

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
 Energy Ohio, Inc. for an Increase in Rates.) Case No. 07-589-GA-AIR

In the Matter of the Application of Duke)
 Energy Ohio, Inc. for Approval of an) Case No. 07-590-GA-ALT
 Alternative Rate Plan for Gas Distribution)
 Service.)

In the Matter of the Application of Duke)
 Energy Ohio, Inc. for Approval to Change) Case No. 07-591-GA-AAM
 Accounting Methods.)

ENTRY ON REHEARING

The Commission finds:

- (1) On July 18, 2007, Duke Energy of Ohio, Inc. (Duke) filed applications to increase its gas distribution rates, for authority to implement an alternative rate plan for its gas distribution services, and for approval to change accounting methods. On February 28, 2008, the parties filed a Joint Stipulation and Recommendation (Stipulation) resolving all the issues raised in the application except the issue of residential rate design. By Opinion and Order issued May 28, 2008, the Commission approved the Stipulation and, based on the record presented, adopted a "levelized" residential rate design to decouple Duke's revenue recovery from the amount of gas actually consumed.
- (2) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (3) On June 27, 2008, the Office of the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) filed applications for rehearing. Both applications assert that the May 28, 2008 Order is unreasonable, unlawful and/or an abuse of the Commission's discretion on the following grounds:

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- (a) The Commission erred by approving a rate design that unreasonably violates prior Commission precedent and policy, and does not produce just and reasonable rates in violation of Sections 4905.22 and 4909.18, Revised Code.
- (b) The Commission erred by approving a rate design that discourages customer conservation efforts in violation of Sections 4929.05 and 4905.70, Revised Code.
- (c) The Commission erred when it failed to comply with the requirements of Section 4903.09, Revised Code, and provide specific findings of fact and written opinions that were supported by record evidence.

In addition to the foregoing common three arguments, OCC adds a fourth ground for rehearing: that the Commission erred by approving a rate design which increases the monthly residential customer charge without providing consumers adequate notice of the new rate design pursuant to Sections 4909.18, 4909.19 and 4909.43, Revised Code.

- (4) On July 7, 2008, Duke filed a memorandum in opposition to the applications for rehearing.
- (5) Before addressing these arguments, we would note that the opinion contains a clerical error which we now correct, *nunc pro tunc*. In the summary of the stipulation on page 6, the Opinion incorrectly states that Duke's revenue increase of \$18,217,566 is based on an 8.15 percent rate of return. The stipulated revenue increase was based upon a rate of return of 8.45 percent.
- (6) With respect to the applications for rehearing, we first observe that neither OCC nor OP&E raises any issues which were not fully considered and rejected in the Opinion at pages 12-15 and 17-20. As noted therein, the only unstipulated issue left to the Commission in this proceeding is the adoption of a new residential gas distribution rate design which would reduce or eliminate the link between natural gas sales volumes and the utility's revenue requirement in order to more closely match costs and revenues such that customers pay their fair share of distribution costs, to reduce or eliminate any disincentive for

the utility to promote conservation programs, and to afford the utility a reasonable opportunity to recover fixed costs. Our choice was between the two approaches deemed most appropriate to accomplish this decoupling: (1) a modified "straight fixed-variable (SFV)" or "levelized" rate design, which recovers most fixed costs in a flat monthly fee; or (2) a decoupling rider, which maintains a lower customer charge and allows the company to offset lower sales through an annually adjusted rider. For the reasons set forth in the record and our Opinion, we believe the levelized rate design best balances the interests of customers and the utility.

- (7) The first ground for rehearing listed by both OCC and OPAE is that our adoption of a levelized rate design violates prior Commission precedent, as well as the regulatory principles of gradualism and rate continuity, thereby producing unjust and unreasonable rates in violation of Sections 4905.22 and 4909.18, Revised Code. In examining these claims, we first observe that this Commission is not bound by any statutory requirement relating to the regulatory principle of gradualism, which is only one of many important regulatory principles. However, consistent with the principle of gradualism, the Commission noted at page 19 of our Opinion that the new levelized rate design best corrects the traditional rate design inequities while mitigating the impact of the new rates on residential customers by maintaining a volumetric component to the rates, by phasing in the increase over a two-year period, and by not reflecting the full extent of Duke's fixed costs in the proposed fixed charge. We also noted that the Pilot Low Income Program, aimed at helping low-income, low-use customers pay their bills, was crucial to our decision. Furthermore, OCC and OPAE continue to compare the new flat monthly fee with the customer charge under the previous distribution rate structure. Such comparisons are misleading and distort the impact on customers, since any analysis of the impact of the new levelized rate structure should consider the total customer distribution charges, including the current Rider AMRP and the volumetric charge. We note that, in association with the adoption of the levelized rate design, the volumetric charge reflected on the bills of residential customers will be reduced as the customer charge is phased-in to reflect the elimination of the majority of the company's fixed costs from the volumetric charge. Moreover, as noted in our Opinion, at page 18, the new rate

design also achieves the important regulatory principle of matching costs and revenues to ensure that customers pay their fair share of distribution costs. Accordingly, the Commission finds that OCC's and OPAE's requests for rehearing on such basis should be denied.

- (8) With respect to the second common ground for rehearing, both OCC and OPAE assert that the Commission erred by approving a rate design that discourages customer conservation efforts in violation of Sections 4929.05 and 4905.70, Revised Code. This argument was fully considered and rejected in the Opinion at pages 14-15 and 18-19. There is no dispute that both the modified straight fixed-variable rate design and the decoupling rider reduce or eliminate any disincentive for utility sponsored or promoted conservation programs. There is also no dispute that, under both of the rate designs, a customer who makes conservation efforts to reduce gas consumption will equally enjoy the full benefit of those efforts for the commodity portion of their gas bill which typically represents 75 to 80 percent of their total gas bill. While under the levelized rate design, a lower-use customer who conserves may not reduce his distribution charges as much as such charges would otherwise be reduced under the decoupling rider method, it is also true that all potential customer savings are not guaranteed under the decoupling rider method due to the attendant uncertainty caused by periodic reviews and adjustments necessary with the decoupling rider. Moreover, any greater reduction in distribution charges achieved through a decoupling rider would have the effect of preserving the inequities within the existing rate design that have caused higher use customers to subsidize the fixed costs of lower use customers. As discussed in the Commission's opinion at page 19, the Commission opted to more closely match costs and revenues such that customers pay their fair share of distribution costs. Finally, this argument for rehearing disregards the fact that a fundamental reason for our adoption of the new rate design is to foster conservation efforts in accordance with Sections 4929.02 and 4905.70, Revised Code. The only question at issue in these proceedings is whether a levelized rate design or a decoupling rider better achieves all competing public policy goals. As discussed at length in our opinion, we believe the levelized rate design is the better choice. This ground for rehearing is denied.

- (9) The third common assignment of error is that the Commission erred when it failed to comply with the requirements of Section 4903.09, Revised Code, by failing to provide specific findings of fact and written opinions that were supported by record evidence. We find this assertion to be without merit. The evidence of record and arguments of the parties were fully considered as reflected in the Opinion at pages 12-15 and 17-20, in accordance with Section 4903.09, Revised Code. The undisputed evidence of record is that the new levelized rates will more closely match fixed costs with fixed revenues, thereby ensuring that residential distribution customers pay their fair share of the costs incurred to serve them. Our adoption of this new rate design was conditioned upon this consideration and upon other important factors, including the gradual phase-in of these new rates and the company's new low-income assistance plan.
- (10) OCC also identifies a fourth basis for rehearing in arguing that our approval of the new levelized rate design violates Sections 4909.18, 4909.19 and 4909.43, Revised Code, by increasing the monthly residential customer charge without providing consumers adequate notice.

We find this argument to be without merit. Sections 4909.18, 4909.19, and 4909.43, Revised Code, direct the utility to notify customers, mayors and legislative authorities in the company's service area of the application and the rates proposed therein. Duke served upon mayors and legislative authorities and published in newspapers throughout its affected service area notices that met the requirements of Section 4909.18, 4909.19, and 4909.43, Revised Code, as approved by the Commission. The notice specifically set forth the rates and percentage increase, by rate schedule, proposed by Duke in the application, including a reference to and explanation of the proposed sales decoupling rider.

OCC relies on *Committee Against MRT v. Pub. Util. Comm.* (1977), 52 Ohio St.2d 231, to argue that the notice failed to inform customers of the levelized rate design adopted by the Commission. In the *Committee Against MRT* case, Cincinnati Bell Telephone Company (CBT) filed an application with the Commission requesting approval to introduce a new rate plan for basic local exchange service throughout its service area.

The notice submitted by CBT did not include a description of measured rate service but did include a general reference to the exhibits filed in the case. The exhibits filed in the case and referenced in the notice included an explanation of the proposed measured rate service. In *Committee Against MRT*, the Commission approved and CBT issued the proposed notice. Subsequently, the Commission approved a stipulation filed by the parties to the case, recommending that the Commission authorize CBT to provide non-optional measured rate service on an experimental basis in one exchange. The court held that the notice issued by CBT failed to sufficiently describe the company's proposal to implement measured rate service. The court reasoned that the notice failed to disclose the essential nature or quality of the proposal; that is, to implement usage-based rates. The Commission finds this case to be distinguishable from *Committee Against MRT*. In *Committee Against MRT*, the court found that the notice failed to disclose the essential nature of the rates proposed by CBT. The notice in this case clearly disclosed the nature of the rates, including the implementation of a decoupling mechanism, as such was proposed by Duke. Although the Commission did not adopt the decoupling mechanism proposed by Duke, the notice was sufficient to inform customers of such proposal and to allow customers to register an objection to a decoupling mechanism and the increase in rates. In addition, the notice stated that "[r]ecommendations which differ from the filed application ... may be adopted by the Commission." Accordingly, OCC's request for rehearing on this basis is denied.

- (11) Finally, the Commission observes that, in addition to electronically filing its application for rehearing, OCC also uploaded an electronic video file of the webcast of the April 23, 2008, Commission meeting, where these matters were discussed at length by the Commissioners. While Commission webcasts may be instructional on the views of the individual members, it is well settled that the Commission speaks through its published opinions and orders, as provided by Section 4903.09, Revised Code. *Murray v. Ohio Bell Tel. Co.*, 54 Ohio Op. 82, 117 N.E.2d 495 (1954). We note that OCC has argued exactly this point in a prior Commission proceeding. In *Cincinnati Bell Telephone Company*, Case No. 04-720-TP-ALT, et al., OCC cited Supreme Court of Ohio decisions for the proposition that commissions, such as this one, only speak

through their published orders (See, OCC's August 9, 2004, reply memorandum at 3, in Case No. 04-720-TP-ALT, et al.). Moreover, the minutes of the Commission meetings are not considered to be a part of the record in the cases discussed. Accordingly, the Commission will, on its own motion, strike this file from the record in these proceedings.

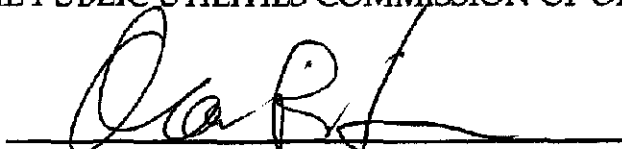
It is, therefore,

ORDERED, That the applications for rehearing filed by OCC and OPAE on June 27, 2008, are denied. It is, further,

ORDERED, That the video file of the April 23, 2008, Commission webcast, which was electronically filed by OCC with its application for rehearing, is hereby stricken from the record in these proceedings. It is, further,

ORDERED, That a copy of this order be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

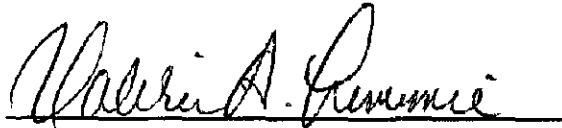


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