

ORIGINAL

IN THE SUPREME COURT OF OHIO

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

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**MOTION FOR A STAY OF EXECUTION  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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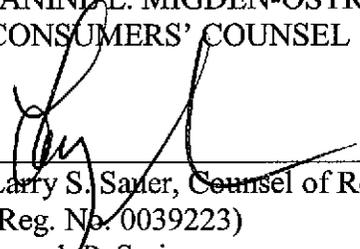
**MOTION FOR A STAY OF EXECUTION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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To serve the public interest and avoid irreparable harm to the customers of Duke Energy Ohio, Inc. ("Duke," "Company" or "Intervening Appellee"), the Office of the Ohio Consumer's Counsel ("OCC" or "Appellant") respectfully moves this Court, pursuant to S.Ct. R. XIV, Section 4, to issue an order granting a Stay of Execution of an Opinion and Order ("Order") and an Entry of the Public Utilities Commission of Ohio ("PUCO," "Commission" or "Appellee"). The Order and Entry were journalized on May 28, 2008 and June 4, 2008, respectively, and are attached hereto as Exhibit A and Exhibit B. Pursuant to the stay provisions of R.C. 4903.16 (Appx. 000003), OCC seeks to stay the effective date (June 2009) of the next phase of the objectionable rate design that the PUCO authorized Duke to impose on residential consumers. For the reasons set forth in the following Memorandum in Support, the requested Stay of Execution should be granted.

Respectfully submitted,

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**Exhibits**

Exhibit A	<i>In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,</i> PUCO Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008)
Exhibit B	<i>In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,</i> PUCO Case No. 07-589-GA-AIR, et al., Entry (June 4, 2008)

- Exhibit C *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,*  
PUCO Case No. 07-589-GA-AIR, et al.,  
Notice of intent to file Motion for Stay of Execution by the Office of the Ohio Consumers' Counsel (April 10, 2009)
- Exhibit D *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,*  
PUCO Case No. 07-589-GA-AIR, et al.,  
Duke Rate RS, Sheet No. 30.15 (July 11, 2008).
- Exhibit E *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,*  
PUCO Case No. 07-589-GA-AIR, et al.,  
Staff Report at 32 (December 20, 2007).
- Exhibit F *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,*  
PUCO Case No. 07-589-GA-AIR, et al.,  
Application at E-4 (July 18, 2007).
- Exhibit G *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates,*  
PUCO Case No. 07-589-GA-AIR, et al.,  
Pre-Filing Notice at 8-2 (June 18, 2007).
- Exhibit H Comparison of Current to Stage 3 Annual Rate Increase/(Decrease), and Percent Change.



\$25.33. Through its Order, the Commission all but ended its practice of billing customers for distribution service per cubic foot of the gas they use.

The PUCO denied a Motion to Stay implementation of the May 28, 2008 Opinion and Order and issuance of the Entry approving the tariffs.<sup>2</sup> Accordingly, on April 10, 2009, OCC provided the PUCO with notice of the intent to file a stay of execution, which is attached as Exhibit C.

The SFV will negatively impact low-use customers and will impede energy efficiency. As explained below, the SFV is being implemented in phases, with successive phases of increases in the residential customers' monthly fixed charge. There is an opportunity now to stay the next phase from being imposed on Duke's residential customers. Otherwise, the next phase of the increase in the fixed charge (even with the decrease in the non-fixed charge) will irreparably harm customers, as will be explained below. It is this irreparable harm that OCC asks the Court to halt. Because it is unlikely that this appeal will be resolved before the next phase of the SFV is implemented in June, OCC requests a Stay of Execution to prevent additional irreparable harm to Duke's residential customers in the meantime.

The Stage 3 rate design change is not a revenue increase for Duke. It will not change the overall revenues that Duke is authorized to collect. Therefore, a stay of the June 2009 (Stage 3) rate design change would not prevent the implementation of Duke's revenue increase which is reflected in the rates whether under Stage 1, Stage 2 or Stage 3.

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<sup>2</sup> See *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service*, PUCO Case No. 07-590-GA-ALT, et al., Entry approving tariffs and customer notice as modified (June 4, 2008) (Exhibit B).

As explained fully in the OCC’s Merit Brief, the PUCO approved a three-stage phased-in approach to Duke’s rate design, abandoning thirty years of precedent. Under the SFV approach ordered by the PUCO, customer charges increase dramatically, while volumetric rates decrease. The three stages of SFV for Duke’s residential customers are as follows:<sup>3</sup>

	<u>Customer Charge</u>	<u>Volumetric Charge</u>
Rates Prior to Increase:	\$6.00	\$0.185910 <sup>4</sup>
Stage 1: (6/1/08)	\$15.00	\$0.401134 <sup>5</sup>
Stage2: (10/1/08)	\$20.25	\$0.107044 <sup>6</sup>
Stage 3: (6/1/09)	\$25.33	\$0.040828 <sup>7</sup>

As illustrated, the fixed monthly customer charge is increased with each stage, while the volumetric rate decreases. Under this approach, Duke will be collecting an ever-increasing percentage of its distribution service revenues from the fixed customer charge that customers cannot avoid, and less revenues from the volumetric charges that customers historically could control by reducing their usage. Each stage of the rate design was designed by Duke, and approved by the PUCO, to collect the revenues authorized by the PUCO in its Order. Thus, the Court can grant the stay to prevent Stage

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<sup>3</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, PUCO Case No. 07-589-GA-AIR, et al., Duke Rate RS, Sheet No. 30.15 (July 11, 2008) (Exhibit D).

<sup>4</sup> Id., Staff Report at 32 (December 20, 2007) (Exhibit E)

<sup>5</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, PUCO Case No. 07-589-GA-AIR, et al., Duke Rate RS, Sheet No. 30.15 (July 11, 2008) (Rate for First 400 CCF, Additional CCF at \$0.465634) (Exhibit D).

<sup>6</sup> Id., (Rate for First 400 CCF, Additional CCF at \$0.171544) (Exhibit D).

<sup>7</sup> Id., (Rate for First 400 CCF, Additional CCF at \$0.105378) (Exhibit D).

3 rates from being charged to customers -- and Duke will continue to collect Stage 2 rates that are designed to recover the revenues authorized by the PUCO. Thus, no harm will flow to the Company if this stay is granted.

## II. STANDARD OF REVIEW

There is no controlling precedent in Ohio setting forth the conditions under which an order of the Commission shall be stayed.<sup>8</sup> However, the Commission has urged adoption of the four-part analysis suggested by Justice Douglas in *MCI Telecommunications Corp. v. Pub. Util. Com.* There Justice Douglas presented four factors to consider when examining a request for a stay of the Commission orders: “(a) Whether there has been a strong showing that movant is likely to prevail on the merits; (b) Whether the party seeking the stay has shown that it would suffer irreparable harm absent the stay; (c) Whether the stay would cause substantial harm to other parties; and (d) Where lies the public interest.”<sup>9</sup> As illustrated below, this Court should stay the Commission’s order because OCC can show a strong public interest in favor of the stay, irreparable harm to consumers if the stay is not issued, no harm to Duke if the stay is granted, and a strong likelihood of prevailing on the merits.

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<sup>8</sup> *In the Matter of the Commission’s Investigation Into the Modification of Intrastate Access Charges*, 2003 Ohio PUC LEXIS 62, \*9-\*10 (citing *MCI Telecommunications Corp. v. Pub. Util. Com.* (1987), 31 Ohio St.3d 604, 606, 510 N.E.2d 806 (Douglas, J., dissenting)).

<sup>9</sup> *Id.*, 2003 Ohio PUC LEXIS at 10.

### III. LAW AND ARGUMENT

#### A. Duke Will Suffer No Substantial Harm As A Result Of This Court's Stay Of The Order.

In this case OCC is only objecting to the rate design -- not the total revenues that Duke is authorized to collect from residential customers. Duke's rates are designed to collect its full revenue requirements whether under Stage 1, Stage 2, or Stage 3 of its approved Residential Tariffs. However, as Duke progresses through the stages of the SFV rate, it collects more of the revenue requirement through the fixed monthly customer charge than through the volumetric charge. The following chart demonstrates the shift from volumetric rate collection to fixed rate collection that has occurred since the tariffs were approved, with the "Prior Tariff" referring to existing rates prior to the PUCO Order under appeal.

	<b>Monthly Residential Customer Charge</b>	<b>Annual Number of Residential Bills<sup>10</sup></b>	<b>Residential Revenues Collected through Customer Charge</b>	<b>Revenue Shift from Volumetric to Fixed Customer Charge</b>
<b>Prior Tariff</b>	\$6.00	4,711,185	\$28,267,110	N/A
<b>Stage 1</b>	\$15.00	4,711,185	\$70,667,775	\$42,400,665 <sup>11</sup>
<b>Stage 2</b>	\$20.25	4,711,185	\$95,401,496	\$67,134,386 <sup>12</sup>
<b>Stage 3</b>	\$25.33	4,711,185	\$119,334,316	\$91,067,206 <sup>13</sup>

<sup>10</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, PUCO Case No. 07-589-GA-AIR, et al., Application at E-4 page 1 of 2 annual number of RS bills, 4,110,081, and annual number of RFT bills, 601,104 (4,110,081 + 601,104 = 4,711,185) (July 18, 2007) (Exhibit F).

<sup>11</sup> \$70,667,775 – 28,267,110 = \$42,400,665.

<sup>12</sup> \$95,401,496 – 28,267,110 = \$67,134,386.

<sup>13</sup> \$119,334,316 – 28,267,110 = \$91,067,206.

As described above, granting the stay of execution would freeze the rate design at Stage 2, while still allowing Duke to continue to collect its approved revenue requirements. This ensures the Company will not suffer any substantial harm due to the stay of execution. The Company would merely miss the opportunity to collect more of its authorized revenues through a fixed monthly customer charge. The Company would nevertheless recover all its authorized revenues but through a higher volumetric charge in lieu of the higher fixed charge. This arrangement ensures the Company will not suffer any substantial harm due to the stay of execution. However, the irreparable harm to Duke's residential customers, described below, is exacerbated as the fixed monthly customer charge increases and the volumetric rate decreases.

**B. A Stay Serves the Public Interest Because the SFV Rate Design Runs Counter to Public Policy Promoting Energy Efficiency and Conservation.**

Justice Douglas, in articulating a standard for stays, emphasized that the most important consideration is "above all \* \* \*, where lies the interest of the public" and that "the public interest [] is the ultimate important consideration for this Court in these types of cases."<sup>14</sup> Justice Douglas' dissent in *MCI* emphasizes that Commission Orders "have effect on everyone in this state -- individuals, business and industry."<sup>15</sup> In these difficult economic times, that effect is most sharply felt by residential consumers who can ill afford increases in essential services such as utilities in general, and the supply of natural gas fuel in particular.

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<sup>14</sup> *MCI Telecommunications Corp. v. Pub. Util. Com.* (1987), 31 Ohio St.3d 604, 606, 510 N.E.2d 806 (Douglas, J. dissenting).

<sup>15</sup> *Id.* at 606, 510 N.E.2d at 807.

The public interest in this case focuses on the need to carry out the state policy encouraging conservation and energy efficiency efforts in Ohio. R.C. 4929.02(A)(4) (Appx. 000017) encourages “innovation and market access for cost-effective supply- and demand-side natural gas services and goods.”<sup>16</sup> Yet, the SFV rate design contradicts and undermines this policy by discouraging consumers to pursue conservation efforts such as purchasing insulation and other conservation retrofits.

Recent developments in high-efficiency furnaces and set-back thermostats, which promote conservation and energy efficiency, gained “market access” because individual consumers were motivated to lower their utility bills by conserving purchased fuel and using it more efficiently. The SFV rate design, on the other hand, fails to reward consumers’ conservation efforts -- and the monetary investments required -- because the fixed monthly customer charge must be paid regardless of whether the consumer reduces usage. This rate design vitiates the impact and benefit of reduced consumption.

Further, the SFV rate design prolongs the time (the payback period) it takes for investments in conservation and efficiency retrofits to pay for themselves in savings. R.C. 4905.70 (Appx. 000005) charges the Commission with encouraging these kinds of retrofits and innovation.<sup>17</sup> Thus, by discouraging consumers from investing in energy efficiency and conservation efforts, the Commission fails to adhere to state energy policy and ignores the duty that the General Assembly placed upon it through R.C Section 4905.70.

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<sup>16</sup> R.C. 4929.02(A)(4) (Appx. 000017).

<sup>17</sup> R.C. 4905.70 (Appx. 000005).

R.C. 4911.15 (Appx. 000014) allows the Consumers' Counsel to represent consumers "whenever in [her] opinion the public interest is served." The Consumers' Counsel first intervened in this case to serve the public interest and moves to stay the Commission's order now for the same reason. The SFV rate design approved by the Commission below unfairly burdens low-use consumers, discourages conservation, and diminishes the value of energy efficiency investments to residential consumers. A stay of that Order would thus serve the public interest.

**C. Irreparable Harm Will be Suffered by Residential Customers in the Absence of Action by this Court.**

Harm is irreparable "when there could be no plain, adequate and complete remedy at law for its occurrence and when any attempt at monetary restitution would be 'impossible, difficult, or incomplete.'"<sup>18</sup> In the context of judicial orders, this Court traditionally looks to the lack of an effective legal remedy to determine whether to allow an interlocutory appeal to stay the proceedings.<sup>19</sup> The SFV rate design irreparably harms Duke's low-use residential customers and warrants this Court granting the requested stay.

**1. Ohio Law Provides No Plain, Adequate And Complete Remedy For The Harm That Will Ensur To Duke's Customers If A Stay Is Not Granted.**

**a. There Is No Plain, Adequate And Complete Remedy For The Lost Opportunities To Conserve.**

Under Stage 3, the fixed monthly customer charge will be four times greater than what consumers were paying only a year ago. This dramatic increase will discourage

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<sup>18</sup> *FOP v. City of Cleveland* (8th Dist. 2001), 141 Ohio App. 3d 63, 81 (citing *Cleveland v. Cleveland Elec. Illuminating Co.* (8th Dist. 1996), 115 Ohio App. 3d 1, 12, appeal dismissed, 78 Ohio St.3d 1419, 676 N.E.2d 123 (1997)).

<sup>19</sup> See, e.g., *Tilberry v. Body* (1986), 24 Ohio St.3d 117, 493 N.E.2d 954, and *Sinnott v. Aqua-Chem, Inc.*, 116 Ohio St.3d 158, 2007-Ohio-5584, 876 N.E.2d 1217, at ¶16.

energy conservation and may, in fact, prompt customers to use more gas. Under this rate design, the cost per unit of gas consumed decreases as consumption increases. Such a rate design encourages consumption which negatively influences conservation decisions and energy efficiency efforts that can benefit consumers on their utility bills and is so important to state and national energy concerns.

The SFV rate design may discourage residential customers from investing in energy efficient home improvements or from implementing conservation measures, because the new rate structure will not reward their investment. Certainly, conservation becomes less attractive to consumers if conserving does not reduce their gas bills or if the payback period for their investments in higher-priced insulation or energy efficient equipment is extended over a longer time period. These opportunities for conservation and the ensuing savings on customers' bills will be lost if a stay is not granted. There is no way to reach back and recover the energy that customers would have conserved under a different rate structure. That energy and the opportunity for savings will be lost forever, and no legal remedy will restore it.

**b. There Is No Plain, Adequate And Complete Remedy To Address The Violations Of The Notice Requirements Imposed By R.C. 4909.18, R.C. 4909.19, R.C. 4909.43 And Due Process Rights.**

Ohio law requires that customers be provided actual notice of the utility's filing of an application for an increase in distribution service rates and that certain officials in municipalities also be provided notice of the utility's intent to file such an application. R.C. 4909.18 (Appx. 000006-000008), R.C. 4909.19 (Appx. 000009-000010) and R.C. 4909.43 (Appx. 000011) are three provisions of the Revised Code that address the process for applying for a rate increase before the Commission. These provisions require

that, among other things, a utility applying for a rate increase publish “the substance and prayer of its application” once a week for three consecutive weeks in generally circulated newspapers throughout the affected areas.<sup>20</sup> In addition, 4909.43 (Appx. 000011) requires a public utility to send written notification to “the mayor and legislative authority of each municipality.”<sup>21</sup> Duke did not provide customers with this notice and the PUCO failed to enforce the notice requirements.

Specifically, Duke’s notice provided customers with information that the percentage increase would be 5.8 percent over current rates for a total bill comprised of delivery charges and commodity charges.<sup>22</sup> However, under the SFV rate design, the anticipated increase depends on a customer’s usage and deviates significantly from the notice that Duke provided. For example, customers at the lower usage level (72 Mcf per year) will see a 7.9 percent increase, whereas higher usage customers (600 Mcf per year) will see a 9.1 percent decrease.

Further, looking only at delivery charges (which were the subject of Duke’s Application), the low-use customer will see a 24.7 percent increase over current delivery charges, and the higher-use customer will see a 42.3 percent decrease. In short, those who use less will pay significantly more, while those who use more will pay less. Had Duke’s notice provided its low-use customers with accurate information and sufficient detail regarding the impact of the rate design that was ultimately approved, these

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<sup>20</sup> R.C. 4909.19 (Appx. 000009-000010).

<sup>21</sup> R.C. 4909.43 (Appx. 000011).

<sup>22</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, PUCO Case No. 07-589-GA-AIR, et al., Pre-Filing Notice at 8-2 (June 18, 2007) (Exhibit G).

customers would have had the opportunity to speak out and to provide input to the PUCO -- input that the PUCO is legally obligated to consider as part of its review process.

The General Assembly enacted R.C. 4909.18 (Appx. 000006-000008), R.C. 4909.19 (Appx. 000009-000010) and R.C. 4909.43 (Appx. 000011) in order to provide customers with an opportunity to protect those interests. The legal requirements imposed by these statutes can be neither waived nor ignored by the Commission. Because the inadequate notice failed to give Duke customers any notice of SFV rates, customers were denied their fundamental opportunity to be heard -- they were not aware of the implications of the SFV rate design and thus were unable to determine whether to participate in the hearing. This is a denial of their basic due process rights, guaranteed by the 14th amendment to the U.S. Constitution, and reinforced under R.C. 4909.18 (Appx. 000006-000008), R.C. 4909.19 (Appx. 000009-000010) and R.C. 4909.43 (Appx. 000011).

The inadequate notice prevented customers from deciding whether to participate in the proceedings. Specifically, “[t]he fundamental requisite of due process of law is the opportunity to be heard.”<sup>23</sup> Due process for individuals is a constitutional right protected by the Fourteenth Amendment. The opportunity to be heard can have no meaning, however, if one is not informed of the issues in contention and consequently can not make a decision as to whether to challenge or object to the matter.<sup>24</sup>

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<sup>23</sup> *Grannis v. Ordean* (1914), 234 U.S. 385, 394, 43 S. Ct. 779, 784, 58 L. Ed. 1363, 1369, citing *Louisville & N.R. Co. v. Schmidt* (1990), 177 U.S. 230, 236; *Simon v. Craft* (1901), 182 U.S. 427, 436.

<sup>24</sup> See for example *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873, where the Court noted that “[t]he right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.”

Since Duke's notice did not sufficiently inform its customers of the issues in contention, in particular the proposed radical change in rate design, Duke's customers were unable to make an informed decision to participate in the rate case. Customers' opportunity to be heard could not be assured under such circumstances. Consequently, customers' due process rights were violated.

Some courts have ruled that when the process is flawed or biased, this may be sufficient to warrant injunctive relief, if events subsequent to the process produce irreparable harm.<sup>25</sup> Such circumstances exist in this case. The lack of adequate notice under R.C. 4909.18 (Appx. 000006-000008), R.C. 4909.19 (Appx. 000009-000010) and R.C. 4909.43 (Appx. 000011) caused the hearing process undertaken to be flawed. Duke customers were not given sufficient information to determine the impact of the proposed rate design on their individual bills. Therefore, the implementation of the SFV residential rates, which resulted from a proceeding in which the due process rights of consumers were violated, will result in harm to Duke's residential customers for which there is no adequate remedy.

**2. Any Attempt At Monetary Restitution For The Payment Of Unlawful And Unreasonable Rates Would Be Impossible, Difficult, Or Incomplete.**

Economic loss is irreparable harm where that loss cannot be recovered. In *Tilberry v. Body* this Court found that the effect of a court order calling for the dissolution of a business partnership would cause "irreparable harm" to the partners because "a reversal \* \* \* on appeal would require the trial court to undo the entire

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<sup>25</sup> *United Church of the Medical Center v. Medical Center Commission* (C.A.7, 1982), 689 F.2d 693, 701.

accounting and to return all of the asset distributions” - a set of circumstances that would be “virtually impossible to accomplish.”<sup>26</sup> In *Sinnott v. Aqua-Chem, Inc.* this Court found that a lower court’s pre-trial findings could be appealed at the point they were issued because the findings allowed the case to proceed to trial.<sup>27</sup> The majority reasoned that “the incurrence of unnecessary trial expenses is an injury that cannot be remedied by an appeal from a final judgment,”<sup>28</sup> and so concluded that “[i]n some instances, ‘[t]he proverbial bell cannot be unrung and an appeal after final \* \* \* judgment on the merits will not rectify the damage’ suffered by the appealing party.”<sup>29</sup>

*Tilberry* and *Sinnott* illustrate that economic harm does become irreparable where the loss cannot be recovered. No post-judgment remedy could have restored the unnecessary trial expenses to the corporation in *Sinnott*. And recovery of partnership distributions after dissolution in *Tilberry* would have been “virtually impossible.” For Duke’s low-use residential consumers affected by the Commission’s Order here, any recovery subsequent to a successful appeal is highly unlikely considering that the Company can be expected to argue and the PUCO can be expected to rule that recompensing consumers is barred by Ohio law which they will claim prohibits the

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<sup>26</sup> *Tilberry*, 24 Ohio St.3d at 121, 493 N.E.2d at 957.

<sup>27</sup> *Sinnott* at ¶30.

<sup>28</sup> *Id.* at ¶26.

<sup>29</sup> *Id.* at ¶23 (quoting *Gibson-Myers & Assocs. v. Pearce* (9th Dist.), 1999 Ohio App. LEXIS 5010, \*7-\*8 (compelled disclosure of a trade secret would “surely cause irreparable harm”).

retroactive refund of overpayments by customers where such payments are not made subject to refund.<sup>30</sup>

This Court expressed this principle in its landmark holding in *Keco Industries, Inc. v. Cincinnati and Suburban Bell Tel. Co.*, 166 Ohio St. 254 (1957), where it limited retroactive ratemaking, according to its interpretation of R.C. 4905.32 (Appx. 000004):

Under this section a utility has no option but to collect the rates set by the Commission and is clearly forbidden to refund any part of the rate collected.<sup>31</sup>

Pursuant to the Commission's order and the schedule imposed therein, Duke raised its fixed monthly customer charge from \$6.00 to \$15.00 on June 4, 2008.<sup>32</sup> Duke raised the charge again to \$20.25 for the October 2008 through May 2009 billing cycles. Duke is scheduled to impose the next increase to \$25.33 with the June 2009 billing cycle. It is this Stage 3 increase that OCC asks the Court to stay.

Under Stage 3 of the SFV rate design, the anticipated increase depends on a customer's usage. In fact at the lower usage level (72 Mcf per year) the customer would see a \$77.47 or 7.9 percent **increase**,<sup>33</sup> whereas a higher usage customer (600 Mcf per year) would experience a \$644.77 or 9.1 percent **decrease**.<sup>34</sup> The comparison is even more dramatic when considering a bill comprised of the delivery charges only. In that

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<sup>30</sup> See, e.g., *Lucas County Commissioners v. Pub. Util. Comm.* (1997), 80 Ohio St.3d 344, 686 N.E.2d 501; *Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 254, 141 N.E.2d 465, par. 2 of the syllabus.

<sup>31</sup> *Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 254, 257, 141 N.E.2d 465.

<sup>32</sup> *In the Matter of the Application of Duke Energy Ohio Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR et al., Opinion and Order at 20 (May 28, 2008).

<sup>33</sup> See Exhibit H Supporting Calculations.

<sup>34</sup> *Id.*

comparison, the low use customer would experience a 24.7 percent **increase** over current delivery charges,<sup>35</sup> and the higher use customer would experience a 42.3 percent **decrease**.<sup>36</sup> To put such demands on these low-use (and potentially low-income) consumers is not in the public interest. The stay will provide some relief to customers who are already burdened by the fragile state of the economy by allowing them to continue to pay rates that include a greater volumetric charge (\$0.107044/CCF vs. \$0.040828/CCF) and a smaller fixed monthly customer charge \$20.25 vs. \$25.32).<sup>37</sup> This configuration better aligns the bill with the customer's usage than the rates under the Stage 3 design. Allowing Duke to implement the Stage 3 of the SFV rate design will further exacerbate that subsidy.

The incremental increases in the customer charge that will be imposed in June are unrecoverable once they are paid. Without a stay, the next stage of the fixed monthly customer charge will cause Duke's low-use residential customers to suffer irreparable harm in the event that OCC prevails on appeal to this Court.

**D. The OCC Has Provided a Strong Showing That it is Likely to Prevail on the Merits.**

The OCC provided substantial and appropriate evidentiary support for its positions during the pendency of this case at the PUCO, and explained why it should prevail on the merits, in the Brief it filed with this Court. The gravity of the errors presented which include notice issues, as well as, federal, state, and public policy considerations, when fully weighed and addressed, make it likely that OCC will prevail

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<sup>35</sup> Id.

<sup>36</sup> See Exhibit H Supporting Calculations.

<sup>37</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, PUCO Case No. 07-589-GA-AIR, et al., Duke Rate RS, Sheet No. 30.15 (July 11, 2008).

on the merits.

Specifically, R.C. 4903.13 (Appx. 000002) provides this Court with the authority to reverse, vacate, or modify a Commission order where the Court finds that order unlawful or unreasonable. Without repeating here the arguments in their entirety from OCC's Brief, OCC has shown that the order is unreasonable and unlawful on four independent bases.

**1. The Commission's Order Is Unlawful And Unreasonable Because It Violates The Notice Requirements Imposed By R.C. 4909.18, R.C. 4909.19, And R.C. 4909.43.**

As discussed above, the General Assembly enacted R.C. 4909.18 (Appx. 000006-000008), R.C. 4909.19 (Appx. 000009-000010), and 4909.43 (Appx. 000011) in order to provide customers with an opportunity to protect their interests in state regulation of the rates of public utilities. The legal requirements imposed by these statutes can be neither waived nor ignored by the PUCO. Because the PUCO failed to enforce these provisions, Duke customers had no adequate notice with sufficient detail of the residential rate design ultimately approved.<sup>38</sup> Thus OCC can demonstrate that the Commission's failure to adhere to the law results in an unreasonable and unlawful Order.

**2. The Commission's Order Is Unlawful And Unreasonable Because It Deviates From Precedent And The Commission Demonstrated Neither A Clear Need To Change Its Position Nor Error In Prior Decisions.**

Decisions of this Court prevent the Commission from changing its position without appropriate considerations. In *Office of Consumers' Counsel v. Public Utilities Commission*, this Court stated:

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<sup>38</sup> See Merit Brief of Appellant, The Office of the Ohio Consumers' Counsel, S. Ct. Case No. 08-1837, (December 15, 2009) at 6-11 for more detailed treatment of this point.

\* \* \* Although the Commission should be willing to change its position when the need therefore is clear **and** it is shown that prior decisions are in error, it should also respect its own precedents in its decisions to assure predictability which is essential in all areas of the law, including administrative law. (Emphasis added.)<sup>39</sup>

The Commission's Order here shows neither a need for a change from its previous ratemaking policy nor that the policy was in error.<sup>40</sup> By imposing the SFV rate design on Duke's residential customers, the Commission ignored thirty years of cases supporting a rate design comprised of a low customer charge with a volumetric charge associated with usage, and thirty years of adherence to the regulatory principle of gradualism. This disregard for prior precedents has resulted in a rate design that imposed a dramatic shifting of rates toward a huge increase in the monthly fixed charge -- significantly greater than had ever been contemplated by the PUCO.

The Commission's Order neither explains its rationale for ignoring the principle of gradualism nor justifies disregarding thirty years of Commission rate design precedent. Thus OCC can demonstrate that the Commission's Order abandons precedent pertaining

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<sup>39</sup> *Office of Consumers' Counsel v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 49, 50, 461 N.E.2d 303, quoting *Cleveland Electric Illuminating Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d. 431, 330 N.E.2d 1. See also *State, ex rel. Auto Machine Co. v. Brown* (1929), 121 Ohio St. 73, 166 N.E. 903. See also *Atchison v. Witchita Bd. of Trade* (1973), 412 US 800, 806, 93 S.Ct. 2367, 37 L. Ed. 2d 350 (In 1973 the U.S. Supreme Court set a limit on the power of federal agencies to change prior established policies stating that, while an agency may flatly repudiate its norms, "whatever the ground for the departure [whether it is completely disregarding a policy or simply narrowing its applicability] \* \* \* it must be clearly set forth so that the reviewing court may understand the basis of the agency's action and so may judge the consistency of that action with the agency's mandate."); *Williams Gas Processing v. FERC* (C.A.D.C. 2006), 475 F.3d 319, 326. (The Court further added that, although not bound by precedent, a demonstration of "reasoned decision-making necessarily requires consideration of relevant precedent.").

<sup>40</sup> See Merit Brief of Appellant, The Office of the Ohio Consumers' Counsel, S. Ct. Case No. 08-1837, (December 15, 2009) at 12-22 for more detailed treatment of this point.

to the regulatory principle of gradualism with no showing of a clear need or previous error and is, therefore, unlawful and unreasonable.

**3. The Commission's Order Is Unlawful And Unreasonable Because It Approves A Rate Design That Fails To Promote Energy Efficiency And Discourages Conservation, Thus Violating R.C. 4929.02 And R.C. 4905.70.**

R.C. 4929.02 (Appx. 000017) and R.C. 4905.70 (Appx. 000005) require the Commission to approve rates that promote energy efficiency and encourage conservation in accordance with Ohio law and policy. The rate design ordered here works against both energy efficiency and conservation.<sup>41</sup> The SFV rate design penalizes energy-efficient consumers in two ways. First, the payback periods for any energy efficiency investments under the SFV rate design are extended. Second, the cost per unit of consumption has increased for low-use customers and decreased as consumption rises, resulting in the low-use customers subsidizing the high-use (and potentially less efficient) customers. Therefore, the SFV rate design does not encourage conservation and violates R.C. 4905.70 (Appx. 000005).

This Court has found that violations of statutes containing state policy warrant a reversal of the Commission's Order and remand to remedy the statutory violation.<sup>42</sup> R.C. 4929.02(A)(4) (Appx. 000017) declares it the policy of the State of Ohio to "[e]ncourage innovation and market access for cost-effective supply-and demand-side natural gas services and goods."

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<sup>41</sup> See Merit Brief of Appellant, The Office of the Ohio Consumers' Counsel, S. Ct. Case No. 08-1837, (December 15, 2009) at 22-36 for more detailed treatment of this point.

<sup>42</sup> *Elyria Foundry Company v. Pub. Util. Comm.* (2007), 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176, at ¶58. (In the Elyria Foundry Case, a violation of R.C. 4928.02 (G) (Appx. 000015-000016) a statute mandating state policy against anticompetitive subsidy relative to competitive retail electric service was found to have been violated).

In violation of that policy the SFV rate design sends consumers the wrong price signal, harms those who have invested in energy efficiency by extending the payback period, and takes away control that consumers have over their utility bills. Thus, the SFV rate design fails to promote energy efficiency and encourage conservation, which is contrary to state policy and is in violation of R.C. 4929.02(A)(4) (Appx. 000017). OCC can, therefore, show that the Order to implement the SFV rate design violates statute and policy and is therefore unlawful and unreasonable.

**4. The Commission's Order Is Unlawful And Unreasonable Because It Was Issued Against The Manifest Weight Of The Evidence.**

This Court will reject a finding of fact by the Commission where “it appears from the record that the evidence and order are manifestly against the weight of the evidence, or are so clearly unsupported by it as to show misapprehension, mistake or willful disregard of duty.”<sup>43</sup> The Commission’s approval of the SFV rate design was done without regard for the fact that critical and fundamental information (e.g. the SFV rate design impact on low-income customers and impact on customers’ conservation efforts) was not available from the record evidence in this case.<sup>44</sup>

**IV. NO BOND IS NECESSARY IN ORDER TO EFFECT THE STAY**

**A. No Bond Is Required Because R.C. 4903.16 Is Unconstitutional Under The Separation Of Powers Doctrine.**

Contrary to the separation of powers, the legislature has encroached on the Ohio

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<sup>43</sup> *General Motors Corp. v. Pub. Util. Comm.* (1976), 47 Ohio St.2d 58, 66, 351 N.E.2d 183.

<sup>44</sup> See Merit Brief of Appellant, The Office of the Ohio Consumers’ Counsel, S. Ct. Case No. 08-1837, December 15, 2009 at 37-49 for more detailed treatment of this point.

Supreme Court's ability to decide a Motion to Stay. This has occurred through the state's bonding requirement -- or "execute an undertaking" as bonding is referred to in R.C. 4903.16 (Appx. 000003) -- associated with a Motion to Stay. R.C. 4903.16 (Appx. 000003) addresses the mandatory procedure for filing a Motion for a Stay of Execution in response to an order of the PUCO. The statute provides that a proceeding to modify an order of the PUCO does not stay execution of the order, unless the appellant applies for a stay.<sup>45</sup>

If the appellant does apply for a stay, the appellant, upon three days notice to the commission "shall execute an undertaking\* \* \* in such a sum as the Supreme Court prescribes<sup>46</sup>\* \* \* conditioned for the prompt payment by appellant of all damages caused by the delay in the enforcement of the order."<sup>47</sup> The PUCO and utilities have argued that R.C. 4903.16 (Appx. 000003) requires a bond to be posted for any Motion for a Stay of Execution before the Motion can be considered by this Court.

The requirement that opposing parties in the past have proposed for the posting of a bond would adversely affects a consumer party's ability to obtain a stay. In fact, the bond requirement, if applied as proposed by opposing parties, would essentially write the stay provision out of the law as far as protecting consumers. But such a result is not an appropriate limitation on the Court's powers to act to protect appellants. As explained below, R.C. 4903.16 (Appx. 000003) is unconstitutional because it violates the separation

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<sup>45</sup> R.C. 4903.16 (Appx. 000003).

<sup>46</sup> If the Court does prescribe an undertaking, then the amount should be nominal (such as \$1.00).

<sup>47</sup> R.C. 4903.16 (Appx. 000003).

of powers doctrine and, therefore, should not apply to the current Motion for a Stay of Execution filed by the OCC in these proceedings.

The separation of powers doctrine prevents the distinct branches of government from exercising the core functions of another. Although the Ohio Constitution does not explicitly contain the separation of powers doctrine, Ohio courts have nevertheless held that it is inherent in the constitutional framework of the government.<sup>48</sup> This Court has previously explained that underlying the policy of the division of powers of government into three departments is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others.<sup>49</sup>

Because this Court has stated that the three grand divisions of the government must be protected from encroachments by the others,<sup>50</sup> any attempt by the legislature to exercise a judicial power or to limit or encroach upon the courts in the exercise of their inherent powers is an unconstitutional violation of the principle of separation of powers.<sup>51</sup> This Court has held that, inherent within a court's jurisdiction, and essential to the orderly

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<sup>48</sup> *State v. Sterling* (2007), 113 Ohio St.3d 255, 2007-Ohio-1790, 864 N.E.2d 630, at ¶22 (citing the Ohio Constitution); *State ex. rel. Bryant v. Akron Metro Park Dist.* (1929), 120 Ohio St. 464, 473, 166 N.E. 407.

<sup>49</sup> *State ex. rel Bryant v. Akron Metro Park Dist.* (1929), 120 Ohio St. 464, 473, 166 N.E. 407.

<sup>50</sup> *Sterling* at ¶25 (quoting *Fairview v. Giffie* (1905), 73 Ohio St. 183, 187, 166 N.E. 407).

<sup>51</sup> *Hale v. The State* (1896), 55 Ohio St. 210, 212-13, 45 N.E. 199; *State v. Sanders* (2<sup>nd</sup> Dist. 1995), 1995 Ohio App. LEXIS 5825, at \*29, unreported.

and efficient administration of justice, is the power to grant or deny stays.<sup>52</sup> Thus, the Court has emphasized that the power to grant or deny stays is one exclusively belonging to the judiciary upon which the legislature cannot encroach.

Furthermore, this Court has recently stated that “it is not within the purview of the legislature to grant or deny the power nor is it within the purview of the legislature to shape or fashion circumstances under which [a stay of power] may be or may not be granted or denied.”<sup>53</sup> Therefore, the legislature is not even entitled to impose limitations on the inherent power of the judiciary to grant or deny stays.

If R.C. 4903.16 (Appx. 000003) is been construed to require every appellant to post a bond in the event the Court grants a stay from a PUCO order, then this legislated bond-posting requirement improperly encroaches upon the judicial power to grant a stay by shaping or fashioning circumstances under which that inherent judicial power may or may not be granted. If the appellant does not or cannot post the legislatively mandated bond, then opposing parties in appeals will argue that the judiciary lacks the power to implement the stay that it intended to grant for a Stay of Execution -- and the appellant may have no means of protection from irreparable harm during the pendency of an appeal.

Thus, the legislative requirement is unconstitutionally shaping the circumstances under which the judiciary can exercise its power to grant stays. This stands in direct violation of the separation of powers doctrine as reflected in Ohio law. For these reasons,

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<sup>52</sup> *State v. Hoechhausler* (1996), 76 Ohio St.3d 455, 464, 1996 Ohio 374; 668 N.E.2d 457; *Landis v. N. American Co.* (1936), 299 U.S. 248, 254, 57 S. Ct. 163, 166; 81 L. Ed. 153, 158; *State v. Smith* (1989), 42 Ohio St.3d 60, 61, 537 N.E.2d 198; *City of Norwood v. Horney* (2006), 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, at ¶118.

<sup>53</sup> *City of Norwood*, at ¶120.

R.C. 4903.16 (Appx. 000003) is unconstitutional under the separation of powers doctrine and cannot be applied to require with regard to this Court's granting of the OCC's Motion for a Stay of Execution.

**B. The Public Office Exemption To The Bond Requirement.**

Ohio law provides exemptions that relieve OCC from having to post a bond -- or "execute an undertaking" as bonding is referred to in R.C. 4903.16 (Appx. 000003) -- in furtherance of a requested stay. A public officer is not required to post a supersedeas bond when acting in a representative capacity for the State. Specifically, R.C. 2505.12 (Appx. 000001) provides:

An appellant is *not required to give a supersedeas bond* in connection with any of the following:

(A) An appeal by any of the following:

\* \* \*

(3) Any public officer of the state or of any of its political subdivisions who is suing or is sued solely in the public officer's representative capacity as that officer.<sup>54</sup>

According to R.C. 4911.06 (Appx. 000012), the Consumers' Counsel "shall be considered a state officer \* \* \*."<sup>55</sup> Furthermore, according to R.C. 4911.02 (Appx. 000012), the Consumers' Counsel may "institute, intervene in, or otherwise participate in proceedings in both state and federal courts \* \* \* on behalf of the residential consumers."<sup>56</sup> Thus, in filing a request for a stay of execution, the Consumers' Counsel acts in a representative capacity and, as a public officer, is not required to post a

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<sup>54</sup> R.C. 2505.12 (Emphasis added.) (Appx. 000001).

<sup>55</sup> R.C. 4911.06 (Appx. 000013).

<sup>56</sup> R.C. 4911.02 (Appx. 000012).

supersedeas bond. In fact, the Court has even granted a stay for an entity other than a public officer without requiring that a bond be posted by the appellant.<sup>57</sup>

Furthermore, a review of the legislative history informs that OCC should not be required to post a bond in order to effect a stay. The original version of R.C. 4903.16 (passed in 1911) (Appx. 000019-000020) limited the undertaking requirement to a “public utility or railroad.” Specifically, the predecessor law to R.C. 4903.16 (Appx. 000019-000020) that was enacted years before the Revised Code was created contained a provision that “[t]he condition of the undertaking shall be that the public utility or railroad shall refund to each of such users, public or private, the amount collected by it in excess of the amount which shall finally be determined it was authorized to collect.”<sup>58</sup> Additionally this Court has also said that “[p]atently, Section 4903.16, Revised Code, was designed primarily to apply to a public utility which is dissatisfied with the rates or charges as ordered by the Public Utilities Commission.”<sup>59</sup> Accordingly, OCC is not required to post a bond because the OCC is acting in a representative capacity as a public officer of the State.

**C. Duke Will Suffer No Financial Harm As A Result Of This Court’s Stay Of The Order.**

As described above, Duke’s rates (Stage 2) are currently designed to collect its full revenue requirement under the approved Residential Tariffs. The stay of execution

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<sup>57</sup> In *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 31 Ohio St.3d 604, 510 N.E.2d 806, a stay was granted in a utility case by the Ohio Supreme Court without the posting of a bond despite the fact that the appellant was not a public entity.

<sup>58</sup> G.C. 614-70 (Section 73, H.B. 89, 79th General Assembly, 1911) (Appx. 000019-000020).

<sup>59</sup> *City of Columbus v. Public Utilities Commission of Ohio* (1959) 170 Ohio St. 105, 109, 163 N.E.2d 167.

means that the current tariff for collecting that revenue requirement will continue to be collected. This ensures the Company will not sustain any substantial harm due to the stay of execution. Accordingly, no bond is necessary in order to effect a stay.

## **V. CONCLUSION**

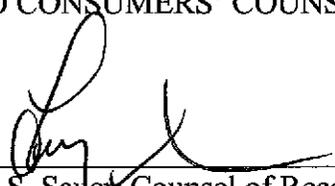
The SFV rate design will discourage conservation and investment in energy-efficient home improvements. It will cause irreparable harm to residential consumers by forcing low-use customers to subsidize high-use customers, -- and at rates that no customer will be able to recover even if this Court finds the PUCO's Order unlawful or unreasonable on OCC's appeal. For these reasons, this Court should stay execution of the Commission's Order that authorizes the June 2009 effective date of the next phase of the SFV rate design change -- collection of a greater portion of the distribution revenues from the fixed monthly customer charge and less from the volumetric charge -- until it has decided the appeal. Finally, no bond is necessary in order to effectuate the stay. But if this Court requires a bond to be posted in order to effect the stay, the bond should be nominal in amount<sup>60</sup> since there will be no financial harm to the Company.

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<sup>60</sup> Such as \$1.00.

Respectfully submitted,

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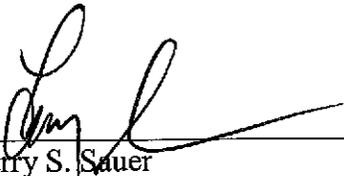
*Attorneys for Appellant*

*Office of the Ohio Consumers' Counsel*

# **EXHIBITS**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Stay of Execution of the Office of the Ohio Consumers' Counsel was served upon all parties of record by regular U.S. Mail this 17th day of April 2009.

  
\_\_\_\_\_  
Larry S. Sauer  
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**IN THE SUPREME COURT OF OHIO**

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

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**APPENDIX OF  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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## **2505.12 No supersedeas bond required for certain appeals.**

An appellant is not required to give a supersedeas bond in connection with any of the following:

(A) An appeal by any of the following:

(1) An executor, administrator, guardian, receiver, trustee, or trustee in bankruptcy who is acting in that person's trust capacity and who has given bond in this state, with surety according to law;

(2) The state or any political subdivision of the state;

(3) Any public officer of the state or of any of its political subdivisions who is suing or is sued solely in the public officer's representative capacity as that officer.

(B) An administrative-related appeal of a final order that is not for the payment of money.

Effective Date: 07-11-2001

**000001**

## **4903.13 Reversal of final order - notice of appeal.**

A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable.

The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

Effective Date: 10-01-1953

**000002**

## **4903.16 Stay of execution.**

A proceeding to reverse, vacate, or modify a final order rendered by the public utilities commission does not stay execution of such order unless the supreme court or a judge thereof in vacation, on application and three days' notice to the commission, allows such stay, in which event the appellant shall execute an undertaking, payable to the state in such a sum as the supreme court prescribes, with surety to the satisfaction of the clerk of the supreme court, conditioned for the prompt payment by the appellant of all damages caused by the delay in the enforcement of the order complained of, and for the repayment of all moneys paid by any person, firm, or corporation for transportation, transmission, produce, commodity, or service in excess of the charges fixed by the order complained of, in the event such order is sustained.

Effective Date: 10-01-1953

**000003**

## **4905.32 Schedule rate collected.**

No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time.

No public utility shall refund or remit directly or indirectly, any rate, rental, toll, or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, regulation, privilege, or facility except such as are specified in such schedule and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like, or substantially similar, service.

Effective Date: 10-01-1953

**000004**

## **4905.70 Energy conservation programs.**

The public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs. Notwithstanding sections 4905.31, 4905.33, 4905.35, and 4909.151 of the Revised Code, the commission shall examine and issue written findings on the declining block rate structure, lifeline rates, long-run incremental pricing, peak load and off-peak pricing, time of day and seasonal pricing, interruptible load pricing, and single rate pricing where rates do not vary because of classification of customers or amount of usage. The commission, by a rule adopted no later than October 1, 1977, and effective and applicable no later than November 1, 1977, shall require each electric light company to offer to such of their residential customers whose residences are primarily heated by electricity the option of their usage being metered by a demand or load meter. Under the rule, a customer who selects such option may be required by the company, where no such meter is already installed, to pay for such meter and its installation. The rule shall require each company to bill such of its customers who select such option for those kilowatt hours in excess of a prescribed number of kilowatt hours per kilowatt of billing demand, at a rate per kilowatt hour that reflects the lower cost of providing service during off-peak periods.

Effective Date: 01-01-2001

**000005**

## **4909.18 Application to establish or change 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

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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.

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Effective Date: 01-11-1983

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## **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

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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.

Effective Date: 01-11-1983

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## **4909.43 Filing rate increase application.**

(A) No public utility shall file a rate increase application covering a municipal corporation pursuant to section 4909.18 or 4909.35 of the Revised Code at any time prior to six months before the expiration of an ordinance of that municipal corporation enacted for the purpose of establishing the rates of that public utility.

(B) Not later than thirty days prior to the filing of an application pursuant to section 4909.18 or 4909.35 of the Revised Code, a public utility shall notify, in writing, the mayor and legislative authority of each municipality included in such application of the intent of the public utility to file an application, and of the proposed rates to be contained therein.

Effective Date: 01-11-1983

## **4911.02 Consumers' counsel - powers and duties.**

(A) The consumers' counsel shall be appointed by the consumers' counsel governing board, and shall hold office at the pleasure of the board.

(B)(1) The counsel may sue or be sued and has the powers and duties granted him under this chapter, and all necessary powers to carry out the purposes of this chapter.

(2) Without limitation because of enumeration, the counsel:

(a) Shall have all the rights and powers of any party in interest appearing before the public utilities commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters;

(b) May take appropriate action with respect to residential consumer complaints concerning quality of service, service charges, and the operation of the public utilities commission;

(c) May institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of the residential consumers concerning review of decisions rendered by, or failure to act by, the public utilities commission;

(d) May conduct long range studies concerning various topics relevant to the rates charged to residential consumers.

Effective Date: 09-01-1976

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## **4911.06 Consumers' counsel considered state officer.**

The consumers' counsel shall be considered a state officer for the purpose of section 24 of Article II, Ohio constitution.

Effective Date: 09-01-1976

## **4911.15 Counsel may represent residential consumer or municipal corporation.**

The consumers' counsel, at the request of one or more residential consumers residing in, or municipal corporations located in, an area served by a public utility or whenever in his opinion the public interest is served, may represent those consumers or corporations whenever an application is made to the public utilities commission by any public utility desiring to establish, modify, amend, change, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental.

The consumers' counsel may appear before the public utilities commission as a representative of the residential consumers of any public utility when a complaint has been filed with the commission that a rate, joint rate, fare, toll, charge, classification, or rental for commodities or services rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted by the utility is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of the law.

Nothing in Chapter 4911. of the Revised Code shall be construed to restrict or limit in any manner the right of a municipal corporation to represent the residential consumers of such municipal corporation in all proceedings before the public utilities commission, and in both state and federal courts and administrative agencies on behalf of such residential consumers concerning review of decisions rendered by, or failure to act by, the public utilities commission.

Effective Date: 06-12-1980

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## **4928.02 State policy.**

It is the policy of this state to do the following throughout this state :

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;
- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure;
- (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;
- (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;
- (G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;

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(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy.

In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.

Effective Date: 10-05-1999; 2008 SB221 07-31-2008

**000016**

## **4929.02 Policy of state 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;

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- (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.

Effective Date: 06-26-2001; 2008 SB221 07-31-2008

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The  
Annotated General Code  
OF THE  
State of Ohio  
of 1910

*And All Laws of a General Nature Passed  
Since Its Adoption and in Force January 1, 1912*

BY

WM. HERBERT PAGE

(of the Columbus Bar, Author of *Page on Contracts*, *Page on  
Wills*, *Page & Jones on Taxation by Assessments*,  
and Professor of Law in the College of  
Law of The Ohio State University)

AND

JOHN J. ADAMS

(Dean of the College of Law of The Ohio State  
University, Late Circuit Judge.)

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VOLUME ONE

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1912

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Suspension of  
order, when

SEC. 614-70. § 73. Upon the commencement of any such action, the operation of the order, finding, determination, direction or requirement complained of shall not be suspended until the determination of said action, unless the court or a judge thereof, after notice of and hearing, shall otherwise order and the court or judge thereof may, after hearing, fix the terms and conditions for the suspension of said order, finding, determination, direction or requirement or any part thereof.

Bond.

Provided, however, that the commencement of such action to vacate and set aside any order of the commission with respect to any fare, toll, price, rate, charge, or rental, shall vacate and suspend the order of the commission sought to be vacated, if such public utility or railroad shall elect to charge the fare, toll, price, rate, charge, or rental in force and effect immediately prior to the entering of such order of the commission, and shall give an undertaking in such amount as the court shall determine. The undertaking shall be filed with the court and shall be payable to the state of Ohio for the use and benefit of the users affected by the order of the commission. The condition of the undertaking shall be that the public utility or railroad shall refund to each of such users, public or private, the amount collected by it in excess of the amount which shall finally be determined it was authorized to collect from such users. The court shall make all necessary orders in respect to the form of such undertaking and the manner of making such refunders.

HISTORY.—102 v. 540, § 73.

Service of order.

SEC. 614-71. § 74. Every order provided for in this act, shall be served upon every person or corporation to be affected thereby, either by personal delivery or a certified copy thereof, or by mailing a certified copy thereof, in a sealed package with postage prepaid, to the person to be affected thereby, or in the case of a corporation, to any officer or agent thereof, upon whom a summons may be served. It shall be the duty of every person and corporation to notify the commission forthwith, in writing, of the receipt of the certified copy of every order so served, and in the case of a corporation such notification must be signed and acknowledged by a person or officer duly authorized by the corporation to admit such service. Within a time specified in the order of the commission every person or corporation upon whom it is served must if so required in the order notify the commission in like manner whether the terms of the order are accepted and will be obeyed.

HISTORY.—102 v. 540, § 74.

Free service or  
reduced rates  
valid, when.

SEC. 614-72. § 75. Nothing in this act contained shall prevent any public utility or railroad from granting the whole or any part of its property for any public purpose, or granting reduced rate or free service of any kind to the United States government, the state government or any political division or subdivision thereof, or for charitable purposes or for fairs or expositions or to any officer or employe of such public utility or railroad or his family and all contracts and agreements made

## **EXHIBIT A**

## BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates.	)	Case No. 07-589-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service.	)	Case No. 07-590-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)	Case No. 07-591-GA-AAM

OPINION AND ORDER

The Commission, considering the applications, testimony, the applicable law, proposed Stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

John J. Finnigan, Jr., Paul A. Colbert, and Elizabeth Watts, 139 East Fourth Street, Room 25, AT II, Cincinnati, Ohio 45201-0960, on behalf of Duke Energy Ohio, Inc.

Janine Migden-Ostrander, The Office of Ohio Consumers' Counsel, by Larry Sauer, Joseph Serio, and Michael Idzkowski, Assistant Consumers' Counsel, 10 West Broad Street, 18<sup>th</sup> Floor, Columbus, Ohio 43215-3485, on behalf of the residential consumers of Duke Energy Ohio, Inc.

David C. Rinebolt and Colleen Mooney, 231 West Lima Street, Findlay, Ohio 45840-3033, on behalf of Ohio Partners for Affordable Energy.

Bricker & Eckler LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215-4236, on behalf of the city of Cincinnati.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group and The Kroger Company.

Chester, Wilcox & Saxbe, LLP, by John W. Bentine, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of Interstate Gas Supply, Inc.

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 technician \_\_\_\_\_ Date Processed 5/28/08

Vorys, Sater, Seymour and Pease LLP, by M. Howard Petricoff and Stephen M. Howard, 52 Gay State Street, P.O. Box 1008, Columbus, Ohio 43215, on behalf of Direct Energy Services, LLC and Integrys Energy Services, Inc.

Christensen, Christensen, Donchatz, Kettlewell & Owens, LLC, by Mary W. Christensen and Jason Wells, 100 East Campus View Blvd., Suite 360, Columbus, Ohio 43235, on behalf of People Working Cooperatively, Inc.

John M. Dosker, 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202-1629, on behalf of Stand Energy Corporation.

Thomas R. Winters, First Assistant Attorney General, by Duane W. Luckey, Section Chief, and William L. Wright and Thomas Lindgren, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 9<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

#### OPINION:

#### I. PROCEDURAL BACKGROUND

Duke Energy Ohio, Inc. (Duke, company) is a public utility, engaged in the distribution and sale of natural gas to approximately 424,000 customers in Adams, Brown, Butler, Clermont, Clinton, Hamilton, Highland, Montgomery, and Warren counties, Ohio. As a public utility and a natural gas company within the definition of Sections 4905.02 and 4905.03(A)(6), Revised Code, Duke is subject to the jurisdiction of this Commission in accordance with Sections 4905.04, 4905.05 and 4905.06, Revised Code.

On June 18, 2007, Duke filed notice of its intent to file an application to increase its rates. The Commission issued an entry on July 11, 2007, establishing a test period of January 1, 2007 through December 31, 2007 for the proposed rate increase and a date certain of March 31, 2007, as well as granting certain waivers requested by Duke.

Duke filed the application in Case No. 07-589-GA-AIR, seeking to increase its gas rates on July 18, 2007. Duke also filed separate applications for approval of an alternative rate plan (Case No. 07-590-GA-ALT) and for approval to change accounting methods (Case No. 07-591-GA-AAM). As originally filed, Duke's rate increase application sought approval for a 5.71 percent annual rate increase, an additional \$34 million, over current total adjusted operating revenues. As part of the alternative rate plan application, Duke proposes to: (a) extend the term of the Accelerated Main Replacement Program (AMRP) and the associated rider (Rider AMRP) through the year 2019, (b) establish a process to recover its future investment in Duke's Utility of the Future initiative through a new rider

(Rider AU), and (c) create a new sales decoupling rider (Rider SD) to remove any disincentive for energy conservation initiatives. In the accounting application, Duke seeks approval to defer certain costs to be recovered later as a part of the AMRP expenditures and to capitalize the cost incurred for certain property relocations and replacements.

By entry issued September 5, 2007, the Commission found that Duke's application in Case No. 07-589-GA-AIR complied with the requirements of Section 4909.18, Revised Code, and Rule 4901:1-19-05, Ohio Administrative Code (O.A.C.) and accepted the application for filing as of July 18, 2007. The entry also granted Duke's waiver requests as to certain standard filing requirements and directed Duke to publish notice of the application in newspapers of general circulation in the company's service territory. Duke filed proof of such publication on February 25, 2007. To provide interested parties with an opportunity to make inquiries about the Duke applications, a technical conference was hosted by the Commission's staff on August 20, 2007.

Motions to intervene in these cases were granted to the Ohio Energy Group (OEG), the Kroger Company (Kroger), Interstate Gas Supply, Inc. (Interstate), the city of Cincinnati, the office of the Ohio Consumers' Counsel (OCC), People Working Cooperatively, Inc. (PWC), Integrys Energy Services, Inc. (Integrys), Direct Energy Services, LLC (Direct), Stand Energy Corporation (Stand), and the Ohio Partners for Affordable Energy (OPAE).

Investigations of Duke's applications were conducted and reports filed by the Commission staff and Blue Ridge Consulting Services, Inc. (Blue Ridge), an independent auditing firm. Both the report filed by staff (Staff Report, Staff Ex. 1) and financial audit report filed by Blue Ridge (financial audit report, Staff Ex. 4) were filed on December 20, 2007. Objections to the Staff Report and/or financial audit report were filed by PWC, OEG, Duke, OPAE, OCC, and, jointly, by Integrys and Direct. Motions to strike certain objections were filed by Duke and OCC. Memoranda contra the motions to strike objections were filed by Duke, Interstate, OPAE, and, jointly, by Integrys and Direct.

On January 25, 2008, a prehearing conference was held, as required by Section 4909.19, Revised Code. In accordance with Section 4903.083, Revised Code, local public hearings were held on February 25, 2008, in Cincinnati, Ohio, and on March 11, 2008, in Mason, Ohio.

A total of 27 witnesses testified at the two local hearings in Cincinnati, while four people took the stand at the Mason hearing. Two witnesses testified in favor of the rate increase, particularly as to the accelerated main replacement (AMRP) and riser replacement programs. Another witness testified that, although he was not opposed to the rate increase if Duke required additional money to maintain the gas lines, he was opposed to the extent that the increase is incorporated into the monthly customer charge as

opposed to the volumetric charge. The witness claimed that applying the increase in such a manner discourages energy efficiency and adversely affects residential customers with small homes (Cincinnati Public Hearing I, p. 20-21). The remaining witnesses at the local public hearings were opposed to the increase, asserting that their utility bills are already expensive, particularly for individuals on fixed incomes and for low income individuals and families; while others argued that increasing the customer charge, as proposed, would discourage conservation.

The evidentiary hearing was called on February 26, 2008, and continued, to allow the parties additional time to negotiate a settlement of the issues in these proceedings. On February 28, 2008, the parties filed a Joint Stipulation and Recommendation (Stipulation, Joint Ex. 1) resolving all the issues except the adoption of a new residential rate design. The evidentiary hearing was reconvened on March 5 and March 6, 2008. Duke and staff filed the testimony of Paul G. Smith (Duke Ex. 29) and of J. Edward Hess (Staff Ex. 2), in support of the Stipulation. With respect to the unresolved issue of residential rate design, Duke presented witnesses James A. Riddle (Duke Exs. 10 and 25), Paul G. Smith (Duke Exs. 11 and 19), Donald L. Stork (Duke Exs. 13, 20, and 22), and James E. Ziokowski (Duke Ex. 16); OCC called Wilson Gonzalez (OCC Exs. 5 and 18) and Anthony J. Yankel (OCC Ex. 6 and 17); and Staff presented the testimony of Stephen E. Puican (Staff Ex. 3).

Initial briefs, in support of their respective positions, were filed by Duke, OPAE, OCC, and staff on March 17, 2008. Reply briefs were filed on March 24, 2008.

A. Duke's Motion for Protective Order

On February 21, 2008, Duke filed a motion for protective order for information attached to the direct testimony of Matthew G. Smith (Duke Ex. 27) and marked as Attachment MGS-1. Duke contends that Attachment MGS-1 contains proprietary pricing information from vendors for equipment necessary for Duke's Utility of the Future program. The company states that the information for which Duke seeks confidential treatment is not known outside of Duke and its vendors. Furthermore, Duke states that, within the company, such information is only disseminated to employees who have a legitimate business need to know and act upon such information. Accordingly, Duke considers the information to be proprietary, confidential, and trade secret, as defined in Section 1333.61, Revised Code, and requests that the information be treated as confidential in accordance with the provisions of Sections 1333.61 and 4901.16, Revised Code. No party opposed Duke's request for protective treatment of Attachment MGS-1.

The Commission recognizes that Ohio's public records law is intended to be liberally construed to ensure that governmental records are open and made available to the public, subject to only a few very limited and narrow exceptions. *State ex rel. Williams*

*v. Cleveland* (1992), 64 Ohio St.3d 544, 549. However, one of the exceptions is for trade secrets. Section 1333.61(D), Revised Code, defines trade secret as:

[I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Commission finds that Attachment MGS-1 is financial information that derives independent economic value from not being generally known to or readily ascertainable by proper means by others who can obtain economic value from its use and that it is subject to reasonable efforts to maintain its secrecy. Therefore, we find that it contains trade secret information, as defined under Section 1333.61(D), Revised Code, and, therefore, that it should be granted protective treatment. In accordance with Rule 4901-1-24, O.A.C., Duke's request for a protective order is granted and the information filed under seal, as Attachment MGS-1, shall be afforded protective treatment for 18 months from the date this order is issued. Any request to extend protective treatment shall be made in accordance with Rule 4901-1-24(F), O.A.C.

**B. Duke's Motion for Waiver and Leave to File Depositions**

On February 25, 2008, Duke filed a motion for waiver of a Commission filing requirement and leave to file depositions *instanter*. Duke states that depositions were conducted on February 21, 2008. On Friday, February 22, 2008, Duke filed notice that it would be filing the deposition transcripts of five witnesses and commenced electronic transmission of the depositions. However, Duke states that it subsequently learned that only one of the five depositions was received by the Commission's Docketing Division before the end of the business day on February 22, 2008. Accordingly, the remaining four depositions were electronically transmitted on Monday, February 25, 2008. Duke requests that the Commission waive the requirement of Rule 4901-1-21(N), O.A.C., that depositions be filed with the Commission at least three days prior to the commencement of the

hearing. In this instance, the Commission finds Duke's request to waive the requirement that deposition transcripts be filed at least three days prior to the commencement of the hearing to be reasonable. Accordingly, the request for waiver should be granted.

## II. SUMMARY OF THE EVIDENCE

### A. Summary of the Proposed Stipulation

The only issue not resolved by the Stipulation is the proposed residential rate design which was litigated and is expressly reserved for our determination. A new design is recommended by the Commission's staff and Duke, but opposed by OCC and OP&E. The city of Cincinnati, PWC, and the commercial and industrial intervenors take no position with respect to this issue (Jt. Ex. 1 at 5). Pursuant to the Stipulation, the parties agree, among other things, that:

- (1) Duke will receive a revenue increase of \$18,217,566, which represents a percentage increase of 3.05 percent and is based on a 8.15 percent rate of return. Duke will not be required to file the 60-day update filing of actual financial data for the test year (Jt. Ex. 1, at 5 and Stipulation Ex. 1).
- (2) Duke's revenue distribution, billing determinants, and rates to be adopted are shown on Exhibit 2 of the Stipulation, and assume the adoption of the new residential rate design. The rates also reflect the shift of \$6,000,000 to the residential class, phased-in over two years, based upon the agreed revenue requirement and Duke's updated cost of service study (*Id.* at 5; Stipulation Ex. 2).<sup>1</sup>
- (3) Duke will amortize deferred rate case expenses requested for recovery in its filing in these cases as recommended in the Staff Report (*Id.* at 6).
- (4) Duke will implement new depreciation rates that reflect the mid-point between Duke's proposed depreciation rates and the rates proposed in the Staff Report, as shown on Stipulation Exhibit 5 (*Id.*).
- (5) The allocation of common plant related to the provision of gas distribution service will be based on an updated allocation

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<sup>1</sup> OCC and OP&E object to the characterization of this cost reallocation as a "subsidy/excess" used in the Stipulation (*Id.* at 5, footnote 6).

factor of 18.29 percent that excludes the generation plant assets contributed to Duke by Duke Energy North America, LLC (*Id.*).

- (6) Duke will file actual data to support a Rider AMRP adjustment for the last nine months of 2007. The Rider AMRP revenue requirement will be modified to include deferred curb-to-meter expense and riser expense, net of maintenance savings, for calendar year 2007. Such net deferred expense shall be capitalized with carrying charges at an annual rate of 5.87 percent, representing the company's long-term debt rate, and recovered through Rider AMRP, beginning in this filing. Duke may elect to recover this expense in any annual Rider AMRP filings, provided that the recovery does not exceed the Rider AMRP cumulative residential rate caps. If this deferred expense causes Duke to exceed the Rider AMRP cumulative rate cap in any year, Duke may recover that portion of the deferred expense that exceeds the rate cap in a subsequent year as long as the recovery does not exceed the cumulative rate cap. The new Rider AMRP residential rates are limited on a cumulative basis as shown on Stipulation Exhibit 4, at 3, and recoverable pursuant to the Rider AMRP revenue allocation described in paragraph 9 of the Stipulation. Duke may implement these rates, effective with the beginning of the first billing cycle following issuance of the Commission's order, adjusted as necessary to permit the company full recovery of the revenue increase through May 1, 2009, subject to refund, upon Commission approval (*Id.* at 6-7).
- (7) Following the implementation of new Rider AMRP rates, Duke will file a pre-filing notice and application annually to implement subsequent adjustments to Rider AMRP, beginning in November 2008.<sup>2</sup> The annual filing will support the adjustment to Duke's revenue requirement for any increase to Rider AMRP. Duke shall continue to make its Rider AMRP annual filing until the effective date of the Commission's order in Duke's next base rate case (*Id.* at 8-9).

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<sup>2</sup> Although the Stipulation directs Duke to make its annual filings in Case No. 07-589-GA-AIR, each annual review should be filed in a new case to accommodate the operational efficiencies of the Commission's Docketing Information System. These annual review cases will be linked to the instant proceedings, and Duke should serve all parties to these proceedings with each pre-filing notice and annual AMRP application.

- (8) Duke's revenue requirement calculation and Rider AMRP application filed with the Commission shall include the post-March 31, 2007 (date certain) original cost and accumulated reserve for depreciation of property associated with the AMRP program that is used and useful on December 31 of the prior year in the rendition of service as such property is associated with the AMRP and riser replacement programs, including capital expenditures for new plant (including but not limited to new mains, services and risers), adjustments for the retirement of existing assets, calculated Post-In-Service Carrying Charges ("PISCC") on net plant additions and related deferred taxes until included in rates for collection in Rider AMRP, a proper annual depreciation expense, and any sums of money or property that Duke may receive to defray the cost of property associated with the AMRP capital expenditures. The return assigned to the recovery of all such net capital expenditures shall be at a pre-tax weighted average cost of capital of 11.7 percent (*Id.* at 9-11).<sup>3</sup>
- (9) Duke will substantially complete the AMRP by the end of 2019 and will complete the riser replacement program by the end of 2012. Duke will file an application with the Commission for approval to extend the AMRP program if not substantially completed by the end of 2019 (*Id.* at 12).
- (10) Duke shall maintain its alternative regulation commitments until the effective date of the Commission's order in the company's next base rate case, except that the incremental \$1,000,000 in funding for weatherization shall be funded through base rates.<sup>4</sup> If, for any reason, Duke does not expend the \$3,000,000 gas weatherization funding amount in any year, the amount not expended will be carried over to the following year and added to the annual \$3,000,000 funding to be available for distribution to weatherization projects during that year. If a weatherization service provider does not meet its contract requirements, including its failure to meet deadlines, following consultation with the Duke Energy Community Partnership (Collaborative), Duke will reprogram the remaining funding to

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<sup>3</sup> This rate of return is based on a 10.4 percent return on equity.

<sup>4</sup> OCC agrees with Duke's incremental \$1 million weatherization funding; however, OCC does not agree that this out-of-test period expenditure should be collected through base rates, and asserts that this amount should instead be collected through a rider.

a different project and/or assign it to another weatherization service provider so that the funding dollars can be spent expeditiously and productively (*Id.* at 12-14).<sup>5</sup>

- (11) The residential rate caps on Stipulation Exhibit 4 apply to Rider AMRP. Duke may establish deferrals for the expenses of the riser replacement program if these expenses cause Duke to exceed the cumulative rate cap, including a carrying cost of 5.87 percent. The rate caps shall be cumulative rather than annual caps such that if the rate increase is below the annual cap in a given year, the unused portion of the cap may be carried forward to future years but can never exceed the cumulative cap. If the deferred curb-to-meter expense or the deferred riser replacement program expense causes Duke to exceed the cumulative rate cap in any year, then Duke may recover that portion of the deferred expense that exceeds the cumulative rate cap in a subsequent year as long as the recovery does not exceed the cumulative rate cap (*Id.* at 17).
- (12) The parties agree that Duke shall take over ownership of the curb-to-meter service, including the riser, whenever a new service line or riser is installed or whenever an existing curb-to-meter service or riser is replaced. Duke shall file its tariffs in these cases such that Duke will be responsible for the cost of initial installation, repair, replacement and maintenance of all curb-to-meter services, including risers, except that consumers shall pay the initial installation costs related to the portion of service lines in excess of 250 feet. In 2008, Duke will begin capitalizing rather than expensing the costs currently described as "Customer Owned Service Line Expense." For this purpose, Duke will submit proposed tariff changes to Staff for review and approval, with a copy to parties, prior to filing the revised sheets with the Commission. Such capitalized costs shall be recoverable through Rider AMRP (*Id.* at 12-14).<sup>6</sup>
- (13) Duke will file, within 60 days of the Commission's final order in this proceeding, a deployment plan for the company's Utility of the Future Program for 2008-2009 (*Id.* at 15-16).

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5 The members of the Collaborative include Duke personnel and representatives of the OCC, Staff, the Hamilton County Cincinnati Community Action Agency, City of Cincinnati, and PWC.

6 Neither Direct, Interstate, nor Integryns endorse this provision of the stipulation.

- (14) Duke's base rates do not include any amount for gas storage carrying costs. On a going forward basis, Duke will recover its actual gas storage carrying costs through its gas cost recovery rider (Rider GCR), without reduction to rate base, as shown on Stipulation Exhibit 1. Carrying charges associated with the actual monthly balances of Current Gas in Storage shall be accrued at a 10 percent annual rate as shown on Stipulation Exhibit 3. Further, the parties agree that the Commission should: (a) approve the methodology for the calculation of the storage carrying costs for inclusion in the GCR rate, as demonstrated in Stipulation Exhibit 3; (b) find that such an adjustment to Duke's rates is not an increase in base rates; and (c) approve recovery of such costs in Duke's next GCR filing following the Commission's order in this proceeding (*Id.* at 16-17).
- (15) Duke shall conduct an internal audit of its method and process for allocating service company charges to Duke by no later than 2009, and shall provide the audit report to Staff and the OCC (*Id.* at 18).
- (16) Duke shall continue to use the "Participants Test" as one of the methods for evaluating its Demand Side Management/Energy Efficiency programs as appropriate; however, Duke shall continue to use other cost/benefit tests as the Collaborative deems appropriate (*Id.* at 19).
- (17) Duke will implement a pilot program available to the first 5,000 eligible customers. The intent of the pilot program will be to provide incentives for low-income customers to conserve and to avoid penalizing low-income customers who wish to stay off of programs such as the Percentage of Income Payment Plan (PIPP). Eligible customers shall be non-PIPP low usage customers verified at or below 175 percent of the poverty level. Duke will design a tariff that adjusts the fixed monthly charge for eligible customers as shown on Stipulation Exhibit 2. These rates may be adjusted if the Commission does not approve the fixed customer charge as shown in Stipulation Exhibit 2. Duke will develop the details for this program in consultation with Staff and the parties. Duke shall evaluate the program after the first winter heating season to determine, following consultation with staff and the parties, whether the program should be

continued to all eligible low-income customers, including considerations of program demand and cost (*Id.* at 20).

- (18) Duke will convene a working group or collaborative process, open to interested stakeholders, within 60 days after approval of the Stipulation, to explore implementing an auction to supply the standard service offer. Duke will report to the Commission within one year after approval of this Stipulation, the findings of the working group or collaborative including the facts and arguments which support and or oppose implementation of an auction process. The working group or collaborative process shall also review whether the present allocation of 80 percent of the net revenues from Duke's asset management agreement should continue to flow to GCR customers only, or should be changed to flow to GCR customers and choice customers (*Id.* at 21-22).
- (19) Duke shall revise its GCR tariff to implement a sharing mechanism for sharing of net revenues from off-system transactions.<sup>7</sup> Such sharing mechanism shall be effective if Duke does not have an asset management agreement transferring management responsibility for its gas commodity, storage and transportation contracts to a third party, and shall provide for sharing of the net revenues from off-system transactions to be allocated 80 percent to GCR and choice customers and 20 percent to Duke shareholders. The revenue sharing percentage proposed by implementation of the sharing mechanism in this Stipulation is expressly limited to gas-related sales transactions, and shall not have precedential value in establishing the sharing percentages for similar electric sales transactions by Duke. This sharing mechanism, but not the 80 percent/20 percent revenue allocation, shall be subject to review in future GCR cases (*Id.* at 21-22).<sup>8</sup>
- (20) Duke shall meet with Staff and other interested parties to discuss eliminating customer deposits for PIPP customers and shall eliminate such deposits if Staff agrees (*Id.* at 18).

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7 Off-system transactions are defined to include but are not limited to Off-System Sales Transactions, Capacity Release Transactions, Park Transactions, Loan Transactions, Exchange Transactions, and any other similar, but yet unnamed transactions.

8 This paragraph does not change the allocation contained in the current sharing mechanism for revenues received under Duke's asset management agreement.

- (21) Duke shall review and fully consider the merits of adopting any new payment plans submitted by any party and, if Duke elects not to implement such new payment plan, Duke shall respond to the stakeholder in writing to state the reason for its decision (*Id.* at 18).
- (22) Duke shall review its use of payday lenders as authorized payment stations and will use its best efforts to eliminate the use of payday lenders as authorized payment stations if other suitable locations for the payment stations are available in the same geographic area. Duke shall provide a list of all payday lenders utilized as authorized payment stations to Staff and other interested parties annually. The annual payday lenders list is to be provided initially on May 1, 2008, and on May 1, each year thereafter (*Id.* at 18-19).
- (23) Duke shall communicate with its customers to educate them about the difference between authorized and non-authorized payment stations. Duke shall work with members of the Collaborative to develop the educational materials and communication strategy (*Id.* at 19).

B. Summary of the Residential Rate Design Issue

This case marks a sea change in the recommendation of the Commission's Staff with respect to the method of determining a gas utility's residential distribution rate design. Traditionally, natural gas distribution rates in Ohio have been set by allocating a relatively small proportion of the fixed costs to the "customer" charge, with the remaining fixed costs recovered through a volumetric component. However, volatile and sustained increases in the price of natural gas, along with heightened interest in energy conservation, have called into question long-held ratemaking practices for gas companies. In this proceeding, Staff and Duke advocate the adoption of a modified Straight Fixed Variable (SFV) residential rate design that allocates most fixed costs of delivering gas to a monthly flat fee with the remaining fixed costs recovered through a variable or volumetric component. Under this proposed new "levelized" rate design, Duke's current \$6.00 residential customer charge would be eliminated. Instead, residential customers would pay a flat monthly fee of around \$20 to \$25, but with a corresponding lower usage component to recover the remaining fixed distribution costs (Staff Ex. 1, at 30-33, 46-48; Stipulation Ex. 2; Duke Ex. 29 at 6; Tr. I at 87-88, 147-148, 159).

In its initial filings, Duke's proposed residential rate design included a \$15.00 customer charge with a sales decoupling rider to address an alleged revenue erosion problem caused by declining average use per customer. The Staff Report noted this

historical trend, but rejected a sales decoupling rider mechanism in favor of a phased-in SFV rate design. Staff's position was subsequently joined by Duke and the new design was used for calculations in the Stipulation exhibits, but adoption of the proposed rate design was expressly reserved for consideration by the Commission (Staff Ex. 1, at 30-33, 46-49; Jt. Ex. 1, at 1, 5, 19-20).

The levelized rate design is opposed by OCC and OP&E, both of whom advocate keeping the current low residential customer charge and high volumetric rates. In the alternative, they argue that, if a decoupling mechanism is to be adopted, the appropriate design is a decoupling rider rather than the flat rates recommended by Duke and Staff. The other parties to these proceedings either have no interest in residential rate design or chose not to take a position on this issue.

OCC and OP&E first cite the projected overall growth in Duke's residential gas revenues for 2008-2012 in contending that Duke has no revenue erosion problem because any revenue loss from declining sales on a per-customer basis will be more than offset by future increases in Duke's residential customer base (OCC Br. at 53; OCC Ex. 6, at 5-6; OCC Ex. 12). OCC and OP&E then argue that, in the event the Commission determines there is a revenue erosion problem, the Commission should adopt a sales decoupling rider to unlink revenue recovery from sales, similar to that stipulated to by Vectren Energy Delivery of Ohio ("Vectren"). See, *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval, Pursuant to Section 4929.11, Revised Code, of a Tariff to Recover Conservation Expenses and Decoupling Revenues Pursuant to Automatic Adjustment Mechanisms and for Such Accounting Authority as May be Required to Defer Such Expenses and Revenues for Future Recovery through Such Adjustment Mechanisms*, Case No. 05-1444-GA-UNC, Supplemental Opinion and Order (June 27, 2007).

Staff maintains that the evidence of record clearly indicates that Duke's revenue erosion problem is real and that the levelized rate design is the better way to balance the utility's desire for recovery of its authorized return with promotion of energy efficiency as a customer and societal benefit through control of energy bills. Staff notes that nearly six million dollars of the total \$34.1 million revenue deficiency identified by Duke in this case is attributable to declining customer usage and cites the decline in per-customer, residential natural gas consumption, which has been accelerating since the marked price increases in the winter of 2000/2001. Staff asserts that, as long as the bulk of a utility's distribution costs are recovered through the volumetric component of base rates, this decline in per-customer usage threatens the utility's recovery of its fixed costs of providing service. Staff contends that the levelized rate design best addresses this issue while simultaneously removing the disincentives to utility-sponsored energy efficiency programs that exist with the traditional rate design (Duke Ex. 11, at 3-6, 11; Staff Ex. 3, at 3-5; Tr. I at 214-216; Staff Br. at 6-7).

Staff points out that the proposed new levelized rate design is a form of decoupling that breaks strict linkage between utility earnings and customer consumption by recognizing that virtually all the costs of gas distribution service are fixed, and the cost to serve a residential customer is largely the same, regardless of the specific customer's usage. Duke and Staff contend that it is neither fair nor accurate to characterize this fixed component as a customer charge because, under Duke's current rate design, the customer charge is set at an artificially low level that only minimally compensates the company for its fixed costs of providing gas service (Duke Ex. 29, at 6; Tr. I at 159; Staff Br. at 6-8; ).

Staff and Duke argue that, since the costs of providing gas distribution service are almost exclusively fixed, the proposed rate design will more closely match costs and revenues, thereby giving customers more accurate and timely pricing signals. They also contend that spreading the recovery of fixed costs more evenly over the entire year will help to reduce winter heating bills. Staff and Duke allege that customer incentives to conserve energy will remain strong because 75 to 80 percent of each customer's total bill is the cost of the gas itself (Staff Ex. 3, at 3-5; Tr. I at 159, 214-216; Tr. II at 91-93).

Finally, Staff and Duke suggest that a strict matching of fixed rates with fixed costs would result in a \$30.00 fixed residential distribution charge. However, because the proposed rate design is a significant departure from current rates, the Stipulation proposes to phase-in the new design over two years, using a lower fixed charge of \$20.25 in year one, and \$25.33 in year two. In addition, the remaining variable base rate component contains two usage tiers in an effort to minimize impacts on low-use residential customers, since average and larger usage residential customers will either benefit or be unaffected by the levelized rate design proposal (Jt. Ex. 1, at Ex. 2; Tr. I at 55, 87-88, 147-148).

OCC and OP&E counter that the stipulated rate design proposal amounts to a huge jump in the fixed monthly customer charge and violates a 30-year rate-making principle of gradualism. Moreover, they allege, it would violate the state policy to promote energy efficiency under Section 4929.02, Revised Code, because the proposed rate design sends an anti-conservation price signal to consumers, penalizes customers who have invested in energy efficiency by extending the payback period, and takes away the consumers' ability to control their energy bills. In addition, they assert that the levelized rate design is regressive towards low-use customers, and transfers wealth from low-income customers to high-use customers who are predominantly high-income customers (OCC Br. at 17-35, 46-55, 75-76).

Staff and Duke contend that under the proposed new rate design, high-use customers will benefit relative to low-use customers, and cite an analysis of PIPP customers to support the proposition that most low-income customers will actually benefit from this change. According to Duke witness Paul G. Smith, the PIPP customer data indicated that the average PIPP customer consumes approximately 1,000 ccf per year, or

approximately 25 percent more than the average non-PIPP customer and, therefore, levelized rates will actually reduce the annual cost for the average PIPP customer, and the cost of the PIPP program (Duke Ex. 29, at 11-12). Duke and Staff argue that if PIPP customer usage is representative of all of Duke's low-income customers, then most of Duke's low-income ratepayers will actually benefit from this policy change. In addition, they note any adverse impact of the levelized rate design will be mitigated by the new low-income/low-use pilot program included in the Stipulation. This program provides a credit to offset the higher fixed monthly charge for the first 5,000 non-PIPP, low-use customers verified at or below 175 percent of the federal poverty level. (Duke Br. at 17-35, 46-55, 75-76).

OCC and OPAE insist that the levelized rates will harm low-income customers and that the PIPP customer data is not indicative of other Duke low-income customers, but offered no data to support this contention (OCC Br. at 46-53; OPAE Br. at 4, 8).

### III. DISCUSSION AND CONCLUSION

#### A. Consideration of the Stipulation

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all or most of the issues presented in the proceeding in which it is offered.

In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994) (citing *Consumers' Counsel*, *supra*, at 126). The court stated in that case that the Commission may

place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

The Commission finds that the Stipulation filed in these cases appears to be the product of serious bargaining among capable, knowledgeable parties. The signatory parties represent a wide diversity of interests including the utility, residential consumers, low-income residential consumers, commercial and industrial consumers, and Staff. Further, we note that the signatory parties routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters.

The Stipulation also meets the second criterion. As a package, the Stipulation advances the public interest by resolving all issues raised, except as to residential revenue design, thereby avoiding extensive litigation. While the Stipulation includes a general rate increase of approximately three percent across all customer classes, that increase will allow the company an opportunity to recover its expenses. As for the new AMRP, which now includes riser replacement and company ownership of certain customer service lines, the Stipulation continues the mechanism established for the parties and the Commission to evaluate the reasonableness of the expenses incurred on a consistent, regular basis during the program until another base rate application is filed by Duke. We conclude that the continuance of the main replacement program, the initiation of the riser replacement program and Duke's ownership of customer service lines advances the public interest and safety. As with the previous program, the new AMRP and riser replacement program does not sanction cost recovery of any or all yet-to-be-incurred costs and does institute caps on future recovery. The Stipulation also continues the process under which each year's AMRP and riser replacement expenses can be evaluated for the next AMRP rider, while also addressing questions related to over-recovery and treatment of cost savings. We note that the accounting provisions adopted to facilitate the new AMRP program and the riser replacement program cease at the completion of each program. The Commission further notes that the Stipulation provides for the continuation of the weatherization program and a pilot program for low income customers.

Regarding company ownership of certain customer service lines, Duke should, upon the request of the customer, work with the customer as to location, relocation, and manner of installation of the service line, to the extent feasible under the gas pipeline safety regulations, Duke's tariff, and Duke's procedures.

Finally, the Stipulation meets the third criterion because it does not violate any important regulatory principle or practice. Indeed, the Stipulation provides a resolution for Duke to economically continue the AMRP and to initiate the riser replacement program facilitating gas system safety and reliability improvements.

On March 14, 2008, Duke moved for waiver of the requirement to file an update of the partially forecasted income statement and any variances for the test year, pursuant to Rule 4901-7-01, Appendix A, Chapter II(A)(5)(d), O.A.C. Duke notes that, as part of the Stipulation, the parties negotiated a revenue increase and further agreed to recommend that Duke be allowed to forgo the requirement of filing actual financial data for the test year (Jt. Ex. 1, at 5, footnote 5).

The Commission finds that the Stipulation filed in these matters is in the public interest and represents a reasonable disposition of all but one of the issues raised in these proceedings. We will, therefore, adopt the Stipulation in its entirety and grant Duke's motion for a waiver of the requirement to file an updated income statement in accordance with Rule 4901-7-01, Appendix A, Chapter II(A)(5)(d), O.A.C.

#### B. Consideration of the Residential Rate Design

The Commission first notes that there is no disagreement in this case that Duke's residential rates need to go up in order to cover Duke's prudently incurred costs to provide service. There is also no dispute in this case as to the amount of the increase in revenues needed to allow Duke to earn a fair rate of return on its investment. In addition to an overall increase in revenue of 3.1 percent, the settlement before us provides for the assignment of \$6 million in costs from commercial and industrial customers to the residential class. This reallocation reduces a pre-existing subsidy of residential customers by commercial and industrial customers. Thus, the parties have already agreed that residential customers, as a class, will pay an increase of 11.9 percent during the first year and 14.1 percent in the second year for the distribution portion of each residential customer's bill.

The only issue left to the Commission is the design of the rates Duke should bill residential customers to collect the revenues agreed to in the settlement. We agree with Staff that the time has come to re-think traditional natural gas rate design. Conditions in the natural gas industry have changed markedly in the past several years. The natural gas market is now characterized by volatile and sustained price increases, causing customers to increase their efforts to conserve gas. The evidence of record clearly documents the declining sales-per-customer trend over the decades. In fact, more than 15 percent of Duke's revenue deficiency in this rate case is attributable to declining customer usage, a trend which is not just continuing, but is also accelerating (Duke Ex. 11, at 3-6, 11; Staff Ex. 3, at 3-5; Tr. I at 214-216; Staff Br. at 7). Under traditional rate design, the ability of a company to recover its fixed costs of providing service hinges in large part on its actual sales, even though the company's costs remain fairly constant regardless of how much gas is sold. Thus, a negative trend in sales has a corresponding negative effect on the utility's ongoing financial stability, its ability to attract new capital to invest in its network, and its incentive to encourage energy efficiency and conservation.

The Commission, therefore, concludes that a rate design which separates or "decouples" a gas company's recovery of its cost of delivering the gas from the amount of gas customers actually consume is necessary to align the new market realities with important regulatory objectives. We believe it is in the interest of all customers that Duke has adequate and stable revenues to pay for the costs of its operations and capital and to ensure the continued provision of safe and reliable service. We further believe that there is a societal benefit to removing from rate design the current built-in incentive to increase gas sales. A rate design that prevents a company from embracing energy conservation efforts is not in the public interest. Duke's commitment to provide \$3 million for weatherization projects under the Stipulation is critical to our decision in this case (Jt. Ex. 1, at 12-14). Indeed, the Commission notes that a commitment to conservation initiatives will be an important factor in any future decision to adopt a decoupling mechanism. The Commission encourages Duke to review and further enhance its weatherization and conservation program offerings. As one part of this review, Duke should adopt the objective to make cost-effective weatherization and conservation programs available to all low-income consumers and to ramp up such programs as rapidly as reasonably practicable.

Having determined that a new decoupling rate design is appropriate, we must decide the better choice of two methods: a levelized rate design, which recovers most fixed costs up front in a flat monthly fee, or a decoupling rider, which maintains a lower customer charge and allows the company to offset lower sales through an adjustable rider.

On balance, the Commission finds the levelized rate design advocated by Duke and Staff to be preferable to a decoupling rider. Both methods would address revenue and earnings stability issues in that the fixed costs of delivering gas to the home will be recovered regardless of consumption. Each would also remove any disincentive by the company to promote conservation and energy efficiency. The levelized rate design, however, has the added benefit of producing more stable customer bills throughout all seasons because fixed costs will be recovered evenly throughout the year. In contrast, with a decoupling rider, as favored by OCC, customers would still pay a higher portion of their fixed costs during the heating season when their bills are already the highest, and the rates would be less predictable since they could be adjusted each year to make up for lower-than-expected sales.

A levelized rate design also has the advantage of being easier for customers to understand. Customers will transparently see most of the costs that do not vary with usage recovered through a flat monthly fee. Customers are accustomed to fixed monthly bills for numerous other services, such as telephone, water, trash, internet, and cable services. A decoupling rider, on the other hand, is much more complicated and harder to explain to customers. It is difficult for customers to understand why they have to pay

more through a decoupling rider if they worked hard to reduce their usage; the appearance is that the company is penalizing them for their conservation efforts.

The Commission also believes that a levelized rate design sends better price signals to consumers. The rate for delivering the gas to the home is only about 20 to 25 percent of the total bill. The largest portion of the bill, the other 75 to 80 percent, is for the gas that the customer uses. This commodity portion, the cost of the actual gas used, is the biggest driver of the amount of a customer's bill. Therefore, gas usage will still have the biggest influence on the price signals received by the customer when making gas consumption decisions, and customers will still receive the benefits of any conservation efforts in which they engage. While we acknowledge that there will be a modest increase in the payback period for customer-initiated energy conservation measures with a levelized rate design, this result is counterbalanced by the fact that the difference in the payback period is a direct result of inequities within the existing rate design that cause higher use customers to pay more of their fair share of the fixed costs than low-use customers.

The levelized rate design also promotes the regulatory objective of providing a more equitable cost allocation among customers regardless of usage. It fairly apportions the fixed costs of service, which do not change with usage, among all customers, so that everyone pays his or her fair share. Customers who use more energy for reasons beyond their control, such as abnormal weather, large number of persons sharing a household, or older housing stock, will no longer have to pay their own fair share plus someone else's fair share of the costs.

We recognize that, with this change to rate design, as with any change, there will be some customers who will be better off and some customers who will be worse off, as compared with the existing rate design. The levelized rate design will impact low usage customers more, since they have not been paying the entirety of their fixed costs under the existing rate design. Higher use customers who have been overpaying their fixed costs will actually experience a rate reduction. Average users will see only the impact of the increase agreed to by the parties; they will see no additional impact as a result of the Commission choosing the levelized rate design.

The Commission is sensitive to the impact of any rate increase on customers, especially during these tough economic times. We believe that the new levelized rate design best corrects the traditional design inequities while mitigating the impact of the new rates on residential customers by maintaining a volumetric component to the rates, by phasing in the increase over a two-year period, and by not reflecting the full extent of Duke's fixed costs in the proposed fixed charge. Still, we are concerned with the impact on low-income, low-use customers. Thus, crucial to our decision to adopt Duke and Staff's proposed rate design is the Pilot Low Income Program aimed at helping low-income, low-use customers pay their bills. This new program will provide a four-dollar, monthly

discount to cushion much of the impact on qualifying customers. To ensure that this discount is available to as many customers as possible, we direct that Duke expand this pilot program to include up to 10,000 customers, instead of the 5,000 customers specified in the Stipulation. Pursuant to the terms of the stipulation, Duke, in consultation with staff and the parties, shall establish eligibility qualifications for this program by first determining and setting the maximum low usage volume projected to result in the inclusion of 10,000 low-income customers who have previously been defined by the stipulation to be those at or below 175 percent of the poverty level. The Commission expects that Duke will promote this program such that to the fullest extent practicable the program is fully enrolled with 10,000 customers. Following the end of the pilot program, the Commission will evaluate the program for its effectiveness in addressing our concerns relative to the impact on low-use, low-income customers.

We are also concerned about the immediate impact of implementing the levelized rate design during the summer months when overall consumption is lowest. For the average customer, the new rate design will result in lower bills in the winter, but higher bills in the summer. Our concern is that the fixed charge increase may not be anticipated by customers who have budgeted for the traditional lower fixed charge during the low usage summer months. To mitigate this impact, we are directing that, from the initial bills resulting from this order through bills covering the period ending September 30, 2008, the fixed charge be set at \$15.00, consistent with Duke's original proposal. The corresponding volumetric rate for those months should also be adjusted to compensate for any revenue shortfall that this adjustment in the fixed charge will cause. Thereafter, rates will be as proposed in the Stipulation. We believe this additional phase-in of the new residential rate structure will give customers a further opportunity to adapt to this change, including the benefits of the budget billing option.

C. Rate Determinants:

1. Rate Base

The value of Duke's property used and useful in the rendition of natural gas services as of the December 31, 2007, is not less than \$649,964,874, as stipulated by the parties (Jt. Ex. 1, at Schedule A-1).

The Commission finds the rate base of \$649,964,874, as provided in the Stipulation, to be reasonable and proper based on the evidence presented in these matters. Accordingly, the Commission adopts the valuation of \$649,964,874 as the rate base for purposes of this proceeding.

## 2. Operating Income:

In accordance with the proposed Stipulation, the parties agree that Duke's operating revenue is \$597,573,805 and that the net operating income is \$43,274,872 for the 12 months ended December 31, 2007 (Jt. Ex. 1, at Schedule A-1). The Commission finds the operating revenue and net operating income, as provided in the Stipulation, to be reasonable and proper based on the evidence presented in these matters. The Commission will, therefore, adopt these figures for purposes of these proceedings.

## 3. Rate of Return and Authorized Increase:

As stipulated by the signatory parties, under its present rates, Duke's net operating income is \$43,274,872. Applying this amount to the rate base of \$649,964,874 results in a rate of return of 6.66 percent. Such a rate of return is insufficient to provide Duke with reasonable compensation for the gas service it renders to customers. Accordingly, the signatory parties have agreed that Duke should be authorized to increase its revenues by \$18,217,566, an increase of approximately 3.05 percent above current annual revenues. This would result in an overall rate of return of 8.45 percent, which the Commission finds to be reasonable.

## 4. Rates and Tariffs:

Duke is directed to file a proposed customer notice. Duke is further authorized to cancel and withdraw its present tariffs governing service to customers affected by these applications and to file tariffs consistent in all respects with the discussion and findings set forth herein for the Commission's consideration. The approved tariffs will be effective for all services rendered after the effective date of the tariffs.

### FINDINGS OF FACT:

- (1) On June 18, 2007, Duke filed notice of its intent to file an application to increase its rates. In that notice, the company also requested a test year beginning January 1, 2007, and ending December 31, 2007, with a date certain of March 31, 2007.
- (2) By entry issued July 11, 2007, the Commission approved Duke's request to establish the test period of January 1, 2007, through December 31, 2007, for the rate increase proposal and a date certain of March 31, 2007.
- (3) Duke filed its rate increase application on July 18, 2007. On July 18, 2007, Duke also separately filed requests for approval

of an alternative rate plan, docketed at Case No. 07-590-GA-ALT, and for approval of changes in accounting methods, docketed at Case No. 07-591-GA-AAM.

- (4) By entry dated September 5, 2007, the Commission found that Duke's rate increase and alternative rate plan applications complied with the requirements of Section 4909.18, Revised Code, and Rule 4901:1-19-05, O.A.C.
- (5) The Commission accepted Duke's rate increase application for filing as of July 18, 2007.
- (6) OEG, Kroger, Interstate, the city of Cincinnati, OCC, PWC, Integrys, Direct, Stand and OPAE each requested, and was granted, intervention in these proceedings.
- (7) Objections to the staff report were filed by Duke, PWC, OEG, OPAE, OCC, and, jointly, by Integrys and Direct.
- (8) Duke published notice of its applications and the hearings and filed the required proofs of publication on February 11, February 25, and March 12, 2008.
- (9) The staff of the Commission and the financial auditor filed their respective reports of investigation on December 20, 2007.
- (10) On January 25, 2008 a prehearing conference was held, as required by Section 4909.19, Revised Code.
- (11) Two local public hearings were held in Cincinnati, Ohio, on February 25, 2008, and another local public hearing was held in Mason, Ohio, on March 11, 2008, in accordance with Section 4903.083, Revised Code. At the Cincinnati hearings a total of 27 witnesses gave testimony and four witnesses gave testimony at the Mason hearing.
- (12) On February 28, 2008, a Stipulation was filed by all the parties to this proceeding resolving all the issues presented in these matters, except rate design.
- (13) The evidentiary hearing commenced as scheduled on February 26, 2008, was continued until February 28, 2008, and reconvened on March 5, 2008. At the evidentiary hearing, Duke and staff each presented one witness in support of the

Stipulation. In regard to the one litigated issue, rate design, Duke presented four witnesses, OCC presented two witnesses and staff presented one witness.

- (14) The Stipulation is the product of serious bargaining between knowledgeable parties, benefits ratepayers, advances the public interest, and does not violate any important regulatory principles or practices.
- (15) The value of all of the company's jurisdictional property used and useful for the rendition of natural gas service to customers affected by this application, determined in accordance with Section 4909.15, Revised Code, is not less than \$649,964,874.
- (16) Under its existing rates, Duke's net operating revenue is \$43,274,872, under its existing rates. This net annual revenue of \$43,274,872, when applied to a rate base of \$649,964,874, results in a rate of return of 6.66 percent.
- (17) A rate of return of 6.66 percent is insufficient to provide Duke reasonable compensation for the service it provides.
- (18) A rate of return of 8.45 percent is fair and reasonable, under the circumstances presented in these cases, and is sufficient to provide the company just compensation and return on the value of its property used and useful in furnishing natural gas service to its customers.
- (19) A rate of return of 8.45 percent applied to the rate base of \$649,964,874 will result in allowable net operating income of \$54,922,032.
- (20) The allowable gross annual revenue to which the company is entitled for purposes of this proceeding is \$615,791,371.

#### CONCLUSIONS OF LAW:

- (1) Duke's application for a rate increase was filed pursuant to, and this Commission has jurisdiction of the application pursuant to, the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code. The application complies with the requirements of these statutes.

- (2) Staff and Blue Ridge conducted investigations of the application, filed their respective reports, and served copies of the Staff Report on interested persons in accordance with the requirements of Section 4909.19, Revised Code.
- (3) The hearings, and notice thereof, complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.
- (4) The Stipulation is the product of serious bargaining between knowledgeable parties, benefits ratepayers, advances the public interest, and does not violate any important regulatory principles or practices. The Stipulation submitted by the parties is reasonable and shall be adopted in its entirety.
- (5) Duke's existing rates and charges for gas service are insufficient to provide Duke with adequate net annual compensation and return on its property used and useful in the provision of natural gas service.
- (6) A rate of return of 8.45 percent is fair and reasonable under the circumstances of this case and is sufficient to provide Duke just compensation and return on its property used and useful in the provision of gas service to its customers.
- (7) Duke should be authorized to cancel and withdraw its present *tariffs governing service* to customers affected by these applications and to file tariffs consistent in all respects with the discussion and findings set forth herein.
- (8) The levelized rate design, as modified herein, is a reasonable resolution to address Duke's declining sales volumes per customer, allow Duke the opportunity to collect the revenue requirement established in this rate case proceeding and encourage Duke's participation in customer energy conservation programs.

ORDER:

It is, therefore,

ORDERED, That Duke's request for a protective order in regards to Attachment MGS-1 is granted for 18 months from the date this order is issued. It is, further,

ORDERED, That Duke's request for leave to file depositions less than three days prior to the commencement of the evidentiary hearing is granted. It is, further,

ORDERED, That the Stipulation filed on February 28, 2008 is approved in its entirety. It is, further,

ORDERED, That Duke's request for a waiver of the requirement to file an updated income statement, pursuant to Rule 4901-7-01, Appendix A, Chapter II(A)(5)(d), O.A.C., is granted. It is, further,

ORDERED, That Duke implement the levelized rate design for its residential customers as discussed in this order. It is, further,

ORDERED, That Duke's applications to increase its rates and charges for gas service, to implement an alternative rate plan and to modify accounting methods are granted to the extent provided in this opinion and order. It is, further,

ORDERED, That Duke is authorized to cancel and withdraw its present tariffs governing gas service to customers affected by these applications and to file new tariffs consistent with the discussion and findings as set forth in this order. Upon receipt of four complete copies of tariffs conforming to this opinion and order, the Commission will review and consider approval of the proposed tariffs by entry. It is, further,

ORDERED, That a copy of this order be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber - CONCURRING  
OPINION  
Alan R. Schriber, Chairman

Paul A. Centolella - CONCURRING  
OPINION  
Paul A. Centolella

Ronda Hartman Reagus  
Ronda Hartman Reagus

Valerie A. Lemmie  
Valerie A. Lemmie

Cheryl L. Roberto  
Cheryl L. Roberto

RMB/GNS/vrm

Entered in the Journal

**MAY 28 2008**

Renee J. Jenkins

Renee J. Jenkins  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

CONCURRING OPINION OF  
CHAIRMAN ALAN R. SCHRIBER

The straight fixed variable (SFV) option proposed by the PUCO Staff and adopted here today appropriately speaks to two significant issues. One is the potential impact on low income customers and the other is the desired effect that the Order shall have upon conservation.

The latter consideration is paramount. As we acknowledge that there are serious energy issues, we strive to promote and adopt advanced and renewable energy sources. While these are necessary and important pursuits, I believe that conservation is the most important measure of all. Nothing is less costly or more effective than simply reducing consumption. As time goes by, I trust that we will expend many resources adopting conservation measures on "both sides of the meter".

What we are attempting to do today is to provide appropriate incentives, through a rational pricing scheme, to encourage a reduction in the consumption of natural gas. By "rational", I mean a balanced approach that penalizes neither those whom have already squeezed the last cubic foot of natural gas from their budget, nor those whom might be inclined to "over-conserve".

The proposed SFV option achieves the optimum balance because it segregates fixed costs from those costs that are within the control of the consumer. In contrast, the current pricing scheme assigns all costs- fixed and variable - to the level of usage. The inherent danger with the current system is that consumers might be led to believe that the more they cut back, the more they save. This is true to a point. The point happens to be that of diminishing returns; over conservation takes place when the fixed costs of providing the

service are no longer covered with revenue. This inevitably leads to a rate case and higher rates. In other words, if usage-sensitive rates are assigned to fixed costs, and if usage falls below a certain point, then fixed costs do not get covered. It is then time for a rate case: what has the consumer saved?

If the solution is appropriate price signals, then prices must be associated with the volume of gas alone. In contrast, under the current pricing scheme, the gas company has no incentive to encourage conservation because those same usage sensitive rates might flow through to fixed costs as consumption grows, much to the utility's advantage. Under the SFV, the fixed costs are covered and the company makes no money on the gas commodity. Therefore, the company might actually promote conservation more aggressively.

One alternative to the old conventional method is a decoupling rider mechanism. In this case, Homeowner A who has already squeezed the last cubic foot of un-needed gas from his home via conservation oriented expenditures is discriminated against. This results from the make-whole provision that accrues to the utility when Homeowner B begins to pare down consumption. In other words, as B's meter begins to spin slower, so too do the company's revenues. Homeowner A will be compelled to make up some share of the shortfall, notwithstanding the fact that Homeowner A can cut back consumption no further.

Finally, those who argue that inadequate price signals are the biggest issue need only look at the impact of budget billing. What signal is being sent when the bill each month is the same regardless of consumption? Yet, is anyone recommending the elimination of budget billing?

The other issue in play is that of the income effect of the SFV methodology. One can conclude that consumers of greater amounts of gas will see their bills fall while those at the low end will see theirs rise. This does not mean that the burden will fall disproportionately on low-income consumers. There is record testimony that suggests that low-income consumers, i.e., PIPP customers consume more on average per year than others. Clearly, PIPP customers are protected. Furthermore, while one can play freely with percentages, the nominal dollar increases due to the rate restructuring is quite small. As a precaution, however, the Commission is modifying the stipulation to provide a four dollar credit to ten thousand non-PIPP customers as opposed to five thousand provided for in the stipulation.

All told, it is important that we arrive at a decision as expeditiously as possible. I believe that over the years the lesson to be learned is that we can never know with one hundred percent certainty all of the facts and all of the possible outcomes. This is precisely why the law has provided this Commission with the ability to react to adverse outcomes should they arise. This is the ultimate consumer protection.



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Alan R. Schriber, Chairman

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

OPINION OF COMMISSIONER PAUL A. CENTOLELLA  
CONCURRING IN PART AND DISSENTING IN PART

The majority concludes that the current residential rate design has a negative impact on the ability of Duke Energy Ohio (hereafter "Duke", "the Company", or "the utility") to maintain financial stability, attract new capital, and on its incentive to encourage energy efficiency and conservation. And, the majority determines that it is necessary to decouple the utility's recovery of fixed costs from its volumetric sales. I concur with the majority in these conclusions and on issues other than residential rate design. I dissent from the majority regarding how to transition toward a residential rate design which decouples the recovery of fixed costs from volumetric rates.

Having determined that a new decoupling rate design is appropriate, the Commission must decide two questions. First, we must decide the better choice between two decoupling methods: a straight fixed variable (SFV) rate design, which recovers fixed costs in a flat monthly customer charge, or a decoupling adjustment, which allows the company to recover the same fixed cost revenue requirement with a lower customer charge by adjusting subsequent year rates to true up revenues received from volumetric charges. Second, in the event the Commission finds the SFV rate design preferable, the Commission should consider how to transition to a rate design which is significantly different from the rate structures that have formed the basis of consumer expectations.

Over the long-term, moving in the direction of a SFV rate design is preferable to keeping a modest customer charge and relying entirely on a decoupling adjustment. Both methods will address revenue and earnings stability issues in that the fixed costs of delivering gas to the home will be recovered irrespective of consumption. When fully implemented, each will remove any disincentive by the Company to promote conservation

and energy efficiency. And, both methods can be implemented in a straight forward manner and, if appropriately designed, easily explained to consumers as a deliberate or more gradual transition toward recovering fixed costs through a customer charge. However, as the ultimate objective, significant movement toward a fixed variable rate design is consistent with developing a more efficient rate structure. Efficient rate design seeks to align price elastic rate elements more closely to marginal costs, while recovering a larger portion of any residual revenue requirements through comparatively price inelastic charges. Experience shows that there is a significant price response to increases in volumetric charges, as evidenced by the recent steep reductions in average per customer consumption as gas costs increased. Given that customer charges are paid to provide access to gas service, it is reasonable to expect comparatively less price response with respect to increases in the customer charge. Over the long-term, this supports significant movement toward a SFV rate design in which a larger portion of the company's fixed cost revenue requirements is recovered through the customer charge.

Additionally, the SFV rate design will reduce the month-to-month variation in customer bills as fixed costs will be recovered evenly throughout the year, making it easier for customers to deal with high winter heating bills. While decoupling adjustments are not difficult to implement, a SFV rate design, when fully implemented, will remove the need for any additional administrative proceedings to review decoupling adjustments.

Consumers have made investment decisions based on expectations regarding natural gas pricing and fairness compels us to move at a measured pace when making fundamental changes in rate design. For this reason, the Commission should carefully consider the appropriate transition path.

On the question of how to transition to a fixed charge rate design, Duke and the Staff have proposed a modified SFV rate design in which the customer charge would be set at \$20.25 per bill in year one and \$25.33 per bill in year two. Fully implementing a SFV rate design would require a customer charge in excess of \$30 per residential consumer bill. Duke and the Staff also proposed and the Commission has expanded a "Pilot Low Income Program" that would provide some low income consumers a discount to cushion the impact of the change in rate design.

In my view, the pace of the transition in this case is more rapid than should be selected given the consumer expectations created by long-standing rate design practices and the recovery of fixed costs should be fully decoupled from sales volumes during the transition.

The pace of the transition proposed in the stipulation could send the wrong message to consumers with respect to energy conservation. Consumers who have made efficiency investments and reduced their consumption could see a significant increase in

the regulated portion of their bills, while their neighbors who have implemented no energy efficiency measures and are high use customers will see the regulated portion of their gas bills decline by similar amounts. Given rising gas commodity costs, increasing dependence on foreign sources of gas supply, and the likely adoption of limits on greenhouse gas emissions from the burning of fossil fuels, encouraging the adoption of cost effective energy efficiency measures should be among our highest priorities. A more gradual transition to a SFV rate design would minimize near term bill increases for low use consumers recognizing the investments that many of these consumers have made to reduce their gas usage, allow consumers to capture a greater portion of the expected benefits of such investments, and avoid the appearance that the Commission is rewarding high use by lowering the gas bills of high use customers.

Second, during the period covered by this Order, the modified SFV approach will not fully decouple recovery of the Company's fixed costs from sales volumes. A modest three percent reduction in sales during the first year would represent a loss to Duke of the opportunity to recover more than a million dollars of its fixed costs.

To address these concerns, I would reach the following result.

First, the recommendation of the Staff and Company should be modified to reduce the year one customer charge for all residential consumers to \$16.25 per residential bill and establish the base level of the year two customer charge for all residential consumers at \$21.33.

Second, consistent with the majority opinion, the Company should review and further enhance its weatherization and conservation program offerings. As one part of this review, Duke should adopt the objective of making cost-effective weatherization and conservation programs available to all low income consumers and to ramp up programs to facilitate implementation of all such measures as rapidly as reasonably practicable. Low income consumers often face difficult choices between paying their energy bills and meeting other essential needs, yet may be among the last to be able to take advantage of cost-effective energy efficiency investments. Consumers who struggle to make ends meet often find it difficult to pay for the initial cost of efficiency measures. And, many low income consumers live in rental housing with landlords who have little incentive to install efficiency measures that would reduce their tenants' utility bills.

Third, in conjunction with filing a proposal for approval of significantly expanded energy efficiency programs and recovery of the costs of such programs, I would invite the Company to propose an interim decoupling adjustment. This adjustment should be structured to adjust the second and subsequent year base customer charge of \$21.33 for the difference, on a per customer bill basis, between the portion of the Company's fixed cost

residential revenue requirement that is allocated to volumetric rates and the revenues recovered for such fixed costs through volumetric rates at weather normalized sales levels.

To meet the energy challenges of the 21<sup>st</sup> Century, Ohio will need to greatly improve the efficiency with which we use all forms of energy including natural gas. Efficient price signals will be an important, but not sufficient, element in this transformation. Our increasing knowledge of behavioral economics and experience with utility energy efficiency programs has shown that utility efficiency programs can produce significant net economic benefits. The Commission needs to encourage the cost-effective expansion of such programs. And, we should not wait through the completion of a multi-year transition to a SFV rate design before doing so in full measure.

  
Paul A. Centolella, Commissioner

## **EXHIBIT B**

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

ENTRY

The Commission finds:

- (1) The Applicant, Duke Energy Ohio, Inc. (Duke) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) In the Opinion and Order issued on May 28, 2008 in these cases, the Commission ordered Duke to cancel and withdraw its present tariffs governing gas service to customers affected by these applications and to file new tariffs consistent with the discussion and findings as set forth in the order.
- (3) On May 30, 2008, Duke provided the updated tariffs and proposed customer notice pursuant to that order.
- (4) On June 3, 2008, the Ohio Partners for Affordable Energy (OPAE) filed a motion to stay implementation of the opinion and order and the issuance of an entry to approve the updated tariffs submitted by Duke. OPAE asserts that such stay is necessary to prevent harm to the residential class, especially low-use residential customers, and that there is a strong likelihood that the opinion will be reversed.
- (5) The Commission finds that the new tariffs and the proposed customer notice, as modified by staff, are consistent with the discussion and findings as set forth in the order and should be approved. Further, the Commission finds OPAE's motion to

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stay the approval of these tariffs and to stay the implementation of the opinion and order should be denied. The Commission devoted a great amount of time to the levelized rate design issue that was approved in this case and OPAE has not raised any issue in its motion that the Commission has not previously considered. While the Commission will consider any issues raised in applications for rehearing, we find no reason has been presented thus far to justify a stay of our opinion and order or the tariffs resulting therefrom. Accordingly, we find that the public interest would be best served by denying OPAE's motion.

It is, therefore,

ORDERED, That the tariffs of Duke Energy Ohio, Inc., provided on May 30, 2008, and the customer notice, as modified by staff, are approved. It is, further,

ORDERED, That the motion to stay filed by Ohio Partners for Affordable Energy is denied. It is, further,

ORDERED, That the Applicant is authorized to file in final form four complete copies of the tariff consistent with this Entry. Applicant shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

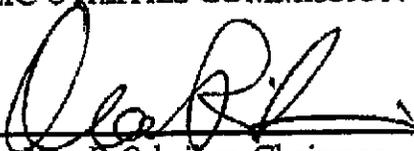
ORDERED, That the tariffs shall be effective for bills rendered beginning June 4, 2008. It is, further,

ORDERED, That the Applicant shall notify all affected customers within 30 days of the effective date of the rider. The Applicant should file a finalized copy of the customer notice within seven days of the issuance of this entry. It is, further,

ORDERED, That nothing in this Entry shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

ORDERED, That a copy of this Entry be served upon the Applicant and all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



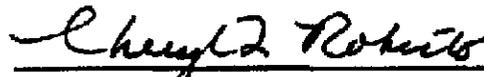
Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

RBF/RMB/GNS/vrm

Entered in the Journal

JUN 04 2008



Renee J. Jenkins  
Secretary

## **EXHIBIT C**

**FILE**



**Office of the Ohio Consumers' Counsel**

*Your Residential Utility Consumer Advocate*  
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Janine L. Migden-Ostrander  
Consumers' Counsel

2009 APR 10 PM 5:23

**PUCO**

April 10, 2009

Duane C. Luckey  
Attorney for Appellee  
Senior Deputy Attorney General  
Public Utilities Commission of Ohio  
180 East Broad Street, 9<sup>th</sup> Floor  
Columbus, Ohio 43215-3793

Re: *In the Matter of Duke Energy Ohio, Inc.*, PUCO Case No. 07-589-GA-AIR, et al.

On Appeal in: *Office of the Ohio Consumers' Counsel v. Public Utilities Commission*,  
Supreme Court Case No. 08-1837

Dear Counsel for the PUCO:

Without waiving or conceding any arguments with respect to the notice provision in R.C. 4903.16, the Office of the Ohio Consumers' Counsel ("OCC") hereby docketed and gives notice to the Public Utilities Commission of Ohio ("PUCO" or "Commission") regarding OCC's intent to file a motion, on or after April 10, 2009, for a stay of the Commission's decisions and Orders in the above-captioned cases with respect to the implementation of stage 3 of the straight fixed variable rate design approved for Duke Energy Ohio, Inc. ("Duke"). In the absence of a stay, the Commission's Order granting Duke the authority to implement the stage 3 increase to the fixed monthly customer charge that is scheduled to go into effect on or about June 1, 2009, will irreparably harm Duke's residential customers.

Sincerely,

Joseph P. Serio  
Assistant Consumers' Counsel

cc: Parties to PUCO Cases 07-589-GA-AIR, et al.  
PUCO (by Docketing)

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**EXHIBIT D**



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Duke Energy Corporation  
139 East Fourth Street  
P.O. Box 960  
Cincinnati, Ohio 45201-0960

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PUCO

FILE

July 11, 2008

The Public Utilities Commission of Ohio  
Attention: Docketing Division  
180 East Broad Street  
13<sup>th</sup> Floor  
Columbus, OH 43215-3793

RE:	In the Matter of The Application of Duke Energy Ohio, Inc. for an Increase in Rates	)	07-589-GA-AIR
		)	
	In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan For Gas Distribution Service	)	07-590-GA-ALT
		)	
	In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods	)	07-591-GA-AAM
		)	

Docketing Division:

Enclosed for filing in compliance with the Commission's Entry dated July 9, 2008 in the above referenced cases are four (4) copies of Sheet Nos. 30, 32, 33, 34, 35, 36, 37 and 52.

One copy of the enclosed tariffs is for filing with TRF Docket #89-8002-GA-TRF.

Please time-stamp the enclosed extra copy and return for our file. Thank you.

Very truly yours,

Donald L. Storck  
Director, Rate Services

Enclosures

Rates/data/word/ga/tariff memos/DEO Changing Customer Charge

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**RATE RS**

**RESIDENTIAL SERVICE**

**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**

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

**The following charges are effective June 4, 2008 through September 30, 2008:**

Fixed Delivery Service Charge per month \$15.00

Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Accelerated Main Replacement Program and Sheet No. 88, Rider AU, Advanced Utility Rider.

Plus a Usage-Based Charge for

First 400 CCF	\$0.401134 per CCF
Additional CCF	\$0.465634 per CCF

**The following charges are effective with the October 2008 billing cycles through May 2009 billing cycles on a bills rendered basis:**

Fixed Delivery Service Charge per month \$20.25

Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Accelerated Main Replacement Program and Sheet No. 88, Rider AU, Advanced Utility Rider.

Plus a Usage-Based Charge for

First 400 CCF	\$0.107044 per CCF
Additional CCF	\$0.171544 per CCF

---

Filed pursuant to an Entry dated July 9, 2008 in Case Nos. 07-589-GA-AIR, 07-590-GA-ALT and 07-591-GA-AAM before the Public Utilities Commission of Ohio.

Issued: July 10, 2008

Issued by Sandra P. Meyer, President

Effective: July 14, 2008

**NET MONTHLY BILL (Cont'd)**

The following charges are effective with the June 2009 billing cycles on a bills rendered basis:

Fixed Delivery Service Charge per month \$25.33

Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Accelerated Main Replacement Program and Sheet No. 88, Rider AU, Advanced Utility Rider.

Plus a Usage-Based Charge for

First 400 CCF \$0.040828 per CCF  
Additional CCF \$0.105378 per CCF

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

Sheet No. 63, Rider PIPP, Percentage of Income Payment Plan.  
Sheet No. 67, Rider UE-G, Uncollectible Expense Rider  
Sheet No. 68, Rider STR, State Tax Rider.  
Sheet No. 71, Rider GCRR, Gas Cost Recovery Rate.  
Sheet No. 76, Rider CCCR, Contract Commitment Cost Recovery Rider.

**EXCISE TAX RIDER**

The net monthly bill shall be adjusted by application of the percent specified on Sheet No. 64, Rider ETR, Ohio Excise Tax Liability Rider, except that finance charges are excluded in the computation of the net bill.

**MINIMUM BILL**

The monthly minimum bill shall be the monthly Fixed Delivery Service Charge and applicable charge under Rider AMRP and Rider AU shown above, plus the percentage specified in Rider ETR, Sheet No. 64, Ohio Excise Tax Liability Rider.

**LATE PAYMENT CHARGE**

Payment of the total amount due must be received in the Company's office by the due date shown on the bill. When not so paid, an additional amount equal to one and one-half percent (1.5%) of the unpaid balance is due and payable. However, this provision is not applicable to:

- (1) customers actively enrolled on the Percentage of Income Payment Plan (PIPP) pursuant to Rule 4901:1-18-04(B), Ohio Administrative Code;
- (2) the unpaid account balances of those customers being backbilled in accordance with Section 4933.28 Ohio Revised Code; and
- (3) the unpaid account balances of those customers on other Commission approved deferred payment plans or the Budget Billing Plan, except that a late payment charge may be assessed on any deferred payment plan or Budget Billing Plan amount not timely paid.

Filed pursuant to an Entry dated July 9, 2008 in Case Nos. 07-589-GA-AIR, 07-590-GA-ALT and 07-591-GA-AAM before the Public Utilities Commission of Ohio.

---

## **EXHIBIT E**

**FILE**



The Public Utilities  
Commission of Ohio

A report by the Staff of the  
Public Utilities Commission of Ohio

Duke Energy Ohio, Inc.

Case No. 07-589-GA-AIR



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**TABLE 4(a)**  
**Year 1**

Total Revenue Including Gas Costs

	Current	Applicant Proposed
Residential Service	62.91%	63.65%
General Service		
Commercial	21.59%	20.42%
Industrial	4.09%	3.95%
Other	<u>2.62%</u>	<u>2.53%</u>
Total General Service	28.31%	26.89%
Total Transportation	8.79%	9.46%
Total	100.00%	100.00%

**TABLE 4(b)**  
**Year 2**

Total Revenue Including Gas Costs

	Current	Applicant Proposed
Residential Service	62.91%	64.54%
General Service		
Commercial	21.59%	20.00%
Industrial	4.09%	3.86%
Other	<u>2.62%</u>	<u>2.47%</u>
Total General Service	28.31%	26.33%
Total Transportation	8.79%	9.13%
Total	100.00%	100.00%

**Rate Design**

Staff has traditionally recommended and supported a rate design for the natural gas distribution component consisting of a minimal customer charge and a volumetric rate or blocks of rates. That structure, while not truly cost-reflective, sufficed to allow the utility the opportunity to recover the recommended revenue requirement as long as gas consumption remained level or increased. In recent years, due primarily to the volatile

and relatively high cost of gas (to be recovered through the Gas Cost Recovery mechanism), the trend of gradually increasing gas consumption, per customer, has been reversed. Therefore, Duke, and other gas utilities, has seen the recovery of distribution costs deteriorate as the volume of gas used decreased.

In this case, Staff recommends a rather significant change in its rate structure policy. Rather than recovery via a minimal customer charge and relatively high volumetric rates, Staff recommends that the Commission approve a rate structure primarily based on a fixed distribution service charge. In reality, most distribution-related costs are fixed. The distribution facilities required to serve a small residence are most likely the same as those required to serve a larger residence. The distribution facilities required to serve a minimum number of gas appliances in a residential unit are most likely the same as those required to serve a residence with multiple gas appliances. The costs to the utility vary only slightly, if at all, by the volume of gas used.

In addition to a better reflection of cost causation, the primarily fixed-charge-based rate structure accomplishes other rate objectives. It levelizes the distribution component of a customers' bill, providing rate certainty. It reduces the revenue deterioration of a utility in a time of reduced consumption; thus, reducing the need for frequent rate cases. It alleviates the need for a decoupling mechanism which requires frequent controversial reconciliations and weather adjustments. From the companies' point of view, it eliminates its natural disincentive to promote energy conservation which, when rate are volume-based, causes revenue erosion.

Staff is keenly aware, however, of the pitfalls of this significant change in the design of rates. The biggest negative impact being that the change from a primarily volume-based rate to a primarily fixed charge rate often results in large price increases to low use customers (or, if the fixed charge is "blocked," to the lower use customers in the block). A secondary disadvantage is that the fixed charge structure reduces the incentive on the part of the customer to reduce its usage. Staff, however, finds that this argument is much less relative in the case of distribution rates. The distribution portion of a customer's bill is relatively small compared to the total bill. The cost of gas to be recovered through the Gas Cost Recovery mechanism will continue to serve as the incentive to a customer to keep its usage to a minimum. Finally, the current rate schedules are designed as "residential" or "general service" in nature. General Service customers are much less homogeneous than residential customers and a simple fixed charge may not be the appropriate cost recovery mechanism.

With all of these things in mind, Staff proposes and recommends a change in rate design that phases in the change from a primarily volumetric rate to a primarily fixed charge rate. The following table illustrates the phased-in concept.

Monthly Billing Determinates

	<u>Current</u>	Year 1	Year 1	Year 2	Year 2
		<u>Applicant</u> <u>Proposed</u>	<u>Staff</u> <u>Proposed</u>	<u>Applicant</u> <u>Proposed</u>	<u>Staff</u> <u>Proposed</u>
Residential Service.					
Customer Charge	\$ 6.00	\$ 15.00		\$ 15.00	
Fixed Distribution Service Charge					
< 50 ccf annually			\$ 10.00		\$ 12.50
> 50 ccf annually			\$ 20.25		\$ 25.33
Volumetric Charge	0.185910	0.227960	0.153942	0.247140	0.099103
General Service					
Customer Charge	\$ 21.00	\$ 40.00		\$ 40.00	
Fixed Distribution Service Charge					
< 50 ccf annually			\$ 25.00		\$ 27.50
> 50 < 2000 ccf annually			\$ 35.25		\$ 40.33
> 2000 < 4000 ccf annually			\$ 50.00		\$ 55.00
> 4000 ccf annually			\$ 130.00		\$ 180.00
Volumetric Charge					
1st 1000 ccf	0.163000	0.194740		0.169800	
Next 4000 ccf	0.157000	0.187740		0.162800	
> 5000 ccf	0.154000	0.183730		0.158800	
All ccf			0.153527		0.099052

**Staff Discussion of Recommendation**

The table represents a Staff "concept" of a two-year-phase-in to a primarily fixed charge rate. Because the filing does not "block" consumption by annual blocks, it is likely that the Staff proposed rates do not exactly produce the Applicant's proposed annual revenues; but, from information provided to Staff by the Applicant in data requests, the recommendations should serve as a reasonable facsimile for discussion purposes. The rates are meant to reflect the Applicant's proposed revenue for each of the two years (i.e. Applicant has proposed an increasing revenue requirement for the Residential class and a corresponding decreasing revenue requirement for the General Service class). While Staff recommends the phased-in revenue requirement adjustments, this table should in no way be taken as a recommendation by the Staff of the Rates and Tariffs Division as to the overall revenue requirement recommended by the appropriate Staff in other sections to this report. The table is meant to reflect the revenue requested by the Applicant for comparative purposes only. It is intended to reflect changes to the rate design that the Applicant has proposed.

Staff is also aware that the test year data in the blocked format may not be readily available. Further, Staff is aware that such a significant change in rate design may require modifications to the current billing system. Due to these, and perhaps other unknown limitations, Staff prefers to characterize its recommendation as a "concept"

## **EXHIBIT F**

**FILE**

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates	) ) ) )	Case No. 07-589-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for its Gas Distribution Service	) ) ) ) )	Case No. 07-590-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods	) ) )	Case No. 07-591-GA-AAM

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VOLUME 2

SCHEDULES "E" THROUGH "S-3"

---

DUKE ENERGY OHIO  
CASE NO. 07-589-GA-AIR  
ANNUALIZED TEST YEAR REVENUES AT PROPOSED RATES  
TWELVE MONTHS ENDED DECEMBER 31, 2007  
(GAS SERVICE - YEAR 1)

PHASE 1

DATA: 3 MONTHS ACTUAL & 9 MONTHS ESTIMATED  
TYPE OF FILING: "X" ORIGINAL UPDATED REVISED  
WORK PAPER REFERENCE NO(S):

SCHEDULE E-4  
PAGE 1 OF 2  
WITNESS:  
J. E. ZIOLKOWSKI

PROPOSED ANNUALIZED

LINE NO.	RATE CODE (A)	CLASS / DESCRIPTION (B)	CUSTOMER BILLS(1) (C)	SALES(2) (D)	PROPOSED RATES (E)	PROPOSED REVENUE LESS GAS COST	% OF REV TO TOTAL LESS GAS COST	GAS COST REVENUE(3)	PROPOSED TOTAL REVENUE (F + H)
						REVENUE(4) (F)	REVENUE (G)	(I)	
				(MCF)	(\$/MCF)	(\$)	(%)	(\$)	(\$)
<b>1 SALES SERVICE:</b>									
2	RS	RESIDENTIAL	4,110,081	27,648,068	5.0757	140,333,595	100.00	257,607,520	397,941,115
3		TOTAL RS	4,110,081	27,648,068	5.0757	140,333,595	56.57	257,607,520	397,941,115
4	GS	COMMERCIAL	271,715	9,981,785	3.4698	34,635,232	79.83	93,004,071	127,638,303
5	GS	INDUSTRIAL	14,077	2,081,066	2.5433	5,292,858	12.20	19,390,070	24,682,928
6	GS	OTH PUB AUTH	10,487	1,324,366	2.8096	3,456,096	7.97	12,339,519	15,795,715
7		TOTAL GS	296,279	13,387,216	3.2407	43,384,186	17.49	124,733,780	168,117,946
8		TOTAL SALES SERVICE	4,406,360	41,035,284	4.4771	183,717,781	74.05	382,341,280	566,059,061
<b>9 TRANSPORTATION SERVICE:</b>									
10	RFT	RESIDENTIAL FIRM TRANSP	601,104	4,176,369	5.0330	21,019,556	35.54	0	21,019,556
11	FT	FIRM TRANSP	98,289	9,866,036	2.7242	26,304,352	44.48	0	26,304,352
12	IT	INTERRUPTIBLE TRANSP	1,920	15,599,722	0.7576	11,816,910	19.98	0	11,816,910
13		TOTAL TRANSP SERVICE	701,313	29,432,127	2.0095	59,143,318	23.84	0	59,143,318
<b>14 MISCELLANEOUS REVENUES:</b>									
15		INTERDEPARTMENTAL	0	97,097	0.8992	67,827	1.30	904,690	972,577
16		BAD CHECK CHARGES	0	0		97,756	1.87	0	97,756
17		LATE PAYMENT CHARGES	0	0		0	0.00	0	0
18		RECONNECTION CHARGES	0	0		76,776	1.47	0	76,776
19		RENTS	0	0		2,922,505	55.91	0	2,922,506
20		SPECIAL CONTRACTS (4)	36	2,311,026	0.5696	1,316,426	25.19	0	1,316,425
21		OTHER MISC	0	0		708,468	13.55	0	708,468
22		STREET LIGHTING	84	41,068	0.9903	36,975	0.71	382,646	419,621
23		TOTAL MISC	120	2,449,190	2.1341	5,226,792	2.11	1,287,336	6,514,128
24		TOTAL COMPANY	5,107,793	72,916,601	3.4024	248,087,891	100.00	383,628,616	631,716,507

(1) DETAIL CONTAINED ON SCHEDULES E-4.1.  
(2) REFLECTS NORMALIZED VOLUMES.  
(3) REFLECTS EXPECTED GAS COST OF \$8.833/MCF.  
(4) EXCLUDES STATE TAX OF 2¢/MCF.

DUKE ENERGY OHIO  
CASE NO. 07-589-GA-AIR  
ANNUALIZED TEST YEAR REVENUES AT MOST CURRENT RATES  
TWELVE MONTHS ENDED DECEMBER 31, 2007  
(GAS SERVICE - YEAR 1)

PHASE 1

DATA: 3 MONTHS ACTUAL & 9 MONTHS ESTIMATED  
TYPE OF FILING: "X" ORIGINAL UPDATED REVISED  
WORK PAPER REFERENCE NO(S): WPE-4a

SCHEDULE E-4  
PAGE 2 OF 2  
WITNESS:  
J. E. ZOLKOWSKI

CURRENT ANNUALIZED

LINE NO.	RATE CODE (A)	CLASS / DESCRIPTION (B)	CUSTOMER BILLS(1) (C)	SALES(2) (D)	MOST CURRENT RATES (J)	CURRENT REVENUE LESS GAS COST REVENUE (K)	% OF REV TO TOTAL LESS GAS COST REVENUE (L)	REVENUE INCR LESS GAS COST REV (F - K) (M)	% INCR IN REV LESS GAS COST REV (N / K)	GAS COST REVENUE(3) (H)	CURRENT TOTAL REVENUE(5) (K + H) (K1)	TOTAL REVENUE % INCREASE (M / K1) (O)
				(MCF)	(\$/MCF)	(\$)	(%)	(\$)	(%)	(\$)	(\$)	(%)
<b>1 SALES SERVICE:</b>												
2	RS	RESIDENTIAL	4,110,081	27,648,068	4.1310	114,214,333	100.00	26,118,262	22.9	257,807,520	371,821,853	7.0
3		TOTAL RS	4,110,081	27,648,068	4.1310	114,214,333	53.38	26,118,262	22.9	257,807,520	371,821,853	7.0
4	GS	COMMERCIAL	271,715	9,881,785	3.4691	34,827,616	81.34	7,516	0.0	93,004,071	127,631,587	0.0
5	GS	INDUSTRIAL	14,077	2,081,065	2.3028	4,792,252	11.26	500,806	10.4	19,390,070	24,182,322	2.1
6	GS	OTH PUB AUTH	10,487	1,324,366	2.3813	3,153,690	7.41	302,406	9.6	12,339,618	15,493,309	2.0
7		TOTAL GS	296,279	13,387,216	3.1802	42,573,558	18.90	810,628	1.9	124,733,760	167,307,318	0.5
8		TOTAL SALES SERVICE	4,406,360	41,035,284	3.8208	156,787,891	73.28	26,928,890	17.2	382,541,280	539,129,171	5.0
<b>9 TRANSPORTATION SERVICE:</b>												
10	RFT	RESIDENTIAL FIRM TRANSP	681,104	4,176,369	4.1043	17,141,006	33.01	3,878,560	22.6	0	17,141,006	22.6
11	FT	FIRM TRANSP	98,289	9,656,936	2.5239	24,371,224	46.93	1,933,628	7.9	0	24,371,224	7.9
12	IT	INTERRUPTIBLE TRANSP	1,920	15,599,722	0.6679	10,418,276	20.06	1,400,634	13.4	0	10,418,276	13.4
13		TOTAL TRANSP SERVICE	781,313	29,432,127	1.7644	51,930,506	24.27	7,212,812	13.9	0	51,930,506	13.9
<b>14 MISCELLANEOUS REVENUES:</b>												
15		INTERDEPARTMENTAL	0	97,097	0.6992	67,887	1.30	0		904,690	972,577	0.0
16		BAD CHECK CHARGES	0	0		97,756	1.87	0		0	97,756	0.0
17		LATE PAYMENT CHARGES	0	0		0	0.00	0		0	0	0.0
18		RECONNECTION CHARGES	0	0		76,776	1.47	0		0	76,776	0.0
19		RENTS	0	0		2,922,505	55.91	0		0	2,922,505	0.0
20		SPECIAL CONTRACTS (4)	36	2,311,025	0.5696	1,315,425	25.19	0		0	1,315,425	0.0
21		OTHER MISC	0	0		708,468	13.55	0		0	708,468	0.0
22		STREET LIGHTING	84	41,068	0.9003	36,975	0.71	0		382,646	419,621	0.0
23		TOTAL MISC	120	2,449,190	2.1341	5,226,792	2.44	0	0.0	1,287,336	6,514,128	0.0
24		TOTAL COMPANY	5,107,793	72,516,501	2.9341	213,945,189	100.00	34,142,702	16.0	383,628,616	597,573,805	5.7

(1) DETAIL CONTAINED ON SCHEDULES E-4.1.  
(2) REFLECTS NORMALIZED VOLUMES.  
(3) REFLECTS EXPECTED GAS COST OF \$8.883/MCF.  
(4) EXCLUDES STATE TAX OF 2¢ /MCF.

## **EXHIBIT G**



Honorable \_\_\_\_\_

This letter is to inform you of Duke Energy Ohio's ("DE-Ohio") intent to file, with the Public Utilities Commission of Ohio, an application relating to our gas service. The application will propose an increase in the current rates and charges for natural gas service. The application will also propose an alternative rate plan for our natural gas service, seeking the same provisions discussed below.

DE-Ohio will make this filing in approximately 30 days and will seek a 5.8% increase in rates, approximately \$34 million dollars. Our last base rate increase occurred in 2002. We anticipate that the new rates will become effective in the spring of 2008, following public hearings conducted by the Commission. In the application, DE-Ohio will propose to continue a capital expenditures "tracker," known as Rider AMRP - Accelerated Main Replacement Program - to allow DE-Ohio to continue to make filings to annually update charges to recover the cost of replacing its cast iron and bare steel gas main lines, and related service lines, as more fully described below. DE-Ohio proposes that Rider AMRP not contain any rate caps, so that each customer class can pay its allocable share of the Rider AMRP revenue requirement.

In 2001, DE-Ohio started a significant construction program to improve customer safety and system reliability, and to capture operational efficiencies, reduce operation and maintenance expenses, and prepare the distribution system to accommodate new markets and emerging technologies. The goal of this project is to replace cast iron and bare steel distribution mains of 12-inch diameter or less, and related service lines. DE-Ohio expects to complete the program in nine more years, in 2015.

The bare steel gas mains, consisting of 192 miles of DE-Ohio's gas main distribution system as of 2001, are significantly aged. These mains operate at very low pressure, which increases the potential for outages. DE-Ohio will also replace approximately 1,020 miles of cast iron mains, some dating to circa 1873. These gas mains are more susceptible to breaks than coated steel and plastic gas mains.

DE-Ohio's main replacement program has been quite successful to date. During the period from 2001 through 2006, the Company replaced 492 miles of cast iron and 67 miles of bare steel gas mains. In 2002, DE-Ohio repaired 6,223 leaks, while in 2006, DE-Ohio repaired 4,913 leaks. The lower leak rate has improved public safety and led to a decrease in DE-Ohio's maintenance expense. Since 2001, DE-Ohio has used Rider

AMRP to credit customers with approximately \$8.5 million in maintenance savings resulting from this program.

DE-Ohio seeks to expand Rider AMRP to allow it to recover costs for replacing service head adapter-style risers. The riser connects the service line to the meter. The Public Utilities Commission of Ohio Staff recently conducted a statewide investigation into these risers and concluded that, under certain circumstances, these risers are more prone to leaks than other types of risers. DE-Ohio plans to accelerate its replacement of these risers and to recover the costs through Rider AMRP.

DE-Ohio also seeks to introduce a new tracker to recover costs for the Company's Utility of the Future initiative, which will provide DE-Ohio and customers with better information about usage. We will also be able to reduce our costs for reading meters. Customers will benefit because this will allow us to reduce our operation and maintenance expenses. The Company will also use the tracking mechanism to flow through to customers the savings related to the Utility of the Future initiative.

DE-Ohio's total cost to complete the main replacement and riser replacement program during the next nine years is estimated at approximately \$599 million. For residential customers, this will result in an additional charge of approximately \$1.53 per month during the first year of the program, beginning in the spring of 2008. DE-Ohio will provide additional information on the Utility of the Future costs and savings at a later date.

Finally, DE-Ohio also proposes a new rate structure for delivery service that is not based upon the volume of gas delivered. Rather than allowing our annual delivery revenues to fluctuate with volumes flowed, we will compare our sales each year to a benchmark, which is the weather normalized level of sales approved by the Public Utilities Commission of Ohio in our most recent general gas rate case, adjusted for new customers added since that time. We will then compare our actual sales to this baseline, and provide customers a credit or charge to account for the difference.

These new rates are applicable to all of DE-Ohio's gas customers. Enclosed is a list of the proposed new rates. These rates are subject to change after the Commission holds public evidentiary hearings. While this letter is a formal notice to you, in accordance with applicable utility laws, we also have representatives available to discuss our rate proposals in more detail. To discuss any specific questions you may have, please call Paul Smith at (513) 419-5180.

Very truly yours,

Sandra P. Meyer  
President

**Duke Energy Ohio**  
**CASE NO. 07-0589-GA-AIR**  
**CASE NO. 07-0590-GA-ALT**  
**CASE NO. 07-0591-GA-AAM**  
**SUMMARY OF PROPOSED RATES**

CASE NO. 07-0589-GA-AIR  
CASE NO. 07-0590-GA-ALT  
CASE NO. 07-0591-GA-AAM  
Tab 8 to Filing Notice  
June 18, 2007

	<u>CURRENT</u>	<u>PROPOSED</u>
<b><u>Rate RS</u></b>		
Customer Charge	\$6.00	\$15.00 / Month
Commodity Charge	\$0.18591	/ CCF
Year 1		\$0.22796 / CCF
Year 2		\$0.24714 / CCF
Year 3 and Beyond		\$0.26575 / CCF
<b><u>Rate GS</u></b>		
Customer Charge	\$21.00	\$40.00 / Month
Commodity Charge		
First 1000	\$0.1630	/ CCF
Year 1		\$0.19474 / CCF
Year 2		\$0.18774 / CCF
Year 3 and Beyond		\$0.18373 / CCF
Next 4000	\$0.1570	/ CCF
Year 1		\$0.16980 / CCF
Year 2		\$0.16280 / CCF
Year 3 and Beyond		\$0.15880 / CCF
All Additional	\$0.1540	/ CCF
Year 1		\$0.14560 / CCF
Year 2		\$0.13860 / CCF
Year 3 and Beyond		\$0.13463 / CCF
<b><u>Rate RFT</u></b>		
Customer Charge	\$6.00	\$15.00 / Month
Commodity Charge	\$0.18591	/ CCF
Year 1		\$0.22796 / CCF
Year 2		\$0.24714 / CCF
Year 3 and Beyond		\$0.26575 / CCF
<b><u>Rate FT</u></b>		
Customer Charge	\$21.00	\$40.00 / Month
Commodity Charge		
First 1000	\$0.1630	/ CCF
Year 1		\$0.19474 / CCF
Year 2		\$0.18774 / CCF
Year 3 and Beyond		\$0.18373 / CCF
Next 4000	\$0.1570	/ CCF
Year 1		\$0.16980 / CCF
Year 2		\$0.16280 / CCF
Year 3 and Beyond		\$0.15880 / CCF

## **EXHIBIT H**

Duke Energy Ohio, Inc.  
Distribution Rate Increase  
PUCO Case No. 07-589-GA-AIR, et al  
OCC Motion to Stay  
Exhibit H

Comparison of Current to Stage 3 Annual Rate Increase/(Decrease),  
and Percent Change

Total Bill	72 Mcf Usage Annually)	240 Mcf Usage Annually)	600 Mcf Usage Annually)
At Current Annual Rates <sup>1</sup>	\$984.19	\$2,934.96	\$7,115.19
At Approved Annual Rates 2009 <sup>2</sup>	\$1,061.66	\$2,756.78	\$6,470.42
Increase/(Decrease) of Commission Approved June 2009 Rates over Current Rates Including Gas Costs	\$77.47	(\$178.18)	(\$644.77)
Percent Change	7.9%%	(6.1%)	(9.1%)
Total Delivery Charges Only	72 Mcf Usage Annually)	240 Mcf Usage Annually)	600 Mcf Usage Annually)
At Current Rates <sup>3</sup>	\$313.34	\$698.79	\$1,524.76
At Approved Annual Rates 2009 <sup>4</sup>	<u>\$390.81</u>	<u>\$520.61</u>	<u>\$879.99</u>
Increase/(Decrease) of Commission Approved June 2009 Rates over Current Rates Excluding Gas Costs	\$77.47	(\$178.18)	(\$644.77)
Percent Change	24.7%	(25.5%)	(42.3%)

<sup>1</sup> Standard Filing Requirement Schedule. E-4.1. (Supp. 000193A) (Supporting calculations at Supp. 000193I).

<sup>2</sup> Commission Approved Duke Energy Ohio Tariff (Supp. 000193B-000193H.) (Supporting calculations at Supp. 000193I).

<sup>3</sup> Standard Filing Requirement Schedule. E-4.1. (Supp.000193A.) (Supporting calculations at Supp. 000193J).

<sup>4</sup> Commission Approved Duke Energy Ohio Tariff (Supp. 000193B-000193H.) (Supporting calculations at Supp. 000193J).

Duke Energy Ohio Gas  
07-589-GA-AIR

	Total Residential Bill at Current Rates (SFR Sch. E-5)				Total Bill at Approved June 2009 Rates			
		Mcf	Mcf	Mcf		Mcf	Mcf	Mcf
	Rates	6	20	50	Rates	6	20	50
Customer Charge	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.00	\$ 25.33	\$ 25.33	\$ 25.33	\$ 25.33
Volumetric Charge	\$ 1.8591 per Mcf	11.15	37.18	92.96				
First 40 Mcf					\$ 0.40828 per Mcf	2.45	8.17	16.33
Additional Mcf					\$ 1.05378 per Mcf	-	-	10.54
Gas Cost Rider	\$ 8.8830 per Mcf	53.30	177.66	444.15	\$ 8.8830 per Mcf	53.30	177.66	444.15
PIPP Rider	\$ 0.1690 per Mcf	1.01	3.38	8.45	\$ 0.1690 per Mcf	1.01	3.38	8.45
State Tax Rider	\$ 0.1593 per Mcf	0.96	3.19	7.97	\$ 0.1593 per Mcf	0.96	3.19	7.97
AMRP Rider	\$ 5.77	5.77	5.77	5.77	\$ 1.30	\$ 1.30	\$ 1.30	\$ 1.30
Sub-Total		\$ 78.19	\$ 233.18	\$ 565.29		\$ 84.35	\$ 219.02	\$ 514.06
Ohio Excise Tax Rider	4.89%	3.82	11.40	27.64	4.89%	4.12	10.71	25.14
Total Bill		\$ 82.02	\$ 244.58	\$ 592.93		\$ 88.47	\$ 229.73	\$ 539.20
Yearly Total Bill		\$ 984.19	\$ 2,934.96	\$ 7,115.19		\$ 1,061.66	\$ 2,756.78	\$ 6,470.42
% Increase/(Decrease) Approved over Current						7.9%	-6.1%	-9.1%

Duke Energy Ohio Gas  
07-589-GA-AIR

	Total Residential Bill at Current Rates Excl. Gas Costs (SFR Sch. E-5)					Total Bill Excl. Gas Costs at Approved June 2009 Rates				
	Rates	Mcf		Mcf		Rates	Mcf		Mcf	
		6	20	50	6		20	50		
Customer Charge	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.00	\$ 25.33	\$ 25.33	\$ 25.33	\$ 25.33	\$ 25.33	
Volumetric Charge	\$ 1.8591 per Mcf	11.15	37.18	92.96						
First 40 Mcf					\$ 0.40828 per Mcf	2.45	8.17	16.33		
Additional Mcf					\$ 1.05378 per Mcf	-	-	10.54		
PIPP Rider	\$ 0.1690 per Mcf	1.01	3.38	8.45	\$ 0.1690 per Mcf	1.01	3.38	8.45		
State Tax Rider	\$ 0.1593 per Mcf	0.96	3.19	7.97	\$ 0.1593 per Mcf	0.96	3.19	7.97		
AMRP Rider	\$ 5.77	5.77	5.77	5.77	\$ 1.30	\$ 1.30	\$ 1.30	\$ 1.30		
Sub-Total		\$ 24.89	\$ 55.52	\$ 121.14		\$ 31.05	\$ 41.36	\$ 69.91		
Ohio Excise Tax Rider	4.89%	1.22	2.71	5.92	4.89%	1.52	2.02	3.42		
Total Bill		\$ 26.11	\$ 58.23	\$ 127.06		\$ 32.57	\$ 43.38	\$ 73.33		
Yearly Total Bill w/o Gas Costs		\$ 313.34	\$ 698.79	\$ 1,524.76		\$ 390.81	\$ 520.61	\$ 879.99		
% Increase/(Decrease) Approved over Current						24.7%	-25.5%	-42.3%		

DUKE ENERGY OHIO  
CASE NO. 07-589-GA-AIR  
ANNUALIZED TEST YEAR REVENUES AT MOST CURRENT RATES  
TWELVE MONTHS ENDED DECEMBER 31, 2007  
(GAS SERVICE - YEAR 1)

PHASE 1

DATA: 3 MONTHS ACTUAL & 9 MONTHS ESTIMATED  
TYPE OF FILING: "X" ORIGINAL UPDATED REVISED  
WORK PAPER REFERENCE NO(S): WPE-4a

SCHEDULE E-4.1  
PAGE 2 OF 14  
WITNESS:  
J. E. ZIOLKOWSKI

CURRENT ANNUALIZED

LINE NO.	RATE CODE (A)	CLASS / DESCRIPTION (B)	CUSTOMER BILLS(1) (C)	SALES(2) (D)	MOST CURRENT RATES (J)	CURRENT REVENUE LESS GAS COST REVENUE (K)	% OF REV TO TOTAL LESS GAS COST REVENUE (L)	REVENUE INCR LESS GAS COST REV (F - K) (M)	% INCR IN REV LESS GAS COST REV (M / K) (N)	GAS COST REVENUE(3) (H)	CURRENT TOTAL REVENUE (K + H) (K1)	TOTAL REVENUE % INCREASE (M / K1) (O)
				(MCF)	(\$/MCF)	(\$)	(%)	(\$)	(%)	(\$)	(\$)	(%)
1	RS	RESIDENTIAL										
2		CUSTOMER CHARGE:										
3		RESIDENTIAL										
4		TOTAL MONTHLY BILLS x										
5		CUSTOMER CHARGE PER MONTH	4,110,081		36.00	24,660,486	21.6	36,990,728	150.0		24,660,486	150.0
6		TOTAL CUSTOMER CHARGE	4,110,081			24,660,486	21.6	36,990,728	150.0		24,660,486	150.0
7		COMMODITY CHARGE:										
8		ALL CONSUMPTION		27,648,068	1.8591	51,400,523	45.0	11,626,013	22.6	245,597,788	296,998,311	3.9
9		RIDERS:										
10		PIPP BILLINGS (4)			0.1690	4,672,523	4.1	0	0.0		4,672,523	0.0
11		ACCELERATED MAIN REPLACEMENT (AMRP)			\$5.77	23,715,167	20.8	(23,715,167)	(100.0)		23,715,167	(100.0)
12		STATE TAX RIDER (STR)				4,440,931	3.9	0	0.0		4,440,931	0.0
13		OHIO EXCISE TAX (ETR)			0.0489	5,324,703	4.7	1,217,687	22.9	12,009,732	17,334,435	7.0
14		TOTAL RIDERS				38,153,324	33.4	(22,497,480)	(59.0)	12,009,732	50,163,056	(44.6)
15		TOTAL RATE RS RESIDENTIAL	4,110,081	27,648,068		114,214,333	100.0	26,119,262	22.9	257,607,520	371,821,853	7.0

(1) BILLS THAT TERMINATE IN RESPECTIVE RATE STEPS.  
(2) REFLECTS NORMALIZED VOLUMES.  
(3) REFLECTS EXPECTED GAS COST OF \$8.883/MCF.  
(4) INCLUDES PIP RIDER RATE OF (\$0.169) /MCF TIMES SALES VOLUMES.

**RATE RS**  
**RESIDENTIAL SERVICE**

**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**

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

**The following charges are effective June 4, 2008 through September 30, 2008:**

Fixed Delivery Service Charge per month \$15.00

Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Accelerated Main Replacement Program and Sheet No. 88, Rider AU, Advanced Utility Rider.

Plus a Usage-Based Charge for

First 400 CCF	\$0.401134 per CCF
Additional CCF	\$0.465634 per CCF

**The following charges are effective with the October 2008 billing cycles through May 2009 billing cycles on a bills rendered basis:**

Fixed Delivery Service Charge per month \$20.25

Plus the applicable charge per month as set forth on Sheet No. 65, Rider AMRP, Accelerated Main Replacement Program and Sheet No. 88, Rider AU, Advanced Utility Rider.

Plus a Usage-Based Charge for

First 400 CCF	\$0.107044 per CCF
Additional CCF	\$0.171544 per CCF

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Filed pursuant to an Entry dated July 9, 2008 in Case Nos. 07-589-GA-AIR, 07-590-GA-ALT and 07-591-GA-AAM before the Public Utilities Commission of Ohio.

Issued: July 10, 2008

Issued by Sandra P. Meyer, President

Effective: July 14, 2008

**NET MONTHLY BILL (Cont'd)**

**The following charges are effective with the June 2009 billing cycles on a bills rendered basis:**

Fixed Delivery Service Charge per month \$25.33

Plus the applicable charge per month as set forth on Sheet  
No. 65, Rider AMRP, Accelerated Main Replacement Program and  
Sheet No. 88, Rider AU, Advanced Utility Rider.

Plus a Usage-Based Charge for

First 400 CCF	\$0.040828 per CCF
Additional CCF	\$0.105378 per CCF

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

Sheet No. 63, Rider PIPP, Percentage of Income Payment Plan.  
Sheet No. 67, Rider UE-G, Uncollectible Expense Rider  
Sheet No. 68, Rider STR, State Tax Rider.  
Sheet No. 71, Rider GCRR, Gas Cost Recovery Rate.  
Sheet No. 76, Rider CCCR, Contract Commitment Cost Recovery Rider.

**EXCISE TAX RIDER**

The net monthly bill shall be adjusted by application of the percent specified on Sheet No. 64, Rider ETR, Ohio Excise Tax Liability Rider, except that finance charges are excluded in the computation of the net bill.

**MINIMUM BILL**

The monthly minimum bill shall be the monthly Fixed Delivery Service Charge and applicable charge under Rider AMRP and Rider AU shown above, plus the percentage specified in Rider ETR, Sheet No. 64, Ohio Excise Tax Liability Rider.

**LATE PAYMENT CHARGE**

Payment of the total amount due must be received in the Company's office by the due date shown on the bill. When not so paid, an additional amount equal to one and one-half percent (1.5%) of the unpaid balance is due and payable. However, this provision is not applicable to:

- (1) customers actively enrolled on the Percentage of Income Payment Plan (PIPP) pursuant to Rule 4901:1-18-04(B), Ohio Administrative Code;
- (2) the unpaid account balances of those customers being backbilled in accordance with Section 4933.28 Ohio Revised Code; and
- (3) the unpaid account balances of those customers on other Commission approved deferred payment plans or the Budget Billing Plan, except that a late payment charge may be assessed on any deferred payment plan or Budget Billing Plan amount not timely paid.

Filed pursuant to an Entry dated July 9, 2008 in Case Nos. 07-589-GA-AIR, 07-590-GA-ALT and 07-591-GA-AAM before the Public Utilities Commission of Ohio.

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Issued: July 10, 2008

Issued by Sandra P. Meyer, President

Effective: July 14, 2008

Duke Energy Ohio  
139 East Fourth Street  
Cincinnati, Ohio 45202

P.U.C.O. Gas No. 18  
Sheet No. 30.15  
Cancels and Supersedes  
Sheet No. 30.14  
Page 3 of 3

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**LATE PAYMENT CHARGE (Cont'd)**

At a residential customer's request, the Company will waive a late payment charge where the current charge is the only late payment charge levied in the most recent twelve month period.

**SERVICE REGULATIONS**

The supplying of, 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, as provided by law.

Filed pursuant to an Entry dated July 9, 2008 in Case Nos. 07-589-GA-AIR, 07-590-GA-ALT and 07-591-GA-AAM before the Public Utilities Commission of Ohio.

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Issued: July 10, 2008

Issued by Sandra P. Meyer, President

Effective: July 14, 2008

Duke Energy Ohio  
139 East Fourth Street  
Cincinnati, Ohio 45202

P.U.C.O. Gas No. 18  
Sheet No. 63.8  
Cancels and Supersedes  
Sheet No. 63.7  
Page 1 of 1

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**INTERIM EMERGENCY AND TEMPORARY  
RIDER PIPP  
PERCENTAGE OF INCOME PAYMENT PLAN**

The current amount of Percentage of Income Payment Plan arrearages for recovery is a plus \$0.0190 per 100 cubic feet.

Filed pursuant to an Entry dated July 2, 2007 in Case No. 07-0606-GA-PIPP before the Public Utilities Commission of Ohio.

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Issued: July 2, 2007

Issued by Sandra P. Meyer, President

Effective: July 2, 2007

**RIDER STR**  
**STATE TAX RIDER**

**APPLICABILITY**

Applicable to all sales and transportation services provided by the Company on behalf of customers served under any of its prevailing rate schedules or lawful and valid contracts unless the customer qualifies as a "flex" customer.

**EFFECTIVE RATE**

This rider shall be applied to all units of 100 cubic feet (CCF) as follows:

First 1,000 CCF	\$0.01593 per CCF
Next 19,000 CCF	\$0.00877 per CCF
Additional CCF	\$0.00411 per CCF

**FLEX CUSTOMER**

A "flex" customer is an industrial or commercial facility that has consumed more than one billion cubic feet (ten million CCF) of gas per year at a single location during any of the previous five (5) years, or an industrial or commercial end user of natural gas that purchases natural gas distribution services from a natural gas distribution company at discounted rates or charges established in any of the following:

1. a special arrangement subject to review and regulation by the PUCO under Section 4905:31 of the Revised Code;
2. a special arrangement with a natural gas distribution company pursuant to a municipal ordinance;
3. a variable rate schedule that permits rates to vary between defined amounts, provided that the schedule is on file with the PUCO.

A customer who meets this definition on January 1, 2000, or thereafter is a "flex" customer for the purposes of determining the rate of taxation under Division (D) of Section 5727.811 of the Revised Code.

**SERVICE REGULATIONS**

The supplying of, 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, as provided by law.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

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Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President

## RIDER AMRP

### ACCELERATED MAIN REPLACEMENT PROGRAM RIDER

#### APPLICABILITY

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

#### ACCELERATED MAIN REPLACEMENT PROGRAM FACTORS

All customers receiving service under Rate RS, Rate RS - Low Income, Rate RFT, Rate RFT - Low Income, Rate GS - Small, Rate GS - Large, Rate FT and Rate DGS 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 bare steel/cast iron main replacement program and the 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 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. The allocation of the AMRP revenue requirement will be in accordance with Paragraph 9 of the Stipulation and Recommendation approved by the Commission in Case No. 07-589-GA-AIR (55% to RS, RSLI, RFT and RFTLI, 37% to GS-S, GS-L, FT-S, FT-L and DGS, and 8% to IT and SSIT). The allocation of the riser replacement revenue requirement will also be in accordance with Paragraph 9 of the Stipulation and Recommendation approved by the Commission in Case No. 07-589-GA-AIR (92% to RS, RSLI, RFT and RFTLI, 8% to GS-S, GS-L, FT-S, FT-L and DGS).

The charges for the respective gas service schedules are:

Rate RS and RSLI, Residential Service	\$ 1.30/month
Rate RFT and RFTLI, Residential Firm Transportation Service	\$ 1.30/month
Rate GS-S and GS-L, General Service	\$11.22/month
Rate DGS, Distributed Generation Service	\$11.22/month
Rate FT-S and FT-L, Firm Transportation Service	\$11.22/month
Rate IT, Interruptible Transportation Service	\$ 0.005/CCF
Rate SSIT, Spark Spread Interruptible Transportation Rate	\$ 0.005/CCF

These monthly charges shall remain in effect until changed by order of the Public Utilities Commission of Ohio.

Issued pursuant to an Order dated May 28, 2008 in Case Nos. 07-589-GA-AIR, *et al.*, before the Public Utilities Commission of Ohio.

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Issued: May 29, 2008

Effective: June 4, 2008

Issued by Sandra P. Meyer, President

Duke Energy Ohio  
139 East Fourth Street  
Cincinnati, Ohio 45202

P.U.C.O. Gas No. 18  
Sheet No. 64.2  
Cancels and Supersedes  
Sheet No. 64.1  
Page 1 of 1

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**RIDER ETR**

**OHIO EXCISE TAX LIABILITY RIDER**

**APPLICABILITY**

Applicable to all sales and transportation services provided by the Company on behalf of customers served under any of its prevailing rate schedules or lawful and valid contracts.

This Rider is also applicable to Rider STR, State Tax Rider.

**EFFECTIVE RATE**

The rider, stated in terms of a specific percent, to be applied to customers bills is 4.890%.

**SERVICE REGULATIONS**

The supplying of, 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, as provided by law.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

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Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President