

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for an Adjustment to) Case No. 10-2788-GA-RDR
Rider AMRP Rates to Recover Costs)
Incurred in 2010.)

In the Matter of the Application of Duke) Case No. 10-2789-GA-ATA
Energy Ohio, Inc. for Tariff Approval.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in these matters and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Elizabeth H. Watts, Associate General Counsel, and Amy B. Spiller, Deputy General Counsel, Duke Energy Ohio, Inc., 155 East Broad Street, 21st Floor, Columbus, Ohio 43215, on behalf of Duke Energy Ohio, Inc.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Larry S. Sauer, Joseph P. Serio, and Kyle L. Verrett, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by William L. Wright, Section Chief, and Steven L. Beeler, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

OPINION:

I. Background

Duke Energy Ohio, Inc. (Duke) is a public utility under Section 4905.02, Revised Code, and a natural gas company as defined in Section 4905.03(A)(5), Revised Code. Duke supplies natural gas to approximately 425,000 customers in southwestern Ohio.

By opinion and order issued May 30, 2002, in *In the Matter of the Application of The Cincinnati Gas & Electric Company¹ for an Increase in Rates*, Case No. 01-1228-GA-AIR, et al. (*CG&E Distribution Rate Case*), the Commission approved a stipulation, which, *inter alia*, included a provision establishing the Accelerated Main Replacement Program (AMRP) rider (Rider AMRP). The purpose of Rider AMRP was to recover the expenditures associated with Duke's 10-year plan to replace all 12-inch and smaller cast iron and bare steel gas mains in its distribution system. In accordance with the stipulation approved in the *CG&E Distribution Rate Case*, the rider was to be adjusted annually to account for any over- or under-recovery and Duke was to file applications annually, supporting adjustments to the Rider AMRP rates.

On July 18, 2007, 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. (*Duke Distribution Rate Case*), Duke filed, *inter alia*, an application to increase its gas distribution rates, as well as an application, pursuant to Chapter 4929, Revised Code, requesting approval of an alternative rate plan and automatic adjustment mechanism to recover costs associated with the AMRP through an extended period. By opinion and order issued May 28, 2008, the Commission approved a stipulation that, *inter alia*, stated that the AMRP would be substantially completed by the end of 2019 and that the riser replacement program (RRP) would be completed by the end of 2012. In addition, the stipulation further defined the process for consideration of the periodic adjustments to Rider AMRP. In accordance with the stipulation, by November 2008, and annually thereafter, Duke will file a pre-filing notice to implement adjustments to Rider AMRP. Subsequently, Duke will file its application and an update of year-end actual data by the following February 28 of each year. The stipulation provides that Staff and other parties then may file comments and that Duke has until April 1 of each year to resolve the issues raised in the comments. If the issues raised in the comments are not resolved, then the stipulation requires that a hearing be held. The goal of the process set forth in the stipulation is for the proposed amendment to Rider AMRP to be effective by the first billing cycle of May.

By opinion and order issued April 28, 2010, in *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider AMRP Rates*, Case No. 09-1849-GA-RDR, et al. (*2009 AMRP Case*), the Commission approved Duke's current AMRP rates, thereby allowing Duke to recover costs incurred during 2009. The stipulation approved by the Commission in those proceedings provided that, for the 2009, 2010, and 2011 AMRP test years, Duke would use the higher of actual maintenance savings, or a guaranteed level of minimum maintenance savings calculated using a methodology established in the stipulation, to determine the AMRP revenue requirement, and that the guaranteed savings methodology would be reevaluated in 2012, or in the next case in which Duke seeks an increase in base rates.

¹ Duke was formerly known as The Cincinnati Gas & Electric Company.

In accordance with the AMRP provisions of the stipulation in the *Duke Distribution Rate Case*, Duke filed its prefiling notice on November 30, 2010, in the instant cases (Duke Ex. 2). On February 28, 2011, Duke filed its application requesting an adjustment to Rider AMRP (Duke Ex. 4), along with the direct testimony of Peggy A. Laub (Duke Ex. 3) and Gary J. Hebbeler (Duke Ex. 5).

By entry issued March 3, 2011, the attorney examiner granted the motion to intervene in these cases filed by the Ohio Consumers' Counsel (OCC). In addition, the attorney examiner required that Staff and intervenors file comments on the application by March 28, 2011, and that Duke file a statement, by April 1, 2011, informing the Commission whether the issues raised in the comments had been resolved. Further, in the event all of the issues were not resolved or the parties entered into a stipulation resolving some or all of the issues in these cases, the entry set the hearing in these matters for April 6, 2011.

On March 28, 2011, comments raising issues regarding Duke's application were filed by OCC (OCC Ex. 1) and Staff (Staff Ex. 1). On April 1, 2011, Duke filed a letter stating that the parties had reached a resolution in principle of all of the issues in these cases. By entry issued April 5, 2011, the attorney examiner granted the parties' joint motion to continue the hearing until April 12, 2011.

On April 8, 2011, a stipulation and recommendation (stipulation) was filed by Duke, OCC, and Staff (Joint Ex. 1), and Duke filed a motion for a protective order seeking to protect the confidentiality of certain information in Stipulation Ex. 2 of Joint Ex. 1. On April 11, 2011, Duke filed the supplemental testimony of Peggy A. Laub in support of the stipulation (Duke Ex. 1). The hearing in these matters was held, as rescheduled, on April 12, 2011.

II. Duke's Motion for Protective Order

As part of the stipulation, the parties filed Stipulation Ex. 2, consisting of both redacted and unredacted versions, which purports to document Duke's justification for augmenting its AMRP with approximately 33 miles of cast iron and bare steel pipe greater than 12 inches in diameter. The unredacted version, filed under seal, includes specific details associated with this pipe.

On April 8, 2011, Duke filed a motion for a protective order for the redacted information contained in Stipulation Ex. 2. Duke contends that the exhibit contains proprietary information that has been selectively redacted. Duke explains that the redacted information is highly sensitive as it relates to details concerning Duke's gas operations, as well as safety and maintenance, and could be exploited in various ways to

the detriment of Duke's business, as well as the safety of the public. Duke notes that the information is not public and is maintained by Duke as a proprietary document. Duke asserts that Rule 4901-1-24(D), Ohio Administrative Code (O.A.C.), allows Duke to seek leave of the Commission to file information considered to be proprietary and trade secret information, or otherwise confidential, in a redacted and unredacted form under seal. Duke maintains that the redacted information contained in Stipulation Ex. 2 constitutes otherwise confidential information. Duke concludes that protecting the confidentiality of the information will prevent undue harm to Duke and its ratepayers, as well as ensure a sound competitive marketplace.

Section 4905.07, Revised Code, provides that all facts and information in the possession of the Commission shall be public, except as provided in Section 149.43, Revised Code, and as consistent with the purposes of Title 49 of the Revised Code. Section 149.43, Revised Code, specifies that the term "public records" excludes information that, under state or federal law, may not be released. The Ohio Supreme Court has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State* (2000), 89 Ohio St.3d 396, 399.

Similarly, Rule 4901-1-24(D), O.A.C., allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "to the extent that state or federal law prohibits release of the information, including where the information is deemed...to constitute a trade secret under Ohio law, and where nondisclosure of the information is not inconsistent with the purposes of Title 49 of the Revised Code." Ohio law defines a trade secret as "information...that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Section 1333.61(D), Revised Code.

Upon review of Duke's motion for a protective order and the memorandum in support, the Commission concludes that Duke has not claimed that the redacted information contained in Stipulation Ex. 2 constitutes trade secret information, nor has Duke demonstrated that state or federal law otherwise prohibits the release of the redacted information. We find that Duke has offered no explanation as to how the redacted information could be used to the detriment of Duke's business, or the public's safety and security. Accordingly, the motion for a protective order for the redacted information contained in Stipulation Ex. 2 should be denied. The Commission's docketing division should release the redacted information, no sooner than June 6, 2011.

III. Summary of the Comments

According to the comments filed by Staff, Duke reported that, prior to the commencement of the AMRP in 2001, Duke had approximately 1,200 miles of cast iron and bare steel mains in service. By the end of 2010, Duke had replaced approximately 866 miles, or 72 percent, of these mains. Duke replaced 70 miles of cast iron and bare steel mains in 2010, and has approximately 303 miles of mains left to replace. In addition, Staff notes that Duke reported that it has replaced approximately 82,480 main-to-curb service lines. (Staff Ex. 1 at 6.)

According to Staff, Duke proposes that, beginning with the first billing cycle in May 2011, the total annual revenue requirement for the AMRP would be \$33,703,214.33 and, for the RRP, it would be \$4,187,812.58, for a total of \$37,891,026.91. Staff points out that Duke used the allocation percentages and billing determinants for the AMRP and the RRP that were established in the *Duke Distribution Rate Case* and proposed that Rider AMRP rates be set at \$4.81 for residential customers, \$36.81 for general service and firm transportation customers, and \$0.15 per thousand cubic foot (Mcf) for interruptible transportation customers. (Staff Ex. 1 at 6-7.)

In its comments, Staff offers two recommendations. First, Staff notes that Duke calculated its gas maintenance account savings by totaling its expenses for 2010 in three different accounts and comparing the result to the baseline for these accounts presently included in base rates established in the *Duke Distribution Rate Case*. According to Staff, Duke's Schedule 21 shows actual savings of \$318,883.95 in composite expenses for 2010 over the baseline expense level. Because these actual savings are less than the guaranteed minimum savings level of \$387,624, as calculated by the savings methodology established pursuant to the stipulation approved by the Commission in the *2009 AMRP Case*, Staff recommends use of the stipulated savings amount of \$387,624 for the purpose of determining the AMRP revenue requirement. Staff recognizes that the stipulated amount was applied by Duke in the schedules supporting its application. (Staff Ex. 1 at 8-9.)

Second, Staff states that, in the direct testimony of Duke witness Hebbeler (Duke Ex. 5), Duke seeks approval to include replacement of certain large diameter cast iron and bare steel pipe and associated metallic services in the AMRP. According to Staff, Duke has discovered differences between system pipeline maps and plant records that may indicate that there is approximately 48 fewer miles of 12-inch and smaller diameter cast iron and bare steel pipe to be replaced than was planned under the AMRP. Staff states that Duke proposes to substitute replacement of approximately 33 miles of larger than 12-inch diameter cast iron and bare steel pipe in the remaining years of the AMRP. Staff recommends that Duke complete its audit of the remaining map mileage of 12-inch and smaller diameter cast iron and bare steel pipe, with the results reported to Staff as soon as the audit is completed. Staff further recommends that the audit be completed before any

decision is made with respect to the greater than 12-inch diameter pipe, a matter that Staff believes should be decided in a future AMRP proceeding. (Staff Ex. 1 at 9-10.)

OCC, in its comments, objects to Duke's proposal to modify the AMRP by adding an additional 33 miles of pipe to be replaced on an accelerated basis. OCC asserts that Duke did not provide any supporting data to verify its claim that leaks on certain larger diameter cast iron and bare steel pipes have escalated to an unacceptable rate. OCC also states that Duke failed to quantify the cost of adding this additional pipe to the AMRP and did not provide a schedule for the timing by which Duke would replace the additional 33 miles of pipe. To the extent Duke is proposing to modify the AMRP and the stipulation approving it, OCC believes that, at a minimum, Duke needs to demonstrate or provide additional information regarding the leak rates for the additional pipe. OCC notes that, in the *Duke Distribution Rate Case*, Duke witness Hebbeler testified that the AMRP is designed to replace the cast iron and bare steel pipe that is 12 inches in diameter or smaller and that larger pipe is monitored and replaced if necessary in conjunction with improvement projects other than the AMRP. OCC points out that the stipulation in that case makes no mention of including for recovery costs related to cast iron and bare steel mains larger than 12 inches in diameter. OCC concludes that Duke has failed to demonstrate a need to expand the AMRP and, therefore, failed to meet its burden of proof. (OCC Ex. 1 at 3-5.)

Additionally, in light of Duke's proposal to expand the AMRP, OCC urges the Commission to consider a systematic and orderly wind down of the AMRP to ensure that Duke is not receiving accelerated recovery for pipeline replacement that should be more appropriately replaced under traditional ratemaking. Specifically, OCC recommends that Duke be required to submit an analysis with its next AMRP application to ensure that Duke does not keep Rider AMRP in place longer than otherwise necessary. According to OCC, the analysis should evaluate the status of the AMRP to date and the costs and benefits of continuing the program on an accelerated basis through 2018, rather than returning to traditional ratemaking as a tool for replacing the remaining bare steel and cast iron pipelines and services. (OCC Ex. 1 at 5-10.)

IV. Summary of the Stipulation

As stated previously, a stipulation, signed by Duke, OCC, and Staff, was filed on April 8, 2011. The stipulation was intended by the parties to resolve all outstanding issues in these proceedings. The stipulation includes, *inter alia*, the following provisions:

- (1) The annualized revenue requirement shall be \$33,703,214.33 for the AMRP and \$4,187,812.58 for the RRP, for a total revenue

requirement of \$37,891,026.91, as calculated by Duke in the schedules attached to Duke Ex. 3.²

- (2) The revenue distribution, billing determinants, and calculated AMRP charges shall be as set forth in Duke Ex. 3 at Schedule 24.
- (3) Consistent with the stipulation approved in the *2009 AMRP Case*, the minimum main maintenance savings of \$387,624 from Stipulation Ex. 1 was applied for the purpose of determining the AMRP annualized revenue requirement on Schedule 24 of Duke Ex. 3, as this amount was greater than the actual savings amount during the 2010 test year. The minimum main maintenance savings of \$387,624 are included in the total revenue requirement of \$37,891,026.91, as a reduction to the total revenue requirement. This is the total revenue requirement amount upon which the calculated Rider AMRP charges on Schedule 24 of Duke Ex. 3 are based.
- (4) Duke shall augment the AMRP to include replacement of approximately 33 miles of larger than 12-inch diameter cast iron and bare steel pipe. Stipulation Ex. 2 is Duke's documentation that justifies augmenting its AMRP for inclusion of the replacement of this pipe. The program to replace the large diameter pipe will begin with the construction season in summer of 2011 and continue through 2015.
- (5) Duke will file with the Commission an exhibit that will memorialize the methodology by which Duke will calculate maintenance savings associated with the replacement of larger than 12-inch diameter pipe that serves as an offset to the Rider AMRP rates. The calculation of maintenance savings associated with the replacement of larger than 12-inch diameter pipe will be relevant for Duke's 2013 AMRP application, which addresses the 2012 test year, and has no bearing on the Rider AMRP rates being approved in these proceedings. The parties agree to use best efforts to complete and file the exhibit no later than 60 days after the Commission's opinion and order in these proceedings.

² At the hearing, the parties clarified that, although the stipulation refers to calculations and schedules contained in Duke's application, that information is actually found in Duke Ex. 3, which is the direct testimony of Peggy A. Laub.

- (6) Duke shall continue its AMRP, including the replacement of larger than 12-inch diameter pipe discussed above, through 2015.
- (7) Duke shall wind down and terminate the AMRP as of December 31, 2015. By no later than February 28, 2016, Duke shall file an AMRP application to true-up and complete the allowable recovery for capital additions related to the replacement of cast iron, bare steel, plastic, and any other type of pipe scheduled for replacement under the AMRP. Capital additions under the AMRP will have been placed in-service by December 31, 2015, and Duke shall be allowed to seek recovery of costs incurred through the end of December 31, 2015. Any contemplated AMRP projects not completed by December 31, 2015, shall not be eligible for cost recovery through Rider AMRP. The purpose of the true-up will be to establish the cut-off for plant additions and associated retirements under the AMRP. Duke shall continue to file subsequent AMRP applications on February 28 (annually between 2017 and the filing of its next natural gas base rate case); however, such applications shall be devoid of any new main line, service line, and riser replacement capital additions and associated retirements.
- (8) Duke shall be permitted to recover bare steel and cast iron mains replacement, service line (main to curb and curb to meter) replacement, and riser replacement costs through Rider AMRP up to the yearly residential rate cap stated in the stipulation in the *Duke Distribution Rate Case*. Any costs that exceed the yearly rate cap will be deferred for inclusion in the subsequent year so long as the recovery does not exceed the cumulative residential rate cap. The established annual caps for the remaining term of the AMRP are as follows: \$6.20 for 2012, \$7.20 for 2013, \$8.20 for 2014, \$9.20 for 2015, and \$10.20 for 2016.
- (9) Duke will complete its audit and provide, as part of its 2012 AMRP application, a reconciliation and explanation of the discrepancy that has been identified between Duke's continuing property records and its mapping records for the remaining bare steel and cast iron mains to be replaced, as discussed in the direct testimony of Gary J. Hebbeler filed in these cases. The reconciliation and explanation of said

discrepancy shall include, but not be limited to, the miles of pipe, type of pipe, vintage of pipe, and the value of pipe carried in Duke's continuing property records as of the date certain of Duke's most recent rate case and as of December 31, 2010.

- (10) Duke shall implement the new 2011 rates for Rider AMRP pursuant to the terms and conditions set forth in the stipulation in the *Duke Distribution Rate Case*.
- (11) The parties request that the Commission approve the tariff attached as Stipulation Ex. 3.

(Joint Ex. 1 at 5-8.)

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:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) 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.*).

The signatory parties agree that the stipulation in these cases is a just and reasonable resolution of the issues raised in these proceedings and is the product of lengthy, serious bargaining among knowledgeable and capable parties, representing a wide range of interests, in a cooperative process (Joint Ex. 1 at 1, 4). The signatory parties further agree that the stipulation is the product of an open process in which all parties were represented by able counsel and technical experts (Joint Ex. 1 at 3). Duke witness Laub testified that the stipulation involved a diverse group of parties with diverse constituency and that all were stakeholders in the outcome. Additionally, Ms. Laub testified that the parties were all represented by skilled and experienced regulatory counsel and that the discussions leading up to the stipulation included all parties to these proceedings and involved serious consideration by each party of the others' positions. (Duke Ex. 1 at 4.) Therefore, upon review of the terms of the stipulation, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, the signatory parties submit that, as a package, the stipulation benefits ratepayers and is in the public interest (Joint Ex. 1 at 4). Ms. Laub testified that the stipulation benefits ratepayers because it saves the time and expense of litigation (Duke Ex. 1 at 4). Moreover, the signatory parties agree that the stipulation offers a commitment by Duke to complete its audit of the remaining 12-inch and smaller diameter cast iron and bare steel pipe to be replaced and to provide, as part of its 2012 AMRP application, a reconciliation and explanation of the discrepancy that has been identified between Duke's continuing property records and its mapping records (Joint Ex. 1 at 8). The signatory parties further agree that Duke will wind down and terminate the AMRP as of December 31, 2015 (Joint Ex. 1 at 6), rather than by the end of 2019, as specified in the *Duke Distribution Rate Case*. Upon review of the stipulation, we find that, as a package, it satisfies the second criterion.

Finally, the signatory parties agree that the stipulation violates no regulatory principle or practice (Joint Ex. 1 at 4). Ms. Laub testified that, based on her knowledge and experience in ensuring that rate proposals and other rate-related matters comply with the regulations and regulatory requirements of the Commission, she concluded that the stipulation does not violate any regulatory principle (Duke Ex. 1 at 4). Accordingly, upon consideration, the Commission finds that there is no evidence that the stipulation violates

any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

The Commission notes that, in the *Duke Distribution Rate Case*, we approved Duke's application to implement the AMRP as an alternative rate plan, pursuant to Chapter 4929, Revised Code, consistent with the stipulation in that case. In the stipulation in the present proceedings, the signatory parties propose, in effect, to modify the stipulation and order in the *Duke Distribution Rate Case*, by adjusting the scope of Duke's AMRP by adding approximately 33 miles of cast iron and bare steel pipe greater than 12 inches in diameter, as well as proposing to alter the term of, and wind down, the program. Section 4929.08, Revised Code, provides, in pertinent part, that the Commission may modify any order granting alternative rate regulation authority if both of the following conditions are met: the findings upon which the order was based are no longer valid and the modification is in the public interest; and the modification is not made more than eight years after the effective date of the order. Regarding the first criterion, in the *Duke Distribution Rate Case*, we found that it was appropriate to approve Duke's AMRP through 2019. It is now apparent that Duke will be prepared to complete the program by December 31, 2015 (Joint Ex. 1 at 6). Given that the AMRP will be completed sooner than expected, and that modification of our order in the *Duke Distribution Rate Case* will ensure that the program is carried out no longer than is necessary, we find that the first criterion is met. With respect to the second criterion, the modification is well within eight years of our order in the *Duke Distribution Rate Case*, which was issued on May 28, 2008. The second criterion is, therefore, also met. Finally, these proceedings were subject to notice and hearing. Duke served notice of its intent to file its AMRP application on all of the parties to the *Duke Distribution Rate Case* (Duke Ex. 2 at 2), and a hearing on these matters was held on April 12, 2011. The Commission concludes that the requirements of Section 4929.08, Revised Code, have been satisfied.

Upon consideration of the record in these proceedings, we find that the stipulation entered into by the parties is reasonable and should be adopted. Therefore, Duke should be authorized to implement the new rates for Rider AMRP in a manner consistent with the stipulation and this order. The proposed tariff page contained in Joint Ex. 1 at Stipulation Ex. 3 should be approved. The Commission finds that Duke should file, in final form, four, complete, printed copies of the final tariff page with the Commission's docketing division, as set forth in this order. The effective date of the new rates for Rider AMRP shall be a date not earlier than the date upon which the final tariff page is filed with the Commission or the first billing cycle of May, whichever is later.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is a public utility under Section 4905.02, Revised Code, and a natural gas company as defined in Section 4905.03(A)(5), Revised Code.
- (2) In accordance with the AMRP provisions in the *Duke Distribution Rate Case*, Duke filed its prefiling notice on November 30, 2010, in the instant cases.
- (3) On February 28, 2011, Duke filed its application in these cases.
- (4) By entry issued March 3, 2011, OCC was granted intervention.
- (5) Comments on the application in these cases were filed by OCC and Staff on March 28, 2011.
- (6) The hearing on these matters was held on April 12, 2011.
- (7) At the hearing, a stipulation was submitted, intending to resolve all issues in these cases. No party opposed the stipulation.
- (8) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (9) Duke should be authorized to implement the new rates for Rider AMRP consistent with the stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That Duke's motion for a protective order be denied. It is, further,

ORDERED, That, no sooner than June 6, 2011, the Commission's docketing division shall remove the redacted information contained in Stipulation Ex. 2, as filed on April 8, 2011, from the sealed record in these cases and place it in the public file. It is, further,

ORDERED, That the stipulation of the parties 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 Duke be authorized to file, in final form, four, complete copies of the tariff page consistent with this order and to cancel and withdraw its superseded tariff page. Duke 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 these case dockets. 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 effective date of the new rates for Rider AMRP shall be a date not earlier than the date upon which four, complete, printed copies of the final tariff page are filed with the Commission or the first billing cycle of May, whichever is later. It is, further,

ORDERED, That Duke shall notify its customers of the changes to the tariff via bill message or bill insert within 30 days of the effective date of the revised tariff. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. 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


 Todd A. Snitchler, Chairman


 Paul A. Centolella

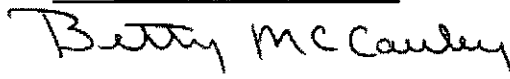

 Steven D. Lesser


 Andre T. Porter


 Cheryl L. Roberto

SJP/sc

Entered in the Journal **MAY 04 2011**


 Betty McCauley
 Secretary

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CONCURRING AND DISSENTING OPINION OF
COMMISSIONER CHERYL L. ROBERTO

I concur with my colleagues that Duke's current AMRP rate should be updated to account for the revenue requirement to continue replacing the cast iron and bare steel mains with a diameter of 12-inch and smaller as approved in our prior order.

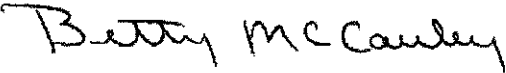
I dissent, however, from that portion of the order that expands the accelerated main replacement program to include larger diameter mains. The mere unsupported assertion that leaks on some of these pipes have "escalated to an unacceptable rate" does not sustain expansion of the extraordinary regulatory tool of a rider to support capital investment that should occur in the course of normal utility operations. Duke has offered no explanation quantitatively or qualitatively as to how the leak rate or fitness for service, in general, for the larger diameter lines has changed since our last case. At that time, in 2007, Duke testified that the larger-diameter pipes require monitoring and replacement only when necessary in conjunction with improvement projects other than the AMRP as part of normal utility operations. Nor has Duke rebutted OCC's observations that it has not provided any supporting data to verify the claim that the larger diameter cast iron and bare steel pipes are unfit for service and must be replaced immediately. No cost data has been provided for this expansion. As the un-rebutted staff comments suggest, Duke should complete its audit of the remaining cast iron and bare steel pipes with a diameter of 12-inch and smaller prior to considering expanding the program and that such an expansion is more properly considered in a future AMRP proceeding where it can be fully documented and analyzed.

The most obvious explanation for Duke's requested expansion lies not with the fitness for service of the larger-diameter pipe but with the fortuitous fact that Duke found 48 fewer miles of 12-inch and smaller diameter pipe in need of replacement. Rather than permit consumers to enjoy this project cost under-run, Duke proposes to collect the additional revenue anyway and spend it on pipes that until now it did not view in need of replacement on an accelerated basis. If a case for accelerated replacement of larger diameter pipes exists, I would encourage Duke to present it. Because the existing facts of record do not support it, I dissent from the expansion.


Cheryl L. Roberto, Commissioner

Entered in the Journal

MAY 04 2011



Betty McCauley
Secretary