BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Proposed Reliability Standards.	)))	Case No. 13-1539-EL-ESS

OPINION AND ORDER

The Commission, having considered the record in this matter, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Amy B. Spiller and Elizabeth H. Watts, 139 E. Fourth Street, Cincinnati, Ohio 45202, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Thomas W. McNamee, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Edmund J. Berger 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential customers of Duke Energy Ohio, Inc.

OPINION:

I. Background

Ohio Adm.Code 4901:1-10-10(B)(2) requires each electric utility in Ohio to file with the Commission an application to establish company-specific minimum performance standards. The rule requires that the application include: a proposed methodology for establishing reliability standards; a proposed company-specific reliability performance standard for each service reliability index based on the proposed methodology; and supporting justification for the proposed methodology and each resulting performance standard.

Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission. On June 28, 2013, and amended on August 12, 2013, Duke filed an application to establish new reliability standards pursuant to Ohio Adm.Code 4901:1-10-10.

On July 31, 2013, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. By Entry issued November 15, 2013, the attorney examiner granted OCC's motion to intervene and set a procedural schedule in this case. In accordance with the schedule, comments by interested persons and the Commission's Staff (Staff) were to be filed by January 6, 2014, and January 17, 2014, respectively, and reply comments were to be filed by February 7, 2014. As provided by Ohio Adm.Code 4901:1-10-10(B)(6), a technical conference was held on December 4, 2013. OCC filed comments on January 6, 2014. Staff filed comments on January 21, 2014, along with a motion requesting that its late-filed comments be accepted; explaining that, due to technical difficulties, Staff was unable to submit its comments on January 17, 2014. The Commission finds that Staff's motion is reasonable and should be granted. Duke and OCC each filed reply comments.

By Entry issued April 10, 2014, the attorney examiner scheduled a hearing in accordance with Ohio Adm.Code 4901:1-10-10(B)(6)(e) for June 10, 2014, and directed Duke to publish notice of the hearing. Ohio Energy Group (OEG) subsequently filed a motion to intervene on April 24, 2014. Duke and OCC jointly requested that the hearing be continued. By Entry issued May 28, 2014, the attorney examiner granted OEG's motion to intervene and continued the evidentiary hearing date until July 22, 2014, but, in order to preserve publication, maintained the original June 10, 2014 hearing date for any public comments. The public hearing was held on July 10, 2014, at which no members of the public were present and no testimony was taken. On June 27, 2014, the parties again jointly requested to continue the evidentiary hearing date. The attorney examiner granted the request in an Entry issued July 10, 2014, and set a new evidentiary hearing date of August 19, 2014.

On July 25, 2014, Duke, OCC, and Staff filed a joint stipulation and recommendation (Stipulation), purportedly resolving all of the issues raised in this proceeding. Duke subsequently filed testimony in support of the Stipulation on August 5, 2014.

At the August 19, 2014 hearing, admitted into the record of evidence were the Stipulation (Jt. Ex. 1) and the testimony of Duke witness Tony Platz (Duke Ex. 3) in support of the Stipulation. Further, incorporated into the Stipulation, the signatory parties agreed to the admission of Duke's application filed June 28, 2013 (Duke Ex. 1), Duke's amended application filed August 12, 2014 (Duke Ex. 2), Duke's proof of publication filed May 28, 2014 (Duke Ex. 5), comments filed by OCC on January 6, 2014 (OCC Ex. 1), comments filed by Staff on January 21, 2014 (Staff Ex. 1), reply comments by Duke filed on February 7, 2014 (Duke Ex. 4), and reply comments by OCC filed on February 7, 2014 (OCC Ex. 2). No one opposed the Stipulation at the August 19, 2014 hearing.

II. Applicable Regulations

Ohio Adm.Code 4901:1-10-10 prescribes the measurement of each electric utility's service reliability, the development of minimum performance standards for such reliability, and the reporting of performance against the established standards. An electric utility's service reliability is measured by two service reliability indices: the customer average interruption duration index (CAIDI) and the system average interruption frequency index (SAIFI). CAIDI represents the average interruption duration or average time to restore service per interrupted customer and equals the sum of customer interruption durations divided by the total number of customer interruptions. SAIFI represents the average number of interruptions per customer and equals the total number of customer interruptions divided by the total number of customers served.

III. Summary of the Application and Comments

In the application, Duke explains that it is engaged in the business of supplying electric transmission, distribution, and generation service to approximately 690,000 customers in southwestern Ohio. Duke requests approval of its proposed reliability standards, submitting that the proposed standards are consistent with the standards approved by the Commission in *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (Dec. 17, 2008) (*Duke ESP Case*), as well as the current standards and commitments approved by the Commission in *In re Duke Energy Ohio, Inc.*, Case No. 09-757-EL-ESS, Opinion and Order (July 29, 2010) (*Duke Standards Case*). (Duke Ex. 2 at 1-2.)

Duke notes that, in the *Duke ESP Case*, the Commission approved Duke's SmartGrid deployment plan and agreed to certain performance standards to be met over the years of the deployment of SmartGrid metering and distribution automation. Duke asserts that the performance standards contained in the application are consistent with those standards set forth in the *Duke ESP Case*. Duke proposes to continue compliance with the terms of the stipulation approved in the *Duke ESP Case*, which were continued in the *Duke Standards Case*; thus, requesting that, for years 2015 and thereafter, the SAIFI be set at 1.10. Duke further proposes setting CAIDI at 124.37 minutes for 2015, which would represent a continuation of the standard approved in the *Duke Standards Case*. Duke also notes that the SmartGrid deployment should be complete by 2016, at which point it will have better data to assess achievable reliability standards. The application also indicates that Duke completed a customer satisfaction survey, in compliance with Ohio Adm.Code 4901:1-10-10(B)(4)(b). (Duke Ex. 2 at 2-4.)

OCC, in its comments, has several criticisms of Duke's application and requests that it be denied. OCC comments that Duke's proposed CAIDI standards are higher than previous standards and go against previous stipulations. Because consumers are paying for the installment of SmartGrid metering, OCC finds the increased durations to be unacceptable. Further, OCC believes Duke should be able to develop realistic standards for after the SmartGrid deployment is complete. Regarding the SAIFI standards, OCC believes that Duke, now equipped with better technology, should be improving from previous standards and not remaining stagnant. (OCC Ex. 1 at 4-16.)

Staff also takes issue with portions of Duke's application. Staff states that, in Duke's customer survey, it did not meet the minimum sample size in order to get reliable results. Like OCC, Staff is concerned about Duke's proposal to raise the CAIDI standard. Staff asserts the new standard should be based on the average performance of the past five years, plus a 10 percent adder to account for weather variances. Staff also proposes that the calculation include updated data from 2013 and not include data from 2010, when Duke failed to meet the reliability standard. (Staff Ex. 1 at 2-6.)

In its reply comments, Duke explains its methodology to determine appropriate standards is more statistically sound than what is proposed by OCC and Staff. Duke believes its method of using a linear trend-line based on past performances establishes a more realistic standard than just averaging the past five year's performances, which, per Duke, creates an outdated standard. Further, Duke disagrees with Staff's recommendation of a 10-percent adder to account for variations, and instead believes the variation should be based off a multiple of the standard deviation. Duke also asserts that an increased CAIDI is the natural result of an improved SAIFI. In response to OCC's request for a lower SAIFI standard, Duke notes that the standard complies with the stipulations that OCC signed off on in other cases. In regards to the concern about the customer survey, Duke submits that there is not a required a sample size, but that it is working on getting more survey participants. (Duke Ex. 4 at 1-7.)

IV. Summary of the Stipulation

A Stipulation signed by Duke, Staff, and OCC was submitted on the record, at the hearing held on August 19, 2014 (Jt. Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The following is a summary of the Stipulation and is not intended to replace or supersede the provisions of the Stipulation:

(1) In the 2015 and 2016 calendar years, Duke shall measure performance against the CAIDI and SAIFI.

(2) The SAIFI standard shall be as set at 1.05 for each of the years 2015 and 2016.

(3) The CAIDI standard shall be set at 122.81 for each of the years 2015 and 2016.

(4) Duke will continue to administer a customer perception survey, pursuant to Ohio Adm.Code 4901:1-10-10(B)(4)(6), and will comply with Staff's reliability survey guidelines. Specifically, each survey will contain a minimum sample size of 400 customers and each survey will be administered to a quarter of the sample size during four consecutive calendar quarters.

(5) Duke will file an application to establish standards for performance during 2016. Results of the customer perception survey will be included in the application.

(6) Duke's application will provide data supporting five years of historical system performance and shall explain factors and methodology used to determine performance periods. The reliability performance standard application will comply with Ohio Adm.Code 4901:1-10-10(B)(2)-(6).

(7) Duke will provide a list of IEEE outage codes and definitions that it uses to categorize the root causes of outages. Duke will explain any changes in the codes and definitions for the years being considered in establishing the historical performance.

(8) Duke will explain how it applies major event day exclusions to its SAIDI calculations.

(9) Duke will analyze the impact of its grid modernization on the reliability of its distribution system for its customers, using performance data for at least the two calendar years preceding the reopener application. Specifically, the report will show the number of times SmartGrid self-healing teams have operated successfully and unsuccessfully and the number of times electronic reclosers have operated successfully and unsuccessfully. The report will quantify how much Duke estimates the successful operations of self-healing teams actually reduced both the number of customers interrupted and the number of customer minutes interrupted. Duke will file its report with its reopener application.

(10) Duke will examine the impact of its non-SmartGrid distribution system improvements on the reliability of its distribution system for its customers, using performance data for at least the two calendar years preceding the reopener application. Specifically, the report will show, for the two previous years:

the list of miles of tree trimming activities completed; the quantity of transformer retrofits accomplished; the number of outage follow-up root-cause field investigations conducted for outages affecting over 500 customers; and the number of quality construction audits completed.

(11) Duke will explain and assess the impact of improvements to SAIDI and SAIFI as they relate to CAIDI.

(Jt. Ex. 1 at 4-7.)

CONCLUSION:

Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See 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, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves most of the 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., *In re Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1004); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 30, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 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 547, 629 N.E.2d 423 (1994), *citing Consumers' Counsel v. Pub. Util. Comm., 64 Ohio St.3d 123, 126, 592 N.E.2d 1370* (1992). 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.

In this case, the signatory parties represent that the Stipulation is the product of serious bargaining among capable, knowledgeable parties representing diverse interest. The signatory parties also maintain that the Stipulation, as a whole, benefits customers and the public interest, does not violate any important regulatory principle or practice and is supported by adequate data and information in the case record. (Jt. Ex. 1 at 1.)

The Stipulation meets the criteria employed by the Commission to evaluate the reasonableness of stipulations, according to the testimony of Tony Platz, director of power quality, reliability and infrastructure engineering for Duke. Mr. Platz testified that the settlement discussions involved all parties, each of whom was represented by experienced, competent legal counsel knowledgeable in regulatory matters. Further, the witness notes that all parties participated in multiple meetings and communications to discuss the resolution of the case. On that basis, Mr. Platz claims that the Stipulation represents the product of serious bargaining among capable, knowledgeable parties. Mr. Platz also asserts that the Stipulation benefits the consumers and the public interest. Further, the witness contends the Stipulation does not violate any important regulatory practice or principle. According to Mr. Platz, the Stipulation is consistent with regulatory principles and practices, and reflects an agreed-upon application of the Commission's rules for electric utilities to establish system-wide reliability standards. (Duke Ex. 3 at 3-5.)

In this case, the Commission finds that the Stipulation is supported by adequate data and information. In addition, the Stipulation represents a just and reasonable resolution of the issues raised in this proceeding and violates no regulatory principle or precedent. Further, we find that the Stipulation is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process, encouraged by this Commission and undertaken by the parties representing varied interests, including the Staff, to resolve the aforementioned issues. Accordingly, the Commission concludes that Stipulation is reasonable and should be adopted in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Duke is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

(2) On June 28, 2013, as amended on August 12, 2013, Duke filed an application to establish reliability targets.

(3) On November 15, 2013, OCC was granted intervention in the matter.

(4) On January 6, 2014, and January 21, 2014, OCC and Staff filed comments, respectively. On February 7, 2014, OCC and Duke filed reply comments.

(5) On May 28, 2014, OEG was granted intervention in this proceeding.

(6) On June 10, 2014, a hearing was held for public comments and no appearances were made.

(7) On July 25, 2014, Duke, Staff, and OCC filed a Stipulation that purports to resolve all of the issues in this proceeding.

(8) The evidentiary hearing was convened on August 19, 2014.

(9) At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No one opposed the Stipulation.

(10) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

It is, therefore,

ORDERED, That Staff's motion requesting that its late-filed comments be accepted is granted. It is, further,

ORDERED, That the Stipulation filed by Duke, OCC, and Staff be approved and adopted in its entirety. 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 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

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

NJW/CMTP/vrm

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Barcy F. McNeal
Secretary