BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates.	)	Case No. 07-589-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for its Gas Distribution Service.	)	Case No. 07-590-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., to Change Accounting Methods.	)	Case No. 07-591-GA-AAM
In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Rates	)	Case No. 01-1228-GA-AIR
In the Matter of the Application of The Cincinnati Gas & Electric Company to Change Accounting Methods.	)	Case No. 01-1539-GA-AAM
In the Matter of the Expansion of the Electronic Filing Pilot Project and Waiver of Procedural Rules 4901-1-02 through 4901-1-04, Ohio Administrative Code.	)	Case No. 06-900-AU-WVR

ENTRY

The Commission finds:

(1) In our opinion issued May 30, 2002, in Case Nos. 01-1228-GA-AIR and 01-1539-GA-AAM (2002 Order), the Commission approved a stipulation (2002 Stipulation) joined by the majority of the parties, including the Ohio Consumers' Counsel (OCC), which granted The Cincinnati Gas & Electric Company, now known as Duke Energy Ohio (Duke),[1] special recovery of costs associated with its accelerated main replacement program

[1] Cinergy Corporation was the parent company of The Cincinnati Gas and Electric Company until Cinergy merged into Duke Energy Corporation, effective April 3, 2006. Following that transaction, The Cincinnati Gas and Electric Company was renamed Duke Energy Ohio, Inc.

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(AMRP). Under this program, Duke intends to replace approximately 1,200 miles of cast iron and bare steel mains on its system, over a 10-year period. Duke initially estimated the total program cost at $716,000,000, which would be recovered through a special annual rider (Rider AMRP), net of any savings realized from fewer leaks on the system. The 2002 Order established caps on the amount that the Rider AMRP may increase each year and authorized Duke to create certain regulatory assets needed to implement the AMRP.

While the 2002 Stipulation proposed rates for the Rider AMRP for 2002 through 2007, the agreement also obligated Duke to defend the continuation of the rider in a special expedited process. Pursuant to the 2002 Stipulation, for the past six years Duke has prefiled a notice of its intent to file an application to continue the Rider AMRP in November, followed by the filing of the AMRP rate application in February of the following year. Staff has then investigated and filed its recommendations, to which the other parties have been able to file objections. Hearings were conducted, with the ultimate goal of having each year's Rider AMRP implemented for the first billing cycle of the May revenue month.

Pursuant to the 2002 Stipulation and Order, Duke agreed not to seek any direct increase in Rider AMRP after May 2007, and the last Rider AMRP rates, adopted on April 18, 2007, were to continue until the effective date of the rates set in Duke's next base rate case. Moreover, the 2002 Stipulation provides that, in such next base rate case, Duke must specifically request the continuation of Rider AMRP, although any party is free to challenge such continuance.[2]

(2) On July 18, 2007, Duke filed applications for an increase in its gas distribution base rates (07-589 application), for approval of an alternative rate plan in Case No. 07-590-GA-ALT, and for approval to change accounting methods in Case No. 07-591-GA-AAM. On November 30, 2007, Duke docketed, in the first five above-captioned proceedings, a prefiling notice of intent to file an application for approval of an increase of approximately $8.4

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2 Stipulation filed April 17, 2002, in Case Nos. 01-1228-GA-AIR, 01-1478-GA-ALT, and 01-1539-GA-AAM, at 5-8.

million in gas distribution rates to recover AMRP and riser replacement costs under its Rider AMRP (AMRP prefiling). Concurrent with this prefiling, Duke filed a motion to modify the filing date for its next Rider AMRP application until the earlier of April 21, 2008, or a final order is issued in Case No. 07-589-GA-AIR. Duke contends that such modification would maintain the present schedule for Rider AMRP filings and allow for the recovery of AMRP costs on the same schedule as approved in Case No. 01-1228-GA-AIR.

(3) On December 17, 2007, OCC filed a memorandum contra, arguing that Duke's motion violates Section 4909.18, Revised Code. This statute prohibits the filing of a notice of intent to file a new rate application until either a final order has been issued in a pending application to increase the same rate, or 275 days have elapsed since the pending application was filed. OCC asserts that Duke violated this provision when it filed the AMRP prefiling notice of intent on November 30, 2007, prior to the issuance of a final order in 07-589 and fewer than 275 days after filing the 07-589 application on July 18, 2007. OCC also argues that Duke's AMRP prefiling violates the 2002 Stipulation because the agreement only provided for AMRP increases through May 1, 2007.

(4) On December 27, 2007, Duke filed a reply, urging that OCC's argument be rejected because Duke's pending 07-589 application seeks to decrease Rider AMRP to zero and to roll the existing AMRP revenue requirement plus new AMRP investment through March 31, 2007, into Duke's base rates. Since Duke's July 18, 2007, application does not seek to increase the Rider AMRP surcharge, Duke asserts that Section 4909.18, Revised Code, does not apply and OCC's objection should be dismissed.

In the alternative, Duke argues that the prohibition against overlapping rate proceedings in Section 4909.18, Revised Code, does not apply to emergency situations, and that the safety and reliability risks which would exist absent the AMRP and riser replacement programs constitute emergency safety measures necessary to protect the public.

A third ground raised by Duke is that its application to continue Rider AMRP constitutes an alternative regulation program

under Section 4929.05, Revised Code, to which the 4909.18 prohibition does not apply. According to Duke, Section 4929.06, Revised Code, authorizes the Commission to adopt its own procedures for implementing alternative rate plans. Assuming the Commission approves Duke's alternative regulation application in Case No. 07-590-GA-ALT, Duke argues that the Commission can authorize it to continue filing annual Rider AMRP applications as part of its alternative rate plan, regardless of the prohibition in Section 4909.18, Revised Code.

A fourth argument raised by Duke is that Rider AMRP constitutes an automatic adjustment mechanism for a regulated service within the meaning of Section 4929.11, Revised Code, to which Section 4909.18, Revised Code, is inapplicable. Therefore, Duke argues, the Commission has discretion to approve such automatic adjustment clauses regardless of any other provision of the Revised Code.

Finally, Duke contends that its request to continue Rider AMRP is totally consistent with the 2002 Stipulation, which required Duke to continue making annual Rider AMRP filings after the May 1, 2007, Rider AMRP increase. In any event, Duke asserts that, if the Commission accepts either of OCC's arguments, we should hold Duke's notice of intent in abeyance until the earlier of April 21, 2008, or the issuance of a final order in Case No. 07-589-GA-AIR.

(5) The Commission believes that any issues relating to the continuation and recovery mechanisms for these programs, or Duke's compliance with the 2002 Order and Stipulation, are best considered within the context of Duke's pending base rate case. We believe it would best serve the interests of all parties that any rate increases or rider changes be limited to a single adjustment on an annual basis wherever possible. Accordingly, we will suspend any perceived obligation that Duke may have to file for an increase in Rider AMRP, and direct the parties to seek resolution of these issues within the context of the 07-589 base rate case proceedings.

(6) In Case No. 06-900-AU-WVR, the Commission has established procedures for the voluntary participation of parties who agree to conventions for validation of filings and signatures, electronic

service of documents, and waiver of certain requirements contained in Rules 4901-1-02 through 4901-1-04, Ohio Administrative Code (O.A.C.), to permit the electronic filing of documents via the internet (E-filing) using the Commission's Docketing Information System (DIS), pursuant to Ohio's Uniform Electronic Transactions Act, Chapter 1306, Revised Code. Rules 4901-1-02 and 4901-1-03, O.A.C., contemplate the filing of paper copies of applications and other documents, while Rule 4901-1-04, O.A.C., requires that applications be signed by the filers or their attorney. Under the Commission's pilot program, these rules are relaxed to the extent necessary to permit the E-filing of documents under specific circumstances.

(7) At the January 25, 2008 prehearing conference, the parties agreed to participate in the expansion of the pilot project for these Duke gas rate case proceedings. Accordingly, all documents and service in these cases may be E-filed. In order to participate in this pilot program, individual filers who have not previously submitted a request for waiver of the procedural rules and participation agreement in the 06-900 docket should submit a hard copy of the participation form which is posted on the Commission's website under the electronic filing information link at http://www.puco.ohio.gov/PUCO/Docketing. Documents should be filed in both PDF and native source formats (e.g., Microsoft Word or Excel). The PDF file will be time-stamped by DIS and become the official filing. If no native source document is available, an explanation should be filed in its stead. No hard copy should be filed or served upon other parties who have agreed to participate in the E-filing pilot program. Instead, all parties will be served by DIS automatically via electronic mail subscription.[3] Filings submitted after 5:30 p.m. will, if accepted, be deemed filed on the following business day. Filers will use "/s/" followed by the signer's name to indicate a signature where applicable. Filers will also be required to comply with any other technical requirements posted on the Commission's website.

It is, therefore,

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[3] It should be noted that the agreement of parties to be served via electronic mail through their DIS subscriptions in these cases does not relieve the obligation of other parties to provide hard copy service of documents in other Commission proceedings.

ORDERED, Any obligation Duke may have to file its next Rider AMRP application be suspended to the extent set forth in this entry. It is, further,

ORDERED, That the Commission's pilot program be expanded as set forth in this entry to include the E-filing and service of documents in these proceedings. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

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Entered in the Journal

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Reneé J. Jenkins
Secretary