

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for an Adjustment to) Case No. 13-2231-GA-RDR
Rider AMRP Rates to Recover Costs)
Incurred in 2013.)

In the Matter of the Application of Duke) Case No. 13-2232-GA-ATA
Energy Ohio, Inc. for Tariff Approval.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in these matters and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Jeanne W. Kingery, Elizabeth H. Watts, and Amy B. Spiller, 139 East Fourth Street, Cincinnati, Ohio 45202, on behalf of Duke Energy, Ohio, Inc.

Rebecca L. Hussey, Carpenter Lipps & Leland, LLP, 280 Plaza, 280 North High Street, Suite 1300, Columbus, Ohio 43215, on behalf of the Ohio Manufacturer's Association Energy Group.

Bruce E. Weston, Ohio Consumers' Counsel, by Mr. Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Mr. William L. Wright, Section Chief, Thomas G. Lindgren and Steven L. Beeler, Assistant Attorneys General, 180 East Broad Street, 6th Floor, Columbus, Ohio 43215, on behalf of Staff.

OPINION:

I. History of the Proceeding

Duke Energy Ohio, Inc.¹ (Duke) is a natural gas company as defined in R.C. 4905.03, and a public utility under R.C. 4905.02. Duke supplies natural gas to approximately 424,000 customers in southwestern Ohio.

¹ Duke was formerly known as The Cincinnati Gas & Electric Company.

By Opinion and Order issued May 30, 2002, in *In re Application of The Cincinnati Gas & Elec. Co.*, Case No. 01-1228-GA-AIR, et al., Opinion and Order, (May 30, 2002) (*CG&E Rate Case*), the Commission approved a stipulation, which included a provision establishing the accelerated main replacement program (AMRP) rider (Rider AMRP). The purpose of Rider AMRP was to recover the expenditures associated with Duke's 10-year plan to replace all 12-inch and small cast iron and bare steel gas mains in its distribution system. In accordance with the stipulation approved in the *CG&E Rate Case*, the rider was to be adjusted annually to account for any over- or under-recovery and Duke was to file applications annually supporting adjustments to the Rider AMRP rates.

By Opinion and Order issued May 28, 2008, the Commission approved a stipulation, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al., (2007 *Duke Rate Case*) which, inter alia, provided that the AMRP would be substantially completed by the end of 2019 and that the riser replacement program (RRP) would be completed by the end of 2012. In addition, the stipulation further defined the process for consideration of the period adjustments to Rider AMRP. In accordance with the stipulation, by November 2008, and annually thereafter, Duke will file a prefiling notice to implement adjustments to Rider AMRP. Subsequently, Duke will file its application and an update of year-end actual data by the following February 28 of each year. The stipulation provides that Staff and other parties then may file comments and that Duke has until April 1 of each year to resolve the issues raised in the comments. If the issues raised in the comments are not resolved, then a hearing will be held. The goal of the process set forth in the stipulation is for the proposed amendment to Rider AMRP to be effective by the first billing cycle of May.

By Opinion and Order, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 09-1849-GA-RDR, et al., Opinion and Order (Apr. 28, 2010) (2009 *AMRP Case*), the Commission approved Duke's AMRP rates to recover costs incurred during 2009. The stipulation approved by the Commission in the 2009 *AMRP Case* provided that, for the 2009, 2010, and 2011 AMRP test years, Duke would use the higher of actual maintenance savings, or a guaranteed level of minimum maintenance savings calculated using a methodology established in the stipulation, to determine the AMRP revenue requirement, and that the guaranteed savings methodology would be reevaluated in 2012. Subsequently, Duke agreed to reevaluate the continued use of the calculation methodology in an attempt to reach an agreed-upon guaranteed maintenance savings level for the 2012 AMRP test year and thereafter. See *In re Application of Duke Energy Ohio, Inc.*, Case No. 10-2788-GA-RDR, Opinion and Order (May 4, 2011) (2010 *AMRP Case*). By Opinion and Order issued April 24, 2013, in *In re Application of Duke Energy Ohio, Inc.*, Case No. 12-3028-GA-RDR, et al., Opinion and Order (Apr. 24, 2013), the Commission approved

a stipulation that established Duke's current AMRP rates, thereby allowing Duke to recover costs incurred during 2012.

In accordance with the AMRP provisions of the stipulation in the *2007 Duke Rate Case*, Duke filed its prefiling notice on November 27, 2013, in the instant cases, requesting approval to recover the AMRP costs incurred for 2013 (Duke Ex. 1). On February 27, 2013, Duke filed its application requesting an adjustment to Rider AMRP (Duke Ex. 2), along with the direct testimony of Gary J. Hebbeler (Duke Ex. 3) and Peggy A. Laub (Duke Ex. 4).

By Entry issued March 7, 2014, the attorney examiner granted the motion to intervene in these cases filed by the Ohio Consumers' Counsel (OCC). The attorney examiner subsequently granted a motion to intervene filed by the Ohio Manufacturer's Association Energy Group (OMA) by Entry issued April 1, 2014. In addition, the attorney examiner required that Staff and intervenors file comments on the application by March 24, 2014, and that Duke file a statement, by March 28, 2014, informing the Commission whether the issues raised in the comments had been resolved. Further, in the event all of the issues were not resolved or the parties entered into a stipulation resolving some or all of the issues in these cases, the Entry set the hearing in these matters for April 3, 2014.

On March 24, 2014, comments regarding Duke's application were filed by OCC (OCC Ex. 1), OMA (OMA Ex. 1), and Staff (Staff Ex. 1). On March 28, 2014, Duke filed a statement informing the Commission that not all of the issues raised in the comments had been resolved in the instant cases.

On March 31, 2014, a joint stipulation and recommendation (Stipulation) was filed by Duke, OCC, and Staff. On that same day, Duke filed supplemental direct testimony of Peggy A. Laub in support of the Stipulation (Duke Ex.5).

The hearing in these matters was held on April 3, 2014. At the hearing, Duke witness Peggy A. Laub presented testimony.

II. Summary of the Application and Comments

As stated previously, with the exception of OMA, all of the parties in this case filed a Stipulation, which purports to resolve all of the issues in this matter. However, as delineated later in our Order under our consideration of the Stipulation, OMA contests the Stipulation, stating that it does not meet the three-prong test utilized by the Commission in reviewing stipulations, because, as a package, it does not benefit ratepayers, is not in the public interest, and violates important regulatory principles and practices. The following

is a summary of the application, the comments and reply comments, and the Stipulation, followed by our consideration of the Stipulation and overall conclusion.

A. Application

Duke witness Hebbeler reports that, prior to the commencement of the AMRP in 2001, Duke had approximately 1,200 miles of cast iron and bare steel mains in service. By the end of 2013, Duke had replaced approximately 1,061 miles, or approximately 93 percent, of these mains. Duke replaced 47 miles of cast iron and bare steel mains in 2013, and has approximately 85 miles of mains left to replace. In addition, Mr. Hebbeler notes that Duke has replaced approximately 105,749 main-to-curb service lines. (Duke Ex. 3 at 4-5.) Duke proposes that, beginning with the first billing cycle in May 2014, the total annual revenue requirement for the AMRP would be \$19,601,340.88 and, for the RRP, it would be \$310,120.21, for a total of \$19,911,461.09 (Duke Ex. 2, Sch. 1). Duke proposes that the Rider AMRP rates be set at \$2.00² for residential customers, \$21.33 for general service and firm transportation customers, and \$0.08 per thousand cubic feet (Mcf) for interruptible transportation customers. (Duke Ex. 2, Sch. 24; Duke Ex. 4 at 7). Duke estimates that the rate changes proposed, if granted in full and factoring in the applicable rate caps approved by the Commission, would increase gross revenues by \$9.9 million, or 2.6 percent annually over the estimated test period gross revenues generated from providing service to customers (Duke Ex. 2 at 2). Duke witness Laub states that, in her opinion, Duke's rate request is fair and reasonable, in which the costs of service are properly allocated to customer classes and the rate design was properly performed in accordance with the terms and conditions of the *2012 Duke Rate Case*, including the limitations set forth regarding rate caps (Duke Ex. 4 at 8).

B. Comments and Reply Comments

In its comments, Staff agrees that the proposed Rider AMRP revenue requirements and rate class allocations are just and reasonable and recommends approval of Duke's application as presented to the Commission (Staff Ex. 1 at 7-8).

According to the comments filed by OCC, on Schedules 17-A and 17-B in the application, the depreciation accrual rates used in calculating the annualized reduction in depreciation for retirements are incorrect. OCC claims Duke mistakenly used the depreciation accrual rates from the *2012 Duke Rate Case*, instead of those recommended by the Staff in its report of investigation in that same case filed on January 4, 2013. OCC

² Duke's calculation reflects a rate of \$2.36 for residential customers; however, due to the agreed-upon cap on residential rates under Rider AMRP in the stipulation approved in *In re Application of Duke Energy Ohio, Inc.* Case No. 12-1685-GA-AIR, Opinion and Order (Nov. 13, 2013) (*2012 Duke Rate Case*), the actual residential rate will be capped at \$2.00 per month.

asserts that the stipulation approved in the 2012 *Duke Rate Case* provides that Duke will use the depreciation rates as reflected on Schedule B-3.2 of the Staff report of investigation in that case. According to OCC, if Duke would have used the Commission-approved depreciation accrual rates to calculate the annualized reduction in depreciation for retirements, there would have been an additional reduction to the AMRP revenue requirement on Schedule 1 of its application in this case, amounting to approximately \$12,770. OCC notes that Duke acknowledged this error in response to an OCC data request. (OCC Ex. 1 at 2-3.) OCC, therefore, recommends that Duke recalculate the AMRP revenue requirement on Schedule 1 to correct this error (OCC Ex. 1 at 3). In response, Duke admits that the calculations reflected in the application relied upon incorrect depreciation accrual rates and it had mistakenly used the depreciation accrual rates from the application in the 2012 *Duke Rate Case*, rather than the rates that were approved in the stipulation (Duke Ex. 5 at 2).

OMA indicates that the current Rider AMRP charge for nonresidential general service, distributed generation service, and firm transportation service is \$10.33 per month. However, OMA points out that the proposed Rider AMRP charge in the instant case is \$20.92 per month, which represents an increase of more than 100 percent for the applicable nonresidential rate classes. OMA asserts the disparity between the increase in the proposed rates for residential and nonresidential customers appears significantly pronounced upon inspection of the provided bill comparison prepared for purposes of this AMRP filing. OMA further provides that, while the greatest overall increase faced by customers in the residential rate categories due to the proposed Rider AMRP rates is 5.7 percent, the greatest overall increase faced by customers in the nonresidential rate categories is 18.1 percent. OMA adds that, while this comparison is significant in terms of percentage increases, it also represents an important difference in actual dollar amounts. (OMA Ex. 1 at 2-3; Duke Ex. 1 at Ex. 4.)

While OMA is cognizant that caps on increases for Rider AMRP charges for residential customers were negotiated and approved in a previous case, OMA asserts that this negotiation did not authorize or support the imposition of such significant percentage increases in Rider AMRP costs upon nonresidential ratepayers. OMA concludes that Duke's attempt to shift significant Rider AMRP costs onto nonresidential customers because of a negotiated inability to assess residential customers an amount necessary to cover accelerated main replacement costs is unjust and unreasonable. Moreover, OMA believes the degree of disparity between the proposed increases on residential and nonresidential ratepayers is unjust and unreasonable. (OMA Ex. 1 at 3-4.)

C. Stipulation

As previously stated, the Stipulation, signed by Duke, OCC, and Staff (collectively, Signatory Parties), was filed on March 31, 2014. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. OMA is the only party in these cases that did not sign the Stipulation. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation:

- (1) Duke shall receive, effective on May 1, 2014, an annualized revenue requirement under Rider AMRP of \$19,588,571 for the AMRP and \$310,120 for the RRP, for a total revenue requirement of \$19,898,691 as calculated on Stipulation Attachment 1. The class rates resulting from the above revenue requirement shall be:

Residential	\$2.00 per month
General Services and Firm Transportation	\$21.32 per month
Interruptible Transportation	\$0.008 per hundred cubic feet

- (2) Duke committed, in the *2010 AMRP Case*, to provide its natural gas customers with guaranteed maintenance savings attributed to the AMRP on an annual basis. For the 2013 AMRP test year, the parties agreed to apply, as savings, the amount of \$73,082 which is the difference between the \$690,220 guaranteed level of savings stipulated in the *2010 AMRP Case* and the \$617,138 of savings included in the base rates in the *2012 Duke Rate Case*. For the purposes of calculating the AMRP revenue requirement in these proceedings, Duke applied the savings of \$73,082 as part of the AMRP revenue requirement and, therefore, also as part of the total revenue requirement of \$19,898,691. The guaranteed savings for the 2014 and 2015 AMRP test years shall be the greater of \$172,488 and \$312,532, respectively, or the actual savings for the test year.
- (3) Duke shall implement the new 2014 rates for Rider AMRP pursuant to the terms and conditions in the stipulations in the *2007 Duke Rate Case* and the *2012 Duke Rate Case*.

(Joint Ex. 1 at 4-5.)

D. Consideration of the Stipulation

Ohio Adm.Code 4901-1-30 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, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves 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., *The Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (Dec. 30, 1993); *The Cincinnati Gas & Elec. Co.*, Case No. 92-1463-GA-AIR, et al. (Aug. 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (Aug. 19, 1993); *The Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR (January 31, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Nov. 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 has stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Indus. Energy Consumers of Ohio Power Co.* at 563.

In support of the Stipulation and the first criterion used in the consideration of a stipulation, Duke witness Laub explains that the stipulating parties regularly participate in Commission proceedings, are knowledgeable in regulatory matters, and were represented

by experienced, competent counsel and subject matter experts (Tr. at 15, 22; Duke Ex. 5 at 3). Moreover, Ms. Laub explains that all of the issues raised by the Signatory Parties were addressed in the Stipulation (Tr. at 15-16; Duke Ex. 5 at 5). The Commission notes that no party contested that the Stipulation meets the first criterion. Accordingly, the Commission finds that the Stipulation filed in these cases appears to be the product of serious bargaining among capable, knowledgeable parties. Therefore, we conclude that the first prong of the three-prong test for our consideration and approval of stipulations has been met.

With respect to the second criterion, Ms. Laub testified that the Stipulation demonstrates that stakeholders with different interests have examined the application and proposed rates, and agreed on a reasonable resolution of the issues in these cases. Ms. Laub also explains that the public interest is served when parties intervene and represent diverse interests in examining a record and ensuring that regulatory requirements are met. (Tr. at 16; Duke Ex. 5 at 4.) Duke witness Hebbeler also provided several benefits that customers enjoy from the incorporation of the AMRP, including but not limited to: a reduction in the leak rate in the natural gas distribution service, saving customers approximately \$24.4 million in maintenance costs; a reduction of filing costly general gas rate cases to recover capital expenditures for the AMRP; the ability to coordinate certain construction activities with governmental agencies, thereby reducing costs and limiting inconvenience to the public; and more efficient determinations for when equipment must be replaced (Duke Ex. 3 at 8-9).

In response to OMA's comments, Duke witness Laub states the stipulation in the *2012 Duke Rate Case* included a limitation on the allowable increases in Rider AMRP rates to be charged to residential ratepayers and, as a party to that case, OMA did not oppose the stipulation. The residential rates in these proceedings were calculated to be higher than the set cap, therefore, the stipulated cap on residential increases was effectuated. Ms. Laub contends that there is no stark contrast between the residential increase and the nonresidential increase, providing that residential and nonresidential rates will be increased in almost identical percentages. Ms. Laub argues that, without the cap, the average residential increase percentage would be approximately 29 percent greater than the average nonresidential increase percentage. Ms. Laub further asserts that OMA's concern that the residential cap leaves Duke unable to charge residential customers an amount necessary to cover the AMRP costs, effectively shifting those costs to nonresidential customers is entirely false and misleading, evidenced by the fact that the residential charge and the nonresidential charge are both calculated before application of the cap and the cap merely serves to reduce the residential charge to \$2.00 per bill, regardless of any excess that may have been calculated. Ms. Laub notes that the fact that the allocation of the Rider AMRP revenue requirement to residential exceeds the amount of revenue Duke collects from residential customers is a burden shouldered exclusively by

shareholders and none of the overage is shifted to any other class for recovery nor deferred for future recovery. (Duke Ex. 5 at 5-9.)

In determining whether the second prong of the test is met, the Commission observes that, as OMA and the other parties to these proceedings note (OMA Ex. 1 at 3-4; Tr. at 30-31, 36-37), OMA's arguments relate to matters already decided in the *2007 Duke Rate Case* and the *2012 Duke Rate Case*. OMA participated in the *2012 Duke Rate Case*, but did not join in the stipulation in that matter. Further, OMA had an opportunity to contest the stipulation the *2012 Duke Rate Case* and argue against the allocation factors between Duke's residential and nonresidential consumers, but there is no indication in the record of the *2012 Duke Rate Case* that OMA chose to avail itself of that opportunity. Upon review of the record in these cases and the testimony presented at hearing, the Commission finds that the Signatory Parties have demonstrated that the Stipulation, as a package, meets the second prong of our test for considering stipulations and it appears to be reasonable and in the public interest.

Finally, Duke witness Laub opines that the Stipulation complies with all relevant regulatory principles and practices (Duke Ex. 5 at 3-4). Ms. Laub asserts she was qualified to make this determination given her role as director of rates and regulatory strategy (Tr. at 16-17; Duke Ex. 4 at 7-8). Upon review of the record, the Commission finds that the Stipulation meets the third criterion and it does not violate any important regulatory principle or practice.

CONCLUSION:

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 these proceedings, and it 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, 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a natural gas company as defined in R.C. 4905.03 and a public utility under R.C. 4905.02.
- (2) In accordance with the AMRP provisions in the *2007 Duke Rate Case*, Duke filed its prefilng notice on November 27, 2013.

- (3) On February 27, 2014, Duke filed its application.
- (4) OCC and OMA were granted intervention in these proceedings by entries dated March 7, 2014, and April 1, 2014, respectively.
- (5) Comments on the application were filed by OCC, OMA, and Staff on March 24, 2014. On March 28, 2014, Duke filed a response.
- (6) On March 31, 2014, a stipulation and recommendation was filed by Duke, OCC, and Staff, intending to resolve all issues.
- (7) The hearing on these matters was held on April 3, 2014.
- (8) The Stipulation meets the criteria used by the Commission to evaluate stipulations. Consequently, the Commission finds that the Stipulation is reasonable and should be adopted.
- (9) Duke should be authorized to implement the new rates for Rider AMRP consistent with the Stipulation and this Order.

ORDER:

It is, therefore,

ORDERED, That the Stipulation filed in these proceedings 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, four complete copies of its tariffs, consistent with this Order. Duke shall file one copy in its TRF docket and one copy in these case dockets. 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, That the effective date of the new rates for Rider AMRP shall be a date not earlier than the date upon which four, complete, printed copies of the final tariff page are filed with the Commission. It is, further,

ORDERED, That Duke shall notify its customers of the changes to the tariff via bill message or bill insert, or separate mailing within 30 days of the effective date of the

revised tariffs. A copy of this 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,

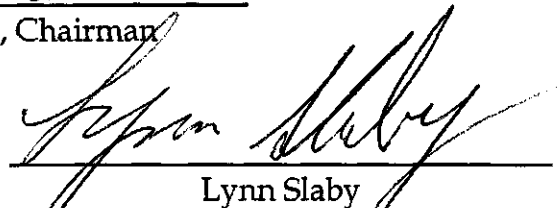
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

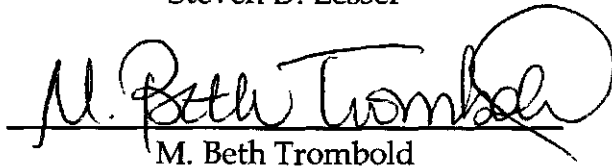
ORDERED, That a copy of this Opinion and Order be served upon each party of record.

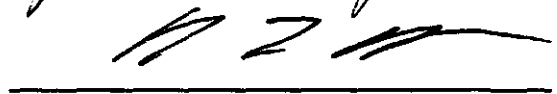
THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser

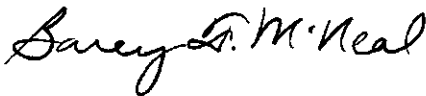

Lynn Slaby


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Barcy F. McNeal
Secretary