

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Determination of the )  
Existence of Significantly Excessive )  
Earnings for 2013 Under the Electric )  
Security Plan of Ohio Edison Company, ) Case No. 14-828-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 William L. Wright and Thomas W. McNamee, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Michael J. Schuler, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

OPINION:

I. Background

Pursuant to R.C. 4928.14, electric utilities are required to provide consumers with a standard service offer, consisting of either a market-rate offer or an electric security plan (ESP). Pursuant to the directives of R.C. 4928.143(F), the Commission is required to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. The Commission issued a Finding and Order in *In re Investigation into the Dev. of the Significantly Excessive*

*Earnings Test Pursuant to Am.Sub.S.B. No. 221 for Elec. Util.*, Case No. 09-786-EL-UNC (*SEET Test Case*), Finding and Order (June 30, 2010), which established policy and significantly excessive earnings test (SEET) filing directives for the electric utilities.

On May 15, 2014, Ohio Edison Company (OE), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (TE) (collectively, the Companies) filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10. The Companies also filed the supporting testimony of K. Jon Taylor (Co. Ex. 1, Att. 1) and Michael J. Vilbert (Co. Ex. 1, Att. 2).

By Entry issued June 19, 2014, the attorney examiner, inter alia, scheduled this matter for hearing on August 15, 2014. On July 9, 2014, Ohio Consumers' Counsel (OCC) filed a motion to intervene. We find that OCC's motion is reasonable and should be granted.

On August 1, 2014, Staff filed testimony of Joseph P. Buckley (Staff Ex. 1). A stipulation and recommendation (Stipulation) entered into by the Companies and Staff was filed in this proceeding (Jt. Ex. 1) on August 11, 2014. At the August 15, 2014 hearing, the Stipulation was introduced. In support of the Stipulation, the Companies presented the testimony of witness Santino Fanelli.

## II. Application and Comments

In the application, the Companies explain that in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, (*ESP 2 Case*), Opinion and Order (Aug. 25, 2010), the Commission approved an ESP for the Companies through May 31, 2014. The Companies note R.C. 4928.143(F) 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, 2013. (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* (Co. Ex. 1, Att. 1 at 5-6). 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. (Co. Ex. 1, Att. 1 at 7.) After making these adjustments, the application indicates that the Companies' 2013 adjusted net income for SEET purposes was \$93,105,118 for OE, \$48,076,667 for CEL, and \$20,223,411 for TE. The average common equity with adjustments for 2013 was \$821,853,000 for OE, \$1,098,282,139 for CEL, and \$375,111,042 for TE. The resulting return on equity for 2013 was 11.3 percent for OE, 4.4 percent for CEL, and 5.4 percent for TE. (Co. Ex. 1, Att. 1 at 9.)

The Companies further state that their 2013 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 12.6 percent for OE, 14.1 percent for CEL, and 13.6 percent for TE (Co. Ex. 1, Att. 1 at 10, 12). 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, Att. 1 at 12).

### III. Stipulation

The Stipulation signed by the Companies and Staff was filed on August 11, 2014 (Jt. Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding (Jt. Ex. 1 at 1). The Stipulation states that the earned returns on equity for the Companies for 2013, as adjusted by specific items contemplated by the stipulation in the *ESP 2 Case*, were 4.4 percent for CEL, 11.3 percent for OE, and 5.4 percent for TE. On that basis, the signatory parties recommend that the Commission determine that significantly excessive earnings did not occur with respect to the Companies' ESP in 2013. (Jt. Ex. 1 at 2-3.) At the August 15, 2014 hearing, OCC made a statement that it neither supports nor opposes the Stipulation (Tr. at 13).

### IV. Consideration of the Stipulation

Ohio Adm.Code 4901-1-30 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 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., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Res. Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison*

Co., Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Opinion and Order (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 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.

Santino Fanelli, Manager of Revenue Requirements in the Rates and Regulatory Affairs Department of FirstEnergy Service Company, testified that the Stipulation is a product of serious bargaining among capable, knowledgeable parties (Tr. at 10-11). 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. Fanelli explained that the Stipulation benefits the public interest (Tr. at 11). 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.

Witness Fanelli also testified that the Stipulation does not violate any important regulatory principle or practice (Tr. at 11). 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 R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.
- (2) On May 15, 2014, the Companies filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10.
- (3) On July 9, 2014, OCC filed a motion to intervene.
- (4) The evidentiary hearing was held on August 15, 2014.
- (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 OCC's motion to intervene is granted. It is, further,


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,

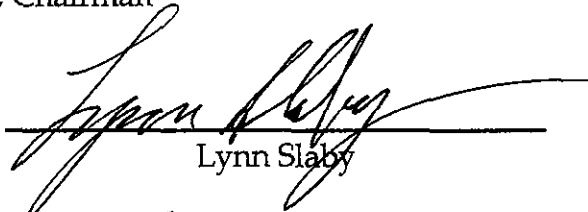
ORDERED, That a copy of this Opinion and Order be served upon each party of record.

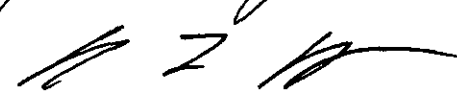
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Thomas W. Johnson, Chairman

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Steven D. Lesser

  
M. Beth Trombold

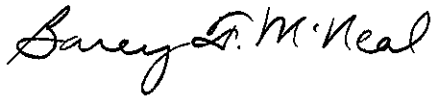
  
Lynn Slaby

  
Asim Z. Haque

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Entered in the Journal

**SEP 25 2014**

  
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Barcy F. McNeal  
Secretary

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Secretary