

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates.)) Case No. 2014-0328

In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)) Appeal from the Public Utilities Commission of Ohio

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.)) Public Utilities Commission of Ohio Case Nos. 12-1685-GA-AIR 12-1686-GA-ATA 12-1687-GA-ALT

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)) 12-1688-GA-AAM

JOINT BRIEF ADDRESSING THE APPROPRIATE AMOUNT OF BOND NECESSARY TO CONTINUE THE STAY

BY

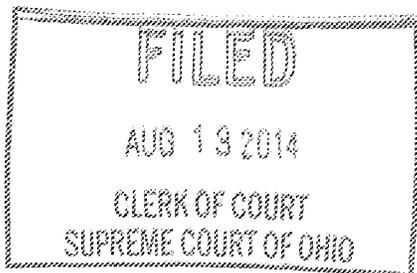
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I. INTRODUCTION

For the purpose of protecting approximately 420,000 residential, commercial and industrial natural gas customers of Duke Energy Ohio, Inc. (“Duke” or “Utility”) from unlawful charges, the, Kroger Company (“Kroger”), Office of the Ohio Consumers’ Counsel (“OCC”), Ohio Manufacturers’ Association (“OMA”), and Ohio Partners for Affordable Energy (“OPAE”)¹ respectfully request this Court to maintain the Stay it ordered without a bond on May 14, 2014. The decision of the Public Utilities Commission of Ohio (“PUCO”) allowed Duke to charge customers \$55.5 million for the environmental remediation of long defunct manufactured gas plants (“MGP”) dating back to the 1800’s.

Absent a stay, Duke can be expected to assert that Ohio law does not permit the refund of charges to customers, even if the charges are found by this Court to be unlawful. See, e.g., *Lucas County Commissioners v. Pub. Util. Comm.* (1997), 80 Ohio St.3d 344; *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257 (1957) ¶ 2 of the syllabus. Recent precedent demonstrates that Duke would likely succeed with the argument that customers cannot be made whole after the unlawful collection. *Id.*

Justice Pfeifer recognized the dilemma facing consumers in the Court’s ruling of July 29, 2014. Justice Pfeifer stated:

If consumers had a chance of recovering unjustly collected revenues after review by this Court, the need for a stay would be greatly reduced. Until *Keco* is overturned, consumers should continue to seek stays, this Court should grant those stays without bond where appropriate * * *.

S. Ct. No. 2014-328, Ruling at Dissenting Opinion (July 29, 2014).

¹ Collectively “Joint Appellants.”

The Stay granted by this Court on May 14, 2014, was granted without a bond requirement. S. Ct. No. 2014-0328, Entry (May 14, 2014). The Court is now revisiting this decision. S. Ct. No. 2014-0328, Ruling (July 29, 2014).

On July 29, 2014, this Court issued a procedural ruling that maintained the stay, but required Joint Appellants, Duke and the PUCO to file briefs by August 13, 2014, addressing the appropriate amount of the bond. Joint Appellants thereby file this brief.

II. STANDARD OF REVIEW

R.C. 4903.16 addresses stays of PUCO orders:

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. (Emphasis added).

The law provides the Court with discretion in determining what level of undertaking is required to satisfy all damages caused by the delay from a Stay.

III. STATEMENT OF FACTS

The PUCO issued its Opinion and Order in this case on November 13, 2013. On November 27, 2013, Duke filed its proposed tariffs to charge customers the \$55.5 million for MGP-related investigation and remediation expenses. On December 2, 2013, Joint Appellants filed a Motion for Stay at the PUCO. On February 19, 2014, the PUCO denied Joint Appellants' Motion for Stay filed with the PUCO. Two days later Duke filed its revised tariffs to charge

customers the \$55.5 million effective March 3, 2014. This equates, on average, to approximately \$100 that each residential customer would pay, in total, to Duke.²

On March 17, 2014, the Joint Appellants filed a Motion for Stay with this Court. Joint Appellants' Motion was granted on May 14, 2014. Following the Court's Entry granting the Stay, Duke continued charging customers under its MGP Rider Tariff for 30 days until June 13, 2014.³

Duke's collection of the \$55.5 million from customers was to be amortized over 5 years or 60 months without carrying charges during the amortization period. Assuming equal collection per month, Duke would collect approximately \$925,000 per month.⁴ Based upon that average level of collection, Duke has already collected approximately \$2,220,000 from customers between March 3 and May 14, 2014,⁵ and \$925,000 between May 14, 2014 and June 13, 2014. Thus, customers have already paid to Duke approximately \$3,145,000 for the environmental remediation of the MGP plants.

² Jt. Bond Brief Supp. at 000006. Duke Manufactured Gas Plant Tariff Filing (February 21, 2014) Residential Charge: \$1.62 per month x 60 months = \$97.20.

³ Jt. Bond Brief Supp. at 000012. Duke Manufactured Gas Plant Tariff Filing (June 13, 2014) Residential Charge: \$0.00 per month.

⁴ \$55.5 million/60 = \$925,000 per month/30 days = \$30,833 per day. More precisely, Duke has proposed a monthly MGP Rider of \$925,396 in a tariff filed with the Commission on November 27, 2013. See PUCO Case No. 12-1685-GA-AIR et al., Tariff pages PUCO Tariff No. 10 (November 27, 2013), Exhibit 1.

⁵ March 3, 2014 to May 14, 2014 is 72 days x \$30,833 per day = \$2,220,000.

IV. LAW AND ARGUMENT

A. The Appropriate Amount Of Bond To Continue to Effect the Stay Should Be Zero Or A De Minimis Amount.

Contrary to Duke's claims, the delay in collection of MGP-related investigation and remediation costs will not cause harm to Duke,⁶ and thus, Joint Appellants should not be required to post a bond. Duke has already collected approximately \$3.1 million from customers and will have the ability to collect the remaining amount (with interest) if Joint Appellants are not successful in their appeal. On the other hand, Joint Appellants' inability to post a bond is the impossibility that the Utility is counting on to get the Court to lift this Stay.⁷ The Court should not lift the Stay. Rather, when the Court revisits the issue whether a bond should be posted pursuant to R.C. 4903.16, Jt. Bond Brief Appx. at 000019, the Court should reasonably balance customers and the Utility's interests and find that the level of the bond requirement should be set at zero or a nominal amount.

The Court should recognize that the bond requirement is problematic in this case, and should not lift the Stay for that requirement or set the level at an amount that will make it impossible to satisfy. First, OCC is exempt from posting a bond. Ohio law provides for an exemption that relieves the OCC from having to post a bond -- or "execute an undertaking" as bonding is referred to in R.C. 4903.16, Jt. Bond Brief Appx. at 00019, -- 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. R.C. 2505.12, Jt. Bond Brief Appx. at 000018, provides:

⁶ Duke's Motion to Lift the Stay at 10 (May 20, 2014).

⁷ In this case, Duke's collection of \$55.5 million from its customers is the subject of this appeal. If Joint Appellants were required to post a \$55.5 million bond in order to obtain a stay, it is understood that it would cost \$832,500 for an annual premium for the bond during the first year the appeal is pending plus a pro-rated amount for increments of a year after the first year that the appeal remains pending. See footnote No. 8 (Joint Motion for Stay) (March 17, 2014).

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. R.C. 2505.12. (Emphasis added.)

According to R.C. 4911.06, Jt. Bond Brief Appx. at 000021, the Consumers' Counsel "shall be considered a state officer * * *." Joint Motion for Stay at 12-13 (March 17, 2014).

Furthermore, Ohio Civil Rules provide an exemption from a bond requirement for state government. Ohio Civ. R. 62 (C), Jt. Bond Brief Appx. at 000022, states:

Stay in favor of the government. When an appeal is taken by this state or political subdivision, or administrative agency of either, or by any officer thereof acting in his representative capacity and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

Therefore, OCC should be exempt from posting a bond.

Second, Kroger may be a large national corporation, but it is one customer taking natural gas distribution service from Duke, and its billings represent a relatively small percentage of Duke's total revenues. Therefore, it would be unfair to expect or require one customer, such as Kroger, or a group of customers to post a bond for the entire amount of any alleged damages resulting from the Stay. OPAGE, a non-profit corporation whose members are primarily Community Action agencies, does not have the resources to post anything other than a nominal bond. The OMA is also a non-profit organization that does not have such resources. The Court has not provided any insight into how a bond requirement might be administered, but the above arguments demonstrate the problematic nature of this requirement. Therefore, the Stay should not be lifted and a bond should not be required, or it should be set at a nominal level.

1. Any calculation of damages to Duke caused by the delay in collection of charges to customers for manufactured gas plant remediation costs should be limited to the financial impacts arising from the time value of money.

Assuming, arguendo that Duke could have damages from the delay in collection caused by the Stay, the calculation of Duke's claimed financial harm can be determined in two distinct time periods.⁸ The first time period is between the removal of the charge on customers' bills after the issuance of the Stay (June 13, 2014) and when this Court renders a decision (assumed June 1, 2015⁹) ("the Stay Period"). This period is directly attributable to a delay in the collection from customers of the remaining \$52.4¹⁰ million resulting from the Stay. Because Duke will collect the full \$52.4 million from customers if the appeal is unsuccessful, the alleged damages for the Stay Period would be interest (time value of money) on the delayed collection of the charges during the Stay Period. Based upon an estimated Stay Period of approximately one year, the amount of interest has been estimated to be \$160,169, which is significantly less than the \$3.1 million that Duke has already collected from customers prior to the Stay being granted and implemented. See Joint Appellants Exhibit A.

In lieu of requiring a bond to cover the estimated interest expense of \$160,169 to protect Duke from alleged harm in the event the appeal is unsuccessful, the estimated interest could be added to the MGP-related investigation and remediation expenses remaining to be collected from customers through the MGP Rider.¹¹ Under this proposal, Duke would receive interest expense

⁸ Joint Appellants' damage calculations attached hereto as Exhibit A.

⁹ This date is assumed only for the purpose of calculating pro forma calculations.

¹⁰ \$55.5 million - \$3.1 million = \$52.4 million.

¹¹ It should be noted that Duke Continued to collect the MGP Rider after May 14, 2013, until June 13, 2014. There should be no interest expenses associated with the Stay for this one-month period.

to compensate Duke for the delay in recovery, and thus, Duke's damages from the Stay would be zero, and the bond requirement should likewise be set at zero.

The second time period ("the Collection Period") involves interest that may accrue during the time period over which Duke is authorized to collect the MGP-related investigation and remediation expenses, subsequent to an unsuccessful appeal. The interest expense calculation can be determined by comparing the difference between the net present value of the stayed collection to the net present value of Duke's un-stayed collection. The difference between the net present value calculations is the interest expense required to compensate Duke for the collection delay resulting from the Stay. See Joint Appellants' Exhibit B.

Joint Appellants have calculated the difference in the net present values of two series of collections under two different amortization time period scenarios. See Joint Appellants' Exhibit B. Under the first scenario, the Collection Period is assumed to be 45 months concluding March 2019 (the original 60-month amortization period authorized by the PUCO). The accrued interest expense calculation under the first scenario results in an amount no higher than \$1,212,777. See Joint Appellants' Exhibit B.

The second scenario assumes a 57 month Collection Period which concludes March 2020 (the original 60 month amortization period authorized by the PUCO plus the 12 month Stay Period). Under the second scenario, the difference in net present value will be no greater than \$2,346,126. See Joint Appellants' Exhibit B.

The first scenario mitigates any claimed harm with respect to interest expense because Duke will have collected the full \$55.5 million in MGP-related expenses plus interest expenses associated with the Stay within the same time period the PUCO originally contemplated that

Duke's collections would be completed.¹² The second scenario mitigates the monthly costs to customers by extending the Collection Period.¹³ The extension of the Collection Period also provides the Utility additional interest expense. The additional interest is provided because Duke will have collected the full \$55.5 million in MGP-related expenses (plus interest) over a longer time period than the PUCO originally contemplated.

If the Joint Appellants' appeal is unsuccessful, the Court can order the PUCO to award collection of the MGP-related investigation and remediation costs with accrued interest to address the collection delay utilizing the mechanism described below, in Section 3 (a) of this argument. In the alternative, the Court can also maintain the Stay and instruct the Utility to deposit collections in an interest bearing trust account in lieu of requiring a bond as described below, in section 3 (b) of our argument. Under either mechanism, Duke's alleged damages would be zero and the bond amount should also be zero.

2. Duke's MGP-related collections from customers have already protected the Utility from any damages caused by the Stay.

The PUCO ordered that Duke's collection of the \$55.5 million from customers was to be amortized over 5 years or 60 months with no carrying charges. To accomplish that recovery over 60 months, Duke will collect from customers approximately \$925,000 per month.¹⁴

Accordingly, Duke has already collected approximately two months of MGP-related investigation or remediation expenses prior to the Stay being granted \$2,220,000 (from March 3, 2014 to May14, 2014), and for one month since the Stay was granted (approximately \$925,000

¹² The first scenario assumes Duke begins collecting the remaining balance of \$52,378,788 over a 45-month period at a monthly amount of \$1,163,973.

¹³ The second scenario assumes Duke begins collecting the remaining balance of \$52,378,788 over a 57-months period at a monthly amount of \$918,926.

¹⁴ \$55.5 million / 60 months = \$925,000.

from May 14, 2014 to June 13, 2014). Therefore, the total MGP-related collections to date have been approximately \$ 3,145,000,¹⁵ which exceed the maximum total accrued interest expense that Duke might experience attributable to collection delays caused by the Stay as discussed above (\$160,169 + \$2,346,126 = \$2,506,295). Therefore, given that the amount collected to date from customers exceeds the maximum amount possible of calculated claimed damages, the collections should be considered by this Court as a sufficient to forego a bond equivalent provided on behalf of Joint Appellants and the Court should not require Joint Appellants to post an additional bond.

Duke overstates its alleged damages in its Motion to Lift Stay:

In a typical rate case, the Commission approves a certain level of cost recovery and orders the regulated utility to file compliance tariffs. By the time a Commission order is issued, the utility already has suffered from regulatory lag to the extent its current rates are under recovering its costs to provide utility service. Ohio law mandates that the new rates go into immediate effect. Staying a Commission-authorized rate from going into effect without requiring an adequate bond harms the utility, **either by depriving the utility of the approved rate increase altogether** or, as in this case, delaying recovery and costing the utility the time value of money.

Duke's Motion to Lift Stay at 2 (May 20, 2014). It is disingenuous for Duke to argue that the Stay of the Commission's Order could deprive the utility of the approved rate increase (the collection of the MGP-related costs) altogether. If the appeal is unsuccessful, Duke will fully collect the unamortized balance of the MGP-related deferrals (approximately \$52.4 million). The amortization of a regulatory asset through a rider is a different rate collection mechanism from a general increase in base rates in a rate case. Duke will never be in danger of not fully collecting the \$55.5 million if the appeal is not successful. On the other hand, if the appeal is successful, absent the continued Stay, customers will be harmed because any unlawful charges collected by

¹⁵ \$2,220,000 + \$925,000 = \$3,145,000.

Duke may not be refunded. If the Stay is lifted, any further collections from customers will increase significantly.

Interestingly, after the PUCO first issued its order, Duke only needed two days to file tariffs to implement the remediation costs collection. Duke collected \$2,220,000 before the Court issued the Stay. After the Court issued the Stay, it took Duke 30 days to file tariffs stopping that collection.¹⁶ As a result, Duke has collected approximately \$925,000 from its customers after the Court issued the Stay. Because the amounts already collected exceed any alleged harm to Duke, no bond should be required.

If Joint Appellants are not successful in their appeal, the mechanisms discussed below will adequately protect Duke from any and all alleged financial harm during the pendency of the appeal.

3. **Alternative mechanisms exist that will provide Duke protection from alleged financial harm during the pendency of the appeal.**
 - a. **The Court can instruct the PUCO to implement a carrying charge mechanism to protect Duke from damages caused by the Stay and protect customers during the pendency of the appeal.**

If the Joint Appellants' appeal is successful, Duke is not entitled to collection of *any* of the MGP-related investigation and remediation expenses even though Duke has already collected \$3.1 million of the MGP-related expenses. So Duke's damages will be zero, and Duke would have received a windfall. In the event the PUCO's Opinion and Order is upheld in this case, there is a carrying charge mechanism available that would balance the parties' interests.

The importance of such protection for consumers was never more evident than in the electric security plan ("ESP") of Columbus Southern Power Company and Ohio Power Company

¹⁶ Jt. Bond Brief Supp. at 000012, Duke Manufactured Gas Plant Tariff Filing (June 13, 2014) Residential Charge: \$0.00 per month.

(collectively, “AEP”).¹⁷ In that case, this Court found that \$368 million in unjustified provider of last resort revenues collected by the utility could not be returned to customers because of prior precedent against retroactive ratemaking.¹⁸ Despite a Court decision in favor of customers, there was no ability to refund the unlawful collection due to the lack of a Stay. In essence, customers lost their money even though they won the appeal, and the utility received an unjustified windfall. Such an inequitable result demonstrates that the balance between the interests of the Utility and its customers is tilted in the utilities favor. The alternative mechanism proposed by Joint Appellants herein is to provide the Utility with reasonable interest expense during the pendency of the appeal and subsequent collection, if Joint Appellants’ appeal is unsuccessful.

In the PUCO proceeding where Duke was authorized to defer its MGP-related investigation and remediation costs (“Duke Deferral Case”), the Commission issued a Finding and Order that established Duke’s ability to accrue carrying charges on the MGP deferrals. The PUCO stated:

Duke is further authorized to accrue carrying charges on all deferred amounts between the dates the expenditures were made and the date recovery commences.¹⁹

Duke collected the authorized MGP-related costs until the Court issued the Stay. As a result of the Stay, there will now be an interim period of time during which there will be no MGP-related cost collection from customers. During such interim period of time the above PUCO Entry should serve as a blueprint for establishing a reasonable mechanism to eliminate any harm that Duke allegedly will suffer, while at the same time protecting customers. Duke could accrue

¹⁷ *In re Application of Columbus S. Power Co.*, Slip Opinion 2014-Ohio-462 at ¶ 54.

¹⁸ J. Bond Brief Appx. at 000006-7, *In re Duke Deferral Case*, PUCO Case No. 09-712-GA-AAM, Finding and Order (“November 12, 2009 Deferral Order”) at 3-4 (November 12, 2009).

¹⁹ Jt. Bond Brief Appx. at 000006, *Id.*, Finding and Order at 3.

carrying charges on the amount of MGP-Rider revenue not collected during the Stay Period until the date recovery of the authorized costs recommences as authorized by the PUCO's Finding and Order. Based on Joint Appellants' calculation the interest expense on the amount of MGP-Rider revenue not collected during the Stay Period is only approximately \$160,169.

While the PUCO disallowed carrying charges accrued by Duke in its Opinion and Order it did so for a very specific reason distinguishable from the current situation with the Court's Stay. The PUCO's November 13, 2013 Opinion and Order, Jt. Bond Brief Appx. at 000004, denied past and future carrying charges as a means for the PUCO to allocate some responsibility for the remediation of the MGP-related contamination to Duke's shareholders. The PUCO stated:

In addition, we find the intervenors' argument that the shareholders should bear some of the responsibility for the remediation costs persuasive, in that the carrying costs should not be borne by the ratepayers. The record clearly reflects that the contamination of these sites has been prevalent for many years. While we agree that federal and state laws, as well as public policy, dictate that these sites must be remediated as part of the public utility service provided by Duke, we also find that it is incumbent upon the utility to commence its investigation and remediation, and request for recovery in a timely manner, so as to minimize the ultimate rate burden on customers. **Therefore, given the circumstances presented in these cases and the decades-long contamination that necessitated these utility costs, we find it appropriate to deny Duke's request for recovery of the associated carrying charges.**²⁰

The PUCO's decision was an attempt by the PUCO to find a balance between customer and Utility cost responsibility. The PUCO's decision with regard to the denial of \$5 million in carrying charges out of a total claim of \$62.8 million served as the PUCO's effort to balance its allowance of cost recovery with its view that some cost responsibility should be borne by the Utility because of the "decades-long contamination" and Duke's delays in remediation.

²⁰ Jt. Bond Brief Appx. at 000002-3, *In re Duke Rate Case*, PUCO Case No. 12-1685-GA-AIR, et al. Opinion and Order at 60-61 (November 13, 2013)(emphasis added).

Nonetheless, the PUCO's decision to deny carrying charges is irrelevant to the Court's ability to allow some interest expense on non-collection during the pendency of the appeal resulting from the Stay in the event that the Joint Appellants' appeal is unsuccessful. The Court's use of reasonable interest expenses to address the time value of money concern alleged by Duke, as proposed herein, in the event that the Joint Appellants appeal is unsuccessful, strikes a balance between protecting the Utility and customers during the pendency of the appeal.

By contrast, any claimed harm caused by the Stay delaying the collection of MGP-related remediation costs pales in comparison to the irreparable harm to Duke's customers if MGP-related collections are allowed to continue and are later found to be unlawful and yet cannot be refunded to customers. The Utility was authorized by the PUCO to collect remediation costs from customers, and the Court, at Joint Appellants' request, has halted that collection. The Court correctly granted the Stay in order to protect customers, and that protection should not be undone by requiring an unreasonable and unattainable bond to be posted. Notwithstanding the above, in the event the appeal is unsuccessful, the reasonably calculated interest expense could be subsequently charged to customers, replacing the need for the bond as a means of protecting the Utility from alleged harm caused by the Stay.

The provisions of the November 12, 2009 Deferral Order remains in effect, and can be relied upon to eliminate any harm caused to the Utility by the Stay.²¹ That Order preserves Duke's continuing ability to seek, and the PUCO's continuing authority to grant Duke the right to accrue interest expense on the delayed collection during the pendency of the appeal.

²¹ Jt. Bond Brief Appx. at 000006-7, *In re Duke Deferral Case*, Finding and Order at 3-4 (November 12, 2009).

Utilities are adept at requesting carrying charges, calculating carrying charges and accounting for carrying charges. The calculation of interest expense for the delayed collection is analogous to a carrying charge calculation. In a recent AEP Storm Damage Deferral Case, the PUCO Opinion and Order necessitated that accounting for the calculation of carrying charges took place retroactively.²² In *AEP*, the utility filed an application (June 2012) that requested carrying charges at weighted average costs of capital if the case was not resolved by April 1, 2013.²³ The case was not so resolved. So AEP filed a Motion on August 22, 2013 asking for PUCO approval of the accounting for carrying charges associated with incremental O&M major storm costs from the 2012 major storms.²⁴ The PUCO never ruled on AEP's Motion. A Stipulation was subsequently filed on December 6, 2013 and therein, the signatory parties (including AEP) agreed to carrying charges based on the long term cost of debt from April 1, 2013 until recovery commences.²⁵ The PUCO approved the Stipulation on April 2, 2014.²⁶ The accounting and determination of carrying charges went back to April 1, 2013, once the PUCO authorization was received on April 2, 2014. Likewise in this case, if Joint Appellants' appeal is unsuccessful, then the Court can remand this case to the PUCO. The remand could provide Duke with an opportunity to account for and collect from customers reasonably accrued interest expense associated with the delayed collection in an amount necessary to prevent Duke from being harmed by the Stay during the Stay Period.

²² Jt. Bond Brief Appx. at 000015, *In the Matter of the Application of Ohio Power Company to Establish Initial Storm Damage Recovery Rider Rates*, Case No. 12-3255-EL-RDR, Opinion and Order at 32 (April 2, 2014).

²³ Jt. Bond Brief Appx. at 000012, *Id.* at 27.

²⁴ *Id.*

²⁵ Jt. Bond Brief Appx. at 000011, *Id.* at 7.

²⁶ Jt. Bond Brief Appx. at 000015, *Id.* at 32.

If the Court ultimately upholds the Stay without a bond requirement, and the appeal is unsuccessful, consumers are no worse off paying reasonably accrued interest expense than they otherwise would be. Assuming, arguendo, that Joint Appellants are unsuccessful on appeal, customers should be indifferent as to whether they pay the MGP-related charges contemporaneously or pay at a later time with an additional amount (accrued interest expense) included in their bills that compensates Duke for the time value of money resulting from the collection delay caused by the Stay. However, the added benefit for consumers, if the Stay is not lifted and the Joint Appellants win the appeal, is that Duke will not have collected an additional \$11,100,000²⁷ in unlawful charges during a year of time.

- b. In the alternative, the Court has instructed a utility to deposit collections in an interest bearing trust account to prevent the utility from being harmed and protect customers during the pendency of the appeal.**

An alternative approach to protecting customers is for the Court to maintain the stay of the PUCO order, but instruct the utility to pay into the hands of a trustee all sums collected in an interest bearing trust account during the pendency of the appeal. This Court has exercised such authority in the past to protect customers by ordering utility collections during the pendency of the appeal be deposited in an interest bearing account in a financial institution in the State of Ohio. *Office of Ohio Consumers' Counsel v. Pub. Util. Comm.* Case No. 85-390, Order (May 8, 1985).²⁸ R.C. 4903.17 provides the Court with such authority. R.C. 4903.17 states:

The supreme court, in case it stays or suspends the order or decision of the public utilities commission in any matter affecting rates, joint rates, fares, tolls, rentals,

²⁷ \$925,000 per month x 12 months = \$11,100,000.

²⁸ See also, *Columbus & Southern Ohio Electric Company v. Pub. Util. Comm.*, 10 Ohio St.3d 12 (1984); *Cincinnati Bell Tel. Co. v. Pub. Util. Comm.*, 12 Ohio St.3d 280 (1984); *Columbia Gas of Ohio, Inc. v. Pub. Util. Comm.*, 10 Ohio St.3d 114 (1984).

charges, or classifications, may also by order direct the public utility or railroad affected to pay into the hands of a trustee to be appointed by the court, to be held until the final determination of the proceeding, under such conditions as the court prescribes, all sums of money collected in excess of the sums payable if the order or decision of the commission had not been stayed or suspended.

By requiring utility collections to be deposited in an interest bearing account, customers will be protected from *Keco* in the event the appeal is successful. That is because such collections would be available for refund to customers with interest.

In this case, Duke has deferred the MGP-related investigation and remediation costs and can receive interest on the deferred balance. Interest on Duke's deferrals is analogous to depositing collections into a trust account. Therefore, such a remedy already exists so that it is not necessary for the Court to order the depositing of collections into an interest bearing trust account during the pendency of the appeal (in lieu of requiring a bond). Duke is protected in the event the appeal is unsuccessful as the utility receives the time value of money while the Stay is maintained. Conversely, customers would be made whole if the trust account alternative is required as customers would receive interest on amounts that have already been collected and the collections would be returned to customers if the appeal is successful.

4. Duke's alleged damages are unsupported and lack a basis in regulatory reality.

Duke, in its Motion to lift the Stay, has argued for an amount the Court should require for the bond. Duke stated:

For all of the reasons stated above, Duke Energy Ohio, Inc., urges the Court to lift the stay or condition the stay on a bond in the amount of \$55,523,788 plus \$357,666 per month times twelve months, for the potential time this appeal will take to complete to cover the payment of damages caused to Duke Energy Ohio by the delay in the enforcement of the Commission's Order.

Duke's Motion to Lift the Stay at 10 (May 20, 2014). Duke's calculation of damages is unsupported.

It is disingenuous for Duke to identify the full \$55.5 million in MGP-related investigation and remediation expenses plus interest as a component of Duke's damages calculation for the following reasons: First, Duke's argument ignores the fact that the Utility has already collected approximately three ½ months of the total unamortized balance of deferred MGP-related investigation and remediation expenses. This collection amounts to approximately \$3.1 million. Thus, under any circumstances, only a maximum of \$52.4 million in MGP-related costs remain to be collected from customers.²⁹

Second, the approved MGP balance of \$55,523,788 (less the \$3.1 million already collected) is not at risk for Duke as a result of the Stay. If the PUCO's decision is eventually upheld, the Utility will then be put in a position to begin charging customers for the entire remaining unamortized balance of the MGP-related investigation and remediation expenses (\$52.4 million). Therefore, none of the \$55.5 million should be considered by this Court in establishing a bond requirement as it is not at risk to be collected if Duke is successful in this appeal.

The next component of Duke's calculated damages is \$357,666 per month for 12 months or \$4.3 million. Duke provided no details or support for this calculation, but Joint Appellants contend this calculation has over-stated Duke's alleged time value of money interest damages. It is assumed by Joint Appellants that Duke has included a carrying charge on the entire unamortized balance, but this calculation by Duke results in an excessive damage claim that should not be entertained by this Court. See Joint Appellants' Exhibit A.

²⁹ \$55.5 million - \$2.8 million already collected = \$52.7 million yet to be collected.

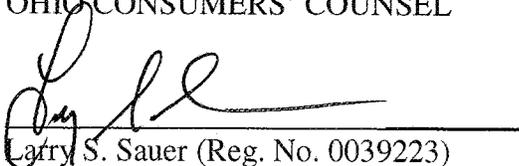
V. CONCLUSION

Joint Appellants contend that no bond is necessary as Duke will not be harmed by the Stay because Duke has already collected \$3.1 million in MGP-related remediation costs from customers which exceed Joint Appellants' calculation of the potential maximum amount of financial harm that could impact Duke as a result of the Stay. Because this amount already covers Duke's interest expense (for the time value of money), no bond is necessary. Any contention that the Utility should be provided additional compensation beyond the amount already collected could be addressed by the alternative mechanisms discussed herein. As explained herein, up until the appeal is decided Duke's alleged damages could be approximately \$160,169. If the stay is lifted, Duke could collect from customers an additional \$11,100,000³⁰ during the pendency of the appeal. In light of the relative harms to the Utility and its customers during the pendency of the appeal, the Court should not lift the Stay and should find that there is no basis to require Joint Appellants to post a bond.

³⁰ \$925,000 per month x 12 months = \$11,100,000.

Respectfully submitted,

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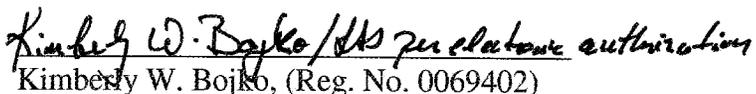
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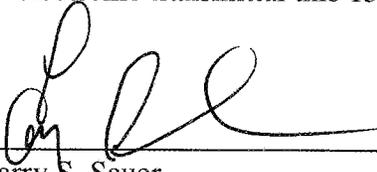
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Joint Brief and Appendix Addressing the Appropriate Amount of Bond Necessary to Continue the Stay* has been served upon the below-named persons via electronic transmittal this 13th day of August 2014.



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IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Its Natural Gas Distribution Rates.)) Case No. 2014-0328))

In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)) Appeal from the Public Utilities Commission of Ohio))

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.)) Public Utilities Commission of Ohio)) Case Nos. 12-1685-GA-AIR)) 12-1686-GA-ATA)) 12-1687-GA-ALT)) 12-1688-GA-AAM))

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.))

JOINT BOND BRIEF APPENDIX

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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 its) Case No. 12-1685-GA-AIR
Natural Gas Distribution Rates.)

In the Matter of the Application of Duke) Case No. 12-1686-GA-ATA
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In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to Change) Case No. 12-1688-GA-AAM
Accounting Methods.)

OPINION AND ORDER

The Commission, considering the above-entitled applications, the Stipulation and Recommendation, and the record in these proceedings, hereby issues its Opinion and Order in these matters.

APPEARANCES:

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circumstances presented in these cases and the decades-long contamination that necessitated these utility costs, we find it appropriate to deny Duke's request for recovery of the associated carrying charges.

With regard to the purchased parcel located to the west of the western parcel of the East End site, we find that the record does not support a recovery of the \$2,331,580 Duke is requesting be included in Rider MGP. Duke failed to prove, on the record, what, if any, of this purchased parcel was, or ever had been, used for the provision of manufactured gas or utility service for the customers of Duke or its predecessors. Rather, the record indicates that, while the nine-acre purchased parcel may have been impacted by the former MGP operations, only a small portion of the parcel may have been associated with the actual MGP property originally owned by Duke and its predecessors (Tr. II at 342). While it may be that a portion of this purchased parcel was formerly part of the MGP, Duke has failed to provide sufficient evidence on the record to distinguish the portion of the parcel that had been MGP-related from the portion that had never been related to the MGPs. Thus, when applying the requirement for recovery set forth in R.C. 4909.15(A)(4), we are not willing to entertain Duke's unsubstantiated request for recovery of costs related to property has not been shown on the record in these cases to provide, either in the past or in the present, utility services that caused the statutorily mandated environmental remediation. Moreover, the record reflects that the requested \$2,331,580 amount submitted by Duke for recovery relates to the price Duke paid to purchase the property from a third-party and not to the statutorily mandated remediation efforts. Therefore, we conclude that the requested \$2,331,580 associated with the purchase parcel on the East End site should not be included in the amount of costs to be recovered through Rider MGP approved by the Commission in this Order.

Accordingly, the Commission finds that any prudently incurred MGP investigation and remediation costs related to the East and West End sites, less costs associated with the purchased parcel on the East End site, the costs incurred in 2008 on the West End site, and all carrying costs, should, in accordance with R.C. 4909.15(A)(4), be considered costs incurred by Duke for rendering utility service and be treated as expenses incurred during the test year.

d. R.C. 4909.154 - Prudently Incurred Costs

i. Arguments by Parties

Duke witness Bednarcik asserts that the actions taken by Duke at the East and West End MGP sites were prudent and reasonable, and designed to resolve the environmental liability and mitigate future risk to the Duke, ratepayers, shareholders, and others (Duke Ex. 21A at 3). According to Ms. Bednarcik, Duke employs a number of procedures to ensure that the scope of cleanup work is appropriate and the cost reasonable. When

determining the most prudent course of action for investigation and remedial work, the witness states that Duke worked with the Ohio EPA CPs and an environmental consultant to evaluate different options based on criteria, including: compliance with environmental regulations, best practices, feasibility, constructability, safety, prior experience, and cost. Duke builds these considerations into its request for proposals (RFPs) for the larger remedial actions. Duke solicits bids from environmental/engineering consulting firms that have a proven history of working on MGP sites. The minimum number of bidders for every RFP is three; however, for the Ohio MGP sites, Duke solicited bids from at least five firms. Initially, the bids are reviewed on their technical merits, due to the complex and technical nature of the work, and not on the cost; after technical screening, costs are evaluated. Ms. Bednarcik explains that the nature of environmental work requires flexibility; thus, when issues arise, changes to the scope of work are evaluated using the same criteria used with the RFP. To ensure that these changes do not become opportunities to inflate costs, during the RFP process, the bidders must provide rate sheets stating costs, *e.g.*, on a per-foot basis, for additional scope items that typically occur on MGP sites. During the initial review of bids, the evaluation considers the cost-per-hour for the different levels of professionals working on the project, the anticipated breakdown of junior and senior personnel, mark-ups on subcontractors, and the per-unit rate for individual items, *e.g.*, per diems and construction trailers. Changes to the initial scope of work require approval of Duke. Therefore, Duke representatives are actively involved in all aspects of work and, among other things, Duke employs an on-site remediation construction manager. (Duke Ex. 21 at 20-23; Duke Ex. 21A at 41-42; Tr. I at 211-212.)

With regard to subcontractors, Ms. Bednarcik notes that the majority of them are managed by the environmental consultant. Subcontractors with larger scopes of work require the environmental consultant to solicit multiple bids and Duke must be included in the decision-making process. In addition, there are a number of subcontractors that Duke directly contracts with because of the nature of the work or preferred pricing agreements. Ms. Bednarcik states that there are limited instances where Duke awards a sole-source contract; this typically happens only if a specialty contractor is needed, *e.g.*, the vibration monitoring contract for the East End site. Ms. Bednarcik went on to describe, in detail, the specific steps taken on both the East and West End sites to ensure the reasonableness of costs. (Duke Ex. 21 at 23-28.)

Moreover, Duke witness Bednarcik submits that Duke participates in a number of utility groups that share best practices and remedial strategies and in national conferences on the investigation and remediation of MGP sites. For example, she notes that the MGP Consortium, whose other members include 28 utilities, including Columbia and FirstEnergy, meets three times a year to discuss case studies on the remediation of MGP sites. (Duke Ex. 21 at 28.) Ms. Bednarcik also mentions that she is aware of a few municipalities that own MGP sites and that participate in MGP groups to share information, *e.g.*, the North Carolina MGP group (Tr. I at 261). In addition, she states that

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Authority to) Case No. 09-712-GA-AAM
Defer Environmental Investigation and)
Remediation Costs.)

FINDING AND ORDER

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke), is a natural gas company within the meaning of Section 4905.03(A)(6), Revised Code, and, as such, is subject to the jurisdiction of the Commission.
- (2) Chapter 4905.13, Revised Code, authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts shall be kept. Pursuant to Rule 4901:1-13-01, Ohio Administrative Code (O.A.C.), the Commission has adopted the Uniform System of Accounts (USOA) for gas utilities, which were established by the Federal Energy Regulatory Commission (FERC). For Ohio regulatory purposes, the USOA is only applicable to the extent that it has been adopted by the Commission. Therefore, the Commission may modify the USOA prescribed by FERC as it applies to Ohio utilities.
- (3) On August 10, 2009, as supplemented on October 29, 2009, Duke filed an application in this proceeding, requesting authority to defer, on its books, environmental investigation and remediation costs in those situations where Duke no longer owns the site in question, or where the site is owned by Duke but is no longer used and useful in the rendition of gas service to customers. According to Duke, the majority of these environmental remediation costs are related to former manufactured gas plant (MGP) sites. The MGP sites were operated in Ohio from approximately 1850 through 1950 in order to produce commercial grade gas from the combustion of coal, oil, and other fossil fuels. Although these sites are no longer operated as MGP facilities, the remains of the subsurface structures and associated residuals, such as coal tar, scrubber wastes, chemicals, and tanks, are commonly found to remain under ground. According to Duke, these sites are still

involved in the provision of utility service as they include a propane cavern and vaporization plant, gas operations district office, substation, parking lot and office building.

In support of its application, Duke states that, pursuant to Chapter 3745-300, O.A.C., and the Federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), these environmental hazards are to be removed in accordance with the applicable state and federal standards or guidelines. Duke further explains that, as the generator of the wastes and as the owner of the property at the time of disposal (or their corporate successor), Duke has been identified as a party responsible for removing the environmental and/or public health hazard, in accordance with Chapter 3745-300, O.A.C., and/or CERCLA. Therefore, Duke requests that the Commission authorize it to revise its accounting procedures and permit the deferral of all environmental investigation and remediation costs incurred by Duke after January 1, 2008, in compliance with state and federal regulations. Duke also requests authority to recover carrying charges on the deferred balance.

- (4) On September 9, 2009, Ohio Partners for Affordable Energy (OPAE) filed a motion for admission *pro hac vice* to admit David C. Rinebolt to practice before the Commission in this proceeding. The Commission finds that OPAE's motion for admission *pro hac vice* should be granted.
- (5) In addition, on September 9, 2009, OPAE filed a motion to intervene in this matter. Likewise, on October 10, 2009, the office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene stating that Duke should only be permitted to defer expenses that it proves to be reasonable and lawful. The Commission finds that the motions to intervene filed by OPAE and OCC are reasonable and should be granted.
- (6) On September 9, 2009, OPAE filed a motion to dismiss this case. No one filed memorandum contra OPAE's motion to dismiss. In support of its motion to dismiss, OPAE submits that Duke's environmental investigation and remediation costs should not be deferred for future recovery because they are not lawfully recoverable in Duke's Ohio jurisdictional natural gas distribution rates. OPAE points out that the MGP sites identified by Duke have not existed since 1950 and Duke has made no claim that

these sites were ever included in Duke's rate base. Furthermore, OP&E argues that these sites are not currently used and useful for the provision of gas distribution service and are not part of Duke's current gas distribution rate base. Therefore, according to OP&E, there is no lawful means for Duke to recover these costs from Ohio ratepayers.

- (7) Upon consideration of OP&E's motion to dismiss, the Commission points out that deferrals do not constitute ratemaking. *See, e.g., Elyria Foundry Co. v. Pub. Util. Comm., (2007) 114 Ohio St.3d 305 (2007)*. Through this application, Duke is only requesting the authority to modify its accounting procedures to reflect the deferral of the costs related to the environmental investigation and remediation, as well as the associated carrying charges. The Commission notes that OP&E's issue addresses the possibility that Duke may request recovery of the deferred costs and carrying charges in a future rate proceeding. By considering this application, the Commission is not determining what, if any, of these costs may be appropriate for recovery in Duke's distribution rates. Therefore, the Commission finds that OP&E's motion to dismiss this case should be denied.
- (8) The Commission has reviewed the application, as well as the applicable federal and state rules and statutes, and finds that these environmental investigation and remediation costs are business costs incurred by Duke in compliance with Ohio regulations and federal statutes. Duke's request to modify its accounting procedures and to defer costs related to the environmental investigation and remediation costs described above is reasonable and should be approved. Duke should separately identify all costs to be deferred in a sub-account of Account 182, Other Regulatory Assets. Duke is further authorized to accrue carrying charges on all deferred amounts between the dates the expenditures were made and the date recovery commences. The carrying charge rate shall be determined annually based on Duke's embedded debt-only interest rate. The rate shall be exclusive of the equity component and there will be no compounding.
- (9) Since the requested authority to change Duke's accounting procedures does not result in any increase in rate or charge, the Commission approves this application without a hearing. The

recovery of the deferred amounts will be addressed in a base rate case proceeding should Duke ever seek to recover the deferrals.

It is, therefore,

ORDERED, That OP&E's motion for admission *pro hac vice* to admit David C. Rinebolt be granted. It is, further,

ORDERED, That the motions to intervene filed by OP&E and OCC be granted. It is, further,

ORDERED, That the motion to dismiss filed by OP&E be denied. It is, further,

ORDERED, That Duke be authorized to modify its accounting procedures and to defer costs related to the environmental investigation and remediation costs described above, subject to the conditions stated herein. It is, further,

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

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

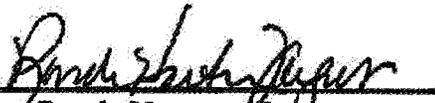
THE PUBLIC UTILITIES COMMISSION OF OHIO



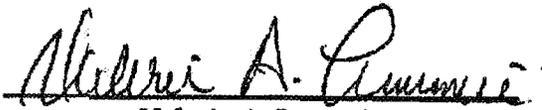
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus

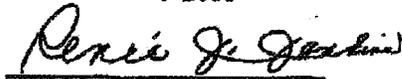


Valerie A. Lemmie

Cheryl L. Roberto

CMTJ/JR/dah

Entered in the Journal
NOV 12 2009



Renee J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company to Establish Initial Storm) Case No. 12-3255-EL-RDR
Damage Recovery Rider Rates.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Steven T. Nourse, Matthew J. Satterwhite, and Yazen Alami, American Electric Power Service Corporation, One Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Ohio Power Company.

Mike DeWine, Ohio Attorney General, by Werner L. Margard and Ryan P. O'Rourke, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Bruce J. Weston, Ohio Consumers' Counsel, by Terry L. Etter, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, and Carpenter, Lipps & Leland LLP, by Kimberly W. Bojko, 280 North High Street, Suite 1300, Columbus, Ohio 43215, on behalf of the residential utility consumers of Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm, Michael L. Kurtz, and Jody Kyler Cohn, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of the Ohio Energy Group.

McNees, Wallace & Nurick LLC, by Samuel C. Randazzo, Frank P. Darr, Joseph E. Olikier, and Matthew R. Pritchard, 21 East State Street, 17th Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Taft, Stettinius & Hollister LLP, by Mark S. Yurick and Zachary D. Kravitz, 65 East State Street, Suite 1000, Columbus, Ohio 43215, on behalf of The Kroger Company.

III. Discussion

A. Summary of the Application

In its application, AEP Ohio explains that, on June 29, 2012, an intense line of severe thunderstorms caused by a weather phenomenon classified as a progressive derecho (derecho) moved through the Midwest. According to AEP Ohio, the derecho traveled over 700 miles, while producing widespread damage from wind gusts in excess of 80 miles per hour, and leaving more than 4.3 million customers without electricity throughout the impacted region, including nearly 720,000 of the Company's customers across Ohio. AEP Ohio notes that other severe weather conditions, including subsequent storms and a prolonged heat wave, aggravated the impact of the derecho, which continued through July 10, 2012. AEP Ohio emphasizes that the derecho caused tremendous damage to the Company's facilities, which necessitated 14 full-service staging sites for more than 6,000 individuals involved in the restoration efforts from within the Company, as well as its fellow operating companies and numerous other investor-owned utilities. AEP Ohio explains that the damage from the derecho was so severe that Governor John Kasich declared a state of emergency in Ohio. (Co. Ex. 1 at 5-9, Ex. B.) In addition to the derecho, AEP Ohio states that two additional major storms, occurring on July 18, 2012, and July 26, 2012, resulted in further damage to the Company's distribution system, causing service interruptions for nearly 56,500 and 51,800 customers, respectively (Co. Ex. 1 at 11-12, Ex. C).

AEP Ohio notes that, in the *ESP Case*, the Commission approved the Company's proposal to defer incremental distribution expenses that exceed \$5 million annually and are related to major events as defined by Ohio Adm.Code Chapter 4901:1-10. AEP Ohio explains that it seeks to recover a total of \$61.8 million in incremental distribution expenses associated with the derecho and the two major storm events that occurred in July 2012. AEP Ohio adds that its proposed recovery incorporates the deduction of the \$5 million threshold, and excludes transmission-related expenses and capital investments related to the major storm events. AEP Ohio states that its proposed initial SDRR rates are based on a percentage of base distribution revenues designed to collect the incremental storm expenses over a 12-month period. AEP Ohio further states that, if the Commission elects to extend recovery beyond a 12-month period, or cost recovery does not commence by April 1, 2013, the Company requests approval of a carrying charge at the WACC rate, effective April 1, 2013. (Co. Ex. 1 at 1, 14-16, 17.)

On March 1, 2013, AEP Ohio filed corrections to its application, reflecting revised incremental storm-related distribution expenses of \$61 million requested for recovery. The expenses may be summarized as follows:

reflected for recovery in the stipulation is reasonable and should be approved by the Commission as a compromise by all signatory parties.

- (b) Recovery shall be over a 12-month period. AEP Ohio will be entitled to recovery of a carrying charge on the amount of \$54,871,799, based on the long-term cost of debt rate of 5.34 percent.³ The calculation of the carrying charge shall be figured to begin on April 1, 2013, through the start of collection of the \$54,871,799 outlined in the stipulation.
- (c) In accordance with Staff's recommendation filed on May 29, 2013, AEP Ohio will file tariffs that collect the storm costs on a fixed charge per month. AEP Ohio will set the recovery up similar to the recovery approved by the Commission with respect to the Company's gridSMART rider in Case No. 10-164-EL-RDR. The signatory parties agree that the exhibits attached to the stipulation outline the expected recovery of the costs and carrying charges, assuming collection to begin with the January 2014 billing cycle.
- (d) AEP Ohio will set up a meeting to discuss storm restoration practices with the signatory parties. The goal will be to provide a deeper understanding of the issues faced in major storm restoration and the resources available to address those efforts.
- (e) As a result of continued review of its records, AEP Ohio secured \$129,549 in refunds for services related to the major storms at issue in this proceeding. Those refunds are reflected as a deduction in the final amount of O&M storm

³ IEU-Ohio, OEG, Kroger, and OMAEG neither support nor oppose the inclusion of the provision authorizing the carrying charge.

In reply, AEP Ohio argues that the appreciation shown by the Company to storm responders and communities in other states is justified as a means to publicly thank them for assisting in the power restoration efforts and to ensure that they will assist again in the future. With respect to the baseball caps, AEP Ohio notes that the associated costs were legitimately incurred to express gratitude for extraordinary efforts, although the Company agreed in its testimony, in response to the parties' concerns, not to include the costs in its litigation position. In any event, AEP Ohio notes that the stipulation includes a reduction of \$6 million. (Co. Ex. 3 at 14-16; Co. Reply Br. at 29-30.)

Although the Commission agrees with AEP Ohio that it was not inappropriate to express appreciation to the other utilities and outside contractors that contributed to the major storm restoration efforts in 2012, we find that the costs associated with the newspaper advertisements and baseball caps were predominantly promotional or institutional in nature and, therefore, are not a direct, primary benefit to the Company's customers. In the absence of a direct, primary benefit to customers, the costs may not be recovered through the SDRR. *In re Columbia Gas of Ohio, Inc.*, Case No. 88-716-GA-AIR, et al., Opinion and Order (Oct. 17, 1989), citing *Cleveland v. Pub. Util. Comm.*, 63 Ohio St.2d 62, 406 N.E.2d 1370 (1980). However, OCC's total recommended advertising adjustment of \$406,010 is more than offset by the stipulation's proposed \$6 million reduction.

b. Carrying Charges

OCC argues that the carrying charges that AEP Ohio would collect from customers pursuant to the stipulation would be unreasonable. OCC maintains that the Commission did not authorize AEP Ohio to collect carrying charges in the *ESP Case*, or rule on the Company's motion to record carrying costs, which was filed in this proceeding on August 22, 2013. OCC also reiterates its arguments raised with respect to the second part of the Commission's three-part test, and emphasizes that many of the signatory parties do not support the carrying charge provision. OCC concludes that the carrying charge provision is in violation of the regulatory principle requiring that rates for electric service be reasonable and prudent. (Jt. Ex. 1 at 4; Co. Ex. 1 at 17; Co. Ex. 2 at 8; Co. Ex. 3 at 22; OCC Ex. 2C at 12; Tr. III at 345; OCC Br. at 31-38.)

AEP Ohio points out that, in the application, the Company requested authority to implement a carrying charge at the WACC rate, if the case was not resolved by April 1, 2013, and that, subsequently, on August 22, 2013, the Company filed a motion to record its carrying costs. AEP Ohio notes that some of the parties generally opposed the proposed carrying charge, while Staff specifically objected to the WACC rate. AEP

Ohio argues that the carrying charge provision in the stipulation, therefore, represents a *significant compromise among the signatory parties, given that the Company conceded to the lower long-term debt rate and agreed to forgo the carrying charge once collection of the storm expenses begins, for a total savings to customers in excess of \$5.8 million. Although some of the signatory parties do not support the carrying charge provision in the stipulation, AEP Ohio emphasizes that these parties agreed not to oppose the implementation of a carrying charge, as part of the overall settlement package presented to the Commission. (Co. Ex. 1 at 17; Co. Ex. 2 at 7-8; Co. Ex. 4; Co. Br. at 13-14; Co. Reply Br. at 4-7.)*

As discussed above with respect to the second part of the three-part test, the Commission has, in prior cases, authorized a utility's collection of carrying charges, as a means to compensate the utility for carrying an outstanding balance on its books. *See, e.g., In re Columbus Southern Power Company and Ohio Power Company, Case No. 08-1202-EL-UNC, Finding and Order (Dec. 17, 2008); In re Columbus Southern Power Company and Ohio Power Company, Case No. 08-1301-EL-AAM, Finding and Order (Dec. 19, 2008); Duke Case, Opinion and Order (Jan. 11, 2011); In re Ohio Power Company and Columbus Southern Power Company, Case No. 10-2929-EL-UNC, Opinion and Order (July 2, 2012).* Accordingly, we find that the carrying charge provision in the stipulation does not violate any important regulatory principle or practice.

c. Cost Allocation

OCC asserts that the cost allocator contained in the stipulation, which would assign AEP Ohio's storm costs on the basis of distribution revenue, is unreasonable. OCC claims that this type of allocation, although simple in nature, does not reflect cost causation and would result in residential customers paying relatively more of the storm costs. Specifically, OCC contends that using distribution revenue as the allocator means that part of the allocation will be based on the customer charge assessed for costs like meter reading and billing, which OCC believes is an inappropriate basis for allocating storm costs. Next, OCC points out that using distribution revenue as the allocator will cause the highest percentage of storm costs to be paid by residential and other small usage customers, despite the fact that such customers have low priority for service restoration. Finally, OCC notes that the purpose of storm restoration is to reinstate the energy commodity for customers. For these reasons, OCC argues that a simple energy allocator should be used to allocate AEP Ohio's storm costs, which would result in approximately 43 percent of the storm costs being allocated to the residential class. (OCC Ex. 2C at 52-54; OCC Br. at 38-39.)

IEU-Ohio responds that OCC fails to demonstrate that the stipulation's proposed revenue allocation violates a significant ratemaking principle. IEU-Ohio asserts that,

e. *Adjustment from LTFR Case*

According to OCC, the Commission should reduce the amount AEP Ohio will collect through the SDRR by an additional \$20 million, consistent with its Opinion and Order in the *LTFR Case*. OCC emphasizes that the \$20 million reduction should be in addition to the \$17.9 million in recommended reductions for unreasonable and imprudent costs. (OCC Ex. 2C at 55-56; OCC Br. at 39-41.) AEP Ohio responds that OCC misunderstands the *LTFR Case* and improperly treats the \$20 million as a requirement that must be applied in this proceeding (Co. Reply Br. at 7-9).

As discussed above, the Commission finds no merit in OCC's argument, which is based on a flawed reading of the *LTFR Case*. Again, in the *LTFR Case*, the Commission required that, if AEP Ohio was not able to invest the \$20 million in Turning Point or a similar project by the end of 2013, the Company should propose another appropriate use for the \$20 million investment. The Commission mentioned an offset to major storm damage costs as one potential option. *LTFR Case*, Opinion and Order (Jan. 9, 2013) at 28. Subsequently, AEP Ohio offered a proposal to apply the \$20 million in its pending gridSMART proceeding, Case No. 13-1939-EL-RDR, which will be addressed by the Commission in that case.

f. *Commission Decision*

In sum, the Commission finds that the expenses associated with AEP Ohio's newspaper advertisements and baseball caps, for a total amount of \$406,010, constitute institutional or promotional advertising costs that should not be recovered from ratepayers. However, the stipulation's recommended \$6 million reduction more than offsets these advertising costs. We, thus, find no merit in OCC's contentions that the stipulation is contrary to the requirement in R.C. 4905.22 that AEP Ohio's charges be just and reasonable, or our directive in the *ESP Case* that the Company may collect only reasonable and prudent major storm costs through the SDRR. The record supports the signatory parties' agreement that the stipulation reflects a reasonable level of cost recovery that should be approved. Additionally, for the reasons set forth above, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

IV. *Conclusion*

Upon consideration of the record in this proceeding, the Commission finds that the stipulation entered into by the signatory parties is reasonable and should be adopted. Accordingly, we further find that AEP Ohio's application to establish initial SDRR rates, as filed on December 21, 2012, and revised on March 1, 2013, should be

approved and modified, consistent with the terms of the stipulation and this Opinion and Order. As a final matter, in light of our adoption of the stipulation, which includes a provision addressing carrying charges, we find that AEP Ohio's motion to record its carrying costs is moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AEP Ohio is a public utility as defined in R.C. 4905.02 and an electric utility as defined in R.C. 4928.01(A)(11), and, as such, is subject to the jurisdiction of this Commission.
- (2) On December 21, 2012, AEP Ohio filed an application to establish initial SDRR rates, which was subsequently revised on March 1, 2013.
- (3) On June 13, 2013, motions to intervene filed by OCC, OEG, Kroger, IEU-Ohio, OMAEG, and OHA were granted.
- (4) On December 6, 2013, a stipulation was filed by AEP Ohio, Staff, OEG, Kroger, IEU-Ohio, OMAEG, and OHA, which was intended to resolve all of the issues in this case.
- (5) The hearing on this matter was called on December 16, 2013, and continued to January 22, 2014. The hearing concluded on January 27, 2014.
- (6) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (7) AEP Ohio should be authorized to implement new SDRR rates, consistent with the stipulation and this Opinion and Order.

ORDER:

It is, therefore,

ORDERED, That OCC's and AEP Ohio's motions for protective order be granted for a period of 18 months from the date of this Opinion and Order. It is, further,

ORDERED, That the stipulation of the signatory parties be adopted and approved. It is, further,

The Supreme Court of Ohio

Columbus

1985 TERM

To wit: May 8, 1985

Office of Consumers' Counsel, :
Appellant, :

Case No. 85-390

v. :

O R D E R

Public Utilities Commission :
of Ohio, :
Appellee. :

This cause is pending before the Court on an appeal from the Public Utilities Commission of Ohio, and upon consideration of the application for stay of the Commission Order dated November 20, 1984 filed by the appellant pursuant to R.C. 4903.16,

IT IS ORDERED by the Court that said application be, and the same is hereby, granted subject to the provisions stated hereinbelow.

IT IS FURTHER ORDERED that collections, to date, and future collections of post in-service allowance for funds used during construction (AFUDC) be deposited in an Interest Bearing Account in a financial institution in the State of Ohio.

IT IS FURTHER ORDERED that, pursuant to R.C. 4903.17, James Wm. Kelly, Clerk of the Supreme Court of Ohio, be appointed Trustee of said Interest Bearing Account which he shall establish upon receipt of the first monies from the Cincinnati Gas and Electric Company and which he shall thenceforth supervise.

IT IS FURTHER ORDERED that monies representing post in-service AFUDC collected, to date, and future collections be deposited as directed by the Trustee.

IT IS FURTHER ORDERED that the Trustee shall, at regular intervals, file with this Court a report reflecting certain financial information on said Interest Bearing Account.

IT IS FURTHER ORDERED that the Trustee may require the Cincinnati Gas and Electric Company to keep records in a specified manner sufficient to show to whom the amounts are being charged or from whom amounts are being received.

IT IS FURTHER ORDERED that the Trustee be empowered to secure the advice and assistance of independent experts in the performance of certain duties.

IT IS FURTHER ORDERED that any fee, charge, expense or cost incurred as a result of the existence of said Interest Bearing Account shall be paid in such manner as further directed by the Court.

IT IS FURTHER ORDERED that said Interest Bearing Account shall continue to exist until final determination of this cause or until otherwise ordered by the Court.

Frank D. Celebrezze

FRANK D. CELEBREZZE
Chief Justice

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 8th day of May, 1985.

JAMES WM. KELLY

CLERK

Sam J. Garrison

DEPUTY

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.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 07-11-2001

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

4903.17 Order in case of stay.

The supreme court, in case it stays or suspends the order or decision of the public utilities commission in any matter affecting rates, joint rates, fares, tolls, rentals, charges, or classifications, may also by order direct the public utility or railroad affected to pay into the hands of a trustee to be appointed by the court, to be held until the final determination of the proceeding, under such conditions as the court prescribes, all sums of money collected in excess of the sums payable if the order or decision of the commission had not been stayed or suspended.

Effective Date: 10-01-1953

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

RULE 62. Stay of Proceedings to Enforce a Judgment

(A) Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of any judgment or stay any proceedings to enforce judgment pending the disposition of a motion for a new trial, or a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment notwithstanding the verdict made pursuant to Rule 50.

(B) Stay upon appeal. When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(C) Stay in favor of the government. When an appeal is taken by this state or political subdivision, or administrative agency of either, or by any officer thereof acting in his representative capacity and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

(D) Power of appellate court not limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(E) Stay of judgment as to multiple claims or multiple parties. When a court has ordered a final judgment under the conditions stated in Rule 54(B), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

[Effective: July 1, 1970.]

**OCC Exhibit A:
Estimated Interest Expenses for Delay In the Collection of the MGP Rider**

| Month | Date* | Estimated Monthly MGP Rider Revenue Not Collected During the Stay** | Beginning Balance of Delayed Collection | Monthly Average Delayed Collection Balance | Monthly Interest Expense on Average Delayed Collection*** | Ending Balance of Delayed Collection |
|--------------|--------|---|---|--|---|--------------------------------------|
| (1) | (2) | (3) | (4) | (5) = ((3) + (4)) / 2 | (6) = (5) * 0.004433 | (7) = (3) + (4) + (6) |
| 1 | Jul-14 | \$918,926 | \$0 | \$459,463 | \$2,037 | \$920,963 |
| 2 | Aug-14 | \$918,926 | \$920,963 | \$919,944 | \$4,078 | \$1,843,967 |
| 3 | Sep-14 | \$918,926 | \$1,843,967 | \$1,381,446 | \$6,124 | \$2,769,017 |
| 4 | Oct-14 | \$918,926 | \$2,769,017 | \$1,843,971 | \$8,174 | \$3,696,117 |
| 5 | Nov-14 | \$918,926 | \$3,696,117 | \$2,307,522 | \$10,229 | \$4,625,272 |
| 6 | Dec-14 | \$918,926 | \$4,625,272 | \$2,772,099 | \$12,289 | \$5,556,487 |
| 7 | Jan-15 | \$918,926 | \$5,556,487 | \$3,237,707 | \$14,353 | \$6,489,766 |
| 8 | Feb-15 | \$918,926 | \$6,489,766 | \$3,704,346 | \$16,421 | \$7,425,113 |
| 9 | Mar-15 | \$918,926 | \$7,425,113 | \$4,172,020 | \$18,495 | \$8,362,534 |
| 10 | Apr-15 | \$918,926 | \$8,362,534 | \$4,640,730 | \$20,572 | \$9,302,032 |
| 11 | May-15 | \$918,926 | \$9,302,032 | \$5,110,479 | \$22,655 | \$10,243,613 |
| 12 | Jun-15 | \$918,926 | \$10,243,613 | \$5,581,269 | \$24,742 | \$11,187,281 |
| Total | | \$11,027,112 | | | \$160,169 | \$11,187,281 |

Notes:

* : Assuming the Supreme Court of Ohio will decide the MGPR case by June 2015.

** : The monthly MGPR collection is calculated by dividing the remaining MGP Expenses Balance of \$52,378,788 (\$55,523,788 - \$3,145,000) by expected future collection period of 57 months. See PUCO Case No. 12-1685-GA-AIR et al., Tariff pages PUCO Tariff No. 10 (November 27, 2013), Exhibit 1.

*** : The monthly interest expenses calculated by applying a monthly interest rate of 0.4433% to the monthly average delayed collection balance.

OCC Exhibit B: Net Present Value Analysis of Delayed Collection of MGP Rider

| Month | Date* | No Delayed Collection of MGP Rider (57 month) | MGP Collection Delayed But No Extension (57 months) | MGP Collection Delayed and Extended by 12 months (69 months) Monthly Collection*** |
|-------|--------|---|---|---|
| | | Monthly Collection | Monthly Collection** | Monthly Collection*** |
| 1 | Jul-14 | \$925,396 | \$368,784 | \$368,784 |
| 2 | Aug-14 | \$925,396 | \$0 | \$0 |
| 3 | Sep-14 | \$925,396 | \$0 | \$0 |
| 4 | Oct-14 | \$925,396 | \$0 | \$0 |
| 5 | Nov-14 | \$925,396 | \$0 | \$0 |
| 6 | Dec-14 | \$925,396 | \$0 | \$0 |
| 7 | Jan-15 | \$925,396 | \$0 | \$0 |
| 8 | Feb-15 | \$925,396 | \$0 | \$0 |
| 9 | Mar-15 | \$925,396 | \$0 | \$0 |
| 10 | Apr-15 | \$925,396 | \$0 | \$0 |
| 11 | May-15 | \$925,396 | \$0 | \$0 |
| 12 | Jun-15 | \$925,396 | \$0 | \$0 |
| 13 | Jul-15 | \$925,396 | \$1,163,973 | \$918,926 |
| 14 | Aug-15 | \$925,396 | \$1,163,973 | \$918,926 |
| 15 | Sep-15 | \$925,396 | \$1,163,973 | \$918,926 |
| 16 | Oct-15 | \$925,396 | \$1,163,973 | \$918,926 |
| 17 | Nov-15 | \$925,396 | \$1,163,973 | \$918,926 |
| 18 | Dec-15 | \$925,396 | \$1,163,973 | \$918,926 |
| 19 | Jan-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 20 | Feb-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 21 | Mar-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 22 | Apr-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 23 | May-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 24 | Jun-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 25 | Jul-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 26 | Aug-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 27 | Sep-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 28 | Oct-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 29 | Nov-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 30 | Dec-16 | \$925,396 | \$1,163,973 | \$918,926 |
| 31 | Jan-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 32 | Feb-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 33 | Mar-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 34 | Apr-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 35 | May-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 36 | Jun-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 37 | Jul-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 38 | Aug-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 39 | Sep-17 | \$925,396 | \$1,163,973 | \$918,926 |

| | | | | |
|--|--------|---------------------|---------------------|---------------------|
| 40 | Oct-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 41 | Nov-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 42 | Dec-17 | \$925,396 | \$1,163,973 | \$918,926 |
| 43 | Jan-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 44 | Feb-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 45 | Mar-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 46 | Apr-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 47 | May-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 48 | Jun-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 49 | Jul-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 50 | Aug-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 51 | Sep-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 52 | Oct-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 53 | Nov-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 54 | Dec-18 | \$925,396 | \$1,163,973 | \$918,926 |
| 55 | Jan-19 | \$925,396 | \$1,163,973 | \$918,926 |
| 56 | Feb-19 | \$925,396 | \$1,163,973 | \$918,926 |
| 57 | Mar-19 | \$925,396 | \$1,163,973 | \$918,926 |
| 58 | Apr-19 | \$0 | \$0 | \$918,926 |
| 59 | May-19 | \$0 | \$0 | \$918,926 |
| 60 | Jun-19 | \$0 | \$0 | \$918,926 |
| 61 | Jul-19 | \$0 | \$0 | \$918,926 |
| 62 | Aug-19 | \$0 | \$0 | \$918,926 |
| 63 | Sep-19 | \$0 | \$0 | \$918,926 |
| 64 | Oct-19 | \$0 | \$0 | \$918,926 |
| 65 | Nov-19 | \$0 | \$0 | \$918,926 |
| 66 | Dec-19 | \$0 | \$0 | \$918,926 |
| 67 | Jan-20 | \$0 | \$0 | \$918,926 |
| 68 | Feb-20 | \$0 | \$0 | \$918,926 |
| 69 | Mar-20 | \$0 | \$0 | \$918,926 |
| Total Collection of MGP Rider | | \$52,747,572 | \$52,747,569 | \$52,747,566 |
| Net Present Value of Total Collection**** | | \$46,520,414 | \$45,307,636 | \$44,174,287 |
| Difference in NPV | | | \$1,212,777 | \$2,346,126 |

Notes:

* : Assuming the Supreme Court of Ohio will decide the MGPR case by June 2015.

** : The monthly MGPR collection is calculated by dividing the remaining MGP Expenses Balance of \$52,378,788 (\$55,523,788 - \$3,145,000) by expected future collection period of 45 months. The \$368,727 represents the additional collection of 12 days.

*** : The monthly MGPR collection is calculated by dividing the remaining MGP Expenses Balance of \$52,378,788 (\$55,523,788 - \$3,145,000) by expected future collection period of 57 months. The \$368,727 represents the additional collection of 12 days.

**** : The discount rate used in calculating the NPV is the same as the cost of long-term debt, 5.32% per year or 0.4433% per month.