

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Adjust and Set the)
Annually Adjusted Component of its) Case No. 09-770-EL-RDR
Market-Based Standard Service Offer.)

OPINION AND ORDER

The Commission, 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

Amy B. Spiller and Elizabeth H. Watts, Duke Energy Ohio, Inc., 155 East Broad Street, 21st Floor, Columbus, Ohio 43215, on behalf of Duke Energy Ohio, Inc.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Stephen Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Ann M. Hotz and Jeffrey L. Small, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

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

OPINION:

I. Background

On October 24, 2007, in *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, et al. (03-93), the Commission issued an order, on remand, approving a the rate stabilization plan (RSP) for Duke Energy Ohio, Inc., (Duke). As part of the RSP, Duke was authorized to collect, through a rider known as the annually adjustable component (AAC), expenditures related to environmental compliance, homeland security, and taxes, to the extent that the

calculations of incremental expenditures are based on changes in costs after December 31, 2000. This AAC rider was comparable to the identically named rider that had previously been approved by the Commission in the same proceeding, prior to remand by the Supreme Court of Ohio.

On December 17, 2008, the Commission approved a stipulation in *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al. (08-920). The stipulation in 08-920 established a process in which Duke files an application to update the AAC rider, now referred to as Rider price-to-compare (PTC)-AAC, if Duke seeks to change the Rider PTC-AAC rate. Additionally, the stipulation requires Duke to request approval for the recovery of costs for cost-effective generation projects not required for environmental compliance, which would improve Duke's fuel flexibility, as part of Rider PTC-AAC.

As an initial matter, the Commission finds that the instant case, which was originally docketed as Case No. 09-770-EL-UNC, is more appropriately docketed with the RDR purpose code, as it specifically addresses riders. Accordingly, now and hereafter, Case No. 09-770-EL-UNC should be designated as Case No. 09-770-EL-RDR.

On September 1, 2009, Duke filed the current application (Duke Ex. 1). This application updates Duke's Rider PTC-AAC, which is intended to recover the net incremental costs associated with environmental compliance, changes in tax laws, and homeland security, and a fuel flexibility project, for the twelve months ending May 31, 2009.

Motions to intervene in this proceeding were filed on September 9, 2009, by Ohio Partners for Affordable Energy (OPAE) and on September 24, 2009, by the Office of the Ohio Consumers' Counsel (OCC). By entry of October 26, 2009, both motions to intervene were granted. Additionally, a motion to admit David C. Rinebolt to practice pro hac vice before the Commission, in this proceeding, was also granted on October 26, 2009.

On November 19, 2009, a Stipulation and Recommendation (Stipulation) entered into by Duke, the Staff of the Commission, OCC, and OPAE was filed in this proceeding (Joint Ex. 1). By entry of September 18, 2009, a hearing was scheduled for November 24, 2009. The hearing was held, as scheduled, at the offices of the Commission. At the hearing, Duke provided testimony in support of the Stipulation.

II. Application and Testimony in Support of the Application

In the application, Duke explains that it is engaged in the business of supplying electric transmission, distribution, and generation service to approximately 680,000 consumers in eight counties in southwestern Ohio. In addition, Duke supplies electric transmission and distribution service to approximately 10,000 customers who receive

generation service from competitive retail electric service providers. Through the application, Duke seeks to establish a new price for Rider PTC-AAC, which is an avoidable generation charge, and includes in its application the schedules supporting the calculation of what Duke believes are the necessary changes to Rider PTC-AAC. (Duke Ex. 1 at 1-2; Duke Ex. 2 at 12.)

A total revenue requirement of \$156,740,871 is sought in the application. The total revenue requirement is comprised of \$162,312,991 for costs associated with environmental compliance, \$60,952 for costs associated with homeland security, (\$5,721,189) in savings associated with changes in tax laws, and \$88,117 in costs associated with fuel diversity (Duke Ex. 1 at Sch. 1.) Duke's witness Robert Parsons explains that the methodology for calculating the environmental compliance costs, changes in taxation costs, homeland security costs, and fuel diversity costs involves a comparison of the costs for the twelve months ending May 31, 2009, to the costs for the year ending December 31, 2000. According to Mr. Parsons, all four components of Rider PTC-AAC are incremental to their costs for the year ending December 31, 2000. (Duke Ex. 2 at 5-8.)

Mr. Parsons explains that, as part of the application, Duke did not seek to recover environmental reagent costs, previously recovered as part of Rider AAC. Instead, the witness states that Duke believes that a better method for recovering environmental reagent costs would be through the fuel and purchased power rider (Rider PTC-FPP). According to Duke's witness Parsons, Rider PTC-FPP is filed quarterly and contains estimates that are reconciled on a more timely basis than the annual Rider PTC-AAC process. Mr. Parsons additionally asserts that there is a direct nexus between the quantity of environmental reagents used and the quantity of electricity generated; therefore, it follows that the cost of the environmental reagents should be recovered in the same manner as fuel costs. (Duke Ex. 2 at 14.)

Duke's witness Parsons further indicates that, in this application, Duke proposes calculating Rider PTC-AAC as a function of Duke's system reliability adjustment rider for the capacity deduction (Rider SRA-CD) instead of as a function of "little g." The witness explains that, traditionally, Rider PTC-AAC has been calculated as a function of "little g"; however, he notes that, as Duke's electric security plan has changed, computing "little g" has become more complicated. Therefore, Duke suggests that calculating the Rider PTC-AAC price based on a ratio of the Rider PTC-AAC revenue requirement to Rider SRA-CD revenue will produce exactly the same result as if the calculation was based on an imputed total "little g" revenue, and will eliminate the need to derive an estimate of revenue to define "little g." (Duke Ex. 2 at 4-5.)

III. Stipulation

A Stipulation signed by Duke, Staff, OCC, and OPAE, was submitted on the record, at the hearing held on November 24, 2009 (Jt. Ex. 1). The Stipulation was intended by the

signatory parties to resolve all outstanding issues in this proceeding. The Stipulation includes, *inter alia*, the following provisions:

- (1) Duke shall recover net incremental costs associated with environmental compliance, homeland security, changes in tax law, and fuel flexibility projects through Rider PTC-AAC.
- (2) The total revenue requirement for Rider PTC-AAC, excluding environmental reagents, is \$156,740,871. Duke shall adjust and set the rate of Rider PTC-AAC consistent with this total revenue requirement, effective with the January 2010 revenue month.
- (3) Duke shall implement Rider PTC-AAC consistent with the tariff sheets set forth as Stipulation Attachment 2.
- (4) Rider PTC-AAC revenues shall be determined with reference to Rider SRA-CD, with Rider PTC-AAC revenues being calculated as a percentage of Rider SRA-CD revenues. The Rider PTC-AAC calculations for each customer class are set forth in Stipulation Attachment 3.
- (5) Effective with the January 2010 revenue month, Rider PTC-AAC shall no longer be used to recover budgeted costs incurred by Duke for environmental reagents. Rather, the parties to the Stipulation agree that the prospective environmental reagent costs related to Duke's standard service offer customers shall be recovered through Duke's Rider PTC-FPP. The environmental reagent costs recovered through Rider PTC-FPP shall be equivalent to the amount that would have been recovered had environmental reagent costs remained in Rider PTC-AAC. Prospective environmental reagent costs are those costs incurred beginning January 1, 2010, and continuing thereafter. Duke will true-up projected versus actual environmental reagent expenses for 2009 pursuant to a filing to be made no later than March 1, 2010, for reconciliation during the period of April through December 2010. The true-up will be subject to due process, including an opportunity for hearing and Commission approval.
- (6) For future Rider PTC-AAC filings, there will be no true-up provision, as all components of the Rider PTC-AAC revenue

requirement will be based on actual data and not forecasted data. (Jt. Ex. 1 at 5-6.)

IV. Consideration of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, 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.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) 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.* (1994), 68 Ohio St.3d 559 (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.*)

Duke's witness Parsons testified that a settlement conference was held at the offices of the Commission on October 27, 2009, and follow up discussions occurred via email. Additionally, according to Mr. Parsons, all of the issues raised by parties in the proceeding were addressed during settlement discussions and all parties had an opportunity to participate in the settlement process and were represented by experienced, competent counsel. Moreover, Mr. Parsons also testified that the Stipulation benefited consumers and the public interest by allowing for timely implementation of the updated Rider PTC-

ACC, allowing for recovery of environmental reagent costs as part of Rider PTC-FPP for more timely recovery, and allowing for the recovery of costs associated with fuel flexibility. (Duke Ex. 5 at 3-4.)

In this case, the Commission finds that the Stipulation is supported by adequate data and information. In addition, the Stipulation represents a just and reasonable resolution of the issues raised in this proceeding and violates no regulatory principle or precedent. Further, we find that the Stipulation is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the parties representing a wide range of interests, including the Staff, to resolve the aforementioned issues. Accordingly, the Stipulation should be adopted in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) 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) On September 1, 2009, Duke filed an application to establish a new price for its Rider PTC-AAC.
- (3) OCC and OPAE were granted intervention in this proceeding.
- (4) On November 19, 2009, Duke, Staff, OCC, and OPAE filed a Stipulation that purports to resolve all of the issues in this proceeding.
- (5) The evidentiary hearing was held on November 24, 2009.
- (6) At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No one opposed the Stipulation.
- (7) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (8) Duke should be authorized to implement the new rates for Rider PTC-AAC consistent with the Stipulation and this order.

ORDER

It is, therefore,

ORDERED, That Case No. 09-770-EL-UNC be now and hereafter designated as Case No. 09-770-EL-RDR. It is, further,

ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is, further,

ORDERED, That Duke take all necessary steps to carry out the terms of the Stipulation and this order. It is, further,

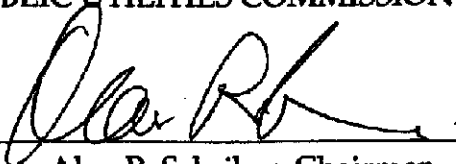
ORDERED, That Duke be authorized to file in final form four complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page. Duke shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) 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,

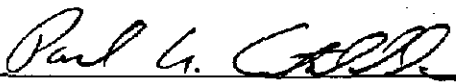
ORDERED, The effective date of the new rates for Rider PTC-AAC shall be a date not earlier than the date upon which four complete, printed copies of the final tariff page is filed with the Commission or the first billing cycle of January, whichever is later. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the 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 opinion and order be served upon all parties of record.

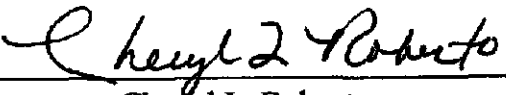
THE PUBLIC UTILITIES COMMISSION OF OHIO


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Entered in the Journal
DEC 16 2009



Renee J. Jenkins
Secretary