

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REGULATION OF
THE PURCHASED GAS ADJUSTMENT
CLAUSE CONTAINED WITHIN THE RATE
SCHEDULES OF DUKE ENERGY OHIO, INC.
AND RELATED MATTERS.

CASE NO. 17-218-GA-GCR

IN THE MATTER OF THE UNCOLLECTIBLE
EXPENSE RIDER OF DUKE ENERGY OHIO,
INC. AND RELATED MATTERS.

CASE NO. 17-318-GA-UEX

IN THE MATTER OF THE PERCENTAGE OF
INCOME PAYMENT PLAN RIDER OF DUKE
ENERGY OHIO, INC. AND RELATED
MATTERS.

CASE NO. 17-418-GA-PIP

OPINION AND ORDER

Entered in the Journal on March 8, 2018

I. SUMMARY

{¶ 1} This Opinion and Order adopts and approves a stipulation and recommendation between Duke Energy Ohio, Inc. and Staff that resolves all issues relating to gas cost recovery, uncollectible expense, and percentage of income payment plan audits.

II. HISTORY OF THE PROCEEDINGS

{¶ 2} Duke Energy Ohio, Inc. (Duke or Company) is a natural gas company as defined in R.C. 4905.03 and a public utility under R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.302, the Commission promulgated rules for a uniform purchased gas adjustment clause to be included in the schedules of gas or natural gas companies subject to the Commission's jurisdiction. These rules, which are contained in Ohio Adm.Code Chapter 4901:1-14, separate the jurisdictional cost of gas from all other costs incurred by a gas or natural gas company, and provide for each company's recovery of these costs.

{¶ 4} R.C. 4905.302 also directs the Commission to establish investigative procedures, including periodic reports, audits, and hearings, to examine the arithmetic and accounting accuracy of the gas costs reflected in a company's gas cost recovery (GCR) rates and to review each company's production and purchasing policies and their effects upon these rates. Pursuant to such authority, the Commission adopted Ohio Adm.Code 4901:1-14-07, which identifies how periodic financial audits of gas or natural gas companies shall be conducted. Ohio Adm.Code 4901:1-14-08(A) requires the Commission to hold a public hearing at least 60 days after the filing of each required audit report. Ohio Adm.Code 4901:1-14-08(C) specifies that notice of the hearing be published in one of three ways, at least 15 days, but not more than 30 days, prior to the date of the scheduled hearing.

{¶ 5} By Entry issued on April 12, 2017, the Commission initiated Case No. 17-218-GA-GCR (*2017 Duke GCR Case*), established the financial audit period, and established the date upon which the financial audit report must be filed. In the April 12, 2017 Entry, the Commission scheduled a hearing date of January 30, 2018, and directed Duke to publish notice of the hearing. In accordance with the April 12, 2017 Entry, the financial audit report (Comm.-ordered Ex. 1) was timely filed on October 27, 2017.

{¶ 6} On December 21, 2005, the Commission authorized Duke to establish an uncollectible expense (UEX) rider, which was initially set at zero. *In re The Cincinnati Gas & Elec. Co.*, Case No. 05-732-EL-MER, et al., Finding and Order (Dec. 21, 2005) at 18. Since that time, the UEX rider rate has been updated. Most recently, by Finding and Order issued in Case No. 17-318-GA-UEX (*2017 Duke UEX Case*) on July 12, 2017, the Commission authorized a decrease in Duke's UEX rider to \$0.07186 per thousand cubic feet (Mcf). Further, in the April 12, 2017 Entry, the Commission established the audit period for Duke's UEX rider. The UEX audit report (Comm.-ordered Ex. 2) was filed on October 27, 2017, in the *2017 Duke UEX Case*.

{¶ 7} By Finding and Order issued on December 2, 1993, the Commission approved a stipulation authorizing Duke to recover percentage of income payment plan (PIPP)

arrears associated with providing natural gas service through its PIPP rider. *In re Review of PIP Plan Riders*, Case No. 88-1115-GE-PIP, et al., Finding and Order (Dec. 2, 1993). In Case No. 17-418-GA-PIP (*2017 Duke PIPP Case*), Duke's most recent application to adjust its PIPP rider to \$0.0005096 per Mcf was approved through the Commission's automatic approval process for PIPP riders. Additionally, in the April 12, 2017 Entry, the Commission established the audit period for Duke's PIPP rider. The PIPP audit report (Comm.-ordered Ex. 3) was filed on October 27, 2017, in the *2017 Duke PIPP Case*.

{¶ 8} On January 12, 2018, a stipulation and recommendation (Stipulation) was filed in these cases. In the Stipulation, Duke and Staff represent that the Stipulation (Jt. Ex. 1) resolves all of the issues between Duke and Staff in the *2017 Duke GCR Case*, the *2017 Duke UEX Case*, and the *2017 Duke PIPP Case*. At the hearing, Duke offered as evidence the testimony of Jeff L. Kern in support of the Stipulation (Duke Ex. 1).

{¶ 9} Ohio Adm.Code 4901:1-14-08(A) requires the Commission to hold a public hearing at least 60 days after the filing of the GCR audit report. As scheduled in the April 12, 2017 Entry, the hearing was convened on January 30, 2018. At hearing, no members of the public appeared to testify.

{¶ 10} Ohio Adm.Code 4901:1-14-08(C) specifies that notice of the hearing be published at least 15 and not more than 30 days prior to the scheduled date of hearing in a newspaper of general circulation throughout the gas or natural gas company's service area, or by bill insert, bill message, or direct mail to customers. Moreover, the April 12, 2017 Entry required the Company to publish notice, pursuant to Ohio Adm.Code 4901:1-14-08(C), and to do so in a section of the newspaper other than the legal notices section.

{¶ 11} On January 23, 2018, Duke filed a motion for waiver of the publication requirement for these cases. In the motion, Duke states that one of the newspapers in its service area did publish the required notice in a timely manner but in the legal classified section of the newspaper and not the general news section. Duke notes that this legal notice

was expected to be republished on January 25 or 26, 2018, in the general news section. Duke requests a waiver of Ohio Adm.Code 4901:1-14-08(C) and the April 12, 2017 Entry that, taken together, require publication at least 15 days prior to the hearing, in a newspaper section other than the legal notices section.

{¶ 12} On January 29, 2018, Duke submitted affidavits of publication stating that notice was provided in newspapers of general circulation on January 8, 9, 10, 11, 17, and 26, 2018. Copies of the notices were included in the filing with the affidavits. Thereafter, on February 16, 2018, Duke filed an affidavit of publication and a newspaper notice verifying that the initial publication of the Company's legal notice of the hearing in one newspaper was timely, but that the publication took place in the legal classified section instead of the general news section.

{¶ 13} Duke's motion for waiver is reasonable and should be granted. The Commission finds that, under the circumstances, sufficient notice was provided in substantial compliance with Ohio Adm.Code 4901:1-14-08(C) and the April 12, 2017 Entry.

III. DISCUSSION

A. *Financial Audit*

{¶ 14} The financial audit was conducted by Deloitte & Touche LLP (Deloitte) in accordance with the objectives outlined in Ohio Adm.Code Chapter 4901:1-14 and Deloitte's audit report was filed on October 27, 2017. In the audit report, Deloitte noted that it examined the periodic filings of Duke that support the GCR rates for the monthly periods ended September 28, 2016, October 25, 2016, November 29, 2016, January 2, 2017, January 31, 2017, March 1, 2017, March 30, 2017, May 1, 2017, May 31, 2017, June 29, 2017, July 31, 2017, and August 29, 2017. Deloitte stated that it found that Duke fairly determined, in all material respects, its GCR rates for the periods stated above, in accordance with the uniform purchased gas adjustment clause, as set forth in Ohio Adm.Code Chapter 4901:1-14, and

related appendices. Further, Deloitte stated that it did not detect any findings related to the GCR mechanism. (Comm.-ordered Ex. 1 at 1-2.)

B. UEX Audit

{¶ 15} Deloitte reviewed Duke's UEX recovery mechanism for the period April 1, 2016, through March 31, 2017, and noted no exceptions in Duke's calculations of its write-offs, recovery, and carrying charges for uncollectible expenses during that time period. Further, based on a random review of 25 charge-offs reflecting the customer's billing history, including any subsequent recovery of any portion of the balance written off, Deloitte noted one occurrence of a charge-off after 90 days. Deloitte stated that it was informed by Company management that this variance in excess of the 90-day, charge-off policy was due to the account not being sent to collections, causing it to stall in the system. Deloitte stated that a report is automatically run monthly through the Company's "sweeper program" to find any final accounts that have been stalled. Deloitte noted that, as the report is run once a month, there could be anywhere from one to 30 days' lag, past the Company policy of 90 days for charge-offs and that this occurrence was charged off 24 days past the 90-day policy. (Comm.-ordered Ex. 2 at 1-2.)

C. PIPP Audit

{¶ 16} Deloitte reviewed Duke's PIPP recovery mechanism for the period April 1, 2016, through March 31, 2017, and proved the mathematical accuracy in Duke's calculations of its deferred PIPP balances, arrearages credits, and PIPP rider revenues from sales customers during the audit period. Deloitte stated that it performed audit procedures related to the monthly activity balance for the PIPP deferrals during the audit period, the application of PIPP arrearage and repayment credits to customer balances, planned billed volumes used to calculate the PIPP rider rates, and the application of PIPP rider revenues to customer balances. Deloitte noted no exceptions to its audit procedures. Further, based on a random review of ten customer bills, Deloitte stated that it compared the PIPP rider rate used in the customers' bill calculations to the applicable rate filing approved by the

Commission and that each rate selected for review was in agreement. With respect to the balance of accumulated deferrals for the PIPP rider, Deloitte also noted that, as of March 31, 2017, Duke had not identified reconciling items and/or differences. (Comm.-ordered Ex. 3 at 1-3.)

IV. STIPULATION AND RECOMMENDATION

{¶ 17} As stated previously, a Stipulation, signed by Duke and Staff (Signatory Parties), was filed in these dockets on January 12, 2018. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation. The Stipulation included, inter alia, the following provisions:

- (1) Duke's GCR rates for the 12-month period ending August 29, 2017, were fairly determined by the Company during the audit period, in accordance with the provisions of Ohio Adm.Code Chapter 4901:1-14 and related appendices of the Ohio Administrative Code.
- (2) The GCR rates were accurately computed and the costs reflected in the GCR rates were properly incurred.
- (3) Duke's GCR rates were accurately applied to customer bills during the audit period.
- (4) A financial audit was conducted by Deloitte in accordance with the objectives outlined in Ohio Adm.Code 4901:1-14-07.
- (5) The specific findings presented in the Summary of Findings in Deloitte's GCR audit report, as well as the findings in the UEX audit report and the PIPP audit report, are reasonable

and should be adopted by the Commission. The next audit or review will verify that the Company implemented any recommendations made in the present audit or review.

(Jt. Ex. 1 at 4-5.)

V. CONCLUSION

{¶ 18} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *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.

{¶ 19} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 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). 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?

{¶ 20} 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* 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.

{¶ 21} In direct testimony filed on January 12, 2018, and submitted as Duke Exhibit 1 at the January 30, 2018 public hearing, Jeff L. Kern, who is employed by Duke Energy Business Services LLC, an affiliate of Duke, as Lead, Gas Resources, testified that the Signatory Parties regularly participate in rate proceedings before the Commission, are knowledgeable in regulatory matters, and were represented by experienced, competent counsel. Further, Mr. Kern testified that, based on his experience, the Stipulation complies with all relevant and important regulatory principles and practices. Finally, Mr. Kern testified that the Stipulation provides benefits for all customer groups and interested stakeholders, while advancing and remaining consistent with state policy. Mr. Kern added that the Stipulation represents a timely and efficient resolution of the issues in these proceedings. (Duke Ex. 1 at 3-4.)

{¶ 22} Based on our review of the three-pronged test, the Commission finds that the first criterion is clearly met. The Stipulation filed in these cases appears to be the product of serious bargaining among knowledgeable, capable parties. Both parties to the Stipulation have been involved in numerous cases before the Commission and have consistently provided extensive and helpful information to the Commission. The Commission also finds that the Stipulation meets the second criterion. As a package, the Stipulation advances the public interest by resolving all the issues raised in these matters without resulting in extensive litigation. Further, the Stipulation meets the third criterion because it does not

violate any important regulatory principle or practice. (Duke Ex. 1 at 3-4.) We, therefore, find that the Stipulation is reasonable and should be adopted.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 23} Duke is a natural gas company, as defined in R.C. 4905.03, and a public utility, as defined in R.C. 4905.02. As such, Duke is subject to the jurisdiction of this Commission.

{¶ 24} By Entry issued April 12, 2017, the Commission initiated the financial audit of Duke, as well as the Company's UEX and PIPP audits.

{¶ 25} On October 27, 2017, the financial, UEX, and PIPP audit reports were filed by Deloitte.

{¶ 26} On January 12, 2018, Duke and Staff filed the Stipulation in these matters.

{¶ 27} On January 30, 2018, a hearing was held.

{¶ 28} The Stipulation submitted by Duke and Staff in these cases meets the criteria used by the Commission to evaluate stipulations, represents a just and reasonable resolution of the issues in these proceedings, and should be adopted.

VII. ORDER

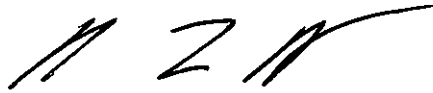
{¶ 29} It is, therefore,

{¶ 30} ORDERED, That Duke's motion for waiver be granted. It is, further,

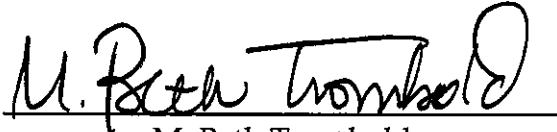
{¶ 31} ORDERED, That the Stipulation be adopted and approved. It is, further,

{¶ 32} ORDERED, That a copy of this Opinion and Order be served upon each party and interested person of record.

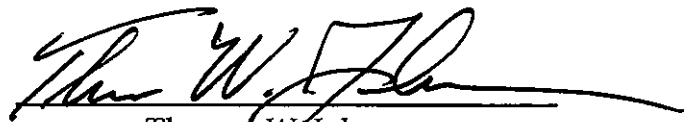
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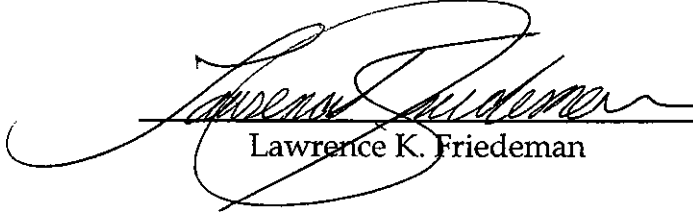
Asim Z. Haque, Chairman



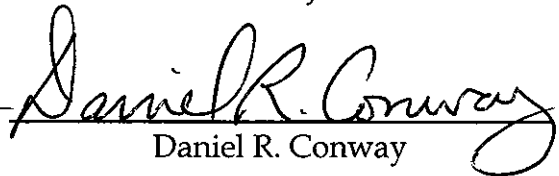
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

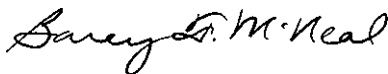


Daniel R. Conway

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Secretary