

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
AUTHORITY TO ADJUST ITS RIDER PF.

CASE NO. 19-1750-EL-UNC

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
APPROVAL TO CHANGE ACCOUNTING
METHODS.

CASE NO. 19-1751-GE-AAM

FINDING AND ORDER

Entered in the Journal on January 10, 2024

I. SUMMARY

{¶ 1} The Commission approves the stipulation and recommendation filed by Duke Energy Ohio, Inc., Ohio Energy Leadership Council, Ohio Energy Group, and Staff.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility as defined by R.C. 4928.01(A)(6), a natural gas company as defined by R.C. 4905.03, and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On September 24, 2019, Duke filed an application, pursuant to the stipulation and recommendation adopted by the Commission in *In re the Application of Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, et al., Opinion and Order (Dec. 19, 2018) and in accordance with R.C. 4905.13, for Commission approval to include the Company's Rider PF in its initial infrastructure modernization plan consisting of customer information system upgrades and other infrastructure investment programs (Infrastructure Modernization Plan) and for deferral authority for Operations and Maintenance (O&M) costs, incremental to amounts in base electric and natural gas rates that have been or will be incurred in relation

to the Infrastructure Modernization Plan. Specifically, the Company is proposing the following four initiatives for inclusion in its Infrastructure Modernization Plan: (1) a new customer information system (CIS) known as Customer Connect; (2) a new Land Mobile Radio (LMR) communication system; (3) the Smart Cities Infrastructure Acceleration Program (Smart Cities); and, (4) an Electric Vehicle (EV) pilot program. In support of its request, Duke opines that the Infrastructure Modernization Plan components proposed in its application will allow flexibility and adaptability as the Company modernizes its electric delivery, customer service, and communication infrastructure to better serve and more actively engage with its customers.

{¶ 4} With respect to its request for deferral authority, the Company states that it is requesting authority to defer the incremental O&M costs attributable to the development and implementation of Customer Connect, as of January 1, 2018, that are allocable to both electric and natural gas business operations. Additionally, the Company requests authority to defer the O&M costs attributable to the implementation of LMR for natural gas operations. As a final matter, Duke requests authority to recover carrying costs on the deferred balance, based on the Company's actual cost of long-term debt and proposes to record this cost as a regulatory asset on its balance sheet in Account 182.3, Other Regulatory Assets, in accordance with the FERC Uniform System of Accounts Prescribed for Natural Gas Companies.

{¶ 5} By Entry issued on March 11, 2020, the attorney examiner invited comments from interested stakeholders regarding Duke's application. Motions to intervene and initial comments were due by April 15, 2020, and reply comments were due by May 15, 2020.

{¶ 6} Motions to intervene were granted to Ohio Energy Group (OEG); Direct Energy Services, LLC and Direct Energy Business, LLC; Interstate Gas Supply, Inc. (IGS); Armada Power, LLC; Ohio Manufacturers' Association Energy Group (OMAEG); The Kroger Co. (Kroger); Ohio Consumers' Counsel; Environmental Law and Policy Center;

ChargePoint, Inc.; IEU-Ohio (now known as Ohio Energy Leadership Council) (OELC); Ohio Environmental Council (OEC); The Ohio Hospital Association (OHA); Sierra Club; Zeco Systems, Inc. d/b/a Greenlots; Mission:data Coalition; and the Natural Resources Defense Council.

{¶ 7} Staff filed a review and recommendation (Staff Report) on April 15, 2020. Additionally, various parties filed initial comments on April 15, 2020, and April 16, 2020. Reply comments were filed on May 15, 2020. Duke filed revised reply comments on May 18, 2020.

{¶ 8} On February 13, 2023, Duke and IGS filed a joint motion to bifurcate supplier consolidated billing issues, requesting that these issues be addressed in a separate case docket. The motion was later granted by Entry issued September 15, 2023.

{¶ 9} On August 2, 2023, Duke filed a stipulation and recommendation (Stipulation). Duke, Staff, OEG, and OELC entered into the Stipulation while OHA, Kroger, OMAEG, and OEC agreed not to oppose it.

{¶ 10} Thereafter, an evidentiary hearing was held as scheduled on October 2, 2023.

III. DISCUSSION

{¶ 11} As discussed, Duke filed its application proposing, among other things, the following four initiatives for inclusion in its Infrastructure Modernization Plan: (1) a new CIS known as Customer Connect; (2) a new LMR communication system; (3) Smart Cities ; and, (4) an EV pilot program. Thereafter, the Staff Report was filed, and numerous parties submitted comments.

A. Summary of the Stipulation

{¶ 12} The Stipulation purports to resolve all issues in the case. The Stipulation asks that Duke’s application be approved, subject to the adjustments discussed below. As we briefly summarize key components of the Stipulation, the Commission notes our summary does not supersede anything expressly stated in the Stipulation.

{¶ 13} Initially, as to LMR, Smart Cities, and the EV pilot program, Duke agrees to withdraw those requests.

{¶ 14} Regarding Customer Connect, Duke will be able to recover the revenue requirement associated with the return on the electric Customer Connect capital assets placed in-service and the associated depreciation and property tax expenses. Duke will be able to defer all electric and natural gas O&M costs associated with the implementation of Customer Connect, with electric O&M costs to be eligible for recovery through annual Rider PF update filings. The Rider PF update filings will be subject to review by Staff, or a third-party designee, through an annual audit, subject to any challenges from signatory parties and ultimate approval by the Commission. No additional electric O&M costs associated with the implementation of Customer Connect will be included in Rider PF after the March 31, 2024 annual Rider PF filing, and the total amount of electric O&M costs included in Rider PF for Customer Connect shall not exceed \$31 million. Duke is to include all capital costs associated with electric service assets already placed in-service as of December 31, 2022, in its next annual Rider PF application, which is to be filed no later than 30 days after the approval of the Stipulation. Capital costs associated with electric service assets for the implementation of Customer Connect will be added into annual Rider PF filings after the March 31, 2023 annual Rider PF filing. The total electric plant-in-service assets included in Rider PF for the implementation of Customer Connect shall not exceed \$38 million.

{¶ 15} For the associated rate design, the revenue requirement shall be allocated based on the percentage of base distribution revenues approved in the Company’s most

recent electric rate case. In Duke's next electric rate case, the Company's application will include a proposal to roll plant-in-service assets, depreciation, and property taxes from Rider PF filings into base rates.

B. Commission Conclusion

{¶ 16} 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.* (*Consumers' Counsel*), 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.

{¶ 17} 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 Western Reserve Telephone 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*, 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?

{¶ 18} The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases 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, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Ohio Supreme 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.

{¶ 19} In support of the first prong of the three-part test, Duke witness Jay Brown (Mr. Brown) testified that the Stipulation was the product of serious bargaining among capable, knowledgeable parties. Mr. Brown notes that all parties were represented by competent and experienced counsel. Further, he states that all parties had an opportunity to review and comment as to each draft of the Stipulation. According to Mr. Brown, while not all parties signed on the Stipulation, no party has expressed opposition to anything in the Stipulation. (Duke Ex. 3 at 6-7.) The Commission agrees that serious bargaining occurred and determines that the first prong of the test is satisfied. In doing so, we recognize that Duke has agreed to withdraw several of the programs it originally applied for. Additionally, the Company asked to bifurcate certain issues to a separate proceeding. The Commission observes that while not all parties are signatories endorsing the Stipulation, several other parties specifically signed the Stipulation as non-opposing parties. Other parties were completely silent as to the Stipulation, neither signing on to the Stipulation in any capacity, filing any opposition, or appearing at the evidentiary hearing concerning the Stipulation.

{¶ 20} Mr. Brown also testified that the Stipulation satisfies the second prong of the Commission's test. Specifically, he highlights that the Stipulation contains cost caps and time limitations associated with the recovery of costs regarding Duke's CIS. Further, he

states the recovery is subject to an annual audit and Commission approval. Regarding the third prong, Mr. Brown testified that the Stipulation does not violate any important regulatory principles or practices. (Duke Ex. 3 at 7-8.) Upon review, the Commission finds that the second and third prongs of the test are satisfied. We determine that the price caps and review process benefit the public. Additionally, the Commission finds that the Stipulation does not violate any important regulatory principles or practices.

{¶ 21} Accordingly, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 22} Duke is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 23} On September 24, 2019, Duke filed an application for Commission approval to include the Company's Rider PF in its initial infrastructure modernization plan consisting of CIS upgrades and other infrastructure investment programs, as well as deferral authority.

{¶ 24} Motions to intervene were granted to OEG; Direct Energy Services, LLC and Direct Energy Business, LLC; IGS; Armada Power, LLC; OMAEG; Kroger; Ohio Consumers' Counsel; Environmental Law and Policy Center; ChargePoint, Inc.; OELC; OEC; OHA; Sierra Club; Zeco Systems, Inc. d/b/a Greenlots; Mission:data Coalition; and the Natural Resources Defense Council.

{¶ 25} Various parties filed initial comments on April 15, 2020, and April 16, 2020. Reply comments were filed on May 15, 2020. Duke filed revised reply comments on May 18, 2020.

{¶ 26} On February 13, 2023, Duke and IGS filed a joint motion to bifurcate supplier consolidated billing issues, requesting that these issues be addressed in a separate case docket. The motion was granted by Entry issued September 15, 2023.

{¶ 27} On August 2, 2023, Duke filed a Stipulation. Duke, Staff, OEG, and OELC entered into the Stipulation while OHA, Kroger, OMAEG, and OEC agreed not to oppose it.

{¶ 28} An evidentiary hearing was held as scheduled on October 2, 2023.

{¶ 29} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

V. ORDER

{¶ 30} It is, therefore,

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

{¶ 32} ORDERED, That the Company takes all necessary steps to carry out the terms of the Stipulation and this Finding and Order. It is, further,

{¶ 33} ORDERED, That nothing in this Finding 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,

{¶ 34} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

NJW/mef

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Case No(s). 19-1750-EL-UNC, 19-1751-GE-AAM

Summary: Finding & Order approving the stipulation and recommendation filed by Duke Energy Ohio, Inc., Ohio Energy Leadership Council, Ohio Energy Group, and Staff. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.