

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR
APPROVAL TO CHANGE ACCOUNTING
METHODS ASSOCIATED WITH ITS
INTEGRITY MANAGEMENT PROGRAM.

CASE No. 16-387-GA-AAM

OPINION AND ORDER

Entered in the Journal on January 4, 2017

I. SUMMARY

{¶ 1} The Commission adopts the stipulation and recommendation submitted by Duke Energy Ohio, Inc. and Staff regarding the deferral of costs related to Duke Energy Ohio, Inc.'s integrity management program.

II. PROCEDURAL BACKGROUND

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company within the meaning of R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 3} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code 4901:1-13-13, the Commission adopted the Uniform System of Accounts (USOA), as prescribed by the Federal Energy Regulatory Commission, for gas and natural gas companies in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding orders of the Commission. Additionally, the Commission may require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of gas or natural gas companies operating within the state.

{¶ 4} On February 19, 2016, Duke filed an application seeking authority to establish a regulatory asset and defer, for accounting and financial reporting purposes, the related expenditures for its new integrity management program (IMP), designed to

improve the safety of its natural gas distribution system. Duke explains that federal regulations require operators of gas distribution pipelines to develop and implement a gas distribution integrity management program and that, in response, Duke developed the IMP. According to Duke, the IMP consists of six initiatives designed to focus on enhancing risk assessment and analysis; improving records; training; damage prevention; inline inspection and pressure testing techniques; and maximum allowable operating pressure verification. Duke further explains that incurrence of costs associated with these initiatives may result in a significant and unavoidable negative impact on Duke's earnings, because the costs are not recoverable in Duke's current base rates. Consequently, Duke requests authorization to revise its accounting procedures and defer its income statement recognition of the IMP costs incurred after December 31, 2015, with the annual increase not to exceed \$4 million per calendar year. Duke notes that the recovery of the deferred amount will be addressed either in a separate proceeding or in Duke's next natural gas base rate case proceeding. Duke further requests authority to recover carrying charges on the deferred balance.

{¶ 5} On October 20, 2016, and corrected on October 26, 2016, a joint stipulation and recommendation (stipulation) was filed by Duke and Staff that purports to resolve all of the issues in this case.

{¶ 6} Pursuant to the Entry issued November 1, 2016, a hearing on the stipulation was held on November 15, 2016. At the hearing, the Company's application (Duke Ex. 2); the testimony of John A. Hill, as filed on October 31, 2016 (Duke Ex. 1); and the stipulation (Joint Ex. 1) were admitted into evidence.

III. STIPULATION OF THE PARTIES

{¶ 7} The parties submit that the stipulation would resolve all of the issues in the case. Below is a summary of the stipulation and is not intended to supersede or replace the stipulation:

The signatory parties recommend deferral of costs directly related to the six pipeline integrity initiatives described in Duke's application (collectively, the Six Initiatives) subject to the following provisions:

- (1) Duke agrees to biannual meetings with Staff to review progress under the Six Initiatives, any proposed changes, the results of any new or ongoing investigations or evaluations, cost-savings measures, and other related matters.
- (2) By June 1 of each year, Duke shall file an annual report detailing the deferred expenses, external auditor findings, baseline performance levels for each safety initiative, safety performance improvements compared to baselines, results of ongoing and future investigations, any mid-term adjustments, and efforts towards identifying efficiencies and implementing cost-savings measures.
- (3) Within 90 days of the filing for the Company's annual report, Staff shall file a report. Duke expressly agrees that Staff's reports on the Company's annual reports shall not be construed to indicate Staff's support for future recovery of the deferred expenses and acknowledges that Staff will investigate and make recommendations regarding future recovery of the deferrals in a proceeding determined by the Commission. Duke shall have 30 days after the filing of the Staff's report to accept or object to the recommendations. If objections are filed, the Commission may establish a procedural schedule for the filing of testimony and an evidentiary hearing or other proceedings as it deems appropriate.

- (4) Duke shall use its best efforts to identify and implement efficiencies and cost-savings measures to minimize deferrals for the Six Initiatives.
- (5) In consultation with Staff, Duke shall develop specific performance measures for each of the Six Initiatives and establish a baseline performance so that safety improvements can be tracked.
- (6) Duke shall cooperate with Staff to develop threshold points for discontinuing the Six Initiative deferrals at the semi-annual meetings. If Staff and Duke cannot agree on proper thresholds, the Company acknowledges that Staff may make recommendations to the Commission in its 90-day annual report, which may potentially be addressed in an evidentiary hearing.
- (7) The carrying charge rate shall be three percent per annum without compounding.
- (8) The maximum amount of expenditures to be deferred for Duke's Six Initiatives during the term of the agreed upon deferral authority shall not exceed \$4 million per year. If Duke seeks to implement any additional pipeline safety initiatives or seeks additional deferral authority in addition to what has been agreed upon in the stipulation, such request shall be made under a different case number.
- (9) At such time when Duke seeks to recover any deferred expenses associated with its Six Initiatives, recovery of such deferred expenses will be limited to the recovery of the

deferred asset reflected on its books with no return on the asset being provided through rate base recognition.

- (10) Unless otherwise ordered by the Commission, the deferral authority will expire not later than January 1, 2024. Recovery of the deferred amounts shall be collected as determined by the Commission.

(Joint Ex. 1 at 2-4.)

IV. COMMISSION CONCLUSION

A. *Duke's Application*

{¶ 8} The Commission evaluates applications for authority to establish a regulatory asset and to defer incurred expenses based primarily on a utility's demonstration of the following factors: whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral; whether the costs are material; whether the reason for requesting the deferral is outside the utility's control; whether the expenses are atypical and infrequent; and whether the financial integrity of the utility will be significantly and adversely affected, if the deferral is not granted. *See, e.g., In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1238-GA-AAM, Finding and Order (July 6, 2016); *In re Duke Energy Ohio, Inc.*, Case No. 09-1097-GA-AAM, Finding and Order (Mar. 24, 2010); *In re The Dayton Power & Light Co.*, Case No. 08-1332-EL-AAM, Finding and Order (Jan. 14, 2009); *In re Citizens Utilities Co. of Ohio*, Case No. 98-1701-WS-AAM, Finding and Order (Apr. 29, 1999); *In re The Ohio Suburban Water Co.*, Case No. 92-1130-WW-AAM, Entry (Dec. 17, 1992); *In re The Cincinnati Gas & Elec. Co.*, Case No. 90-2017-EL-AAM, Entry (Mar. 14, 1991). Further, the Commission may, at its discretion, grant a deferral to incent a utility.

{¶ 9} In its application, Duke asserts it developed its IMP in response to federal regulations requiring gas distribution pipeline operators to implement gas distribution

integrity management programs. Duke's IMP consists of six initiatives designed to focus on enhancing risk assessment and analysis; improving records; training; damage prevention; inline inspection and pressure testing techniques; and maximum allowable operating pressure verification. Duke contends the associated business expenses are prudent and necessary, as the IMP is designed to enhance safety and reliability and to promote compliance with both Ohio and federal regulations. According to the Company, because its IMP costs are not factored into its existing base rates, the incurrence of these costs may result in a significant and unavoidable negative impact on its earnings. Duke avers the recovery of the deferred amount will be addressed either in a separate proceeding or in Duke's next natural gas base rate case proceeding. (Duke Ex. 2 at 2-7.) Therefore, in this instance, the Commission finds Duke's application to establish a regulatory asset and defer expenses incurred for its IMP to be consistent with the Commission's guidelines for approval of a deferral application.

B. Stipulation

{¶ 10} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are afforded 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.

{¶ 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 Western Reserve Telephone 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:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

{¶ 12} 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, 629 N.E.2d 423 (1994), *citing Consumers' Counsel* 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.

{¶ 13} At the hearing, Duke presented the testimony of John A. Hill, Director of Gas Engineering, in support of the stipulation. Mr. Hill testified that the stipulation filed in this case is the product of a lengthy investigation and a serious and open review process of discussion and negotiations. According to Mr. Hill, the parties were represented by able, experienced counsel. As a result of the negotiations, Mr. Hill stated Duke accepted several additional provisions and amendments to its application. Therefore, Mr. Hill contends the stipulation represents a just and reasonable resolution of the issues. (Duke Ex. 1 at 4-5, 7.)

{¶ 14} Mr. Hill further testified that the stipulation benefits ratepayers and is in the public interest. According to Mr. Hill, the stipulation provides Duke with a mechanism to implement integrity programs without having to seek immediate cost recovery through a separate filing. He states these programs will maintain or enhance Duke's system reliability, thus benefitting customers. Additionally, Mr. Hill asserts that customers benefit from added protections such as annual reporting, Staff investigation, annual caps on deferrals, and commitments to seeking cost efficiencies. Finally, Mr. Hill testified that the stipulation does not violate any important regulatory principle or practice. (Duke Ex. 1 at 5-6.)

{¶ 15} Based on the three-part standard of review for the evaluation of stipulations, the Commission finds the stipulation, as corrected and filed on October 26, 2016, should be approved. The first criterion, that the settlement process involve serious bargaining by capable and knowledgeable parties, is met. Duke and Staff, as well as each party's counsel, have been involved in numerous cases before the Commission and are knowledgeable about utility accounting policies and practices. The stipulation also meets the second criterion. As a package, the stipulation advances the public interest by efficiently resolving all of the issues related to Duke's deferral application. The stipulation provides deferral authority for Duke's IMP, which consists of six initiatives designed to focus on enhancing risk assessment and analysis; improving records; training; damage prevention; inline inspection and pressure testing techniques; and maximum allowable operating pressure verification. The Commission finds that the stipulation benefits ratepayers to the extent it establishes annual reporting requirements, annual caps on deferrals, and commitments to seeking cost efficiencies. Finally, the stipulation meets the third criterion, because it does not violate any important regulatory principle or practice. (Joint Ex. 1 at 2-4; Duke Ex. 1 at 4-6; Co. Ex. 2 at 3-4.) Accordingly, we find that the stipulation should be adopted and approved.

{¶ 16} Finally, the Commission's consideration of Duke's deferral application does not constitute ratemaking. *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176. As a result, recovery of any deferred amounts is not guaranteed. Recovery of the deferred amounts will be addressed in a subsequent proceeding.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 17} Duke is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 18} On February 19, 2016, Duke filed an application seeking approval to establish a regulatory asset to defer expenditures related to its implementation of new initiatives as part of its IMP.

{¶ 19} On October 20, 2016, and corrected on October 26, 2016, Duke and Staff filed a stipulation that would resolve all of the issues in this proceeding.

{¶ 20} A hearing on the stipulation was held on November 15, 2016.

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

VI. ORDER

{¶ 22} It is, therefore,

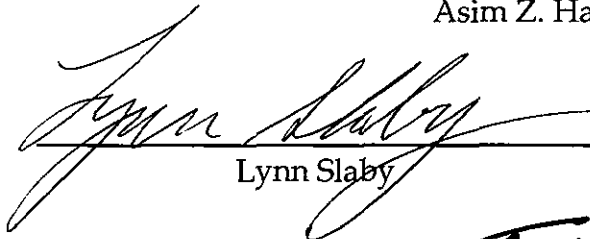
{¶ 23} ORDERED, That the stipulation, as corrected and filed by the parties on October 26, 2016, be approved and adopted. It is, further,

{¶ 24} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any future investigation or proceeding 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 all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Asim Z. Haque, Chairman

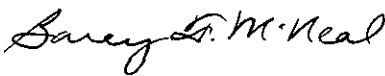

Lynn Slaby


M. Beth Trombold


Thomas W. Johnson

NJW/vrm/sc

Entered in the Journal
JAN 04 2017



Barcy F. McNeal
Secretary