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 2012 Grid Modernization Costs.	: : : :	Case No. 13-1141-GE-RDR

POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

This case involves Duke Energy Ohio, Inc.'s ("Duke") request to adjust its advanced utility rider ("Rider AU") and its distribution reliability – infrastructure modernization rider ("Rider DR-IM"). Duke requests an adjustment to Rider AU and Rider DR-IM to allow recovery of 2012 costs for the deployment of Duke's grid modernization systems ("SmartGrid"). The Staff of the Public Utilities Commission of Ohio ("Staff") and various intervenors filed comments regarding Duke's application. After settlement negotiations, Duke, Staff, and all intervenors, except Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy"), entered into a Stipulation and Recommendation ("Stipulation").[1]

[1] *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2012 Grid Modernization Costs*, Case No. 13-1141-GE-RDR (hereinafter *In re Duke Energy*) (Stipulation and Recommendation) (January 10, 2014) (Joint Ex. 1).

The Stipulation represents a modification to the terms initially proposed in Duke's application.[2] The only question for the Commission is whether the Stipulation is reasonable. The record proves that it is. As such, Staff urges the Commission to adopt the Stipulation.

ARGUMENT

Ohio Adm. Code 4901-1-30(A) authorizes two or more parties to enter into a stipulation. Though not bound by a stipulation, the Commission should give it substantial weight.[3] The Commission conducts a three-factor inquiry to assess whether a stipulation is reasonable and should be adopted.[4] The three factors are:

1. Whether the stipulation is a product of serious bargaining among capable, knowledgeable parties;
2. Whether the stipulation, as a package, benefits ratepayers and the public interest; and
3. Whether the stipulation violates any important regulatory principal or practice.

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2 *In re Duke Energy* (Application) (Jun. 28, 2013).

3 *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992).

4 *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Order on Remand) (Apr. 14, 1994).

The Ohio Supreme Court has endorsed this inquiry.[5] The three factors will now be addressed.

A. The stipulation is a product of serious bargaining among capable, knowledgeable parties.

All parties were represented by able counsel and knowledgeable technical advisers, and had ample opportunities to participate in the settlement process. During the pendency of the negotiations, all parties circulated proposals to one another which they thought would best achieve their respective interests and objectives. And to foster further settlement dialogue, the Commission granted the parties' request for extra time so that discussions could continue.

Direct Energy has presented no evidence that the Stipulation was not the product of serious bargaining among capable and knowledgeable parties. Although Direct Energy is not a signatory party to the Stipulation, it was involved in settlement discussions and was afforded an opportunity to make its voice heard. Based on these facts, the Commission should find that the first factor in the three-part test is satisfied.

B. The stipulation, as a package, benefits ratepayers and the public interest.

The record shows that ratepayers and the public interest benefit from this Stipulation. Some of these benefits provide a clear financial benefit for ratepayers, such as a reduction in the proposed rider amounts. Other benefits address reliability and help

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5 *Indus. Energy Consumers of Ohio Power v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994).

improve the effectiveness of Duke's SmartGrid program. When considered in the aggregate, these benefits undoubtedly show that the second factor in the three-part test is satisfied.

1. The Stipulation contains economic benefits for ratepayers

The Stipulation reduces the recovery amounts for Rider-IM and Rider-AU that Duke proposed in its Application.[6] The Stipulation states that Duke should be allowed to collect from customers $41.8 million through Rider DR-IM and $7.0 million through Rider AU."[7] These stipulated revenue requirements are less than the $42,597,095 for Rider-IM and the $7,425,481 for Rider AU Duke proposed its Application.[8] These modifications to the Application are direct, financial benefits for ratepayers.

The Stipulation also provides that Duke will defer severance package payments for meter readers.[9] Although Duke originally sought to recover these severance payments in its Application in this case, Duke agrees to defer these costs *without carrying charges*.[10] This modification to the Application is consistent with Staff's comments, and represents another financial benefit to ratepayers.

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6 Joint Ex. 1 at 5.

7 *Id*.

8 *See* Application, Direct Testimony of Peggy Laub, Schedule 1-Electric and Schedule 14-Gas.

9 Joint Ex. 1 at 7.

10 *Id*.

The Stipulation is also beneficial because Duke adopted Staff's recommendations regarding "gas only" customers. Duke agrees to Staff's recalculation of Rider AU for "gas only" customers.[11] Duke's adoption of Staff's methodology will result in more accurate rates for "gas only" customers by ensuring that these customers are only paying for costs that are specific to serving "gas only" customers.[12] In addition, Duke agrees to deploy automated meter reading for all "gas only" customers as part of the SmartGrid program.[13] This will allow "gas only" customers to obtain the benefit of non-manual monthly meter reads that is included in the SmartGrid deployment and paid for through Rider AU.[14]

2. The Stipulation will increase the performance and reliability of Duke's SmartGrid program

In the Stipulation, Duke adopts a number of Staff's recommendations that address analyzing and increasing the performance of Duke's SmartGrid program. Duke agrees to track and provide a report on the number of instances Duke's self-healing teams had the opportunity to operate and the number of instances the self-healing teams actually operated.[15] In addition, when self-healing teams fail to operate, Duke agrees to identify the cause for these failures and what corrective action was taken to address these failures.

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[11] Joint Ex. 1 at 7.

[12] *In re Duke Energy* (Staff's Comments at 8-9) (Oct. 31, 2013) ("Staff Ex. 1").

[13] Joint Ex. 1 at 8.

[14] Staff Ex. 1 at 6.

[15] Joint Ex. 1 at 3.

This report on the performance of self-healing teams will help Duke and the Commission better understand the effectiveness of the distribution automation portion of Duke's SmartGrid program.

Another provision in the Stipulation that may increase the performance of Duke's SmartGrid program is Duke's agreement to, by June 1 2014, perform a cost/benefit analysis of integrating data from AMI into the outage management system. This analysis will include the cost of implementing battery back-up on communication nodes, which may help Duke recognize and remedy customer outages more effectively.

3. The Stipulation extends Duke's time-differentiated rate pilot program and implements a moratorium on disconnecting customers

Duke's customers will benefit from the continuation of its time-differentiated rate pilot program. Duke has offered pilot programs for time-differentiated rate options since 2010.[16] These pilot programs have provided valuable information for Duke and the stakeholder collaborative.[17] These programs have allowed some of Duke's customers to save money by giving them the ability reduce their energy usage during higher priced on-peak periods.[18] The most recent version of Duke's pilot program ("Rate TD 2013") was approved by the Commission in Case No. 12-3281-EL-ATA. The Stipulation provides that Duke will continue Rate TD 2013 until May 31, 2016. Continuing access to time-

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[16] Staff Ex. 1 at 10.

[17] *Id*.

[18] *Id*.

differentiated rates for residential customers is a proposition that was supported by Staff, as well as OCC.[19]

The Stipulation also provides that Duke will "not disconnect or refuse service to its residential customers who refuse to accept installation of a SmartGrid meter or otherwise opt-out of receiving such SmartGrid meters."[20] Both OCC and OPAE advocated for implementation of a moratorium on customer disconnections.[21] The Commission should view Duke's agreement to this moratorium as a reasonable compromise between the utility and consumer advocates and, therefore, a benefit for ratepayers.

4. Summary of the benefits of the Stipulation

The record shows that the Stipulation is a reasonable compromise between varying parties with diverse interest and beneficial for ratepayers. The Stipulation results in financial benefits for ratepayers, increases the reliability of Duke's SmartGrid program, and continues the development of time-differentiated rates by continuing a pilot program that is already in place. Although Direct Energy chose not to sign the Stipulation, no one disputes that the aforementioned benefits result from the Stipulation. Because the benefits of the Stipulation are clear and noncontroversial, the Commission should adopt the Stipulation.

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[19] *In re Duke Energy* (OCC Reply Comments at 3) (Nov. 14, 2013) ("OCC Reply Comments").

[20] Joint Ex. 1 at 8.

[21] OCC Reply Comments at 3; *In re Duke Energy* (OCC Reply Comments at 3) (Nov. 14, 2013); OPAE Comments at 3-4 (Oct. 31, 2013).

C. The stipulation does not violate any important regulatory principal or practice.

The Stipulation resolves Duke's annual application to adjust its SmartGrid riders. The Stipulation is yet another reasonable step in Duke's continuing SmartGrid program, and is consistent the Commission's past practices and longstanding regulatory principles.

CONCLUSION

The Stipulation satisfies the Commission's three-part test for Stipulations. It represents a reasonable resolution of all the issues raised by Duke's Application. The Commission should adopt the Stipulation.

Respectfully submitted,

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PROOF OF SERVICE

I certify that a true copy of the foregoing **Initial Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served via electronic mail upon the following parties of record, this 14th day of February, 2014.

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