

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Administration of the)
Significantly Excessive Earnings Test under) Case No. 18-568- EL-UNC
Section 4928.143(F), Revised Code, and Rule)
4901:1-35-10, Ohio Administrative Code.)

APPLICATION OF DUKE ENERGY OHIO, INC., FOR ADMINISTRATION OF THE SIGNIFICANTLY EXCESSIVE EARNINGS TEST

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and hereby applies for the administration of the significantly excessive earnings test (SEET), as required under Section 4928.143(F), Revised Code (R.C.), and Rule 4901:1-35-10, Ohio Administrative Code (O.A.C.). Duke Energy Ohio further submits that the SEET is to be applied to it in a manner consistent with the Opinion and Order issued by the Public Utilities Commission of Ohio (Commission) in connection with the Company's electric security plan (ESP) approved under Case No. 14-841-EL-SSO, *et al.* (ESP Order).¹ Further, the Company recognizes that the interpretation of the governing statute and administrative rule are addressed in the Commission's decisions in its generic SEET proceeding (SEET Proceeding).² As will be demonstrated herein and through the testimony filed in support of this Application, Duke Energy Ohio's earnings for 2017 were not significantly excessive. Rather, its return on common equity for 2017 was 6.28 percent.

¹ *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, *et al.*, Opinion and Order (April 2, 2015).

² *In the Matter of the Investigation into the Development of the Significantly Excessive Earnings Test Pursuant to Amended Substitute Senate Bill 221 for Electric Utilities*, Case No. 09-786-EL-UNC, *et al.*, Finding and Order (June 30, 2010) and Entry on Rehearing (August 25, 2010).

REQUIREMENT FOR A SIGNIFICANTLY EXCESSIVE EARNINGS TEST

Pursuant to R.C. 4928.143(F), the Commission must determine, on an annual basis, whether the earnings of an electric distribution utility operating under an ESP are “significantly excessive.” Insofar as it concerns the administration of this test, the burden is on the electric distribution utility to prove that such significantly excessive earnings did not occur.³

The applicable statute provides, in relevant part, that the test is to consider whether adjustments under an ESP “resulted in excessive earnings, as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk.”⁴

SEET PROCESS, CALCULATION, AND THRESHOLD

On May 5, 2009, the Commission implemented rules under Chapter 4901:1-35, O.A.C. In general, these rules set forth the filing requirements for an application for a standard service offer, whether an ESP or a market rate option. However, the chapter also includes Rule 4901:1-35-10, O.A.C., which requires an annual filing to commence the SEET review, with process and timeframes to be established on a case-by-case basis. The rule also requires the applicant to include, in its application, the information set forth in Rule 4901:1-35-03(C)(10)(a), O.A.C. Specifically, this latter rule provides as follows:

- a) For the annual review pursuant to division (F) of section 4928.143 of the Revised Code, the electric utility shall provide testimony and analysis demonstrating the return on equity that was earned during the year and the returns on equity earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility. In addition, the electric utility shall provide the following information:

³ R.C. 4928.143(F).

⁴ *Id.*

- (i) The federal energy regulatory commission form 1 (FERC form 1) in its entirety for the annual period under review. The electric utility may seek protection of any confidential or proprietary data if necessary. If the FERC form 1 is not available, the electric utility shall provide balance sheet and income statement information of at least the level of detail as required by FERC form 1.
- (ii) The latest securities and exchange commission form 10-K in its entirety. The electric utility may seek protection of any confidential or proprietary data if necessary.
- (iii) Capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP.⁵

This rule was analyzed in detail in the SEET Proceeding, which directed utilities as to the application of the statute and the rule.

With regard to calculation parameters, the ESP Order did not disagree with the methodology proposed by Duke Energy Ohio and used in its prior SEET proceedings:

Net income as shown on page 117, column (c), line (78) of the [FERC] Form 1, adjusted for the following, if necessary:

- Eliminate all impacts related to the purchase accounting recorded pursuant to the Duke Energy/Cinergy merger.
- Eliminate all impacts of refunds to customers pursuant to R.C. 4928.143(F).
- Eliminate all impacts of mark-to-market accounting.
- Eliminate all impacts of material, non-recurring gains/losses, including, but not limited to, the sale or disposition of assets.
- Eliminate all impacts of material, non-recurring revenue or expenses.
- Eliminate all impacts of parent, affiliated, or subsidiary companies and, to the extent reasonably feasible and prudently justified in the opinion of Duke Energy Ohio, eliminate the impacts of its natural gas distribution business.

The adjusted net income will be divided by Common Equity to determine the resulting return on equity. Certain adjustments will be made to Common Equity.

- Common Equity used in the calculation will be the beginning and ending average common equity of Duke Energy Ohio on a stand-

⁵ Rule 4901:1-35-03(C)(10)(a), O.A.C.

alone basis (i.e., equity associated with subsidiaries will be excluded and common equity will be allocated between gas and electric service to the extent practicable)

- Equity will be adjusted to eliminate the acquisition premium recorded to equity pursuant to the Duke Energy/Cinergy merger.
- Eliminate the cumulative effect of the Net income adjustments.

If the annual return on average common equity for the relevant year, as adjusted pursuant to the above, is above 15 percent, the Company will be deemed to have had “significantly” excessive earnings. Any significantly excessive earnings shall be grossed up for taxes and refunded to customers. Any refunds will be allocated to all retail customers on the same basis as is used for allocated costs under Rider RC.⁶

Although the statute does not define “significantly” excessive earnings,” the Commission has, in the past, established a threshold to be applied for purpose of the SEET test, with the level having most recently been set at 15%.⁷ In the ESP Order, however, the Commission specifically refrained from setting a SEET threshold, indicating that it would establish an appropriate threshold in the SEET proceedings.⁸

The Direct Testimony of Sarah E. Lawler, filed contemporaneously herewith, demonstrates that Duke Energy Ohio’s return on common equity for 2017 was 6.28 percent. This return is below the most recent allowed rate of return of 9.84%. Accordingly, the Company’s earnings were not significantly excessive as compared to other publicly traded companies facing similar business and financial risks. Duke Energy Ohio thus addresses – and satisfies – the requirement of subparagraph (a) of Rule 4901:1-35-03(C)(10), O.A.C.

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 11-3549-EL-SSO, *et al.*, Stipulation and Recommendation (October 24, 2011)(Attachment H) and Opinion and Order (November 22, 2011). Although not all parties signed the Stipulation and Recommendation, no party objected to the content thereof.

⁷ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 11-3549-EL-SSO, *et al.*, Stipulation and Recommendation (October 24, 2011) and Opinion and Order (November 22, 2011). Although not all parties signed the Stipulation and Recommendation, no party objected to the SEET threshold.

⁸ ESP Order, at pg. 84.

The testimony of Company witness Lawler also addresses other issues required through the Commission's orders in the SEET Proceeding. Specifically, she discusses (1) that the Company excluded all earnings or allocable equity associated with its natural gas operations; (2) the Company's earned return on average electric common equity; and, (3) the certain factors specified by the Commission.

As required under subparagraphs (a)(i)-(iii) of Rule 4901:1-35-03(C)(10), O.A.C., Duke Energy Ohio submits the following:

1. FERC Form 1 for 2017 (electronically available at <https://www.duke-energy.com/our-company/investors/regulatory-information>;
2. Form 10-K (electronically available at <https://www.duke-energy.com/media/pdfs/our-company/investors/2017-duke-energy-form-10-k.pdf>;
3. Capital budget requirements for the future electric committed investments in Ohio are \$442 million for 2018 and \$475 million for 2019.

Through these submissions, Duke Energy Ohio confirms that its earnings for 2017 were not significantly excessive.

CONCLUSION

For the reasons stated herein and as confirmed by the testimony filed in support of this Application, Duke Energy Ohio respectfully requests that the Commission conclude that Duke Energy Ohio has satisfied the requirements of Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, O.A.C., and that its earnings for 2017 were not significantly excessive.

Respectfully submitted,

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