BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio to Adjust and Set its Gas and Electric Recovery Rate for SmartGrid Deployment under Rider AU and Rider DR-IM.	)	Case No. 09-543-GE-UNC
In the Matter of the Application of Duke Energy Ohio for Tariff Approval.	)	Case No. 09-544-GE-ATA
In the Matter of the Application of Duke Energy Ohio to Change its Accounting Methods.	)	Case No. 09-545-GE-AAM

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:

Elizabeth Watts, 155 East Broad Street, Columbus, Ohio 43215, on behalf of Duke Energy Ohio.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Thomas G. Lindgren, 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 Hotz, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Duke Energy Ohio.

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

OPINION:

I. Background

Duke Energy Ohio (Duke) is an electric light company, as defined in Section 4905.03(A)(4), Revised Code; a natural gas company, as defined in Section 4905.03(A)(6), Revised Code; and a public utility under Section 4905.02, Revised Code. Duke supplies electricity and natural gas to approximately 700,000 customers in southwestern Ohio (Duke Ex. 6 at 1).

By opinion and order issued May 28, 2008, in *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Rates*, Case No. 07-589-GA-AIR, et al. (*Duke Gas Rate Case*), the Commission authorized Duke to file a deployment plan to install a SmartGrid system. The plan was to include an explanation of the costs to be recovered through Rider Advanced Utility (AU), which is the mechanism by which Duke would recover the costs related to the deployment of gas SmartGrid. Additionally, by opinion and order issued December 17, 2008, 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. (*Duke ESP Case*), the Commission approved a stipulation that, *inter alia*, permitted Duke to establish Rider Distribution Reliability - Infrastructure Maintenance (DR-IM), to recover costs associated with the deployment of SmartGrid technologies. Rider DR-IM was initially set at $0.00. The Commission's opinion in the *Duke ESP Case* contemplated periodic filings of applications and adjustments of the rate for Rider DR-IM.

On June 30, 2009, Duke filed its application in the instant case, which seeks to adjust and set a gas and electric recovery rate for Duke's SmartGrid deployment. Along with its application, Duke filed the direct testimony of three witnesses, Todd Arnold (Duke Ex. 1), William Don Wathen, Jr. (Duke Ex. 2), and Donald H. Denton, III (Duke Ex. 3). Duke also filed a motion for protective order to protect the confidentiality of the exhibit attached to the direct testimony of Mr. Denton. On August 19, 2009, the attorney examiner issued an entry granting Duke's motion for protective order and setting a procedural schedule. The procedural schedule, among other things, set a September 16, 2009, intervention deadline, set deadlines for the filing of comments and reply comments, and scheduled a November 16, 2009, hearing date, if necessary.

Several parties requested intervention in the matter. By entry issued October 15, 2009, the attorney examiner granted the motions to intervene of the office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), and the Kroger Company (Kroger). The attorney examiner also granted OPAE's motion for admission *pro hac vice* of David Rinebolt.

OCC, Kroger, and Commission Staff (Staff) filed comments raising issues regarding Duke's application on October 8, 2009. Reply comments were subsequently filed by Duke and OCC. On October 27, 2009, Duke filed a motion to extend the procedural schedule, specifically requesting an extension of the dates on which Staff and intervenor testimony would be due, as well as the date on which Duke's supplemental testimony would be due. The attorney examiner issued an entry on October 29, 2009, extending the procedural schedule accordingly.

On November 2, 2009, Staff filed the testimony of its witnesses, Peter Baker (Staff Ex. 2), Stephen Puican (Staff Ex. 3), L'Nard Tufts (Staff Ex. 4), and Gregory Scheck (Staff Ex. 5). On November 6, 2009, Duke filed a motion for extension of time and request for expedited ruling, seeking an extension of time to file its supplemental testimony. Duke's motion was granted on November 9, 2009.

On November 13, 2009, Duke filed a motion for a cancellation or continuation of the hearing and a request for expedited ruling. Duke's motion to continue was granted on November 16, 2009, and the parties were directed to file either a stipulation signed by all or some of the parties, a statement that no stipulation would be signed and that the hearing should go forward on Friday, November 20, 2009, or a motion to continue the hearing by November 19, 2009. On November 19, 2009, Duke filed the supplemental testimony of William Don Wathen, Jr., as well as a stipulation and recommendation (stipulation or Joint Ex. 1) signed by Duke, Staff, OPAE, and Kroger. OCC also filed a letter indicating that it would not oppose the stipulation on November 19, 2009.

A hearing in these cases took place on November 20, 2009. Duke witness Wathen testified in support of the stipulation at the hearing. On December 1, 2009, Duke filed two late-filed exhibits. The first, Joint Ex. 3, presented a complete list of Staff's recommendations in the proceedings, which indicated the items that were specifically addressed in the stipulation. The second late-filed exhibit, Duke Ex. 8, provided updated information about Duke's award of stimulus funds for SmartGrid implementation. Additionally, on December 1, 2009, OCC filed a letter detailing the reasons it did not sign the stipulation, but did not oppose it at hearing.

II. Summary of Application, Comments, and Testimony

In support of Duke's application to deploy SmartGrid to both its gas and electric customers, Duke witness Denton explained Duke's design and deployment plan for the proposed SmartGrid. The Design and Basis Document (DBD) attached to Mr. Denton's testimony sets forth the criteria, functional requirements, standards, and assumptions for the design of Duke's SmartGrid. According to Mr. Denton, the DBD is intended to ensure the proper implementation and integration of each new project with Duke's existing infrastructure. The witness explains that the DBD includes a section for each major component of SmartGrid, namely, telecommunications, advanced metering, distribution automation, and information technology (IT) systems. (Duke Ex. 3 at 3.)

Duke witness Arnold offers that the DBD includes two segments: the plan to complete the initial field deployment that commenced in 2008, to install and commission approximately 50,000 electric meters, 40,000 gas modules and associated communications modes; and the plan for the 2009/2010 scaled field deployment, which is referred to as Ohio Tranche 1 in the DBD. According to Mr. Arnold, there are three major components to the field deployment element for Tranche 1.0: gas and electric smart meter deployment; communications network deployment; and distribution automation deployment. (Duke Ex. 1 at 2 and Att. 1.) Duke witness Denton states that, for Ohio Tranche 1.0, which extends through the end of 2010, Duke proposes to deploy approximately 190,000 electric meters, 130,000 gas modules and associated communications networks, 16 percent of the IT, and approximately 40 percent of the planned distribution automation equipment (Duke Ex. 3 at 3).

With regard to *smart meter deployment*, Mr. Arnold explains Duke's activities related to SmartGrid deployment in 2008, stating that Duke began deploying new electric smart meters, new gas modules, associated communications devices, and the communication network for mostly residential customers (Duke Ex. 1 at 2). The witness testified that, in 2008, there were 43,418 electric meters replaced in 12 areas in Cincinnati, mostly for residential customers. Also, in 2008, Duke deployed 24,010 new Badger gas modules, which were retrofitted on legacy gas meters mostly for residential gas customers; however, in 3,535 instances, retrofitting a Badger gas module was not possible, so new gas meters were installed. Both the electric meters and the gas modules were deployed mostly in high density areas with a high percentage of inside meters. Mr. Arnold expounds that it is important to deploy the gas and electric components for the SmartGrid deployment at the same time, because most of the customers have both gas and electric service and many of their meters are in locations where it is difficult to gain access. According to the witness, deploying gas and electric components at the same time is more efficient because they only have to gain access once and it enables the elimination of the entire manual read process at the premise. Furthermore, in 2008, 2,147 communications nodes were installed, of which 2,066 were electric-only communication nodes and 81 were combination electric and gas nodes. Mr. Arnold went on to reveal that, in 2009, Duke commenced meter commissioning where the meter reading occurs through a digital communication and the bill is derived from this electronic read. With regard to electric commercial and industrial customers, Mr. Arnold explains that, with the exception of some small commercial customers, no meter equipment was deployed in 2008. In addition, approximately 1,031 commercial and industrial gas customers received new Badger gas modules. (Duke Ex. 1 at 4-7.)

As for deployment of the communications network, according to Mr. Arnold, work started in 2008. He believes that the lessons learned in the deployment of residential equipment will provide a more efficient deployment of meter equipment to commercial and industrial electric customers. Mr. Arnold represents that no distribution automation equipment was deployed in 2008. (Duke Ex. 1 at 7.)

Duke witness Wathen testified regarding the revenue requirements for Rider DR-IM and Rider AU. The witness submits that the revenue requirement for both riders include the following components: return on rate base, depreciation, property taxes, and incremental expenses. With regard to rate base, Mr. Wathen points out that, while it is calculated consistent with the traditional method used in rate cases, the order in the *Duke SSO Case* provided that post-in-service carrying charges (PISCC) would be an additional component of the rate base calculation for Rider DR-IM. Duke proposes to likewise include this component in the Rider AU revenue requirement calculation. In addition, Mr. Wathen notes that the costs for common equipment will be allocated to the gas or electric service types based on appropriate allocation factors. With regard to depreciation expense, Mr. Wathen states that it is annualized by using current accrual rates and the depreciable gross plant for each plant type as of December 31, 2008. Similarly, the property tax expense is annualized by applying the latest property tax rates to the calculated property tax valuation as of December 31, 2008. Turning to incremental expenses, Mr. Wathen asserts that only identifiable costs associated with the implementation of the SmartGrid project are included in the riders, such as IT costs, overhead costs, and any other costs directly attributed to the program. Mr. Wathen explains that the revenue requirement calculations will reflect the savings that the distribution automation and SmartGrid projects will generate as the SmartGrid project progresses; however, there are no savings reflected in this application because the project has just begun. As the project progresses, savings are expected from meter reading and other meter-reading expenses, net of any required severance costs. In addition, call center savings may be included, to the extent Duke can eliminate some labor costs in the center. Mr. Wathen also notes that additional savings that will not or cannot be included in the riders may be found from such areas as reduced line losses, minimized outage durations, and improved usage information; these types of savings will flow through to the customer via fuel savings or shorter outage durations. (Duke Ex. 2 at 2-5.)

According to Mr. Wathen, for Rider DR-IM, pursuant to the *Duke ESP Case*, 85 percent of the revenue requirement is allocable to residential customers and the remaining 15 percent is allocable to nonresidential customers. Based on this allocation, Mr. Wathen estimates that the new Rider DR-IM would result in a per bill charge of $0.48 for residential customers, which is below the $0.50 cap established in the *Duke ESP Case*, and $0.71 for nonresidential customers; all lighting customers are excluded from Rider DR-IM. (Duke Ex. 2 at 9.) Mr. Wathen explains that Duke is proposing to allocate the Rider AU revenue requirements based on the number of bills; the result is a per bill charge of $0.18 for Rider AU for all gas customers (Duke Ex. 2 at 13).

In its comments, Staff recommends adjustments to various figures in Duke's calculation of the 2008 costs for Rider AU and Rider DR-IM. Specifically, with regard to the calculation of the plant additions to be included in the revenue requirement for Rider DR-IM, Staff recommends a $47,721 reduction for Rider DR-IM because some of these costs were included in the date certain plant balances for *Duke's Electric Rate Case.* In addition, Staff does not recommend recovery of any Envision Center costs. With regard to plant additions for Rider AU, Staff submits that: the $922,427 cost for 20,759 Badger modules should be excluded because they were not installed; the $1,315,162 cost associated with the retirement and replacement of gas meters incompatible with Badger modules should be recovered through the normal ratemaking process and not through Rider AU; the $407,007 cost charged to the communications equipment account be moved to the gas meter account; the $2,226 for the installation of electric smart meters be transferred to the electric meters account; the $15,000 cost for a consultant for an extended demand-side management calculation be excluded; and the $5,849 cost for telephone equipment at the Envision Center be excluded. In addition, Staff recommends adjustments to the electric depreciation expense totaling $729 and to the gas depreciation expense totaling $1,405. For both riders, Staff recommends: the PISCC calculation use a debt rate of 6.45 percent; the deferred balances not be offset by the associated deferred taxes; and the calculations for deferred taxes on liberalized depreciation, annualized depreciation associated with additions, annualized amortization of PISCC, deferred operations and maintenance, and annualized property taxes be adjusted to reflect the changes proposed by Staff. Staff also recommends grossing up the operating income portion of the revenue requirement for Rider DR-IM to reflect the commercial activities tax. (Staff Ex. 1 at 4-9.) Also, Staff offers that no SmartGrid common costs should be allocated to the 1,354 gas-only customers through Rider AU (Staff Ex. 1 at 11). For Rider DR-IM, Staff recommends that the estimates of future benefits be used as an offset to current costs in the calculation, stating that the recognition of future benefits from the inspection of the rider allows for the timely recovery of costs, while also recognizing a future "fully used and useful" status (Staff Ex. 1 at 15).

Staff further recommends that Duke make a time differentiated rate structure for generation service available, with the minimum differentiation on peak, off-peak, and critical peak pricing (CPP), with summer and winter differentiations. Staff states that, at the outset of implementation, these rates may be designed to be revenue neutral with regard to distribution service and the tariff should be on an opt-in or voluntary basis. (Staff Ex. 1 at 16.) Likewise, OCC comments that Duke should be required to offer various dynamic rate design offerings (OCC Ex. 1 at 6).

Finally, Staff proposes that Duke be directed to conduct a study to identify any incremental costs, additional time, and impact on rider DR-IM, regarding the compiling and processing of momentary interruption data that its smart meters detect on a daily basis. Staff recommends that the results of this study be due 60 days after the Commission's order in this case. (Staff Ex. 1 at 18.)

In response to Staff's comments, Duke agrees with many of Staff's recommendations. However, while Duke agrees that all costs included in the *Duke Electric Rate Case* should be eliminated from Rider DR-IM filing, Duke believes that the amount to be excluded for electric meters is $42,578 rather than $47,721. In addition, Duke disagrees with Staff's recommendation that all costs associated with the Envision Center be excluded. Duke also argues that the costs for maintaining inventory should be allowed and gas module additions should be reduced by $732,322 rather than $922,427 as recommended by Staff. Finally, Duke disagrees with Staff's recommendation to recover the cost of replacing incompatible gas meters through the normal ratemaking process, pointing out that the meters that were replaced as incompatible would not necessarily have been replaced for many years; those meters were only replaced to accommodate the installation of the gas module as part of the SmartGrid project. (Duke Ex. 7 at 3-4.)

In its comments, OCC submits that Duke should allocate a greater amount of common costs to electric customers, rather than simply the ratio of gas/electric customers to total customers, pointing out that it appears that more common communication nodes are needed to serve the electric meters. OCC also believes that Duke should clarify how common costs for SmartGrid will be charged among the various states in which Duke operates. In addition, OCC maintains that Duke should be required to demonstrate how it will be diligent in identifying and recording the full range of system benefits it realizes as the SmartGrid deployment evolves, since the costs of deploying SmartGrid are to be netted against the system benefits achieved, in accordance with the *Duke ESP Case*. With regard to federal stimulus money, OCC advocates that any money awarded to Duke should be credited against its capital investment, rather than operation and maintenance expenses, in order to reduce the rate base impact of SmartGrid. (OCC Ex. 1 at 2-6.) Finally, OCC submits that Duke's recovery of the costs of deployment of SmartGrid should be dependent upon meeting the implementation milestones Staff identified, and that the SmartGrid Collaborative (Collaborative) should establish specific objectives Duke must meet on each of the compliance principles before the recovery amounts are adjusted upward (OCC Ex. 3 at 4-5).

In response to OCC, Duke explains that it has properly allocated common costs between its gas and electric customers, subject to the changes proposed by Staff. Duke also notes that, as part of its annual review, it will identify all of the benefits and costs of the SmartGrid deployment. In addition, with regard to OCC's proposal to include savings occurring in 2009 as part of the calculation in these cases, which cover the recovery of costs for 2008, Duke asserts that such a request is premature and should be handled in its filing to recover the costs for 2009. (Duke Ex. 7 at 12-13.)

Kroger comments that Duke's customers should have direct, real-time access to smart metering information at no additional charge. In addition, Kroger advocates that Duke should commit to developing rate designs that maximize the advantages of SmartGrid deployment. Finally, Kroger recommends that Duke implement electronic billing for its large-scale energy customers as soon as reasonably practical. (Kroger Comments at 2-5.) In response, Duke states that it is committed to developing rate designs that maximize the advantages of the project. As for electronic billing, Duke states that this issue is unrelated to the SmartGrid program and it should not be addressed in these cases. (Duke Ex. 7 at 15-17.)

III. Summary of Stipulation

As stated previously, a stipulation signed by Duke, Staff, OPAE, and Kroger was submitted on the record at the hearing held on November 20, 2009 (Jt. Ex. 1). OCC stated in a letter filed on November 19, 2009, that it will not contest the stipulation (OCC Ex. 1). The stipulation was intended by the signatory parties to resolve all outstanding issues in these proceedings. The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the stipulation:

(1) Duke shall receive a revenue increase applicable to Rider DR-IM of $4,225,376, and a revenue increase of $593,162, applicable to Rider AU. The charges per bill are as follows: for Rider DR-IM, $0.49 and $0.72 for residential and nonresidential electric customers, respectively (Jt. Ex. 2, Att. 1, Sch. 13); and, for Rider AU, $0.12 for gas customers (Jt. Ex. 2, Att. 2, Sch. 13). The monthly charge per residential electric meter resulting from the Rider DR-IM revenue requirement is below the 2009 cap set in the *Duke ESP Case*. Consistent with Staff's recommendation, the revenue requirements are based upon a cost of capital consistent with the last-approved cost of capital in Duke's most recent gas and electric rate cases.

(2) Duke shall calculate book depreciation expense by applying account-appropriate accrual rates prescribed by the Commission and in effect at the time the expense is booked. Annualized depreciation will be calculated based on the last Commission-approved depreciation rates in effect during recovery of the revenue requirement. For purposes of Rider AU's Electronic Data Processing Equipment Account, the depreciation rate shall be 20 percent.

(3) Regarding dynamic rate billing, it is anticipated that SmartGrid will enable customers in all rate classes to receive energy cost information that will allow the customer to react in real time to facilitate energy savings and efficiencies. Duke will work with the Collaborative to make such rates available as soon as practicable for all rate classes. Duke shall make available a CPP tariff to 100 residential customers. The CPP tariff will have off-peak, shoulder, and peak pricing periods, and contain an additional CPP period called upon during specific summer hours. The number of critical peak hours will be determined in the Collaborative. The rate design, which may also contain a seasonal element, will have no less than a four-to-one ratio of the peak to the off-peak price. Once Duke automates its customer billing system, the CPP tariff will be made available on a voluntary basis and marketed to all residential customers who have the necessary technology. Duke will also work with commercial and/or industrial customers to design SmartGrid rates. Duke shall continue to work with the Collaborative to develop other rate designs, i.e., time-of-use, peak-time rebates, and real-time pricing tariffs. Duke shall provide monthly updates on the progress it is making toward automation of customer billing for implementation of SmartGrid pricing.

(4) Duke shall eliminate recovery of any costs in Rider DR-IM that were included previously in the *Duke Electric Rate Case*. The revenue recovery for Rider DR-IM would be reduced by the impacts of the amount to be excluded from plant in service in the Rider DR-IM revenue requirement calculation of $42,578 and the flow-through effect of that reduction.

(5) The cost of retirement and replacement of the gas meters that are incompatible with automated meter reading (AMR) devices should be recovered through normal ratemaking processes and shall not be included in Rider AU. The signatory parties agree not to oppose Duke's request through normal ratemaking in its next natural gas distribution case to recover all reasonable and prudent costs associated with gas meter replacement.

(6) Beginning with the next annual application for Rider DR-IM and Rider AU, Duke will create a separate Rider AU rate or a rider credit rate for customers that take gas service from Duke, but reside outside of Duke's electric service territory. Costs to be charged to these gas-only customers will include only those

costs specific to serving gas customers and will not include an allocation of most of the common costs. Examples of costs to be included are: gas modules and gas-only communication nodes and installation costs, gas specific IT systems, data transfer fees, and annual maintenance fees for the above-referenced equipment and systems. Examples of costs to be excluded from these gas only customers include project management office costs and IT costs that are common to both gas and electric customers. Costs incurred to implement this separate Rider AU rate or rider credit rate into the billing system will not be included for recovery in future Rider DR-IM or Rider AU filings. Upon request, Duke will provide actual deployment experience regarding the number of communication modules required to serve gas customers.

(7) Duke shall be authorized to create a regulatory asset for the purpose of deferring gas PISCC, deferred operation and maintenance expense, depreciation, and property taxes. Duke received approval for identical accounts with respect to electric SmartGrid costs in the *Duke Electric Rate Case*.

(8) The costs related to the Envision Center will be eliminated from Rider DR-IM and these costs will not be recovered through any SmartGrid filings.

(9) Reasonable business practices include the necessity of having inventory on hand to enable the efficient deployment of SmartGrid. Accordingly, three months of inventoried gas modules and related equipment will be included in Rider AU's revenue requirement calculation. Adjusting the December 31, 2008, gas module inventory level to comply with this requirement results in a reduction to the gas module inventory balance included in rate base set forth in Duke's application by $732,322.

(10) Duke will provide Staff and the Collaborative with such data and information as may be necessary to understand any revisions or changes to its business case for SmartGrid as set forth in the *Duke Electric Rate Case*, including information pertaining to revised projected costs and revised projected operational benefits.

(11) The Ohio portion of all federal stimulus funds received (net of reasonable costs to comply with the stimulus rules and regulations and net of taxes) will be applied to offset overall SmartGrid deployment costs, subject to terms and conditions that may be imposed by the United States Department of Energy. Duke shall inform the Collaborative of how any federal stimulus funds received will be applied and treated.

(12) Duke shall undertake a study of SmartGrid deployment to capture momentary interruptions and will provide the results of said study to the Commission. The study will include details as to what momentary information will be gathered by the implementation of SmartGrid. To the extent the existing plan for SmartGrid does not provide for the gathering of momentary data, Duke will provide an estimate of incremental costs to accomplish the gathering of momentary data, the timing for implementation, and the impact of such costs on Rider DR-IM. Duke shall file the study in this docket within 90 days following the Commission's order in the case.

(13) The revenue requirement calculations for Rider DR-IM and Rider AU recognize the impact of accumulated deferred income taxes. Duke will continue to recognize accumulated deferred income taxes as an offset to rate base, and will apply a pre-tax rate of return in future Rider DR-IM and Rider AU filings.

(14) All other elements related to revenue requirements for Rider DR-IM and Rider AU, as set forth in Duke's application, shall be resolved as set forth in Staff's comments in this case as summarized in Joint Ex. 3.

(15) The parties recommend that the Commission approve Rider AU, as set forth in Duke application in the *Duke Gas Rate Case* and as modified in this case and this stipulation, and established rates for Rider AU and Rider DR-IM.

(Jt. Ex. 1 at 5-11.)

<u>*CONCLUSION:*</u>

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. *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. *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, 1994); *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.).

The signatory parties agree that the stipulation is the product of serious bargaining among capable, knowledgeable parties that are representative of the many interests and stakeholders and that it presents a just and reasonable result (Jt. Ex. 1 at 2). The parties to this case have been involved in numerous cases before the Commission and have provided extensive and helpful information to the Commission. Therefore, upon review of the terms of the stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Duke's witness, Mr. Wathen, testifies that, as a package, the stipulation benefits ratepayers and is in the public interest. Mr. Wathen points out that the stipulation provides several significant benefits to all customer groups and other interested stakeholders, including: the implementation of a pilot program needed to role out new rate designs and provide information to customers in the future; the provision of data and information necessary to understand revisions or changes to its business case for SmartGrid to Staff and the Collaborative; and the sharing of stimulus funds received by Duke to offset overall SmartGrid deployment costs. (Duke Ex. 5 at 4-5.) Upon review of the stipulation, we find that, as a package, it satisfies the second criterion.

Finally, the signatory parties agree that the stipulation violates no regulatory principle or precedent (Jt. Ex. 1, at 2). Mr. Wathen supports the signatory parties' assertion, pointing out that the stipulation actually furthers the policies set forth in Amended Substitute Senate Bill 221 (Tr. at 16). Accordingly, upon consideration, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, concludes that the stipulation meets the third criterion.

Upon consideration of the record in this case, we find that the stipulation entered into by the parties is reasonable and should be adopted. Therefore, Duke should be authorized to implement the new rates for Rider DR-IM and Rider AU in a manner consistent with the stipulation and this order. The Commission finds that Duke should file, in final form, four complete, printed copies of its final tariff pages with the Commission's docketing division, as set forth in this order. The effective date of the new rates for Rider DR-IM and Rider AU shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission, and shall be effective on a services-rendered basis, as set forth in the stipulation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Duke is an electric light company, as defined in Section 4905.03(A)(4), Revised Code; a natural gas company, as defined in Section 4905.03(A)(6), Revised Code; and a public utility under Section 4905.02, Revised Code.

(2) On June 30, 2009, Duke filed its application in these cases.

(3) By entry issued October 15, 2009, David Rinebolt was granted admission *pro hac vice* for the purpose of these proceedings.

(4) By entry issued October 15, 2009, OCC, OPAE, and Kroger were granted intervention.

(5) Comments on the application in these cases were filed by OCC, Kroger, and Staff on October 8, 2009. Duke filed reply

comments on October 15, 2009, and OCC filed reply comments on October 20, 2009.

(6) The hearing in these matters was held on November 20, 2009.

(7) At the hearing, a stipulation was admitted into the record, intending to resolve all issues in these cases. Duke, Staff, OPAE, and Kroger signed the stipulation. OCC did not oppose it.

(8) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

(9) Duke should be authorized to implement the new rates for Rider DR-IM and Rider AU, consistent with the stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That the stipulation of the parties be adopted and approved. 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 pages consistent with this opinion and order and to cancel and withdraw its superseded tariff pages. It is, further,

ORDERED, The new rates for Rider DR-IM and Rider AU shall be effective, on a services-rendered basis, on a date not earlier than the date upon which four complete, printed copies of the final tariff pages are filed with the Commission. 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 each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

CMTP/RLH/vrm

Entered in the Journal

MAY 1 3 2010

Reneé J. Jenkins
Secretary