

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Adjust and Set the ) Case No. 10-1268-EL-RDR  
Annually Adjusted Component of its )  
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, 21<sup>st</sup> Floor, Columbus, Ohio 43215, on behalf of Duke Energy Ohio, Inc.

Richard Cordray, Ohio Attorney General, by Sarah J. Parrot, 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 Michael E. Idzkowski, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

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 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 adjusted 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.

On September 1, 2010, 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, 2010 (Duke Ex. 2 at 5-6).

Motions to intervene in this proceeding were filed on September 9, 2010, as amended September 16, 2010, by the Ohio Consumers' Counsel (OCC) and on October 12, 2010, by the Industrial Energy Users-Ohio (IEU). By entry of September 29, 2010, OCC's motion to intervene was granted. IEU's motion to intervene was granted at the hearing held in this matter on December 6, 2010.

On November 2, 2010, comments on the application were submitted by Staff and OCC (Staff Ex. 1 and OCC Ex. 1). Duke filed reply comments on November 12, 2010 (Duke Ex. 3).

On December 3, 2010, a Stipulation and Recommendation (Stipulation) entered into by Duke and Staff was filed in this proceeding (Joint Ex. 1). A hearing was held, as scheduled, on December 6, 2010. At the hearing, Staff witness Trisha Smith provided testimony in support of the Stipulation (Staff Ex. 2). The additional testimony of Duke witnesses Peggy Laub, Donald Wathen, and Salil Pradhan (Duke Exs. 2, 4, and 5, respectively); and OCC witness David Marczely (OCC Ex. 2) were admitted into the record. OCC indicated, at the hearing, that it would not oppose the stipulation entered into by Duke and Staff. On December 6, 2010, IEU filed a letter indicating that, although it was not a signatory party, it did not oppose the stipulation.

## II. Application Testimony in Support of the Application and Comments

In the application, Duke explains that it is engaged in the business of supplying electric transmission, distribution, and generation service to approximately 500,000 consumers in eight counties in southwestern Ohio. In addition, Duke supplies electric

transmission and distribution service to approximately 180,000 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. (Duke Ex. 1 at 1.) Rider PTC-AAC 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. 2 at 12.)

A total revenue requirement of \$154,862,935 is sought in the application. The total revenue requirement is comprised of \$164,191,030 for costs associated with environmental compliance, \$187,226 for costs associated with homeland security, (\$9,641,204) in savings associated with changes in tax laws, and \$125,883 in costs associated with fuel diversity (Duke Ex. 2 at PAL-1). Duke's witness Peggy Laub 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, 2010, to the costs for the year ending December 31, 2000. According to Ms. Laub, 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.)

In its comments, filed November 2, 2010, Staff stated that, during its investigation of the application, it found a math error regarding total operation and maintenance expenses for the Conesville Unit 4, which resulted in the total operation and maintenance component of environmental compliance being overstated by \$476,668. Accordingly, Staff recommended that the new revenue requirement for environmental compliance be \$163,714,362, and the new total revenue requirement be \$154,386,267. (Staff Ex. 1 at 3.)

### III. Stipulation

A Stipulation signed by Duke and Staff was submitted on the record, at the hearing held on December 6, 2010 (Jt. Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The Stipulation provided that the parties agree that Duke's application, as modified by Staff's comments, is accurate and correct and that Duke should adjust its Rider PTC-AAC consistent with the calculations set forth therein for recovery of environmental compliance costs, fuel diversity, changes in tax law, and homeland security. Consistent with Staff's comments, Duke's operation and maintenance expense for environmental compliance should be reduced in the amount of \$476,668. Therefore, the total adjusted revenue requirement for environmental compliance is \$163,714,362. (Jt. Ex. 1 at 4.)

#### 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, 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.*)

Staff witness Smith testified that 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, Ms. Smith also testified that the Stipulation benefited consumers and the public interest by allowing for timely implementation of the updated Rider PTC-ACC and avoided the costs associated with litigation. Ms. Smith also states that the stipulation is consistent with the evidence in this case, as well as Duke's current electric security plan. (Tr. at 9-13.)

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 Commission concludes that 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, 2109, Duke filed an application to establish a new price for its Rider PTC-AAC.
- (3) OCC and IEU were granted intervention in this proceeding.
- (4) On December 3, 2010, Duke and Staff filed a Stipulation that purports to resolve all of the issues in this proceeding.
- (5) The evidentiary hearing was held on December 6, 2010.
- (6) At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. OCC indicated that it would not oppose the Stipulation. IEU filed correspondence on December 6, 2010, indicating that it would not oppose 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 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,

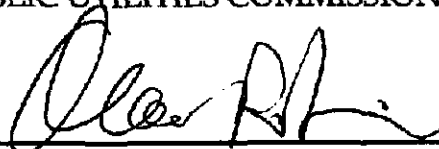
ORDERED, That Duke be authorized to file in final form four complete copies of the tariff page consistent with this opinion and order and to cancel and withdraw its superseded tariff page. Duke shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR)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

  
Alan R. Schriber, Chairman

  
Paul A. Centolella

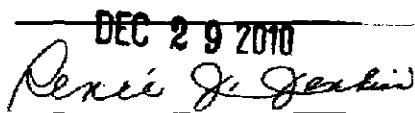
  
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Entered in the Journal

  
DEC 29 2010

Reneé J. Jenkins  
Secretary