

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the)
Purchased Gas Adjustment Clause) Case No. 08-218-GA-GCR
Contained Within the Rate Schedules of)
Duke Energy Ohio, Inc.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the evidence and the stipulation and recommendation presented by the parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Amy B. Spiller, Associate General Counsel, and Elizabeth H. Watts, Assistant General Counsel, 139 Fourth Street, 25 Atrium II, P. O. Box 960, Cincinnati, Ohio 45202-0960, on behalf of Duke Energy Ohio, Inc.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Werner L. Margard III and Thomas G. Lindgren, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of Staff of the Commission.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Ann M. Hotz, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

Chester, Wilcox & Saxbe, LLP, by John W. Bentine, Mark S. Yurick, and Matthew S. White, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of Interstate Gas Supply, Inc.

OPINION:

I. Summary of the Proceeding

Duke Energy Ohio, Inc., (Duke) is a gas company and a natural gas company as defined in Sections 4905.03(A)(5) and (6), Revised Code, and a public utility under Section 4905.02, Revised Code. Pursuant to Section 4905.302, Revised Code, the Commission promulgated rules for a uniform purchased gas adjustment clause to be included in the schedules of gas or natural gas companies subject to the Commission's jurisdiction. These rules, which are contained in Chapter 4901:1-14, Ohio Administrative Code (O.A.C.),

separate the jurisdictional cost of gas from all other costs incurred by a gas or natural gas company, and provide for each company's recovery of these costs.

Section 4905.302, Revised Code, also directs the Commission to establish investigative procedures, including periodic reports, audits, and hearings to examine the arithmetic and accounting accuracy of the gas costs reflected in a company's gas cost recovery (GCR) rates and to review each company's production and purchasing policies and their effect upon these rates. Pursuant to such authority, the Commission adopted Rule 4901:1-14-07, O.A.C., which identifies how periodic financial audits of gas or natural gas companies shall be conducted. Rule 4901:1-14-08(A), O.A.C., requires the Commission to hold a public hearing at least 60 days after the filing of each required audit report. Rule 4901:1-14-08(C), O.A.C., specifies that notice of the hearing be published in one of three ways, at least 15 days, but not more than 30 days, prior to the date of the scheduled hearing.

On March 12, 2008, the Commission initiated this case, established the financial audit period, established the date upon which the financial audit report must be filed, and authorized Duke to select an auditor to perform the financial audit. By this same entry, the Commission scheduled a hearing date of December 9, 2008, and directed Duke to publish notice of the hearing.

On October 9, 2008, Deloitte & Touch, LLP (D&T) filed its financial audit report (Commission-ordered Ex. 1). By entry issued December 2, 2008, Interstate Gas Supply, Inc., (IGS) and the Office of the Ohio Consumers' Counsel (OCC) were granted intervention in this proceeding.

No public witnesses appeared to testify at the December 9, 2008, hearing. Counsel for the Staff represented, at the December 9, 2008, hearing, that the parties had reached an agreement in principle on the issues in this case (Tr. I at 3). Therefore, the hearing was continued pending the filing of the parties' agreement. On January 27, 2009, a stipulation and recommendation (Jt. Ex. 1) signed by Duke, the Commission's Staff, and IGS was filed. Subsequently, on February 10, 2009, Duke, Staff, and IGS filed an amended stipulation and recommendation (Jt. Ex. 1A), which is identical in all respects to the document filed by the parties on January 27, 2009, except for the language clarifying that OCC is not a signatory party to the stipulation and recommendation. Therefore, henceforth, when referring to the "stipulation," we will be referencing Joint Exhibit 1A. On December 9, 2009, Duke filed proof of publication (Duke Ex. 1).

By entry issued May 1, 2009, the hearing was scheduled to recommence on May 18, 2009. The hearing reconvened as scheduled. On the record, OCC stated that it does not oppose the stipulation (Tr. II at 6).

II. Financial Audit

In its financial audit, D&T examined the periodic filings of Duke that support the GCR rates for the monthly periods of September 27, October 28, and November 28, 2007; and January 1, January 30, February 28, March 31, April 29, May 29, June 29, July 29, and August 27, 2008. D&T found that Duke fairly determined, in all material respects, the GCR rates for the periods stated above, in accordance with the financial and procedural aspects of the uniform purchased gas adjustment as set forth in Chapter 4901:1-14 and related appendices of the Ohio Administrative Code and properly applied the GCR rates to customer bills. (Commission-ordered Ex. 1, at 1).

In its audit, D&T reported that Duke understated and overstated various items used in calculating components of its rates and that these errors were self-correcting or were corrected in Duke's 2007 and 2008 filings (Commission-ordered Ex. 1, at 3-4). In addition, D&T noted that Duke recorded a credit in the amount of \$119,592 to the current actual adjustment calculation in the GCR rate effective August 29, 2006, serving to refund the overcollection of certain firm transportation development costs (FTDC). Those costs were collected under the FTDC rider from both GCR and transportation customers. The refund, according to D&T, was applied only to GCR customers. D&T explained that Duke personnel had reasoned that the GCR customers had the closest nexus to the FTDC rider. D&T noted that the credit was neither ordered by the Commission nor prescribed by the Ohio Administrative Code. D&T reported that it had neither examined the credit nor determined the appropriateness of its application to only GCR customers (Commission-ordered Ex. 1, at 4).

Finally, in its audit, D&T states that, in accordance with the Commission's decision in *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Rates*, Case No. 07-589-GA-AIR et al., Opinion and Order (May 28, 2008) (*Duke Rate Case*), Duke began including gas storage carrying costs in the GCR rate, effective June 30, 2008. D&T notes that Duke deviated from the calculation prescribed in the *Duke Rate Case* in two ways. First, Duke used budgeted inventory balances, rather than actual inventory balances. However, D&T points out that, according to Duke, a mechanism to adjust the effect of using the budgeted amounts will be included in the company's December 1, 2008, filing. Second, Duke did not include the gross revenue conversion factor as approved in the *Duke Rate Case* (Commission-ordered Ex. 1, at 4). Duke's witness, Lisa Steinkuhl, explains that, while the Commission approved a calculation in the *Duke Rate Case* that included a gross revenue conversion factor to illustrate the impact on the company's GCR rates when the carrying costs on gas storage are included in the GCR, such a gross-up factor has historically been disallowed in rate proceedings. Therefore, Duke worked with Staff to incorporate the calculation into the GCR filing. According to the witness, the calculation proposed by Duke uses the estimated monthly average balance of gas stored underground multiplied by the monthly cost of capital and includes the carrying costs in the total

expected gas cost (EGC). Ms. Steinkuhl attests that, because the monthly EGC uses an estimate average balance of gas stored underground, the annual adjustment calculation will true-up any differences between the actual and estimated balances (Duke Ex. 2, at 4-5).

III. Stipulation of the Parties

As stated previously, a stipulation, signed by Duke, Staff, and IGS, was submitted on the record at the hearing held on May 18, 2009 (Jt. Ex. 1A). On the record, OCC stated that it does not oppose the stipulation (Tr. II at 6). The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The stipulation included, *inter alia*, the following provisions:

- (1) The costs passed through Duke's GCR clause during the audit period were fair, just, and reasonable.
- (2) Duke's GCR rates were accurately applied to customer bills during the audit period.
- (3) The financial audit was conducted by D&T in accordance with the objectives outlined in Appendix C of Chapter 4901:1-14, O.A.C.
- (4) The specific findings presented in D&T's audit report are reasonable and should be adopted by the Commission.

(Jt. Ex. 1, at 3-4).

CONCLUSION:

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (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.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 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:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues 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 (1994), citing *Consumers' Counsel, supra*, at 126. The 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 (*Id.*).

Attached to the stipulation was an affidavit provided by Roger Sarver, an energy specialist in the Commission's Utilities Department. Mr. Sarver attests that the stipulation submitted in this case meets the three-pronged standard of review for stipulations (Jt. Ex. 1, at 6-7). Based on our review of the three-pronged test, the Commission finds the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. The Commission finds that the stipulation filed in this case appears to be the product of serious bargaining among capable, knowledgeable parties. Duke, IGS, and Staff have been involved in numerous cases before the Commission and have consistently provided extensive and helpful information to the Commission. In addition, the stipulation also meets the second criterion. As a package, the stipulation advances the public interest by resolving all the issues raised in this matter without resulting in extensive litigation. Finally, the stipulation meets the third criterion because it does not violate any important regulatory principle or practice. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123 (1992). Accordingly, we find that the stipulation is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility under Section 4905.02, Revised Code. Duke is also a natural gas company for purposes of Sections 4905.302(C).

- (2) Section 4905.302, Revised Code, together with Rule 4901:1-14-08, O.A.C., requires the Commission to review the purchased gas adjustment clause contained within the tariffs of each gas and natural gas company on an annual basis, unless otherwise ordered by the Commission.
- (3) On March 12, 2008, the Commission initiated this proceeding, established the financial audit period, established the date upon which the financial audit report must be filed, authorized Duke to select an auditor to perform the financial audit, scheduled a hearing date of December 9, 2008, and directed Duke to publish notice of the hearing.
- (4) On October 9, 2008, D&T filed its financial audit report
- (5) IGS and OCC were granted intervention in this proceeding.
- (6) Duke published notice of the public hearing in substantial compliance with Commission requirements and Section 4905.302, Revised Code.
- (7) No public witnesses appeared to testify at the December 9, 2008, and the hearing was continued pending the filing of a stipulation by the parties.
- (8) The hearing was reconvened on May 18, 2009. At the hearing, a stipulation was submitted, intending to resolve all issues in this case. No one opposed the stipulation.
- (9) The financial audit was performed, and the report of the audit was prepared, in substantial compliance with Section 4905.302, Revised Code, and Rule 4901:1-14-07, O.A.C.
- (10) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (11) Duke's GCR rates were properly incurred and accurately computed, and Duke has accurately applied the GCR rates to customers' bills.

ORDER:

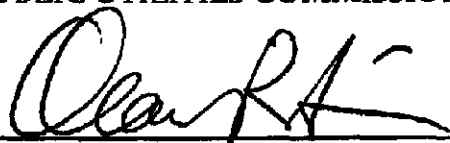
It is, therefore,

ORDERED, That the stipulation of the parties should be adopted and approved. It is, further,


ORDERED, That Duke take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

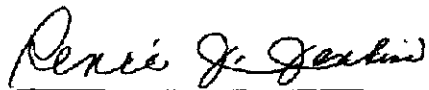


Cheryl L. Roberto

CMTP/vrm

Entered in the Journal

JUL 08 2008



Renee J. Jenkins
Secretary