

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc. for an Adjustment to ) Case No. 11-5809-GA-RDR  
Rider AMRP Rates to Recover Costs )  
Incurred in 2011. )

In the Matter of the Application of Duke ) Case No. 11-5810-GA-ATA  
Energy Ohio, Inc. for Tariff Approval. )

OPINION AND ORDER

The Commission, 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:

Jeanne W. Kingery and Amy B. Spiller, 155 East Broad Street, 21st Floor, Columbus, Ohio 43215, on behalf of Duke Energy Ohio, Inc.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio and Larry Sauer, 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 Devin Parram and Steven L. Beeler, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

OPINION:

I. History of the Proceedings

Duke Energy Ohio, Inc. (Duke) is a natural gas company as defined in Section 4905.03(A)(5), Revised Code, and a public utility under Section 4905.02, Revised Code. Duke supplies natural gas to approximately 420,000 customers in southwestern Ohio.

By opinion and order issued May 30, 2002, in *In the Matter of the Application of The Cincinnati Gas & Electric Company<sup>1</sup> 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)

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<sup>1</sup> Duke was formerly known as The Cincinnati Gas & Electric Company.

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 prefiling 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 AMRP rates to recover costs incurred during 2009. The stipulation approved by the Commission in the *2009 AMRP Case* 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. By opinion and order issued May 4, 2011, in *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider AMRP Rates to Recover Costs Incurred in 2010*, Case No. 10-2788-GA-RDR, *et al.*, the Commission approved Duke's current AMRP rates to recover costs incurred during 2010.

In accordance with the AMRP provisions of the stipulation in the *Duke Distribution Rate Case*, Duke filed its prefiling notice on November 30, 2011, in the instant cases (Duke Ex. 5). On February 28, 2012, Duke filed its application requesting an adjustment to Rider

AMRP (Duke Ex. 1), along with the direct testimony of Peggy A. Laub (Duke Ex. 3) and the testimony Gary J. Hebbeler (Duke Ex. 2).

By entry issued March 2, 2012, 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 26, 2012, and that Duke file a statement, by March 30, 2012, 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 4, 2012.

On March 26, 2012, comments regarding Duke's application were filed by OCC (OCC Ex. 1) and Staff (Staff Ex. 1). On March 30, 2012, Duke filed a letter stating that the parties had reached a resolution in principle of all of the issues in these cases.

On April 2, 2012, a stipulation and recommendation (stipulation) was filed by Duke, OCC, and Staff (Joint Ex. 1), and Duke filed the supplemental testimony of Peggy A. Laub in support of the stipulation (Duke Ex. 4). The hearing in these matters was held, as scheduled, on April 4, 2012.

## II. Summary of the Application and 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 2011, Duke had replaced approximately 941 miles, or approximately 78 percent, of these mains. Duke replaced 76 miles of cast iron and bare steel mains in 2011, and has approximately 215 miles of mains left to replace. In addition, Staff notes that Duke reported that it has replaced approximately 91,206 main-to-curb service lines. (Staff Ex. 1 at 6.)

Duke proposes that, beginning with the first billing cycle in May 2012, the total annual revenue requirement for the AMRP would be \$40,582,943.47 and, for the RRP, it would be \$4,714,091.70, for a total of \$45,297,035.17. (Duke Ex. 3, Sch. 1-2.) In response, 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 \$5.73 for residential customers, \$44.67 for general service and firm transportation customers, and \$0.17 per thousand cubic feet (Mcf) for interruptible transportation customers. (Staff Ex. 1 at 6-7.)

In its comments, Staff notes that Duke calculated its gas maintenance account savings by totaling its expenses for 2011 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, provided with its application, shows actual savings of \$377,902.16 in composite expenses for 2011 over the baseline expense level. Because these actual savings are less than the guaranteed minimum savings level of \$475,152, 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 \$475,152 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.)

In its March 26, 2012, filing, OCC states that it had no comments on this particular application by Duke. However, OCC states that it preserves the opportunity to review certain responses to its discovery requests that were deemed by Duke to be too voluminous and needed to be reviewed at Duke's office. (OCC Ex. 1 at 2-3.) To date, OCC has filed no further comments regarding Duke's current Rider AMRP.

### III. Stipulation

As stated previously, a stipulation, signed by Duke, OCC, and Staff, was filed on April 2, 2012. The stipulation was intended by the parties to resolve all outstanding issues in these proceedings. The stipulation includes, *inter alia*, the following provisions:

- (1) Duke shall receive an annualized revenue requirement under Rider AMRP of \$40,582,943.47 for the AMRP and \$4,714,091.70 for the RRP, for a total revenue requirement of \$45,297,035.17, as calculated in Duke's application filed on February 28, 2012.
- (2) The revenue distribution, billing determinants, and calculated Rider AMRP rates shown on Schedule 24 submitted by Duke with its Application on February 28, 2012, shall be approved.
- (3) Duke committed, in the 2009 AMRP Case, to provide its natural gas customers with guaranteed maintenance savings attributed to the AMRP on an annual basis. For the 2011 AMRP test year, the stipulating parties agree to apply, as savings, the greater of the actual maintenance savings or a minimum savings of \$475,152.00. For purposes of calculating the AMRP revenue requirement in these proceedings, Duke applied the minimum maintenance savings of \$475,152.00 as part of the AMRP revenue requirement and, therefore, also as part of the total revenue requirement of \$45,297,035.17. This is the revenue requirement upon which the calculated Rider AMRP charges on Schedule 24 of Duke's application are based.

- (4) Duke shall implement the new 2012 rates for Rider AMRP pursuant to the terms and conditions in the stipulation in the *Duke Distribution Rate Case*.
- (5) Duke agrees that OCC shall have the opportunity to review, at Duke's offices, at a time and date mutually agreeable, materials responsive to OCC Interrogatories 1, 11, and 16 and OCC Request to Produce 18; provided, however, that neither such review nor the results thereof shall in any way provide OCC with an opportunity to modify or withdraw from this stipulation.

(Joint Ex. 1 at 4-6.)

#### IV. Consideration of the Stipulation

Rule 4901-1-30, Ohio Administrative Code, 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, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (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. See e.g., *The Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *The Cincinnati Gas & Electric Co.*, Case No. 92-1463-GA-AIR, et al. (August 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *The Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 31, 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.* at 563.)

Duke witness Peggy Laub explains that the stipulating parties regularly participate in Commission proceedings, are knowledgeable in regulatory matters, and were represented by experienced, competent counsel and subject matter experts. Moreover, Ms. Laub explains that all of the issues raised by the parties were addressed in the stipulation. (Duke Ex. 4 at 3.) Accordingly, the Commission finds that the stipulation filed in these cases appears to be the product of serious bargaining among capable, knowledgeable parties.

With respect to the second criterion, Ms. Laub testified that the stipulation demonstrates that stakeholders with different interests have examined the application and proposed rates, and agreed on a reasonable resolution of the issues in this case. Ms. Laub also explains that the public interest is served when parties intervene and represent diverse interests in examining a record and ensuring that regulatory requirements are met. (Duke Ex. 4 at 4.) Upon review, the Commission finds that the stipulation also meets the second criterion.

Finally, Duke witness Laub opines that the stipulation complies with all relevant regulatory principles and practices (Duke Ex. 4 at 4). As such, the Commission finds that the stipulation meets the third criterion and it does not violate any important regulatory principle or practice. Accordingly, the Commission finds 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)(5), Revised Code, and a public utility under Section 4905.02, Revised Code.
- (2) In accordance with the AMRP provisions in the *Duke Distribution Rate Case*, Duke filed its prefiling notice on November 30, 2011, in the instant cases.
- (3) On February 28, 2012, Duke filed its application.
- (4) By entry issued March 2, 2012, OCC was granted intervention.

- (5) Comments on the application were filed by OCC and Staff on March 26, 2012.
- (6) On April 2, 2012, a stipulation and recommendation was filed by Duke, OCC, and Staff, intending to resolve all issues.
- (7) The hearing on these matters was held on April 4, 2012.
- (8) The stipulation meets the criteria used by the Commission to evaluate stipulations. Consequently, the Commission finds that the stipulation 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 the stipulation filed in these proceedings 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 its tariffs in final form consistent with this order. 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,

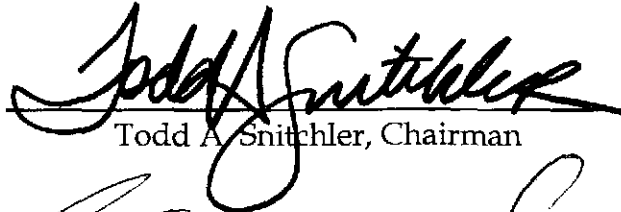
ORDERED, That the effective date of the new rates for Rider AMRP shall be a date not earlier than the date upon which four, complete, printed copies of the final tariff page are filed with the Commission. It is, further,

ORDERED, That Duke shall notify its customers of the changes to the tariff via bill message or bill insert, or separate mailing within 30 days of the effective date of the revised tariffs. 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



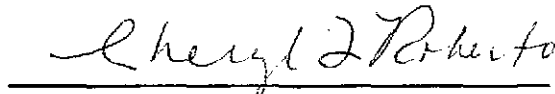
Todd A. Snitchler, Chairman



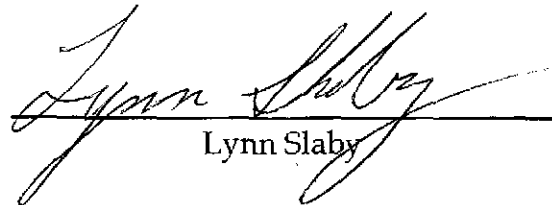
Steven D. Lesser



Andre T. Porter



Cheryl L. Roberto

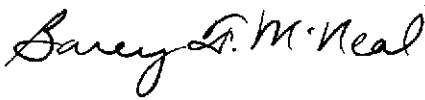


Lynn Slaby

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Barcy F. McNeal

Barcy F. McNeal  
Secretary