Commission directs Duke to insert the below-listed paragraph in each newspaper notice. The Commission is of the opinion that the inclusion of this additional paragraph in the notice of publication will enhance interested parties' ability to access the application and its content. Duke shall begin publication of these newspaper notices, pursuant to Section 4909.19, Revised Code, within 30 days of the date of this entry and such notices shall not appear in the legal notice section of the newspaper.

Any interested party seeking detailed information with respect to all affected rates, charges, regulations and practices may inspect a copy of the application, including supporting schedules and present and proposed rate sheets, at the offices of the Commission at 180 East Broad Street, 13th floor, Columbus, Ohio, 43215-3793; by visiting the Commission's web site at <http://www.puco.ohio.gov>, selecting DIS, inputting 07-0589 in the case-lookup box, and selecting the date the application was filed; or by telephoning the Commission at 1-800-686-7826. In addition, a copy of the application and supporting documents may be viewed at the business office of the company at 644 Linn Street, Cincinnati, Ohio.

- (10) Moreover, on August 1, 2007, the Commission issued an entry finding that, in order to complete our review of the applications, the necessary audit should be conducted by a qualified independent auditing firm. Therefore, the Commission ordered staff to issue a request for proposals (RFP) from qualified independent auditors, with proposals due by August 29, 2007.
- (11) Staff mailed RFP No. U07-FA-1 on August 16, 2007. One auditor submitted a timely proposal.
- (12) Staff has evaluated the proposal received in response to the RFP. After consideration of the proposal received, the Commission selects Blue Ridge Consulting Services, Inc., (Blue Ridge) to conduct the audit. The Commission finds that Blue

Ridge has the necessary experience to complete the required work under the RFP.

- (13) Duke shall enter into a contract with Blue Ridge for the purpose of providing payment for its auditing services. The contract shall incorporate the terms and conditions of the RFP, the auditor's proposal, and relevant Commission entries in this case.
- (14) Blue Ridge will execute its duties pursuant to the Commission's statutory authority to investigate and obtain records, reports, and other documentation under Sections 4903.02, 4903.03, 4905.06, 4905.15, and 4905.16, Revised Code. The auditor shall be subject to the Commission's statutory duty under Section 4901.16, Revised Code, which states, in relevant part:

Except in his report to the public utilities commission or when called on to testify in any court or proceeding of the public utilities commission, no employee or agent referred to in section 4905.13 of the Revised Code shall divulge any information acquired by him in respect to the transaction, property, or business of any public utility, while acting or claiming to act as such employee or agent. Whoever violates this section shall be disqualified from acting as agent or acting in any other capacity under the appointment or employment of the commission.

- (15) Upon request of the auditor or staff, Duke shall provide any and all documents or information requested. Duke may conspicuously mark such documents or information "confidential." In no event, however, shall Duke refuse or delay in providing such documents or information.
- (16) Once the exceptions set forth in Section 4901.16, Revised Code, are satisfied, the following process applies to the release of any document or information Duke marks as "confidential." The staff or auditor shall not publicly disclose any document marked "confidential" by Duke, except upon three days' prior written notice of intent to disclose served upon Duke's counsel. Three days after such notice, staff or auditor may disclose or

otherwise make use of such documents or information for any lawful purpose, unless Duke moves the Commission for a protective order pertaining to such documents or information within the three-day notice period. The three-day notice period will be computed according to Rule 4901-1-07, O.A.C. Service shall be complete upon mailing or delivery in person.

- (17) The auditor shall perform its duties as an independent contractor. Neither the commission nor its staff shall be liable for any acts committed by the auditor in the performance of its duties.

It is, therefore,

ORDERED, That Duke's application be accepted for filing as of July 18, 2007. It is, further,

ORDERED, That the proposed newspaper notice submitted by Duke be approved for publication with the modification specified by the Commission as set forth above. It is, further,

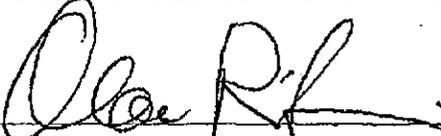
ORDERED, That Duke's motion for a waiver be granted. It is, further

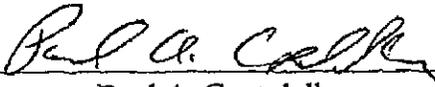
ORDERED, That Blue Ridge Consulting Services, Inc., is hereby selected to perform the consulting activities set forth above. It is, further,

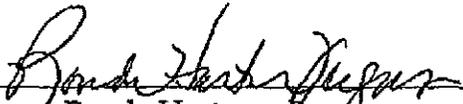
ORDERED, That Duke and Blue Ridge shall observe the requirements set forth in this entry. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

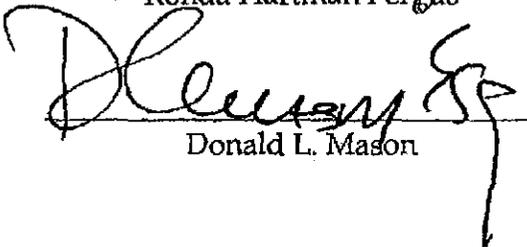
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

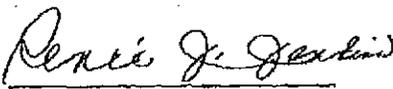
  
Ronda Hartman Fergus

  
Valerie A. Lemmie

  
Donald L. Mason

GAP/HW:ct

Entered in the Journal  
**SEP 05 2007**

  
Renee J. Jenkins  
Secretary



BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for Approval ) Case No. 07-590-GA-ALT  
of an Alternative Rate Plan for its )  
Gas Distribution Service )

**PRE-FILING NOTICE**  
**OF DUKE ENERGY OHIO, INC.**

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of            )  
Duke Energy Ohio, Inc. for Approval        )  
to Change Accounting Methods                )     Case No. 07-591-GA-AAM

**PRE-FILING NOTICE**  
**OF DUKE ENERGY OHIO, INC.**

Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215-3793

Attention:

Ms. Renee J. Jenkins  
Secretary to the Commission

Mr. Steven R. Brennen  
Director, Utilities Department

Ms. Doris McCarter  
Director, Service Monitoring and Enforcement Department

Re:

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for an ) Case No. 07-589-GA-AIR  
Increase in Gas Rates )

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for Approval ) Case No. 07-590-GA-ALT  
of an Alternative Rate Plan for its )  
Gas Distribution Service )

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for Approval ) Case No. 07-591-GA-AAM  
to Change Accounting Methods )

To The Honorable Public Utilities Commission of Ohio:

Pursuant to R. C. 4909.43(B), O.A.C. 4901:1-19-05(A) and Chapter 1, General Instructions (B) of the Standard Filing Requirements, Section 4901-7-01 of the Commission's Code of Rules and Regulations, notice is hereby given that Duke Energy Ohio, Inc. ("DE-Ohio") intends to file with this Commission an application for approval of an increase in its gas rates, an application for approval of an alternative rate plan for its gas distribution service, and a related application to change accounting methods.

Enclosed are the following items required pursuant to Chapter I, General Instructions (B) of the Standard Filing Requirements, OAC 4901-7-01:

Tab 1

B(1)(a) PFN Exhibit 1      Statement of Notice of Intent to File / Service Area  
Included / Proposed Test Year/Date Certain

Tab 2

B(1)(b) PFN Exhibit 2      Municipalities to be included in the Application  
Names and addresses of mayors and clerks  
Names and addresses of legislative authorities

Tab 3

B(1)(c) PFN Exhibit 3      Proposed tariff schedules and current tariff schedules

Tab 4

B(1)(d) PFN Exhibit 4      Schedule E-5 Typical Bill Comparison

The following items required by OAC 4901:1-19-05 are also  
enclosed:

Tab 5

Proposed rates/Explanation of methodology for changes in rates during the term  
of the plan with illustration of effect on rates

Tab 6

Brief summary of DE-Ohio's proposed alternative rate plan for its gas distribution  
service

Tab 7

Copies of waiver requests filed with the Commission

Tab 8

Copy of letter sent to mayors and legislative authorities of municipalities listed in PFN  
Exhibit 2

Tab 9

List of intervenors and interested parties in DE-Ohio's last gas rate case

For the Commission's information, a copy of the letter to mayors and legislative authorities is attached at Tab 8. Such notice letter was sent to each mayor, clerk and legislative authority listed in PFN Exhibit 2, the Office of Consumers' Counsel, each party in DE-Ohio's last gas rate case and any other parties who have requested to receive notice. A complete listing of all such parties (except those already listed in PFN Exhibit 2) is attached at Tab 9.

Please date-stamp the four extra copies of this Notice, and return in the postage-paid envelope.

Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sandra P. Meyer".

Sandra P. Meyer  
President  
Duke Energy Ohio, Inc.

**DUKE ENERGY OHIO, INC.**

**NOTICE OF INTENT TO FILE**

This document constitutes DE-Ohio's Notice of Intent to file for an increase in gas rates and DE-Ohio's Notice of Intent to file an application for approval of an alternative rate plan for its gas distribution service.

**SERVICE AREA INCLUDED**

The entire gas service area of DE-Ohio will be included in the application for an increase in gas rates and the application for approval of an alternative rate plan for its gas distribution service.

**TEST YEAR AND DATE CERTAIN**

Test Year – Twelve Months ended December 31, 2007

Date Certain – March 31, 2007

I. List of municipalities served gas by DE-Ohio within the jurisdiction of the Public Utilities Commission of Ohio:

Village of Aberdeen  
Village of Addyston  
Village of Amberley Village  
Village of Amelia  
Village of Arlington Heights  
Village of Batavia  
Village of Bethel  
Village of Blanchester  
City of Blue Ash  
City of Carlisle  
City of Cheviot  
City of Cincinnati  
Village of Cleves  
City of Deer Park  
Village of Elmwood Place  
Village of Evendale  
Village of Fairfax  
City of Fairfield  
City of Forest Park  
City of Franklin  
Village of Georgetown  
Village of Glendale  
Village of Golf Manor  
Village of Greenhills  
Village of Hamersville  
City of Hamilton  
City of Harrison  
Village of Indian Hill  
City of Lebanon  
Village of Lincoln Heights  
City of Lockland  
City of Loveland  
City of Madeira  
Village of Manchester  
Village of Mariemont  
City of Mason  
City of Middletown  
City of Milford  
Village of Millville  
City of Monroe  
City of Montgomery

# Large Filing Separator Sheet

Case Number: 07-589-GA-AIR  
07-590-GA-ALT  
07-591-GA-AAM

Date Filed: 7/18/2007

Section: 3 of 3

Number of Pages: 169

Description of Document: Volume 2 (part 3 of 3)  
Schedules E through S-3

**LEGAL NOTICE**

**NOTICE OF APPLICATION TO  
THE PUBLIC UTILITIES COMMISSION OF OHIO  
FOR AN INCREASE IN GAS RATES  
TO ALL JURISDICTIONAL CUSTOMERS  
AND FOR APPROVAL OF  
AN ALTERNATIVE REGULATION PLAN  
FOR DUKE ENERGY OHIO, INC.**

**TO WHOM IT MAY CONCERN:**

Pursuant to the requirements of Section 4909.19 of the Revised Code of Ohio, Duke Energy Ohio, Inc. (DE-Ohio) hereby gives notice that on July 18, 2007, it filed with The Public Utilities Commission of Ohio (Commission) an application for authority to change its gas rates and charges in incorporated communities and the unincorporated territory within its service area which includes all or part of Adams, Brown, Butler, Clinton, Clermont, Hamilton, Highland, Montgomery, and Warren Counties in Ohio. The Application also contains a request for approval of annually adjusted rate mechanisms and an Alternative Regulation Plan (Plan). Such Application has been assigned Case Nos. 07-589-GA-AIR, 07-590-GA-ALT, and 07-591-GA-AAM by the Commission. The substance of the application follows.

Each 100 cubic feet of gas (Ccf) under the sales service rate schedules shall be subject to an adjustment per Ccf determined in accordance with the "GAS COST RECOVERY" provision set forth on Sheet No. 71 of the Company's P.U.C.O. Gas No. 18 tariff (gas tariff). The gas cost recovery rate charged under the present and proposed rate sheets shall be determined in accordance with the provisions of Section 4901:1-14 of the Ohio Administrative Code. The average expected gas cost rate, used for purposes of determining the impact on customers who purchase natural gas from the Company, is \$0.8883 per Ccf.

Monthly charges computed under the sales service and firm transportation rate schedules described herein shall be adjusted by the interim emergency and temporary rider, Rider PIPP, Percentage of Income Payment Plan (PIPP) as set forth on Sheet No. 63 of the Company's gas tariff. The current PIPP rider increases monthly charges by \$0.0190 per Ccf. Monthly charges are adjusted for Rider STR, State Tax Rider, as set forth on Sheet No. 68 of the Company's gas tariff. The current charges for Rider STR per Ccf are \$0.01593 for the first 1,000 Ccf; \$0.00877 for the next 19,000 Ccf; and \$0.00411 for all additional Ccf. The monthly charges shall be further adjusted for Rider ETR, Ohio Excise Tax Liability Rider, as set forth on Sheet No. 64. The current charge under Rider ETR, stated in terms of a specific percent, to be applied to customer bills is 4.89%. Under Rider CCCR, as set forth on Sheet No. 76, all firm customers served pursuant to Rates RS, GS, FT, and RFT shall be assessed a surcharge to enable the

Company to fully recover all costs which were incurred to supply gas to firm sales service customers who have elected to switch to gas transportation service. The amount of this surcharge shall be \$0.0039 per Ccf. This rate is currently in effect during the months of June 2007 through August 2007 and is updated quarterly, concurrent with the Company's Gas Cost Recovery filings, to reflect the cost of unneeded capacity, net of any costs that the Company is able to recover via its mitigation efforts, including, but not limited to, capacity release transactions.

The following is a description of the proposed changes to the Company's existing gas rates.

### **RESIDENTIAL SERVICE RATE**

#### **RATE RS, RESIDENTIAL SERVICE, SHEET NO. 30.14**

##### **APPLICABILITY**

Applicable to gas service required for residential purposes when supplied at one point of delivery where distribution mains are adjacent to the premises to be served.

##### **NET MONTHLY BILL**

Computed in accordance with the following charges:

Customer Charge per month	\$15.00
Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Sheet No. 88, Rider AU, Advanced Utility Rider, and Sheet No. 89, Rider SD, Sales Decoupling Rider.	

Plus a charge for all Ccf delivered at

Year 1	\$ 0.22796 per Ccf
Year 2	\$ 0.24714 per Ccf
Year 3 and beyond	\$ 0.26575 per Ccf

The average percentage increase in the total bill of customers, under Rate RS in year 3, including the cost of natural gas, should the increase be granted in full is 10.0%.

### **GENERAL SERVICE RATE**

#### **RATE GS, GENERAL SERVICE, SHEET NO. 32.10**

##### **APPLICABILITY**

Applicable to gas service required for any purpose by an individual customer at one premises when supplied at one point of delivery where distribution mains are adjacent to the premises to be served.

**NET MONTHLY BILL**

Computed in accordance with the following charges:

Customer Charge per Month \$40.00  
Plus the applicable charge per month as set  
forth on Sheet No. 65, Rider AMRP,  
Sheet No. 88, Rider AU, Advanced Utility Rider, and  
Sheet No. 89, Rider SD, Sales Decoupling Rider.

Plus a charge for all Ccf delivered at

**Year 1**

<u>First 1,000 Ccf delivered at</u>	\$0.19474 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.18774 per Ccf
<u>Additional Ccf delivered at</u>	\$0.18373 per Ccf

**Year 2**

<u>First 1,000 Ccf delivered at</u>	\$0.16980 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.16280 per Ccf
<u>Additional Ccf delivered at</u>	\$0.15880 per Ccf

**Year 3 and beyond**

<u>First 1,000 Ccf delivered at</u>	\$0.14560 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.13860 per Ccf
<u>Additional Ccf delivered at</u>	\$0.13463 per Ccf

The average percentage increase in the total bill for customers under Rate GS in year 3, including the cost of natural gas, should the increase be granted in full is (3.6%).

**RESIDENTIAL FIRM  
TRANSPORTATION SERVICE RATE**

**RATE RFT, RESIDENTIAL FIRM TRANSPORTATION SERVICE,  
SHEET NO. 33.11**

**AVAILABILITY**

Firm full requirements transportation service, which is provided from the Company's city gate receipt points to the outlet side of Company's meter, is available to all residential customers, except those customers whose utility service accounts are past due at the time customer desires to utilize this service, or whose accounts fall into arrears, as defined in Rate FRAS, after choosing this service.

**NET MONTHLY BILL**

Customer Charge per month \$15.00  
Plus the applicable charge per month as set  
forth on Sheet No. 65, Rider AMRP,  
Sheet No. 88, Rider AU, Advanced Utility Rider, and

Sheet No. 89, Rider SD, Sales Decoupling Rider.

Plus a charge for all Ccf delivered at

Year 1	\$ 0.22796 per Ccf
Year 2	\$ 0.24714 per Ccf
Year 3 and beyond	\$ 0.26575 per Ccf

The average percentage increase in the total bill for customers under Rate RFT in year 3, should the increase be granted in full is 32.3%.

**RATE SAC, RETAIL NATURAL GAS SUPPLIER AND AGGREGATOR CHARGES, SHEET NO. 45.2**

**AVAILABILITY**

These Charges apply to Retail Natural Gas Suppliers and Aggregators providing Competitive Retail Natural Gas Service to Customers located in the Company's service territory.

**TYPES OF CHARGES**

**General Fees**

Registration Fee	\$145.00
Retail Natural Gas Supplier and Aggregator Financial Evaluation Fee	\$50.00/Evaluation
Retail Natural Gas Supplier Customer Information List Fee	\$150.00/List
Governmental Aggregator Eligible Customer List Fee (based on zip codes only)	\$400.00/List
Governmental Aggregator Eligible Customer List Fee (includes best efforts verification of governmental boundaries)	\$1,200.00/List
Returned Check Charge	\$13.50/Check

**Bill Preparation and Request Charges**

**Consolidated Bill Preparation**

Hourly charge for administrative and technical support to institute program modifications associated with the implementation of consolidated billing on non-standard rates requested by the Retail Natural Gas Supplier or Aggregator	\$75.00/Hour
---	--------------

**Other Bill Preparation Requests**

Request by Retail Natural Gas Supplier or Aggregator for a one page Duplicate Bill	\$0.26/Bill
Fee for Providing Commission Mandated Abandonment Notices as Bill Messages	\$0.225/Bill

**PURCHASE OF ACCOUNTS RECEIVABLE**

The Company will negotiate a discount rate for purchase of supplier accounts receivable with each individual Retail Natural Gas Supplier or Aggregator, consistent with the guidelines approved by the Commission.

**BILLING TERMS AND CONDITIONS**

The billing terms and conditions for the above stated charges shall be in conformance with those specified in Rate FRAS.

The supplying and billing for service and all conditions applying thereto are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio.

**INTERRUPTIBLE TRANSPORTATION SERVICE RATE**

**RATE IT, INTERRUPTIBLE TRANSPORTATION SERVICE, SHEET NO. 51.14**

**AVAILABILITY**

Curtailable natural gas local delivery service available to any customer who: (1) signs a contract with the Company for service under Rate IT; (2) utilizes a minimum of 10,000 Ccf per month during each of the seven consecutive billing periods commencing with customer's first meter reading taken on or after April 1; (3) has arranged for the delivery of gas into the Company's system, for customer's sole use at one point of delivery where distribution mains are adjacent to the premises to be served; and (4) has become a member of a pool under Rate AS and elected interruptible monthly balancing service under Rate IMBS.

**NET MONTHLY BILL**

The Net Monthly Bill is determined as follows:  
All gas consumed is billed in units of 100 cubic feet (Ccf).

Administrative Charge per month	\$595.86
---------------------------------	----------

Commodity Charge:

Company will deliver the arranged-for gas, less shrinkage which is equal to the Company's system average unaccounted for percentage, at a rate of

<u>Year 1</u>	\$ 0.06072 per Ccf
<u>Year 2</u>	\$ 0.05843 per Ccf
<u>Year 3 and beyond</u>	\$ 0.05620 per Ccf

Plus the throughput charge for the service level selected under Rate IMBS, Interruptible Monthly Balancing Service.

Plus, if applicable, all delivered gas shall be subject to an adjustment per Ccf as set forth on:

- Sheet No. 65, Rider AMRP, Accelerated Main Replacement Program.
- Sheet No. 88, Rider AU, Advanced Utility Rider.

The customer will be subject to a monthly minimum bill requirement equivalent to the Administrative Charge shown above, plus the Excise Tax Liability Rider and the State Tax Rider and in addition, during the seven consecutive billing periods beginning each April, a 10,000 Ccf per month throughput volume minimum.

If customer fails to take delivery of 10,000 Ccf per month during the months of April through October, customer will be charged, in addition to the Administrative Charge and the charges for the delivered volume and the charges for the delivered volume and the applicable Excise Tax Liability Rider and State Tax Rider, an amount equal to the difference between 10,000 Ccf and the delivered volume billed at Rate GS, plus all applicable riders.

#### COMPETITIVE FLEXIBILITY

The Company may, on an individual customer basis, charge a rate lower than that specified in the "Net Monthly Bill" provision to meet competition from alternative fuels or other energy sources. The decision to charge a lower rate will be made by the Company at its sole discretion based on its interpretation of competitive conditions.

The average percentage increase in the total bill for customers under Rate IT in year 3, should the increase be granted in full is 6.3%.

#### FIRM TRANSPORTATION SERVICE RATE

##### RATE FT, FIRM TRANSPORTATION SERVICE, SHEET NO. 52.21

#### AVAILABILITY

Firm full requirements transportation service, which is provided from the Company's city gate receipt points to the outlet side of Company's meter used to serve the customer. This service is available within the Company's entire service territory, and at the customer's option, to serve the firm service requirements of interruptible customers in combination

with service under Rate IT, and to all non-residential customers except for those customers whose utility service accounts are past due at the time customer desires to utilize this service, or whose accounts fall into arrears, as defined in Rate FRAS, after choosing this service.

**NET MONTHLY BILL**

The Net Monthly Bill is determined as follows:

Customer Charge per Month	\$40.00
Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Sheet No. 88, Rider AU, Advanced Utility Rider, and Sheet No. 89, Rider SD, Sales Decoupling Rider..	

Plus a charge for all Ccf delivered at

**Year 1**

<u>First 1,000 Ccf delivered at</u>	\$0.19474 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.18774 per Ccf
<u>Additional Ccf delivered at</u>	\$0.18373 per Ccf

**Year 2**

<u>First 1,000 Ccf delivered at</u>	\$0.16980 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.16280 per Ccf
<u>Additional Ccf delivered at</u>	\$0.15880 per Ccf

**Year 3 and beyond**

<u>First 1,000 Ccf delivered at</u>	\$0.14560 per Ccf
<u>Next 4,000 Ccf delivered at</u>	\$0.13860 per Ccf
<u>Additional Ccf delivered at</u>	\$0.13463 per Ccf

The average percentage increase in the total bill for customers under Rate FT in year 3, should the increase be granted in full is (12.5)%.

**RIDER FOR ACCELERATED MAIN REPLACEMENT PROGRAM**

**ACCELERATED MAIN REPLACEMENT PROGRAM RIDER, SHEET NO. 65.6**

**APPLICABILITY**

Applicable to all customers receiving service under the Company's sales and transportation rate schedules.

All customers receiving service under Rate RS, Rate RFT, Rate FT, Rate GS, or Rate DGS shall be assessed a monthly charge, in addition to the Customer Charge or Administrative Charge component of their applicable rate schedule, that will enable the Company to recover the costs of the Company's cast iron and bare steel main replacement program and its riser replacement program. Customers receiving service under Rate IT

and Rate SSIT will be assessed a throughput charge in addition to their commodity delivery charge for that purpose.

Rider AMRP will be updated annually, in order to reflect the impact on the Company's revenue requirements of net plant additions as offset by maintenance expense reductions during the most recent twelve months ended December. Such adjustments to the Rider will become effective with the first billing cycle of May, and during the first three years will reflect the allocation of the required revenue increase based on the phased-in revenue distribution approved in the Company's last rate proceeding. In subsequent years, the allocation will be made on the basis of the actual base revenues excluding Rider AMRP revenues by rate class for the just completed calendar year. New allocations will be contained within the Company's annual filings.

### **RATE GSR, GAS SURCREDIT RIDER, SHEET NO. 66**

#### **AVAILABILITY**

Amended Substitute House Bill No. 9 (HB9) requires the Company to remove from the Company's base rates, the amount of the assessments for the Public Utilities Commission of Ohio and the Office of Consumers' Counselor that is attributable to commodity sales service for those customers that do not purchase that service from the Company. This rider is applicable to all customers who receive their gas supply from a Competitive Retail Natural Gas Service (CRNGS) provider.

This rider will remain in effect until such time as the Company establishes new base rates and this rider is re-calculated.

#### **SURCREDIT AMOUNT**

All customers who receive their gas supply from a CRNGS shall have the following surcredit rate applied to the gas distribution charge rendered by the Company:

\$0.0012479 per 100 cubic feet

### **PROPOSED RIDER FOR ADVANCED UTILITY PROGRAM**

#### **ADVANCED UTILITY RIDER, SHEET NO. 88.0**

#### **APPLICABILITY**

Applicable to all customers receiving service under the Company's sales and transportation rate schedules.

All customers receiving service under Rate RS, Rate RFT, Rate GS, Rate FT, Rate DGS, Rate IT and Rate SSIT shall be assessed a monthly charge in addition to the Customer Charge component of their applicable rate schedule that will enable the Company to complete the Utility of the Future program. Customers receiving service under Rate IT

and Rate SSIT will be assessed a throughput charge in addition to their commodity delivery charge, for that purpose.

Rider AU will be updated annually, in order to reflect the impact on the Company's revenue requirements of net plant additions as offset by operations and maintenance expense reductions during the most recent twelve months ended December. Such adjustments to the Rider will become effective with the first billing cycle of May and, during the first year, will reflect the allocation of the required revenue increase based on the revenue distribution approved in the Company's last rate proceeding. In subsequent years, the allocation will be made on the basis of the actual base revenues excluding Rider AU revenues by rate class for the just completed calendar year. New allocations will be contained within the Company's annual filings.

## **PROPOSED RIDER FOR SALES DECOUPLING**

### **SALES DECOUPLING RIDER, SHEET NO. 89.0**

#### **APPLICABILITY**

Applicable to all customers receiving service under the Company's sales and transportation rate schedules, except Rate IT.

All customers receiving service under Rate RS, Rate RFT, Rate GS, Rate FT, and Rate DGS shall be assessed a throughput charge in their applicable rate schedule that will enable the Company to recover the difference between Actual Base Revenues and Adjusted Order - Granted Base Revenues.

Actual Base Revenues are defined as weather-normalized monthly base revenues for each rate schedule, prior to Rider SD adjustments.

Adjusted Order-Granted Base Revenues are defined as the monthly base revenues for each applicable Rate Schedule as approved by the Commission's Order in the Company's last base rate case, as adjusted to reflect the change in the number of customers from levels approved in the Order. To reflect the change in the number of customers, Order-granted base revenue per customer is multiplied by the net change in number of customers since the like month during the test year, with the product being added to the Order-granted base revenues for such month.

#### **TEXT CHANGES IN TARIFF SCHEDULES**

In addition to the foregoing proposed changes in DE-Ohio's rates and charges, DE-Ohio proposes certain text changes to its tariff. Such text changes consist of: (1) changes to its service regulations to state that DE-Ohio assumes responsibility for the installation, maintenance, repair and replacement of the curb-to-meter service line, including the riser; (2) text changes to Rate FRAS – Full Requirements Aggregation

Service, Sheet No. 44; and (3) text changes to Rider EFBS, Enhanced Firm Balancing Service, Sheet No. 50.

### **WITHDRAWAL OF TARIFF SCHEDULES**

DE-Ohio proposes to withdraw Rider MSR-G -- Merger Savings Credit Rider -- Gas, Sheet No. 69 and the Residential Conservation Service Program, Sheet No. 80.

### **REQUEST FOR APPROVAL OF ANNUAL AUTOMATIC RATE ADJUSTMENTS AND FOR APPROVAL OF ALTERNATIVE REGULATION PLAN**

DE-Ohio also requests approval of annual automatic rate adjustments and approval of an Alternative Regulation Plan. Such annual automatic rate adjustments and Alternative Regulation Plan consist of the Accelerated Main Replacement Rider, the Advanced Utility Rider and the Sales Decoupling Rider, as described above.

The above proposed provisions, rates, and charges are subject to changes, including changes as to amount and form, by The Public Utilities Commission of Ohio following a public hearing on the filed application. Recommendations which differ from the filed application may be made by the Staff of The Public Utilities Commission of Ohio or by intervening parties and may be adopted by the Commission.

Any person, firm, corporation or association may file, pursuant to Section 4909.19 of the Revised Code, an objection to such proposed increased rates by alleging that such proposals are unjust and discriminatory or unreasonable.

Any person, firm, corporation or association may file a motion to intervene. Intervenors may obtain copies of the application and other filings made by the Company by contacting Ms. Dianne Kuhnell at (513) 287-3402, Duke Energy Ohio.

WHEREFORE, since the rates, prices, charges and other provisions in the current rate schedules do not yield just and reasonable compensation to DE-Ohio for supplying gas service to the customers to which they are applicable, do not yield a just and reasonable return to DE-Ohio on the value of the property used for furnishing gas service to such customers, and result in the taking of DE-Ohio's property for public use without compensation and without due process of law, DE-Ohio respectfully prays that your Honorable Commission:

- (a) Accept this Application for filing;
- (b) Find that this Application and the attached Schedules filed herewith and incorporated herein, are in accordance with R.C. 4909.18, 4929.11 and 4929.05, and the Rules of the Commission;
- (c) Approve the Form of Notice in Schedule S-3 filed herewith;
- (d) Find that the current rates, prices and charges for gas service are unjust, unreasonable and insufficient to yield reasonable compensation to DE-Ohio for the gas service rendered;
- (e) Find that the proposed rates, prices, and charges are just and reasonable based upon the test period for the twelve months ending December 31, 2007 and approve such schedules in the form tendered herewith;
- (f) Find that DE-Ohio is in compliance with R.C. 4905.35; that DE-Ohio is in substantial compliance with the state policies specified in R.C. 4929.02; and that DE-Ohio is expected to continue to be in substantial compliance with the state policies specified in R.C. 4929.02 after the plan is implemented;
- (g) Approve DE-Ohio's requested automatic rate adjustments pursuant to R.C. 4929.11;
- (h) Approve DE-Ohio's Alternative Rate Plan and authorize DE-Ohio to implement its Alternative Rate Plan;
  - (i) Approve DE-Ohio's Application for Approval to Change Accounting Methods consistent with proposed Riders AMRP, AU and SD, including: (i) capitalizing its investment in service lines and risers; (ii) deferring costs related to Rider AMRP and Rider AU for subsequent recovery through the respective riders; and (iii) the calculated monthly Rider SD amounts for and reconciliation amounts for later recovery or pass-through to customers; and
  - (j) Fix the date on or after which deliveries made are subject to the proposed rates.

A copy of the Application, including a copy of the present and proposed rate sheets, may be inspected by any interested party at the office of the Commission, 180 East Broad Street, Columbus, Ohio 43266-0573; or at the business offices of the Company at 644 Linn Street, Cincinnati, Ohio.

DUKE ENERGY OHIO, INC.



PAGE'S OHIO REVISED CODE ANNOTATED  
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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH DECEMBER 9, 2008 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH SEPTEMBER 1, 2008 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER 11, 2008 \*\*\*

TITLE 49. PUBLIC UTILITIES  
 CHAPTER 4909. PUBLIC UTILITIES COMMISSION -- FIXATION OF RATES

**Go to the Ohio Code Archive Directory**

ORC Ann. 4909.18 (2008)

§ 4909.18. Application for establishment or change in rate

Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, shall file a written application with the public utilities commission. Except for actions under section 4909.16 of the Revised Code, no public utility may issue the notice of intent to file an application pursuant to division (B) of section 4909.43 of the Revised Code to increase any existing rate, joint rate, toll, classification, charge, or rental, until a final order under this section has been issued by the commission on any pending prior application to increase the same rate, joint rate, toll, classification, charge, or rental or until two hundred seventy-five days after filing such application, whichever is sooner. Such application shall be verified by the president or a vice-president and the secretary or treasurer of the applicant. Such application shall contain a schedule of the existing rate, joint rate, toll, classification, charge, or rental, or regulation or practice affecting the same, a schedule of the modification amendment, change, increase, or reduction sought to be established, and a statement of the facts and grounds upon which such application is based. If such application proposes a new service or the use of new equipment, or proposes the establishment or amendment of a regulation, the application shall fully describe the new service or equipment, or the regulation proposed to be established or amended, and shall explain how the proposed service or equipment differs from services or equipment presently offered or in use, or how the regulation proposed to be established or amended differs from regulations presently in effect. The application shall provide such additional information as the commission may require in its discretion. If the commission determines that such application is not for an increase in any rate, joint rate, toll, classification, charge, or rental, the commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect. If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility. After such hearing, the commission shall, where practicable, issue an appropriate order within six months from the date the application was filed.

If the commission determines that said application is for an increase in any rate, joint rate, toll, classification, charge, or rental there shall also, unless otherwise ordered by the commission, be filed with the application in duplicate the following exhibits:

(A) A report of its property used and useful in rendering the service referred to in such application, as provided in section 4909.05 of the Revised Code;

(B) A complete operating statement of its last fiscal year, showing in detail all its receipts, revenues, and incomes from all sources, all of its operating costs and other expenditures, and any analysis such public utility deems applicable to the matter referred to in said application;

(C) A statement of the income and expense anticipated under the application filed;

(D) A statement of financial condition summarizing assets, liabilities, and net worth;

(E) A proposed notice for newspaper publication fully disclosing the substance of the application. The notice shall prominently state that any person, firm, corporation, or association may file, pursuant to section 4909.19 of the Revised Code, an objection to such increase which may allege that such application contains proposals that are unjust and discriminatory or unreasonable. The notice shall further include the average percentage increase in rate that a representative industrial, commercial, and residential customer will bear should the increase be granted in full;

(F) Such other information as the commission may require in its discretion.

#### **HISTORY:**

GC § 614.20; 102 v 549, § 22; 108 v PtlI, 1094; 110 v 366; 113 v 16; 119 v 275; Bureau of Code Revision, 10-1-53; 136 v S 94 (Eff 9-1-76); 139 v S 378. Eff 1-11-83.

#### **NOTES:**

#### Related Statutes & Rules

#### Cross-References to Related Statutes

Alternative method of establishing rates and charges, RC § 4927.04.

Application for change in rate; approval, RC § 4909.17.

Approval of alternate rate plan, RC § 4929.05.

Assessment for commission expenses, RC § 4905.10.

Assessment for counsel expenses, RC § 4911.18.

Commission to review fuel related practices of electric light companies, RC § 4905.66.

Complaint, appeal or notification requirements, RC § 4909.38.

Market-based standard service offer; competitive bidding process; failure to provide service, RC § 4928.14.

Natural gas company inspections; recovery of actual expenses, RC § 4905.94.

Power of municipal corporation or corporations to fix rate, price, and charge, RC § 4909.34.

Proposed rate increase effective date, RC § 4909.42.

Publication; investigation, RC § 4909.19.

Public hearings to be held in municipal corporation affected by rate increase, RC § 4903.08.3.

Purchased gas adjustment clause; rule, RC § 4905.30.2.

Rate increase application filing date, RC § 4909.43.

Review of continued appropriateness of environmental compliance plan, RC § 4913.05.

Rule defined, RC § 121.24.

Schedules for providing noncompetitive service; access of self-generator to back-up electricity supply, RC § 4928.15.

Service offering for nonfirm electric service customers, RC § 4928.44.

Utility report showing property valuation, RC § 4909.15.6.

Utility to file schedules containing unbundled rate components; equitable reduction to reflect utility's receipt of refund; standard service offer during market development period; amendment of separation plan; plan for independent operation of transmission facilities, RC § 4928.35.

Violation, RC § 4909.41.

Waterworks rate charge based on change in water cost imposed by local government, RC § 4909.17.1.

#### OH Administrative Code

Public utilities commission: administration --

General rate proceeding: rules of practice. OAC ch. 4901-1.

Time periods for discovery. OAC 4901-1-17.

Standard filing requirements for rate increases. OAC ch. 4901-7.

Public utilities commission: utilities --

Applications by telephone utility for other than an increase in rates. OAC ch. 4901:1-8.

Electric fuel component rate. OAC ch. 4901:1-11.

Ohio coal research and development rate. OAC ch. 4901:1-12.

Zones of operation, or service areas of the telephone companies. OAC 4901:1-3-03.

#### Law Reviews & Journals

Deregulation of telephone services in Ohio. Frank P. Darr. 24 Akron L. Rev. 229 (1991).

Emergency rate making for Ohio public utilities. Sally W. Bloomfield. 37 Ohio St. L.J. 108 (1976).

Municipal home rule in Ohio: Police regulations -- specific subject. George D. Vaubel. 3 Ohio N.U.L. Rev. 814 (1976).

Public Utilities. Ohio Law Survey. 51 CinLRev 203 (1982).

#### Case Notes & OAGs

ANALYSIS Generally Application Burden to justify adjustment on utility Cellular phones Common pleas court; jurisdiction Complaint proceedings Consideration of parent utility's capital structure Evidence Exhibits Increase of rates Measured rate service Rate-fixing ordinances Reversal of order Short-term debt What the public utilities commission may consider

#### GENERALLY.

Notice, investigation, and hearing requirements of RC § 4909.19 were not triggered because they apply only upon application for a rate increase, pursuant to RC § 4909.18, which did not occur. Commission's finding that the utilities' standard service offer was market based was supported by sufficient probative evidence. Commission's approval of the utility's alternative to the competitive bidding process was reasonable and lawful. The utility's rate-stabilization plan was not discriminatory: *Ohio Consumers' Counsel v. PUC*, 111 Ohio St. 3d 300, 856 N.E.2d 213, 2006 Ohio LEXIS 3263, 2006 Ohio 5789, (2006).

#### APPLICATION.

A first filing, under RC § 4909.18, cannot be an application for an increase in rates; the fact that the service was previously provided on a contract basis is irrelevant: *Cleveland v. P.U.C.*, 67 Ohio St. 2d 446, 424 N.E.2d 561 (1981).

A water-works company must conform to the rates filed with the application for a certificate: *Public Utility Service v. P.U.C.*, 62 Ohio St. 2d 421, 406 N.E.2d 522 (1980).

Where a public utility, regulated by the public utilities commission, makes application to the commission proposing to offer a new service to its customers and proposing to establish a rate for such new service, such application is not for an increase in any rate and the commission, pursuant to the provisions of RC §§ 4909.17, 4909.18, and 4909.19, is required to permit the filing of the schedule of rates proposed for such new service and fix the time when such schedule shall take effect: *Ohio Bell Tel. Co. v. Public Util. Comm.*, 17 Ohio St. 2d 45, 245 N.E.2d 351 (1969).

Where, pursuant to authority granted by this section, there is filed with the public utilities commission by a public utility an application for increase of rates for public utility service, the commission may waive the filing with such application of a detailed inventory and appraisal of applicant's property used and useful as of a date certain, and such waiver is effective throughout the proceeding on such application: *Buckeye Lake Chamber of Com. v. Public Util. Comm.*, 161 Ohio St. 306, 119 N.E.2d 51 (1954).

#### BURDEN TO JUSTIFY ADJUSTMENT ON UTILITY.

The utility had the burden to demonstrate to the commission that an adjustment was justified based on the utility's estimates of a reduction in local service revenues: *Cincinnati Bell Tel. Co. v. P.U.C.*, 12 Ohio St. 3d 280, 466 N.E.2d 848 (1984).

#### CELLULAR PHONES.

The Federal Communications Act § 332 did not preempt cellular telephone service reseller's administrative complaint before PUCO against cellular telephone service providers alleging discriminatory treatment and violations of Ohio law: *GTE Mobilnet v. Johnson*, 111 F.3d 469, 1997 U.S. App. LEXIS 7646 (1997).

#### COMMON PLEAS COURT; JURISDICTION.

A court of common pleas is without power to order that utility service be supplied to a claimant, in complete disregard of an order of the Public Utilities Commission, under the guise of granting equitable relief: *Cincinnati Gas & Electric Co. v. Arnold*, 55 Ohio App. 2d 261, 380 N.E.2d 763 (1978).

#### COMPLAINT PROCEEDINGS.

Utility rates may be changed by the PUCO in an RC § 4905.26 complaint proceeding without compelling the affected utility to apply for a rate increase under RC § 4909.18: *Ohio Consumers' Counsel v. PUC*, 110 Ohio St. 3d 394, 853 N.E.2d 1153, 2006 Ohio LEXIS 2900, 2006 Ohio 4706, (2006).

#### CONSIDERATION OF PARENT UTILITY'S CAPITAL STRUCTURE.

The commission may consider the consolidated capital structure of the parent utility in determining a utility's interest expense: *Ohio Water Service Co. v. P.U.C.*, 64 Ohio St. 2d 12, 412 N.E.2d 397 (1980).

#### EVIDENCE.

Findings of public utilities commission in granting emergency rate relief application were not deficient because they made no specific reference to evidence in the hearing record of consumers and others opposing the emergency order sought by the utility: *Coalition of Concerned Util. Users v. Public Util. Comm.*, 45 Ohio St. 2d 151, 341 N.E.2d 839 (1976).

#### EXHIBITS.

It is within the power of the public utilities commission in a rate application to accept an exhibit other than the detailed inventory and appraisal of the utility's property used and useful required by this section, where the exhibit proffered by the utility is sufficient to enable the commission's staff to perform the investigations required by statute: *In re Ohio Telephone Service Co.*, 81 Ohio L. Ab. 501 (PUC 1958).

The provisions of RC §§ 4909.18 and 4909.19, and the step by step procedure therein prescribed for the administrative processing by the commission and its staff of utility rate applications manifests clearly that the exhibits specified

for attachment to a rate application are submitted for the information of the commission and its staff: In re Ohio Telephone Service Co., 81 Ohio L. Ab. 501 (PUC 1958).

#### INCREASE OF RATES.

Under the provisions of RC § 4909.17 and this section, a public utility may not increase its charges for its services to its customers without the approval of the public utilities commission: General Tel. Co. v. Public Util. Comm., 173 Ohio St. 280, 181 N.E.2d 698 (1962).

#### MEASURED RATE SERVICE.

Where a utility plans to adopt measured rate service as the method for establishing rates to be charged its subscribers, and includes such plan as a proposal in its general application for a rate increase before the commission, it must specifically mention the proposal in any notice published under the requirements of RC § 4909.19: Committee Against MRT v. Public Util. Comm., 52 Ohio St. 2d 231, 371 N.E.2d 547 (1977).

#### RATE-FIXING ORDINANCES.

A municipal ordinance: (1) prohibiting a public utility from terminating or discontinuing residential service during designated months under designated conditions, (2) regulating the collection by the public utility of deposits or service charges in connection with a delinquent residential account or in connection with the resumption of discontinued residential service, and (3) regulating the collection by the public utility of monies due on a residential account in connection with the resumption of discontinued service, is not reviewable by the public utilities commission of Ohio under RC §§ 4909.18 and 4909.34 - 4909.39: East Ohio Gas Co. v. Akron, 60 Ohio App. 2d 21, 395 N.E.2d 511 (1978).

A municipality may pass a rate-fixing ordinance without the necessity of the utility's acceptance, and, where such ordinance has been passed, the public utilities commission has authority to establish or modify existing rates although the utility has not complied with RC §§ 4909.18 and 4909.19: State ex rel. Dayton v. Kenealy, 170 Ohio St. 320, 164 N.E.2d 400 (1960).

#### REVERSAL OF ORDER.

Where the record demonstrates that the applicant telephone company presented evidence in support of the private-line rate increase upon which the Public Utilities Commission could conclude that applicant had met its burden of proof, this court will not disturb the commission's finding: Electrical Protection Assn. v. Public Utilities Commission, 50 Ohio St. 2d 169, 364 N.E.2d 3 (1977).

When this court reverses and remands an order of the public utilities commission establishing a revised rate schedule for a public utility, the reversal does not reinstate the rates in effect before the commission's order or replace that rate schedule as a matter of law, but is a mandate to the commission to issue a new order, and the rate schedule filed with the commission remains in effect until the commission executes this court's mandate by an appropriate order: Cleveland Electric Illum. Co. v. Public Util. Comm., 46 Ohio St. 2d 105, 346 N.E.2d 778 (1976).

#### SHORT-TERM DEBT.

Utilities commission's exclusion of short-term debt in ascertaining the cost of capital was neither unlawful nor unreasonable: Masury Water Co. v. P.U.C., 58 Ohio St. 2d 147, 389 N.E.2d 478 (1979).

#### WHAT THE PUBLIC UTILITIES COMMISSION MAY CONSIDER.

The commission's approval of custom calling services under RC § 4909.18 does not constitute state action under the fourteenth amendment: Ohio Domestic Violence Network v. Public Utils. Comm'n, 70 Ohio St. 3d 311, 638 N.E.2d 1012, 1994 Ohio LEXIS 2080, 1994 Ohio 165, (1994).

When considering an application for a rate increase filed by a public utility, the public utilities commission may not extend its inquiry to matters not put in issue by the applicant and not related to the rates which are the subject of the application. Property used and useful by a utility in rendering its service is includable in its rate base whether located within the state or out of the state. Customers' contributions in the form of accruals for the payment of taxes which will be constant with reasonable certainty and which are available for investments in materials and supplies or for use as working capital should be used as an offset on the allowance for working capital. (Cincinnati v. Public Util. Comm.,

161 OS 395, 53 OO 304, 119 NE2d 619, approved and followed.) Different rates for various classes of customers may be charged by a utility where the classifications are based upon the quantity used, the time when used, the purpose for which used, the duration of use, and other reasonable considerations which essentially distinguish the service required to meet the various demands: *Cleveland Elec. Illum. Co. v. Public Util. Comm.*, 42 Ohio St. 2d 403, 330 N.E.2d 1 (1975).

The public utilities commission, pursuant to the provisions of this section, has the authority to authorize the withdrawal of the existing local telephone service including an automatic time disconnect feature coincident with the establishment of a satisfactory new service eliminating such feature, and to authorize the telephone company to file an appropriate schedule and to make such schedules effective without further notice or hearings, where the withdrawal of existing schedules and the filing of the new schedules will not increase any present rate, joint rate, toll, classification, charge, or rental for service now being rendered in the area affected: *In re Wadsworth*, 88 Ohio L. Ab. 170 (PUC 1960).



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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH DECEMBER 9, 2008 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH SEPTEMBER 1, 2008 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER 11, 2008 \*\*\*

TITLE 49. PUBLIC UTILITIES  
 CHAPTER 4909. PUBLIC UTILITIES COMMISSION -- FIXATION OF RATES

**Go to the Ohio Code Archive Directory**

ORC Ann. 4909.19 (2008)

§ 4909.19. Publication; investigation

Upon the filing of any application for increase provided for by section 4909.18 of the Revised Code the public utility shall forthwith publish the substance and prayer of such application, in a form approved by the public utilities commission, once a week for three consecutive weeks in a newspaper published and in general circulation throughout the territory in which such public utility operates and affected by the matters referred to in said application, and the commission shall at once cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith. Within a reasonable time as determined by the commission after the filing of such application, a written report shall be made and filed with the commission, a copy of which shall be sent by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and to such other persons as the commission deems interested. If no objection to such report is made by any party interested within thirty days after such filing and the mailing of copies thereof, the commission shall fix a date within ten days for the final hearing upon said application, giving notice thereof to all parties interested. At such hearing the commission shall consider the matters set forth in said application and make such order respecting the prayer thereof as to it seems just and reasonable.

If objections are filed with the commission, the commission shall cause a pre-hearing conference to be held between all parties, intervenors, and the commission staff in all cases involving more than one hundred thousand customers.

If objections are filed with the commission within thirty days after the filing of such report, the application shall be promptly set down for hearing of testimony before the commission or be forthwith referred to an attorney examiner designated by the commission to take all the testimony with respect to the application and objections which may be offered by any interested party. The commission shall also fix the time and place to take testimony giving ten days' written notice of such time and place to all parties. The taking of testimony shall commence on the date fixed in said notice and shall continue from day to day until completed. The attorney examiner may, upon good cause shown, grant continuances for not more than three days, excluding Saturdays, Sundays, and holidays. The commission may grant continuances for a longer period than three days upon its order for good cause shown. At any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.

When the taking of testimony is completed, a full and complete record of such testimony noting all objections made and exceptions taken by any party or counsel, shall be made, signed by the attorney examiner, and filed with the commission. Prior to the formal consideration of the application by the commission and the rendition of any order respecting

the prayer of the application, a quorum of the commission shall consider the recommended opinion and order of the attorney examiner, in an open, formal, public proceeding in which an overview and explanation is presented orally. Thereafter, the commission shall make such order respecting the prayer of such application as seems just and reasonable to it.

In all proceedings before the commission in which the taking of testimony is required, except when heard by the commission, attorney examiners shall be assigned by the commission to take such testimony and fix the time and place therefor, and such testimony shall be taken in the manner prescribed in this section. All testimony shall be under oath or affirmation and taken down and transcribed by a reporter and made a part of the record in the case. The commission may hear the testimony or any part thereof in any case without having the same referred to an attorney examiner and may take additional testimony. Testimony shall be taken and a record made in accordance with such general rules as the commission prescribes and subject to such special instructions in any proceedings as it, by order, directs.

#### **HISTORY:**

GC § 614-20; 102 v 549, § 22; 108 v PIII, 1094; 110 v 366; 113 v 16; 119 v 275; Bureau of Code Revision, 10-1-53; 136 v S 94 (Eff 9-1-76); 139 v S 378. Eff 1-11-83.

#### **NOTES:**

##### Section Notes

The effective date of S 378 is set by section 3 of the act.

##### Related Statutes & Rules

##### Cross-References to Related Statutes

Alternative method of establishing rates and charges, RC § 4927.04.

Application for change in rate; approval, RC § 4909.17.

Complaint, appeal or notification requirements, RC § 4909.38.

Contents of notice of public hearing, RC § 4903.08.3.

Efficiency, sufficiency, adequacy of facilities, RC § 4909.15.2.

Examiners, RC § 4901.18.

Exhibits to be filed with application, RC § 4909.18.

Natural gas company inspections; recovery of actual expenses, RC § 4905.94.

Proposed rate increase effective date, RC § 4909.42.

Purchased gas adjustment clause; rule, RC § 4905.30.2.

Rule defined, RC § 121.24.

Surcharge to meet costs of compliance with acid rain control requirements, RC § 4909.19.2.

Violation, RC § 4909.41.

Waterworks rate charge based on change in water cost imposed by local government, RC § 4909.17.1.

##### OH Administrative Code

Public utilities commission: administration --

Reports of investigation and objections thereto. OAC 4901-1-28.

Public utilities commission: utilities --

Applicability of uniform purchased gas adjustment to certain rate schedules. OAC 4901:1-14-03.

Ohio coal research and development rate. OAC ch. 4901:1-12.

#### Law Reviews & Journals

Municipal home rule in Ohio: Police regulations -- specific subject. George D. Vaubel. 3 Ohio N.U.L. Rev. 814 (1976).

#### Case Notes & OAGs

ANALYSIS Generally Allocation formulas Applications which are not for a rate increase Authority to increase common carrier line charge Exhibits Limits on inquiry Measured rate service Rate-fixing ordinances Secretary's report Waiver

#### GENERALLY.

Notice, investigation, and hearing requirements of RC § 4909.19 were not triggered because they apply only upon application for a rate increase, pursuant to RC § 4909.18, which did not occur. Commission's finding that the utilities' standard service offer was market based was supported by sufficient probative evidence. Commission's approval of the utility's alternative to the competitive bidding process was reasonable and lawful. The utility's rate-stabilization plan was not discriminatory: *Ohio Consumers' Counsel v. PUC*, 111 Ohio St. 3d 300, 856 N.E.2d 213, 2006 Ohio LEXIS 3263, 2006 Ohio 5789, (2006).

#### ALLOCATION FORMULAS.

The dedicated facilities allocation method for special contract customers is not unreasonable or unlawful: *Canton v. P.U.C.*, 63 Ohio St. 2d 76, 407 N.E.2d 9 (1980).

The commission's use, in determining the portion of the utility's property which serviced Columbus residents, of an allocation formula based, in part on the non-verifiable assumption that the relationship between the average and peak demands of city and non-city residents is the same was reasonable and lawful: *Columbus v. P.U.C.*, 58 Ohio St. 2d 103, 388 N.E.2d 1237 (1979).

#### APPLICATIONS WHICH ARE NOT FOR A RATE INCREASE.

The company's attempt to supplement its application with this additional plant after the issuance of the staff report and its failure to provide timely information with which the commission could verify the plant's status effectively prevented the commission from performing its statutory duty. Under these circumstances, exclusion of the plant is neither unreasonable nor unlawful: *Ohio Edison Co. v. Public Utilities Com.*, 63 Ohio St. 3d 555, 589 N.E.2d 1292, 1992 Ohio LEXIS 838 (1992).

Where a public utility, regulated by the public utilities commission, makes application to the commission proposing to offer a new service to its customers and proposing to establish a rate for such new service, such application is not for an increase in any rate and the commission, pursuant to the provisions of RC §§ 4909.17, 4909.18 and 4909.19, is required to permit the filing of the schedule of rates proposed for such new service and fix the time when such schedule shall take effect: *Ohio Bell Tel. Co. v. Public Util. Comm.*, 17 Ohio St. 2d 45, 245 N.E.2d 351 (1969).

#### AUTHORITY TO INCREASE COMMON CARRIER LINE CHARGE.

The public utilities commission has the authority to increase the common carrier line charge even though the telephone company did not request such an increase in its rate increase application: *AT&T Communications of Ohio, Inc. v. Public Utilities Com.*, 51 Ohio St. 3d 150, 555 N.E.2d 288, 1990 Ohio LEXIS 241 (1990).

#### EXHIBITS.

The exhibit data required to be filed with a utility rate application forms the basis for the commission's staff's independent investigation of the valuation of the utility's plant and property and its revenues and expenses and such investigation is necessarily administrative in character and its recommended findings are required to be made available for

the guidance and information of the municipalities, other proper interested parties, the applicant utility and the commission: *In re Ohio Telephone Service Co.*, 81 Ohio L. Ab. 501 (PUC 1958).

#### LIMITS ON INQUIRY.

When considering an application for a rate increase filed by a public utility, the public utilities commission may not extend its inquiry to matters not put in issue by the applicant and not related to the rates which are the subject of the application: *Cleveland Elec. Illum. Co. v. Public Util. Comm.*, 42 Ohio St. 2d 403, 330 N.E.2d 1 (1975).

The allowance by the public utilities commission of an application by a party to a rate case for an order approving a "random-sampling plan" for the inspection of underground pipe installations for the purpose of preparing evidence relative to existing actual pipe depreciation is within the discretion of the commission and is not prejudicial, especially where the result of such inspection is not binding upon the commission or any interested party so as to preclude introduction of other evidence in this same area of inquiry: *Akron v. Public Util. Comm.*, 5 Ohio St. 2d 237, 215 N.E.2d 366 (1966).

#### MEASURED RATE SERVICE.

A telephone company wishing to adopt measured rate service must specifically mention the proposal in its published notice re a rate increase: *Assn. of Realtors v. P.U.C.*, 60 Ohio St. 2d 172, 398 N.E.2d 784 (1979).

Where a utility plans to adopt measured rate service as the method for establishing rates to be charged its subscribers, and includes such plan as a proposal in its general application for a rate increase before the commission, it must specifically mention the proposal in any notice published under the requirements of RC § 4909.19: *Committee Against MRT v. Public Util. Comm.*, 52 Ohio St. 2d 231, 371 N.E.2d 547 (1977).

#### RATE-FIXING ORDINANCES.

A municipality may pass a rate-fixing ordinance without the necessity of the utility's acceptance, and, where such ordinance has been passed, the public utilities commission has authority to establish or modify existing rates although the utility has not complied with RC §§ 4909.18 and 4909.19: *State ex rel. Dayton v. Kenealy*, 170 Ohio St. 320, 164 N.E.2d 400 (1960).

#### SECRETARY'S REPORT.

The administrative character of investigation and resulting report made by the staff of the public utilities commission under authority of this section, is evidenced not only by the fact that the date and findings therein contained, as well as the testimony of the commission's staff, is subject to cross-examination by all parties at the public hearing in the same manner as any other evidence or testimony, and by the further fact that the findings of the commission's staff, as set forth in such report, are not binding upon the commission in its final determinations: *In re Ohio Telephone Service Co.*, 81 Ohio L. Ab. 501 (PUC 1958).

The "secretary's report" provided for in this section, is subject to objections by both the representatives of the utility users and the applicant utility: *In re Ohio Telephone Service Co.*, 81 Ohio L. Ab. 501 (PUC 1958).

After service of the "written report," commonly known as the secretary's report, provided for in this section, municipalities and other proper parties in interest may then become formal litigants in a rate proceeding by filing objections to said report: *In re Ohio Telephone Service Co.*, 81 Ohio L. Ab. 501 (PUC 1958).

#### WAIVER.

The utility's failure to include an objection to the commission's treatment of the separation factors in question in its objections to the report or to raise the issue in its application for rehearing was a waiver of such issue on appeal to the courts: *Cincinnati Bell Tel. Co. v. P.U.C.*, 12 Ohio St. 3d 280, 466 N.E.2d 848 (1984).



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 \*\*\* ANNOTATIONS CURRENT THROUGH SEPTEMBER 1, 2008 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH NOVEMBER 11, 2008 \*\*\*

TITLE 49. PUBLIC UTILITIES  
 CHAPTER 4929. ALTERNATE RATE PLAN FOR NATURAL GAS COMPANIES; CERTIFICATION OF GOV-  
 ERNMENTAL AGGREGATORS AND RETAIL NATURAL GAS SUPPLIERS

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ORC Ann. 4929.02 (2008)

§ 4929.02. State policy as to natural gas services and goods

(A) It is the policy of this state to, throughout this state:

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;
- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;
- (4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods;
- (5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;
- (6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;
- (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;
- (9) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section;
- (10) Facilitate the state's competitiveness in the global economy;

(11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation;

(12) Promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.

(B) The public utilities commission and the office of the consumers' counsel shall follow the policy specified in this section in exercising their respective authorities relative to sections 4929.03 to 4929.30 of the Revised Code.

(C) Nothing in Chapter 4929. of the Revised Code shall be construed to alter the public utilities commission's construction or application of division (A)(6) of section 4905.03 of the Revised Code.

#### **HISTORY:**

146 v H 476 (Eff 9-17-96); 149 v H 9. Eff 6-26-2001; 152 v S 221, § 1, eff. 7-31-08.

#### **NOTES:**

##### Section Notes

###### **EFFECT OF AMENDMENTS**

152 v S 221, effective July 31, 2008, added (A)(12); and, in (B), inserted "and the office of the consumers' counsel" and substituted "exercising their respective authorities relative to" for "carrying out".

##### Related Statutes & Rules

##### Cross-References to Related Statutes

Approval of alternate rate plan, RC § 4929.05.

Commission may abrogate or modify order; implementation violating state policy, RC § 4929.08.

Conditions for exemption of natural gas company from other rate provisions; jurisdiction as to noncompliance, RC § 4929.04.

Procedure after approval of exemption or alternate plan; reduction of rate or charge, RC § 4929.07.

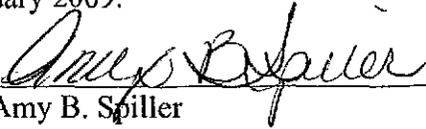
##### Case Notes & OAGs

#### **GENERALLY.**

Commission lawfully determined that the utility was entitled to an exemption from RC § 4905.302 pursuant to RC § 4929.04. Nothing in RC § 4905.70 indicates that the legislature intended it to pertain to RC § 4929.04 proceedings: *Ohio Partners. for Affordable Energy v. PUC*, 115 Ohio St. 3d 208, 874 N.E.2d 764, 2007 Ohio LEXIS 2217, 2007 Ohio 4790, (2007).

CERTIFICATE OF SERVICE

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

  
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