BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2011 SmartGrid Costs.	)))	Case No. 12-1811-GE-RDR

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, 139 East Fourth Street, Cincinnati, Ohio 45202, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Thomas G. Lindgren, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Terry Etter, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility customers of Duke Energy Ohio, Inc.

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

OPINION:

I. Background

Duke Energy Ohio, Inc. (Duke) is an electric light company as defined in Section 4905.03(A)(3), Revised Code; a natural gas company, as defined in Section 4905.03(A)(5), Revised Code; and a public utility under Section 4905.02, Revised Code. Duke supplies electricity to approximately 690,000 consumers and natural gas to approximately 420,000 customers in southwestern Ohio, all of whom will be affected by Duke's application. (Duke Ex. 1 at 1.)

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. (*2008 ESP Case*), the Commission approved a stipulation that, *inter alia*, provided a process for recovering costs associated with the electric SmartGrid system, designated Rider Distribution-Reliability, Infrastructure Modernization (Rider DR-IM). The stipulation provided that, each year, Duke shall file for approval of Rider DR-IM adjustments, subject to due process, including a hearing. On 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. (*Gas Distribution Rate Case*), the Commission authorized Duke to file deployment plans for installation of an automated gas meter reading system, which would share the SmartGrid communications technology. The plan provided that Duke would recover costs related to the deployment plans through Rider Advanced Utility (Rider AU).

On May 13, 2010, in *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, et al., the Commission approved a stipulation that set the initial rates for Riders DR-IM and AU. Most recently, on June 13, 2012, in *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review,* Case No. 10-2326-GE-RDR (10-2326), the Commission approved a stipulation authorizing the current rates as follows: for Rider DR-IM, $2.24 and $3.31 per meter per month for residential customers and nonresidential customers, respectively; for Rider AU, $1.97 per meter per month; and, for gas-only customers, a credit of $0.92 per meter per month. The Commission also reviewed a mid-deployment program summary and review in 10-2326, as required by the *2008 ESP Case.* To aid in its review, the Commission issued a request for proposals to perform an audit that included both an operational audit and an operational benefits assessment of Duke's overall SmartGrid implementation. MetaVu, Inc. (MetaVu) was ultimately selected to perform the review, and filed the Duke Energy Ohio Smart Grid Audit and Assessment (MetaVu Report) on June 30, 2011.

On June 20, 2012, Duke filed its application and supporting testimony requesting authority to adjust Riders DR-IM and AU for SmartGrid deployment, pursuant to the process approved in the *Gas Distribution Rate Case* and the *2008 ESP Case* (Duke Ex. 1). Motions to intervene were filed by the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) on July 11, 2012, and July 16, 2012, respectively. The attorney examiner granted the motions to intervene filed by OCC and OPAE at the hearing.

On November 21, 2012, comments were filed by OCC (OCC Ex. 1), OPAE (OPAE Ex. 1), and Staff (Staff Ex. 1). On December 5, 2012, reply comments were filed by Duke (Duke Ex. 5) and OCC.

On February 20, 2013, a stipulation and recommendation (Stipulation) entered into by Duke, Staff, OPAE, and OCC was filed in this proceeding (Jt. Ex. 1). The hearing was initially scheduled to commence on November 27, 2012. Following several requests by the parties to extend the procedural schedule in this case, the hearing was held, as rescheduled, on February 25, 2013. At the hearing, Staff witness Daniel R. Johnson testified in support of the Stipulation.

II. Summary of the Application and Supporting Testimony

In support of Duke's application, Duke witness Schneider provides status updates on Duke's deployment of SmartGrid in its service territory. Specifically, Duke witness Schneider explains that 2011 was the third year of Duke's full scale distribution automation (DA) deployment. In 2011, Duke installed or upgraded over 260 system devices inside substations and over 860 system devices on distribution circuits, which met Duke's 2011 plan. Mr. Schneider further explains that 2011 was the second year for full-scale advanced metering infrastructure (AMI) deployment. The target for 2011 was to install 170,000 electric meters, 115,000 gas meters/modules, and 48,800 communications nodes. Actual installation for 2011, included 185,682 electric meters, 127,987 gas meters/modules, and 48,954 communications nodes. (Duke Ex. 3 at 4-5.)

Duke witness Schneider further provides that, through the first quarter of 2012, Duke has installed a total of 358,788 electric meters, 251,179 gas modules, and 84,384 communications nodes, and has certified 326,065 of the electric meters installed and 227,607 of the gas modules installed. Meters are certified to identify when the meter has successfully been commissioned and verified and the meter data is ready to be used for billing. Duke's AMI deployment is approximately 50 percent complete, with planned completion to occur in mid-2014. With the completion of AMI deployment, Duke will have installed over 730,000 electric meters, 450,000 gas meters/modules, and 135,000 communications nodes. (Duke Ex. 3 at 5.)

With respect to DA, through the first quarter of 2012, Duke has installed and/or automated with two-way communications capabilities, a total of 575 system devices inside substations and over 1,400 system devices on distribution circuits. These numbers put the total planned DA deployment at approximately 55 percent complete, with deployment planned for completion year-end 2013. With the completion of DA deployment, Duke will have installed and/or automated with two-way communications capabilities, a total of 1,055 system devices inside substations and over 5,800 system devices on distribution circuits. (Duke Ex. 3 at 5-6.)

Duke witness Schneider also explains Duke's performance with respect to the system average interruption frequency index (SAIFI), which is a utility industry standard for reporting the average number of sustained (greater than five minutes) interruptions per customer per year. In the *2008 ESP Case*, Duke committed to achieving specified SAIFI targets for each year of deployment. Mr. Schneider states that Duke met or exceeded its SAIFI targets for 2009, 2010, and 2011. (Duke Ex. 3 at 6-7.)

Duke witness Laub provides the revenue requirements for Rider DR-IM and Rider AU, which include the following components: a return on the base rate; depreciation and property taxes; and incremental expenses. Ms. Laub explains that some of the costs of the SmartGrid project are shared between Duke's gas and electric distribution businesses. She further explains the costs for common equipment are allocated between gas and electric service based on appropriate allocation factors. The development of these allocation factors is based on Duke's determination of the extent to which each type of plant contributes to the gas or electric SmartGrid function. (Duke Ex. 4 at 2-3.)

With respect to the revenue requirements, Ms. Laub states that Duke has not made any changes in the revenue requirement calculations since Duke's filing in 10-2326. Ms. Laub further explains that the revenue requirement calculations reflect the savings generated by DA and SmartGrid projects that Duke agreed to in 10-2326. (Duke Ex. 4 at 2-5.)

With respect to the allocation of Rider DR-IM, Ms. Laub explains that, pursuant to the stipulation approved in the *2008 ESP Case*, 85 percent of the revenue requirement is allocable to residential customers and the remaining 15 percent is allocable to nonresidential customers. The allocated revenue is then divided by the number of bills for the residential rate class. The result of this calculations is a per bill charge of $3.30 for residential customers and $4.91 for nonresidential customers for Rider DR-IM. The proposed rates for Rider DR-IM are below the proposed caps agreed to in the *2008 ESP Case*. (Duke Ex. 4 at 10-11.) The Rider AU revenue requirement is allocated based on the total number of bills. The result is a $2.48 charge per bill for all customers, and a per bill credit of $1.36 for gas-only customers. (Duke Ex. 4 at 16.)

III. Summary of Comments

In its comments, Staff states that it does not oppose Duke including in the proposed rates a premium to account for its under-collection of the 2010 costs. However, Staff explains that, to avoid similar situations in the future, Duke should strive to have new rates for Riders DR-IM and AU go into effect on April 1 of each year. Staff also recommends the following revisions to the schedules filed by Duke: changes to how Duke calculated the rate of Rider AU for gas-only and combination customers; computational revisions to the filed schedules; corrections of allocation errors; a reduction for gas modules not used and useful; and, a reduction associated with replacement gas meters. (Staff Ex. 1 at 1-7.)

In its comments, OPAE explains that it opposes the use of opt-out customer acquisition for use in Duke's time-differentiated pilot programs (OPAE Ex. 1 at 3). OCC states that the consideration of Rider AU in this case should be held in abeyance pending the outcome of *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, et al. (12-1685). OCC also opposes allowing Duke to collect its perceived under-collection of Rider AU for 2010 costs. In support of its position, OCC explains that Rider AU is based on an annual revenue requirement that is updated each year, and over- or under-recoveries are not calculated with each rider update. (OCC Ex. 1 at 2-6.)

In its reply comments, Duke agrees with the recommendations of Staff, with the exception of procedural matters. Duke also proposes potential solutions to reconcile the timing of the instant case, with respect to Rider AU, with the timing of 12-1685. (Duke Ex. 5 at 1-4.)

IV. Stipulation

As previously stated, a Stipulation signed by Duke, Staff, OPAE, and OCC (signatory parties) was submitted on the record at the hearing held on February 25, 2013. 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 signatory parties and is not intended to replace or supersede the Stipulation:

(a) Duke shall receive a revenue increase applicable to Rider DR-IM of $28.5 million, and a revenue increase of $12.3 million applicable to Rider AU. These revenue increases result in rates of $3.31 per meter per month for residential electric customers and $4.93 per meter per month for nonresidential electric customers under Rider DR-IM. The revenue increase results in a rate of $2.50 per meter per month under Rider AU. Gas-only customers will receive a $1.37 credit per meter per month. The revenue increases set forth in this section are subject to adjustment pending the outcome of 12-1685.

(b) The monthly charge per residential electric meter resulting from the Rider DR-IM revenue requirement for the applicable period is below the applicable cap established in the stipulation approved in the *2008 ESP Case*.

(c) The revenue requirement is based upon a rate of return of 8.9 percent and 8.45 percent approved by the Commission.

(d) Duke shall reduce its revenue requirement, to the benefit of customers, by an amount equal to the value of operational benefits, as set forth in the MetaVu Report, levelized over four years as provided below. The electric share of the levelized benefits will be netted against 2011 costs for purposes of revenue recovery is $6.24 million.

(e) Duke accepts Staff's recommendations for adjustments to the Rider AU revenue requirement calculation as set forth in Staff's comments, including:

(1) Staff's methodological recalculation of rates for two separate customer classes.

(2) Staff's three computational revisions to the total revenue requirement for Rider AU as calculated in Schedule 1, line 13; Schedule 3, Depreciation; and Schedule 4, Post-in-Service Carrying Costs.

(3) A $737,170 reduction to gas plant account 29700 for uninstalled gas modules.

(4) A $39,287 reduction to gas plant account 29700 to remove stored loading charges related to replacement gas meters.

(f) Duke accepts Staff's recommendation for reclassification of accounts with respect to Rider DR-IM as follows:

(1) A $45,425 reduction to gas account 20300, including that for project management office costs (PMO costs) and common plant additions, reclassified to electric plant account 30300.

(2) A $367,426 reduction to gas account 20300, including that for PMO costs and common plant additions and for shared computer software projects, reclassified to electric plant account 30300.

(3) That the timing of the riders taking effect each year would ideally be governed by an annual cycle with rates taking effect on April 1 of each year.

(g) Duke commits to maintain Rider DR-IM as the means to recover SmartGrid investment through the year in which full deployment occurs. For each Rider DR-IM filing for the following two years, Duke agrees to include, for the benefit of customers, the electric distribution share of operational savings derived from the MetaVu Report. The total savings to be included in the revenue requirement from the MetaVu Report for the respective years are as follow:

Savings to include in 2011: $2.38 million
Savings to include in 2012: $4.77 million
Savings to include in 2013: $8.00 million
Savings to include in 2014: $10.67 million

(h) In order to mitigate the impact of the rate increases attributable to Rider DR-IM, Duke agrees to defer recovery of all or a portion of the following expenses normally recovered in the Rider DR-IM revenue requirement for 2011 and 2012: operations and maintenance, depreciation, and/or property taxes. Such deferrals are incremental to the normal deferral process used in the Rider DR-IM calculations. The amount of the incremental deferrals attributable to costs incurred in 2011 and 2012 will be \$3.86 million and \$1.47 million, respectively. Duke shall be allowed to increase the revenue requirement of Rider DR-IM for costs incurred in 2013 and 2014 to recover the expenses deferred from the 2011 and 2012 recovery periods. The additional recovery in 2013 and 2014 will be \$1.76 million and \$4.43 million, respectively. The impact on the Rider DR-IM revenue requirement will be as follows:

DR-IM for 2011: \$3.86 million reduction
DR-IM for 2012: \$1.47 million reduction
DR-IM for 2013: \$1.76 million increase
DR-IM for 2014: \$4.43 million increase

(i) Once the Commission makes its final determination of the rates in 12-1685, Duke will recompute the Rider AU rate prior to the filing of tariff sheets in that case. The recomputed rates shall become effective at the same time as the new base rates. Should the Commission approve the transfer of all plant and equipment from Rider AU to base rates, the revised Rider AU rate will be computed by subtracting the annualized return on rate base number associated with Rider AU investment as of December 2011 out of the revenue requirement.

(j) Duke will continue to work with the Duke SmartGrid Collaborative in developing a portfolio of time-differentiated rate offerings that include further pilot programs of innovative designs and nonpilot rates that provide standard service offer customers with pricing structures that incentivize them to shift energy usage to reduce their electric bills. For purposes of this Stipulation, time-differentiated rates are rates that include different electricity prices for different times of the day, week, or year. Time-differentiated rates also include rates that respond, as predetermined by Duke, to electricity market events. For calendar year 2013, Duke agrees not to propose any pilot rate programs that include a provision for customer opt-out. Pilot rate programs for calendar year 2013 will only be offered on an opt-in basis for customers.

(k) Duke will provide a report, by April 2013, to the Staff and to the parties with regard to the results of the reprogramming of the Distribution Monitoring System and whether the reprogramming has alleviated a problem with false alarms related to communication interruptions. Duke will also report to the parties, by April 2013, the results of the efforts to remediate capacitor bank controls that are not presently functioning as anticipated.

(Jt. Ex. 1 at 5-9.)

V. Consideration of the Stipulation

Rule 4901-1-30, O.A.C., 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. *See 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. *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 31, 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 Supreme Court of Ohio 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.

Staff witness Johnson testified in support of the Stipulation stating that it was the product of serious bargaining among capable knowledgeable parties. Specifically, Mr. Johnson explains that the negotiation process took place over several months and included approximately six meetings, as well as conversations and interactions between meetings, to come to a consensus and agreement on the issues in this case. (Tr. at 7-8.)

Mr. Johnson further explains that the Stipulation, as a package, benefits ratepayers and the public interest. Specifically, he explains that the Stipulation guarantees a level of savings and benefits for ratepayers, with benefits in this case approaching $5 million. Moreover, Mr. Johnson explains that the Stipulation provides Duke with a fair, just, and reasonable rate to recover expenditures and investments, and avoids protracted litigation that would otherwise occur. Finally, the witness asserts that the Stipulation does not violate any important regulatory principle or practice. (Tr. at 8.)

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 Staff, to resolve the aforementioned issues. Accordingly, the Commission concludes that the Stipulation should be adopted in its entirety.

As a final matter, this proceeding should remain open pending the resolution of 12-1685. Moreover, within 30 days of the final order in 12-1685, Duke should file revised tariffs in this docket, and, if necessary, correspondence indicating whether any additional process is necessary in the present case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Duke is an electric light company as defined in Section 4905.03(A)(3), Revised Code; a natural gas company, as defined in Section 4905.03(A)(5), Revised Code; and a public utility under Section 4905.02, Revised Code.

(2) On June 20, 2012, Duke filed its application to adjust Riders DR-IM and AU.

(3) OPAE and OCC were granted intervention at the hearing in this matter.

(4) On November 21, 2012, comments were filed by OCC, OPAE, and Staff. On December 5, 2012, reply comments were filed by Duke and OCC.

(5) On February 20, 2013, Duke, Staff, OPAE, and OCC filed the Stipulation resolving all of the issues in this proceeding.

(6) The evidentiary hearing was held on February 25, 2013.

(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 Riders AU and DR-IM consistent with the Stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed in this proceeding is 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 observe all directives set forth in 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. It is, further,

ORDERED, The new rates for Rider DR-IM and Rider AU shall be effective on a date not earlier than the date upon which 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 all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

M. Beth Trombold

KLS/CMTP/sc

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Barcy F. McNeal
Secretary