

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The	)	
Cincinnati Gas & Electric Company to Modify	)	
Its Nonresidential Generation Rates to	)	
Provide for Market-Based Standard Service	)	Case No. 03-93-EL-ATA
Offer Pricing and to Establish an Alternative	)	
Competitive-Bid Service Rate Option Sub-	)	
Sequent to the Market Development Period.	)	
In the Matter of the Application of The	)	
Cincinnati Gas & Electric Company for	)	
Authority to Modify Current Accounting	)	Case No. 03-2079-EL-AAM
Procedures for Certain Costs Associated with	)	
the Midwest Independent Transmission	)	
System Operator.	)	
In the Matter of the Application of The	)	
Cincinnati Gas & Electric Company for	)	
Authority to Modify Current Accounting	)	
Procedures for Capital Investment in its	)	Case No. 03-2081-EL-AAM
Electric Transmission and Distribution System	)	Case No. 03-2080-EL-ATA
And to Establish a Capital Investment	)	
Reliability Rider to be Effective after the	)	
Market Development Period.	)	
In the Matter of the Application of Duke	)	
Energy Ohio, Inc., to Adjust and Set its	)	Case No. 06-1069-EL-UNC
System Reliability Tracker.	)	
In the Matter of the Application of The	)	
Cincinnati Gas & Electric Company to Modify	)	
its Fuel and Economy Purchased Power	)	Case No. 05-725-EL-UNC
Component of its Market-Based Standard	)	
Service Offer.	)	
In the Matter of the Application of Duke	)	
Energy Ohio, Inc., to Modify its Fuel and	)	Case No. 06-1068-EL-UNC
Economy Purchased Power Component of its	)	
Market-Based Standard Service Offer.	)	

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In the Matter of the Application of Duke )  
 Energy Ohio, Inc., to Adjust and Set its ) Case No. 05-724-EL-UNC  
 System Reliability Tracker Market Price. )

In the Matter of the Application of Duke )  
 Energy Ohio, Inc., to Adjust and Set the ) Case No. 06-1085-EL-UNC  
 Annually Adjusted Component of its Market )  
 Based Standard Service Offer. )

### ENTRY

The Commission finds:

- (1) In *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, et al. (RSP case), this Commission authorized Duke Energy Ohio (DE-Ohio)<sup>1</sup> to establish a rate stabilization plan and, as a part of that plan, to recover various costs through identified riders.
- (2) On appeal of that Commission decision, the Ohio Supreme Court remanded the proceedings to the Commission, requesting, *inter alia*, that the Commission provide additional record evidence and sufficient reasoning to support the modification of its opinion and order on rehearing. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789. The entry on rehearing, *inter alia*, modified or created various riders, as part of the rate stabilization plan.
- (3) Adjustments to certain of the riders established through the RSP case are currently pending before the Commission. Specifically, the fuel and economy purchased power component (FPP) is being considered in Case Nos. 06-1069 and 05-725, the system reliability tracker component (SRT) is being considered in Case Nos. 06-1069 and 05-724, and the annually adjusted component (AAC) is being considered in Case No. 06-1085, all as captioned above.

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<sup>1</sup> DE-Ohio was formerly known as the Cincinnati Gas & Electric Company. In this entry, it will be referred to as DE-Ohio, regardless of its name at the time being discussed. Case names, however, will not be modified.

- (4) On November 29, 2006, the attorney examiner issued an entry directing the parties not to file testimony in the FPP and SRT proceedings and continuing the scheduled hearing in the AAC proceeding.
- (5) On December 5, 2006, DE-Ohio filed two motions in the AAC proceeding. The first of those motions, which includes a request for expedited consideration, asks the Commission to continue the AAC at its current level. The second motion requests that the Commission permit DE-Ohio to reconcile any change in the AAC to January 1, 2007, through a true-up, in order to fully recover included 2007 costs.
- (6) On December 6, 2006, DE-Ohio filed a motion in the SRT proceedings. DE-Ohio asks the Commission to allow the SRT rates to be amended as proposed in its application, subject to subsequent true-up.
- (7) On December 12, 2006, the office of the Ohio Consumers' Counsel (OCC) filed a memorandum contra DE-Ohio's motions, a motion to stay DE-Ohio's rate increases, and a motion to render all rate increases following the market development period subject to refund.
- (8) On December 15, 2006, DE-Ohio filed a memorandum contra OCC's motions and a reply to OCC's memoranda contra certain of DE-Ohio's motions.<sup>2</sup>
- (9) On December 18, 2006, OCC filed a reply to DE-Ohio's memoranda contra.
- (10) At a prehearing conference on December 14, 2006, the attorney examiner ordered that replies to OCC's memoranda contra and memoranda contra OCC's motions must be filed no later than 12:00 p.m. on December 15, 2006, and that replies to memoranda contra OCC's motions must be filed no later than 12:00 p.m. on December 16, 2006.
- (11) As the OCC's request that any increased rates be subject to refund applies to all of DE-Ohio's riders, we will address that issue first.

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<sup>2</sup> DE-Ohio included a reply to OCC's memorandum contra DE-Ohio's motion to extend the AAC. That motion was filed on an expedited basis. Therefore, no reply is allowed. To the extent that DE-Ohio's filing on December 15, 2006, replies to arguments on that subject, it will be disregarded.

OCC notes that "collecting rates subject to refund is not foreign to Commission policies and practices." The Commission has used this approach to permit it to explore the reasonableness of rates in light of events that occurred after the issuance of its orders. In the present situation, OCC points out, allowing collection, subject to refund, of rates that were increased in the RSP case is the only way to ensure that customers are protected. DE-Ohio, in its memorandum contra, argues that a stay is inappropriate, as there is almost complete certainty that no component of its market-based standard service offer (MBSSO) will change. In addition, DE-Ohio questions the Commission's authority to grant a stay of a market-based component.

- (12) We find that the appropriate approach, in our consideration of the various pending motions, is to maintain DE-Ohio's current rate structure, to the extent possible. If we ultimately find that any particular rider is not reasonable or that a given level of any particular rider is too high or too low, those overpayments or underpayments will ultimately be accounted for, with interest. Therefore, we believe that the rates established for the riders discussed below should be subject to true-up for under- or over-recovery, depending on the Commission's ultimate determination in these proceedings.
- (13) For purposes of clarity, each rider will be discussed separately in this entry.

Annually Adjustable Rider (AAC)

- (14) DE-Ohio points out that, in the RSP case, the Commission set the level for the AAC for 2005 and 2006 and established that DE-Ohio would have to apply to the Commission to set the AAC level for 2007 and for 2008. The currently effective tariff states that the present AAC charge is effective only through December 31, 2006, and does not establish a level for 2007. In order to preserve the status quo, DE-Ohio moves that the AAC be continued at its current level until such time as the Commission approves a change.
- (15) OCC asserts that the burden of proof is on DE-Ohio to show that the proposal in its application is just and reasonable. It submits that DE-Ohio's only arguments for extending the AAC are that the AAC was an integral part of DE-Ohio's MBSSO and that consumers

will suffer if the AAC is not extended. OCC opines that DE-Ohio has not met its burden of proof at this point in the proceeding.

- (16) The Commission finds that, in order to maintain the current situation until we can evaluate DE-Ohio's rates, DE-Ohio's tariff should be amended to continue the AAC at its current level, subject to true-up, until such time as we determine otherwise in the pending RSP remand or DE-Ohio's application to modify the AAC.
- (17) DE-Ohio's second motion with regard to the AAC asks that the Commission determine that it will ultimately be appropriate for DE-Ohio to true up the AAC to January 1, 2007, in order to fully recover environmental, homeland security, and tax costs for the covered period.
- (18) OCC argues that there is no assurance, at this point, that the AAC will be vindicated upon reconsideration of the RSP case.
- (19) While we may ultimately determine that a true-up of the AAC is appropriate, we do not at this time need to determine the period of time for such a true-up. An evaluation of the appropriate date from which to true up the recovery of costs under the AAC must be made, if at all, on the basis of the record that will be developed in these proceedings. Therefore, we will not rule, at this time, on DE-Ohio's motion for a true-up of the AAC to January 1, 2007.

#### System Reliability Tracker (SRT)

- (20) DE-Ohio's third motion requests that we authorize implementation of its proposed 2007 SRT rider, subject to true-up. DE-Ohio points out that, under its current SRT rider, DE-Ohio is paying a credit to customers, thereby reimbursing customers for overcollection of the SRT earlier in 2006. DE-Ohio also indicates that its current rider will, by its terms, expire on January 1, 2007, if the Commission takes no action. According to DE-Ohio, its intent is to maintain the status quo. DE-Ohio also questions the Commission's jurisdiction to alter an approved pricing mechanism for a competitive service. DE-Ohio also threatens to purchase additional capacity on the volatile real-time market, if the Commission does not allow recovery of projected SRT costs, even though no hearing has been held.
- (21) OCC opposes DE-Ohio's motion, noting that the projected SRT costs for 2007, as set forth in DE-Ohio's application for

modifications to the SRT, are "significantly above those actually incurred during 2006." OCC continues, contending that the "2006 experience, where [DE-Ohio's] projected SRT costs vastly exceeded actual costs, may have only been partly corrected in the Company's projections for 2007." OCC proposes that it would be more reasonable to "charge a rate consistent with the actual 2006 experience . . ."

- (22) Although, as noted previously, it is our intent to keep the riders as close as possible to their current situation during the pendency of our consideration of these cases, the Commission agrees with DE-Ohio that the SRT should not remain as a credit past the end of the intended expiration of that credit. The credit was designed to reimburse only a specific level of 2006 overpayments. Contrary to the AAC situation where we could keep the rider at its current level, we therefore must make a change. DE-Ohio moves that the SRT be changed to the level proposed in its application. Without having developed a record to support that level, we cannot authorize that change. OCC proposes that the SRT be set at a level that would collect an amount sufficient to recover costs equal to those actually incurred in 2007. We also have not developed a record to support the determination that such a level would be reasonable. Therefore, we find that the best option is to allow the SRT rider to expire by its current terms on January 1, 2007. We will determine whether a true-up to January 1, 2007, as proposed by DE-Ohio, is reasonable when we are resolving all of the other issues in these proceedings.

#### Fuel and Purchased Power Rider

- (23) While DE-Ohio's motions do not address the FPP, OCC's motion to stay all increases does. OCC points out that previous quarterly rate changes to the FPP have been implemented without a Commission order or entry. It believes that, while these proceedings are under consideration, FPP rates should not be increased.
- (24) DE-Ohio responds that there is no basis for the Commission to suspend, stay, or make subject to refund any portion of the market price.
- (25) The FPP is intended to recover actual costs and is, as noted by OCC, implemented through quarterly filings by DE-Ohio, without the need for Commission authorization. The FPP is then subjected

to an annual audit, with subsequent true-ups, as may be found to be necessary. The audit for the FPP rates charged during the second half of 2005 and the first half of 2006 is part of these consolidated proceedings. In order to continue our effort to maintain the current rate structure, where possible, we find that the FPP should continue to be adjusted quarterly, subject to our subsequent audit and true-up.

- (26) The Commission also notes that we recently authorized the adjustment of DE-Ohio's transmission cost rider (TCR), in *In the Matter of the Transmission Rates Contained in the Rate Schedules of Duke Energy Ohio and Related Matters*, Case No. 05-727-EL-ATA et al. (Entry, November 28, 2006). In DE-Ohio's TCR filing on October 16, 2006, it indicated that it was proposing to transfer net congestion costs and losses to the FPP component. As that TCR rate was approved, the Commission finds that DE-Ohio should also be allowed to adjust the FPP to reflect that transfer, subject to the Commission's continuing consideration of possible double recovery of congestion costs, as noted in the TCR entry.

#### Infrastructure Maintenance Fee

- (27) OCC's motion to stay also covers the infrastructure maintenance fee (IMF). OCC submits that the IMF was set, by the RSP case, to increase from four percent of "little g" to six percent of "little g" as of the beginning of 2007. OCC argues that, inasmuch as the IMF was approved by this Commission "without reference to record evidence and without explanation," in the words of the Supreme Court, it should not be permitted to increase without further consideration.
- (28) DE-Ohio asserts that the IMF is not the subject of any pending application.
- (29) We will not stay the automatic increase in the IMF. DE-Ohio's tariff currently provides for a change in the IMF as of the start of 2007. We will allow the tariff provision regarding the IMF to stand, subject to true-up, depending on the Commission's ultimate determination in these proceedings.

It is, therefore,

ORDERED, That DE-Ohio's motions and OCC's motions be granted in part and denied in part, as discussed in this entry. It is, further

ORDERED, That DE-Ohio be authorized to file in final form four complete copies of its tariff consistent with this entry. DE-Ohio shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. 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,

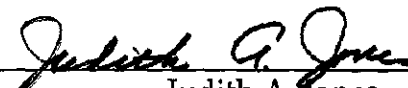
ORDERED, That the proposed tariffs be effective pursuant to their terms and upon filing in final form, on a services-rendered basis. It is, further,

ORDERED, That a copy of this entry be served upon Energy Ventures Analysis, Inc., and all parties of record in these proceedings.

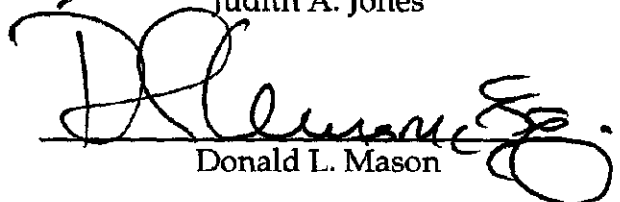
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Renee J. Jenkins  
Secretary