THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE DETERMINATION OF THE EXISTENCE OF SIGNIFICANTLY EXCESSIVE EARNINGS FOR 2015 UNDER THE ELECTRIC SECURITY PLAN OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY.	CASE NO. 16-925-EL-UNC

OPINION AND ORDER

Entered in the Journal on November 3, 2016

I. SUMMARY

{¶ 1} The Commission finds that the stipulation between the Companies and Staff regarding the significantly excessive earnings test meets the criteria used by the Commission to evaluate stipulations, is reasonable and should be adopted.

II. PROCEDURAL HISTORY

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the Companies) are electric distribution utilities as defined in R.C. 4928.01(A)(6) and public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4928.14, electric utilities are required to provide consumers with a standard service offer, consisting of either a market-rate offer or an electric security plan (ESP). Pursuant to the directives of R.C. 4928.143(F), the Commission is required to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility. The Commission issued a Finding and Order in *In re Significantly Excessive Earnings Test,* Case No. 09-786-EL-UNC (*SEET Test Case*), Finding and Order (June 30, 2010), which established the

policy and significantly excessive earnings test (SEET) filing directives for the electric utilities.

{¶ 4} On May 16, 2016, the Companies 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. The Companies also filed the supporting testimony of K. Jon Taylor and Joanne M. Savage.

{¶ 5} A stipulation and recommendation (Stipulation) entered into by the Companies and Staff was filed in this matter on July 29, 2016. By Entry issued September 6, 2016, the attorney examiner scheduled this matter for hearing to take place on September 29, 2016. At the September 29, 2016 hearing, the Stipulation was introduced and admitted into the record (Jt. Ex. 1).

III. DISCUSSION

{¶ 6} In the application, the Companies explain that in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO, (*ESP 2 Case*), Opinion and Order (Aug. 25, 2010), the Commission approved an ESP for the Companies through May 31, 2014. Additionally, the Companies explain that in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (*ESP 3 Case*), Opinion and Order (July 18, 2012), the Commission approved an ESP for the Companies effective June 1, 2014 through May 31, 2016. The Companies note that R.C. 4928.143(F) requires the Commission to annually determine whether an electric distribution utility has earned significantly excessive earnings under its ESP. In the application, the Companies request that the Commission find that significantly excessive earnings did not result for the Companies under their ESPs with respect to the annual period ending December 31, 2015. (Co. App. at 1-3.)

{¶ 7} The application and supporting testimony explain that, for purposes of determination of significantly excessive earnings, net income and common equity were

adjusted as contemplated by the stipulation in the *ESP 3 Case* (Co. App, Att. 1 at 5-6). Under the terms of the stipulation, adjustments should be made to net income and common equity in order to exclude the impact of any reduction in equity from any write-off of goodwill, of deferred carrying charges, and of any liability or write-off of regulatory assets due to the implementation of the Companies' ESPs. The application notes that no adjustments were made for the write-off of goodwill or the write-off of regulatory assets; however, adjustments were made to exclude the impact of deferred carrying charges from the SEET calculations. (Co. App., Att. 1 at 6.) After making these adjustments, the application indicates that the Companies' 2015 adjusted net income for SEET purposes was $121,087,040 for OE, $57,856,800 for CEI, and $27,905,193 for TE. The average common equity with adjustments for 2015 was $1,121,068,382 for OE, $1,103,107,476 for CEI, and $461,005,808 for TE. The resulting return on equity for 2015 was 10.8 percent for OE, 5.2 percent for CEI, and 6.1 percent for TE. (Co. App, Att. 1 at 8.)

{¶ 8} The Companies further state that their 2015 returns on equity for SEET purposes are below the "safe harbor" threshold of 200 basis points above the mean of the comparable group recognized by the Commission in the *SEET Test Case*, or 12.2 percent for OE, CEI, and TE (Co. App., Att. 1 at 12). Finally, the Companies state that, because their earnings are not significantly excessive, they do not need to submit revenue information from their prior rate plans (Co. App., Att. 1 at 12).

IV. STIPULATION OF THE PARTIES

{¶ 9} The Stipulation signed by the Companies and Staff was filed on July 29, 2016 (Jt. Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding (Jt. Ex. 1 at 1). The Stipulation states that the earned returns on equity for the Companies for 2015, as adjusted by specific items contemplated by the stipulation in the *ESP 3 Case*, were 5.2 percent for CEI, 10.8 percent for OE, and 6.1 percent for TE. On that basis, the signatory parties recommend the Commission

determine that significantly excessive earnings did not occur with respect to the Companies' ESPs in 2015. (Jt. Ex. 1 at 2-3.)

V. CONCLUSION

{¶ 10} 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.

{¶ 11} 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 (Zimmer Plant)*, 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?

{¶ 12} 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.

{¶ 13} Joseph Buckley, a Utility Specialist 3 with Staff, testified that he was involved in the development of the agreement in this case (Tr. at 6-7). He testified that the Stipulation is a product of serious bargaining among knowledgeable and informed parties. Upon review of the terms of the Stipulation and the supporting testimony, 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.

{¶ 14} With regard to the second criterion, Mr. Buckley explained that in his opinion the Stipulation benefits the public interest (Tr. at 7). Upon review of the Stipulation and Mr. Buckley's testimony, we find that, as a package, the Stipulation satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation.

{¶ 15} Finally, Mr. Buckley also testified that the Stipulation does not violate any significant public policy provision or statute (Tr. at 7). 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, the Commission finds that the Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 16} The Companies are public utilities as defined in R.C. 4905.02 and, as such, are subject to the jurisdiction of this Commission.

{¶ 17} R.C. 4928.143(F) requires the Commission to evaluate the earnings of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility.

{¶ 18} On May 16, 2016, the Companies 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.

{¶ 19} The evidentiary hearing was held in this matter on September 29, 2016. At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No party opposed the Stipulation.

{¶ 20} The Stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

VII. ORDER

{¶ 21} It is, therefore,

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

{¶ 23} ORDERED, That the Companies take all necessary steps to carry out the terms of the Stipulation and this Opinion and Order. It is, further,

{¶ 24} 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,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

BAM/sc

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Barcy F. McNeal
Secretary