

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Recovery of)
Program Costs, Lost Distribution) Case No. 12-1857-EL-RDR
Revenue, and Performance Incentives)
Related to its Save-A-Watt Programs.)

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:

Amy B. Spiller and Elizabeth H. Watts, 2500 Atrium II, 139 East Fourth Street, Cincinnati, Ohio 45201, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Devin D. Parram, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Melissa R. Yost, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

OPINION:

I. Background

Duke Energy Ohio, Inc. (Duke) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.

By opinion and order issued on 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. (08-920), the Commission approved a stipulation submitted by Duke and other parties in that case. The stipulation, as approved, provides for the

creation of the distribution reliability save-a-watt rider (Rider DR-SAW) as a cost recovery mechanism for Duke's energy efficiency and peak demand reduction efforts. Rider DR-SAW was to be implemented on January 1, 2009, and expire on December 31, 2011. At the expiration of Rider DR-SAW, the parties agreed that it would be subject to true-up in the second quarter of 2012.

On June 29, 2012, Duke filed its application to true-up Rider DR-SAW. Duke also filed testimony in support of its application on June 29, 2012.

The Ohio Consumer's Counsel (OCC) and Ohio Partners for Affordable Energy (OPAЕ) filed unopposed motions to intervene on July 25, 2012; and July 30, 2012, respectively. In their motions, both OCC and OPAЕ explain that they represent the interests of customers who may be affected by the outcome of this case. The Commission finds that the motions to intervene filed by OCC and OPAЕ are reasonable and should be granted.

On August 9, 2012, the attorney examiner issued an entry establishing a procedural schedule in this case. Comments on the application were filed on October 11, 2012, by Staff, OCC, and OPAЕ. On October 16, 2012, Duke, Staff, and OCC filed reply comments in this case.

On October 25, 2012, a stipulation and recommendation (stipulation) (Jt. Ex. 1), signed by Duke, Staff, OCC, and OPAЕ, was filed in this case.

The hearing in this matter commenced on November 7, 2012, at the offices of the Commission. At the hearing, Duke witnesses Timothy J. Duff (Duke Ex. 3) and James E. Ziolkowski testified in support of the stipulation.

II. Summary of the Application and Comments

In its application, Duke explains that, under Rider DR-SAW, it does not explicitly recover the direct costs of its programs. Instead, Duke may collect 50 percent of the avoided costs for energy efficiency programs, 75 percent of the avoided costs resulting from demand response programs, and may recover certain lost margins that result from the programs. Duke explains that the lost margins do not include generation margins after December 10, 2009, but include distribution margins for the entire period covered by Rider DR-SAW. (Duke Ex. 1 at Att. JEZ at 5-6.)

Duke further explains that it is recognizing 410,785 megawatt hours of energy efficiency impacts for the purpose of determining its level of allowed incentive, which equates to 125 percent of its energy efficiency requirements and allows Duke to earn an allowed return on investment under Rider DR-SAW of 15 percent on an after tax

basis. Any over- or under-collection of lost revenues is to be determined without including carrying costs. (Duke Ex. 1 at Att. TJD at 5-9.)

In its initial comments, Staff expresses concern regarding Duke's continued collection of unauthorized lost generation revenues and recommends that Duke credit back to customers any lost generation revenues collected after December 10, 2009. Moreover, Staff opines that only lost distribution revenues are to be included in the revenue requirement true-up and not other lost revenues. Staff further states its concern with respect to \$32,302 that was included in the revenue requirement as mercantile customer self-direct program costs. Specifically, Staff states that it needs additional information regarding what costs were included in the mercantile customer self-direct program costs, and whether these costs are already included in base rates. (Staff Ex. 1 at 1-2.)

In its comments, OCC argues that Duke improperly included lost generation revenues from shopping customers for the period from January 1, 2009 through December 10, 2009. OCC explains that those revenues were lost due to competition and are inappropriate for recovery under Rider DR-SAW. In addition, OCC argues that Duke's proposed incentive award calculation should be reduced to: account for the lower market-based avoided capacity costs in the PJM Interconnection territory; ensure Duke did not collect transmission and distribution lost revenues; account for the lower company program savings emanating from the recent Ohio independent evaluator study; and account for interest that should be paid to customers on balances that Duke held for approximately two years, from December 10, 2010, through December 31, 2011, regarding non-fuel lost generation revenues. OCC also asserts that Duke should be required to rerun its model and file its revised incentive results in this proceeding. (OCC Ex. 1 at 2-10.) In reply comments, both Staff and Duke disagree with many of OCC's proposed reductions to Duke's incentive award (Staff Ex. 2 at 3; Duke Ex. 2 at 4-12).

In its comments, OPAE argues that it is inappropriate to use pre-2009 banked incentives for purposes of calculating the incentive earned by Duke under the Rider DR-SAW mechanism. OCC agrees with this suggestion in its reply comments. OPAE also avers that the cost of low-income service programs should not be included for recovery under Rider DR-SAW. (OPAE Ex. 1 at 2-5; OCC Ex. 2 at 4-5.)

III. Summary of the Stipulation

As stated previously, a stipulation signed by Duke, Staff, OCC, and OPAE was filed in this case on October 25, 2012. The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. 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 was not entitled to collect from customers lost generation revenue from December 10, 2009 through December 31, 2011. Duke affirms that, in regard to the calculation to true-up Rider DR-SAW, all of the lost generation revenues have been properly credited wherein the revenue collected is deducted from the allowed revenue which was trued-up, in part, by removing all lost generation revenues from December 10, 2009 through December 31, 2011.
- (2) Duke will credit Rider DR-SAW for all revenue received from shopping customers who shopped from January 1, 2009 through December 9, 2009. The revenue credited back to Rider DR-SAW for shopping customers shall be \$57,900.
- (3) For the period December 15, 2010 through December 31, 2012, to compensate customers for a revenue collection timing adjustment in unauthorized residential revenue collection, Duke shall credit Rider DR-SAW for residential customers in the amount of \$100,000.
- (4) The energy efficiency impacts achieved prior to 2009 shall be included in Duke's calculations for purposes of establishing its level of achievement with the state of Ohio energy efficiency and peak-demand reduction requirements set forth in amended substitute Senate Bill 221 and Section 4928.66, et. seq., Revised Code. However, Duke will not and has not included any avoided costs associated with those banked impacts for the purposes of determining the incentive in this proceeding, nor will it do so in future shared savings incentive calculations.

(Joint Ex. 1 at 4-5.)

IV. Consideration of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid

where the stipulation is unopposed by any party and resolves almost all issues presented in the proceeding in which it is offered.

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:

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

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

Duke witness Duff testified that the stipulation is the product of serious bargaining among capable, knowledgeable parties. Mr. Duff explains that the signatory parties represent a broad range of interests, regularly participate in rate proceedings before the Commission, are very knowledgeable in regulatory matters, and were represented by experienced competent counsel. Further, Mr. Duff asserts that all of the issues raised by the signatory parties in this proceeding were thoroughly reviewed and addressed during negotiations and, despite the divergent interests, all parties had an opportunity to express their opinions. In addition, the witness notes that the settlement discussions resulted in beneficial modifications and compromises. (Duke Ex. 3 at 4-5.) 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, Mr. Duff explains that the stipulation benefits all customer groups and interested stakeholders, while advancing and remaining consistent with state policy (Duke Ex. 3 at 6.) Upon review of the stipulation, we find that, as a package, it satisfies the second criterion, as it benefits ratepayers by avoiding the cost of litigation.

Duke witness Duff also testified that the stipulation does not violate any important regulatory principle or practice, and furthers Ohio's energy policy (Duke Ex. 3 at 5). 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.

Accordingly, we find that the stipulation entered into by the parties is reasonable and should be adopted.

The Commission is aware that the opinion and order in 08-920 is silent on what vehicle should be used to true-up Rider DR-SAW, which expired on December 31, 2011. At the hearing, Mr. Duff explains that, despite our order in 08-920 that Rider DR-SAW expire at the end of 2011, Duke continued collection under Rider DR-SAW to fund its energy efficiency programs into 2012. Specifically, Duke continued collecting Rider DR-SAW until Duke's new rider was approved in *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR (11-4393), and went into effect. Even after the implementation of the rider approved in 11-4393, Duke has continued Rider DR-SAW as an active tariff, set at zero. Duke witness Ziolkowski explains that Duke would prefer to true up Rider DR-SAW over a period of 12 months through a continuation of Rider DR-SAW (Tr. at 11-20). Accordingly, to carry out the terms of the stipulation, the Commission finds that Duke should be authorized to continue Rider DR-SAW for a period of 12 months for the sole purpose of effecting the true-up at issue in this case.

As a final matter, the Commission hereby puts Duke on notice that it expects Duke to address its continued unauthorized collection of Rider DR-SAW into 2012, in its April 2013 portfolio filing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is an electric light company, as defined in Section 4905.03, Revised Code, and a public utility under Section 4905.02, Revised Code.

- (2) On June 29, 2012, Duke filed its application in this case.
- (3) On October 11, 2012, comments on the application were filed by Staff, OPAE, and OCC.
- (4) Reply comments were filed by Duke, Staff, and OCC on October 16, 2012.
- (5) A stipulation signed by Staff, Duke, OCC, and OPAE was filed October 25, 2012.
- (6) The hearing in this matter was held on November 7, 2012.
- (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 continue Rider DR-SAW, consistent with this order, to true-up Rider DR-SAW, as it was collected from January 1, 2009 through December 31, 2011, for a period of 12 months.

ORDER:

It is, therefore,

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

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 complete copies of the tariff pages consistent with this opinion and order and to cancel and withdraw its superseded tariff pages. 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 docket. It is, further,

ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date of this opinion and order and the date upon which four complete printed copies of final tariffs are filed with the Commission. It is, further,

ORDERED, That Duke shall notify all affected customers via a bill message or via a bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. 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



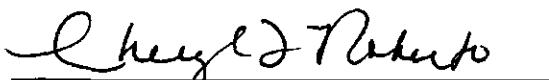
Todd A. Snitchler, Chairman



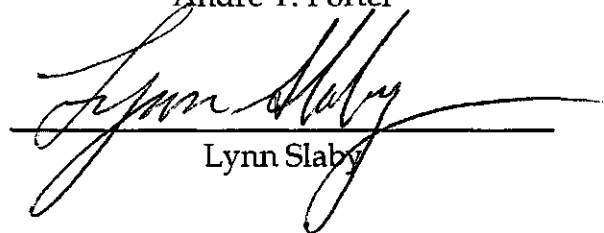
Steven D. Lesser



Andre T. Porter



Cheryl L. Roberto

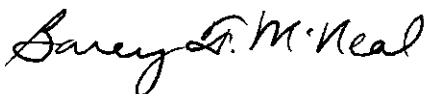


Lynn Slaby

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Barcy F. McNeal
Secretary