

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Administration of the)
Significantly Excessive Earnings Test) Case No. 15-665-EL-UNC
Under R.C. 4928.143(F), and Ohio)
Adm.Code 4901:1-35-10 for 2014.)

OPINION AND ORDER

The Commission, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its Opinion and Order.

APPEARANCES:

Amy Spiller, Jeanne Kingery, and Elizabeth H. Watts, 139 East Fourth Street, Cincinnati, Ohio 45201, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, John H. Jones, Assistant Section Chief, and Thomas W. McNamee, Assistant General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

OPINION:

I. Applicable Statutes and Policies, and Procedural History of Case

Duke Energy Ohio, Inc. (Duke or Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143. On November 22, 2011, the Commission approved a stipulation that, among other things, authorized Duke to provide consumers an SSO in the form of an ESP through May 2015. *In re Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al. (*ESP 2 Case*), Opinion and Order (Nov. 22, 2011).

Pursuant to the directives of R.C. 4928.143(F), the Commission is required to evaluate the earnings of each EDU's approved ESP to determine whether the plan produces significantly excessive earnings for the EDU. R.C. 4928.143(F) provides that,

* * * excessive earnings is measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publically traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate.

On June 30, 2010, the Commission established the policy and significantly excessive earnings test (SEET) filing directives for EDUs, in accordance with R.C. 4928.143(F). *In re Investigation into the Dev. of the Significantly Excessive Earnings Test Pursuant to Am.Sub.S.B. No. 221 for Elec. Util.*, Case No. 09-786-EL-UNC, Finding and Order (June 30, 2010). Ohio Adm.Code 4901:1-35-10 requires that, by May 15th of each year each EDU must file an application with the Commission and demonstrate whether or not any rate adjustments authorized by the Commission as part of the ESP resulted in significantly excessive earning during the review period.

On April 30, 2015, Duke filed this application for the administration of the SEET for 2014, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10 (Co. Ex. 1). That same day, Duke filed the supporting testimony of Peggy A. Laub (Co. Ex. 2).

By Entry issued May 15, 2015, the attorney examiner scheduled the hearing in this matter for June 12, 2015. On June 10, 2015, a stipulation and recommendation (Stipulation) entered into by Duke and Staff was filed in this proceeding (Jt. Ex. 1). No one filed to intervene in this matter.

At the June 12, 2015 hearing, the Stipulation was introduced. In support of the Stipulation, Staff presented the testimony of witness Joseph P. Buckley.

II. Application and Comments

In its application, Duke explains that, in the *ESP 2 Case*, the Commission approved a stipulation, which provides a mechanism for how the Commission will administer the SEET with regard to Duke. Specifically, Duke asserts that the stipulation approved in the *ESP 2 Case* provides that, if Duke's annual return on average common equity for each review year, as adjusted, does not exceed 15 percent, then Duke's return on common equity will be deemed to not be significantly in excess of the return on common equity that was earned during the same period by publicly traded companies facing comparable business and financial risks. (Co. Ex. 1 at 1-3.)

Duke submitted testimony along with its application indicating that Duke's return earned on average electric common equity for the year ended December 31, 2014, is 8.27 percent based on a calculated average electric common equity of \$1,758,588,086 and an adjusted electric net income of \$145,420,704, including non-SSO sales and ESP deferrals (Co. Ex. 2 at Att. PAL-1). Duke represents that the Company did not have significantly excessive earnings in 2014 (Co. Ex. 1 at 4-6; Co. Ex. 2 at 5, 11-14, PAL-1).

III. Stipulation

A Stipulation signed by Duke and Staff was submitted, on the record, at the hearing held on June 12, 2015 (Jt. Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The Stipulation provides that Duke has calculated its earned return on average common equity for the year ended December 31, 2014, to be 8.27 percent. The parties agree that, consistent with the ESP approved in the *ESP 2 Case*, because this return is lower than the 15 percent threshold, significantly excessive earnings did not occur with respect to the Company's ESP in 2014. (Jt. Ex. 1 at 2.) Nothing in this summary of the Stipulation supersedes or replaces the language in the Stipulation. The Stipulation was not opposed.

IV. Consideration of the Stipulation

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 *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., *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Res. Tel. Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *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. 31, 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 Supreme Court of Ohio 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 v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, 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. *Consumers' Counsel* at 126.

Staff witness Buckley testified that the Stipulation is a product of serious bargaining among capable, knowledgeable parties (Tr. at 8). Upon review of the terms of the Stipulation, based on our three-prong standard of review, we find that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Mr. Buckley explained that the Stipulation benefits the public interest (Tr. at 8). Upon review of the Stipulation, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation.

Staff witness Buckley also testified that the Stipulation does not violate any important regulatory principle or practice (Tr. at 8). 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.

Accordingly, we find that the Stipulation entered into by the parties is reasonable and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Duke is an EDU as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) On April 30, 2015, Duke filed an application for the administration of the SEET, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10.
- (3) The evidentiary hearing was held on June 12, 2015.

- (4) At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No one opposed the Stipulation.
- (5) The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

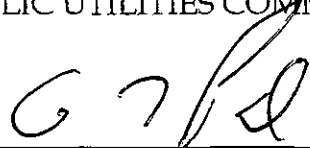
ORDERED, That the Stipulation filed in this proceeding be approved and adopted.
It is, further,

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

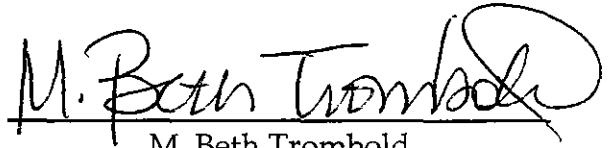
ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T Porter, Chairman



M. Beth Trombold



Thomas W. Johnson


Lynn Slaby

Asim Z. Haque

NW/CSO/CMTP/vrm

Entered in the Journal

SEP 16 2015



Barcy F. McNeal
Secretary