

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Determination of)
the Existence of Significantly Excessive)
Earnings for 2012 Under the Electric)
Security Plan of Ohio Edison Company,) Case No. 13-1147-EL-UNC
The Cleveland Electric Illuminating)
Company, and The Toledo Edison)
Company.)

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:

Arthur E. Korkosz, 76 South Main Street, Akron, Ohio 44308, on behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

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

OPINION:

I. Background

Pursuant to Section 4928.141, Revised Code, electric utilities are required to provide consumers with an SSO, consisting of either a market-rate offer (MRO) or an electric security plan (ESP). Further, according to the directives of Section 4928.143(F), Revised Code, the Commission is required to evaluate the earnings of each electric utility's approved ESP to determine whether the plan or offer produces significantly excessive earnings for the electric utility. On June 30, 2010, the Commission issued a finding and order in *In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to Amended Substitute Senate Bill 221 for Electric Utilities*, Case No. 09-786-EL-UNC (SEET Test Case), which

established policy and significantly excessive earnings test (SEET) filing directives for the electric utilities.

On May 15, 2013, Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (FirstEnergy or the Companies) filed an application for the administration of the SEET, as required by Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code (O.A.C.). The Companies also filed the supporting testimony of K. Jon Taylor (Co. Ex. 1, Attachment 1) and Michael J. Vilbert (Co. Ex. 1, Attachment 2).

On June 4, 2013, the attorney examiner scheduled this matter for hearing on August 5, 2013. Moreover, the Companies and Staff filed a stipulation and recommendation (Stipulation) (Joint Ex. 1) on June 4, 2013. At the August 5, 2013 hearing, one witness provided testimony on behalf of Staff (Staff Ex. 1).

II. Application and Comments

In the application, the Companies explain that in *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Office Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, (ESP 2 Case), the Commission approved an ESP for the Companies through May 31, 2014. The Companies note that Section 4928.143(F), Revised Code, requires the Commission to annually determine whether an electric distribution utility has earned significantly excessive earnings under its ESP. In the application, the Companies request that the Commission find that significantly excessive earnings did not result for the Companies under their ESP with respect to the annual period ending December 31, 2012 (Co. Ex. 1 at 1-3).

The application and supporting testimony explain that, for purposes of determination of significantly excessive earnings, net income and common equity were adjusted as contemplated by the stipulation in the *ESP 2 Case*. Under the terms of the stipulation, adjustments should be made to net income and common equity in order to exclude the impact of any reduction in equity from any write-off of goodwill, of deferred carrying charges, and of any liability or write-off of regulatory assets due to the implementation of the Companies' ESP. The application notes that no adjustments were made for the write-off of goodwill or the write-off of regulatory assets; however, adjustments were made to exclude the impact of deferred carrying charges from the SEET calculations. After making these adjustments, the application indicates that the Companies' 2012 adjusted net income for SEET purposes was

\$96,829,997 for OE, \$35,976,099 for CEI, and \$15,613,610 for TE. The average common equity with adjustments for 2012 was \$792,320,805 for OE, \$1,147,380,661 for CEI, and \$368,791,410 for TE. The resulting return on equity for 2012 was 12.2 percent for OE, 3.1 percent for CEI, and 4.2 percent for TE (Co. Ex. 1, Attachment 1 at 9).

The Companies further state that their 2012 returns on equity for SEET purposes are below the "safe harbor" threshold of 200 basis points above the mean of the comparable group recognized by the Commission in the *SEET Test Case*, or 12.5 percent for OE, 13.5 percent for CEI, and 13.6 percent for TE. Finally, the Companies state that, because their earnings are not significantly excessive, they need not submit revenue information from their prior rate plans (Co. Ex. 1, Attachment 1 at 12-13).

III. Stipulation

The Stipulation signed by the Companies and Staff was filed on June 4, 2013 (Joint Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The Stipulation states that the earned returns on equity for the Companies for 2012, as adjusted by specific items contemplated by the stipulation in the *ESP 2 Case*, were 3.1 percent for CEI, 12.2 percent for OE, and 4.2 percent for TE. On that basis, the signatory parties recommend that the Commission determine that significantly excessive earnings did not occur with respect to each of the Companies' ESPs in 2012 (Joint Ex. 1 at 2).

IV. Consideration of the Stipulation

Rule 4901-1-30, O.A.C., 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.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 378 N.E.2d 480 (1978). 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.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994) (citing *Consumers' Counsel* 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.

Joseph P. Buckley, Utility Specialist in the Capital Recovery and Financial Analysis Division of the Commission, stated that the Stipulation is the product of serious bargaining among capable, knowledgeable parties in a cooperative process (Staff Ex. 1 at 3). 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, Mr. Buckley asserted that his review of the earnings of the Companies led him to conclude that, under the standards established by the Commission, the Companies did not have significantly excessive earnings (Staff Ex. 1 at 2). Further, Mr. Buckley noted that the Stipulation, as a package, benefits ratepayers and the public interest because it avoids further litigation in this matter (Staff Ex. 1 at 3). Therefore, upon review of the Stipulation, we find that, as a package, it satisfies the second criterion.

Finally, Mr. Buckley stated that the Stipulation does not violate any regulatory principle or practice (Staff Ex. 1 at 3). 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The Companies are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.
- (2) On May 15, 2013, the Companies filed an application for the administration of the SEET, as required by Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, O.A.C.
- (3) On June 4, 2013, the Companies and Staff filed a Stipulation that purports to resolve all of the issues in this proceeding.
- (4) The evidentiary hearing was held on August 5, 2013.
- (5) At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No one opposed the Stipulation.
- (6) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

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

ORDERED, That the Companies take all necessary steps to carry out the terms of the Stipulation and this opinion and order. 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.

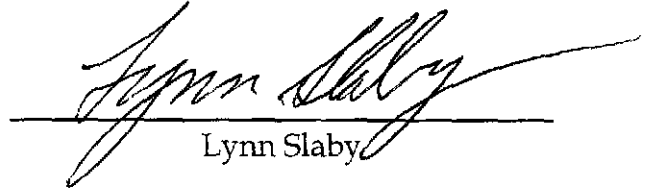
THE PUBLIC UTILITIES COMMISSION OF OHIO



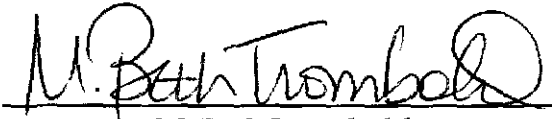
Todd A. Snitchler, Chairman



Steven D. Lesser



Lynn Slaby



M. Beth Trombold



Asim Z. Haque

GAP/sc

Entered in the Journal

OCT 16 2013



Barcy F. McNeal
Secretary