THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF OHIO POWER COMPANY FOR APPROVAL OF ITS ENERGY EFFICIENCY AND PEAK DEMAND REDUCTION PROGRAM PORTFOLIO PLAN FOR 2017 THROUGH 2020.	CASE NO. 16-574-EL-POR

OPINION AND ORDER

Entered in the Journal on January 18, 2017

I. SUMMARY

{¶ 1} The Commission approves the Ohio Power Company's Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 through 2020, as modified by the Stipulation filed in this case.

II. APPLICABLE LAW

{¶ 2} Ohio Power Company, d/b/a AEP Ohio (AEP Ohio or the Company), is an electric distribution utility 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 energy efficiency and peak demand reduction (EE/PDR) requirements under R.C. 4928.64 and 4928.66.

{¶ 3} Ohio Adm.Code Chapter 4901:1-39 provides rules for the Commission's review of each electric utility's EE/PDR program portfolio plan (Plan) that consists of cost-effective programs to encourage innovation and market access for all customer classes and achieve the statutory benchmarks for peak-demand reduction, and meet or exceed the statutory benchmarks for energy efficiency.

{¶ 4} On May 28, 2014, the General Assembly passed 2014 Sub.S.B. No. 310 (S.B. 310), which became effective on September 12, 2014, and amended provisions in R.C. Chapter 4928 to freeze the EE/PDR mandates at 2014 levels. S.B. 310 also gave each electric utility the option of extending its then-current Plan through 2016, or amending its Plan to scale back to the frozen standard levels. The freeze enacted by S.B. 310 will be lifted in 2017, and the benchmarks under R.C. 4928.64 and 4928.66 will again apply.

{¶ 5} Ohio Adm.Code 4901:1-39-04(A) required each utility to file an update to its EE/PDR Plan by April 15, 2016.

III. PROCEDURAL HISTORY

{¶ 6} AEP Ohio's first Plan was approved in Case Nos. 09-1089-EL-POR and 09-1090-EL-POR and in effect from 2009 through 2011. AEP Ohio's second Plan proposed for the 2012 through 2014 period, was approved in the Commission's March 21, 2012 Finding and Order in Case Nos. 11-5568-EL-POR and 11-5569-EL-POR. AEP Ohio elected to continue its 2012-2014 Plan unchanged through 2016 under S.B. 310, and therefore was not subject to the freeze.

{¶ 7} Tariff provisions for recovery of costs associated with AEP Ohio's EE/PDR Cost Recovery Rider (EE/PDR Rider) were approved in the Company's electric security plan cases, Case Nos. 08-917-EL-SSO, et al. (ESP I), Opinion and Order (Mar. 18, 2009) at 41-45; Case Nos. 11-346-EL-SSO, et al. (ESP II), Opinion and Order (Aug. 8, 2012) at 65-66; Case Nos. 13-2385-EL-SSO, et al. (ESP III), Opinion and Order (Feb. 25, 2015) at 68.

{¶ 8} On March 16, 2016, AEP filed a request to waive the April 15, 2016 filing deadline for approval of its Plan, in light of the report issued September 30, 2015, by the S.B. 310 Energy Mandates Study Committee recommending that the freeze on EE/PDR mandated levels be continued indefinitely.

{¶ 9} On April 7, 2016, the Commission issued an entry granting AEP's requested waiver and extending the Plan filing deadline to June 15, 2016.

{¶ 10} On June 15, 2016, the Company filed its Application for approval of its Plan with the direct testimonies of Jon F. Williams and David R. Gill.

{¶ 11} Motions to intervene and objections to the Company's Plan were filed by the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), the Environmental Law & Policy Center (ELPC), the Environmental Defense Fund and Ohio

Environmental Council (EDF/OEC), the Natural Resources Defense Council (NRDC), Industrial Energy Users-Ohio (IEU-Ohio), the Kroger Co. (Kroger), the Ohio Manufacturers' Association Energy Group (OMAEG), IGS Energy, Inc. (IGS), the Ohio Farm Bureau Federation, Inc. (OFBF), the Mid-Ohio Regional Planning Commission (MORPC), and the Ohio Hospital Association (OHA).

{¶ 12} On October 26, 2016, an entry was issued granting the above-referenced motions to intervene and scheduling the case for hearing on November 17, 2016. The hearing was subsequently rescheduled at the request of the parties for December 6, 2016, by entry issued November 8, 2016, and ultimately for December 16, 2016, by entry issued November 25, 2016.

{¶ 13} Motions for intervention were also filed by Noble Americas Energy Solutions, LLC (Noble Americas) and Ohio Energy Group (OEG) on December 1 and 2, 2016, respectively.

{¶ 14} On December 9, 2016, AEP Ohio filed a Stipulation and Recommendation (Stipulation) that was joined by Staff, EDF/OEC, ELPC, IGS, Kroger, MORPC, NRDC, OEG, OFBF, OHA, OMAEG, and OPAE.

{¶ 15} On December 12, 2016, OCC filed correspondence indicating it would not oppose adoption of the Stipulation at the hearing of this matter.

{¶ 16} On December 15, 2016, AEP Ohio filed the direct testimony of Company witness Williams in support of the Stipulation.

{¶ 17} The hearing of this matter was held on December 16, 2016, at which time the motions to intervene of Noble Americas and OEG were granted, and the testimony of Mr. Williams was admitted without opposition (Tr. at 8-9, 12, 19).

IV. SUMMARY OF THE STIPULATION

{¶ 18} The Stipulation is supported by AEP Ohio, Staff, EDF/OEC, ELPC, IGS, Kroger, MORPC, NRDC, OEG, OFBF, OHA, OMAEG, and OPAE. As noted above, OCC did not sign the Stipulation but filed correspondence indicating that it does not oppose the Commission's adoption of the Stipulation.

{¶ 19} AEP Ohio witness Williams testified that the Stipulation represents the culmination of a long and detailed settlement process by a diverse group of parties, nearly all of which ultimately determined to sign the Stipulation or not to oppose it. The Stipulation proposes a number of clarifications and modifications to the Company's Plan proposed in its Application that, as a package, provide for AEP Ohio to offer a suite of programs in 2017 through 2020, which will allow AEP Ohio to meet its statutory EE/PDR benchmarks and provide numerous benefits to customers. (Co. Ex. 4 at 2-3).

{¶ 20} One of the most notable provisions of the Stipulation is ¶IV.A, which addresses the term of the Plan and establishes an annual cost cap. If adopted, the Stipulation would extend the term of the Plan from three to four years (January 1, 2017 through December 31, 2020), which Mr. Williams asserts will provide stability and predictability for AEP Ohio's EE/PDR programs, as well as cost certainty for customers over a longer term, and will allow the Company to engage in longer-term planning. ¶IV.A.2 also provides that if legislation is passed affecting EE/PDR plans during the new four-year Plan term, AEP Ohio will not file, and will not be required to file, for a new or amended Plan unless expressly required by the new legislation. (Joint Ex. 1 at 3, Co. Ex. 4 at 3-4).

{¶ 21} ¶IV.A of the Stipulation proposes an annual cost cap of $110,310,902 for the Plan. Program costs and shared savings are subject to the proposed cap, but net lost distribution revenues and IRP-D costs and revenues (associated with interruptible service credits under the Company's Rider IRP-D) are not. The Stipulation proposes that the annual cost cap will continue in place for each year of the Plan (2017-2020), subject to a

limited hearing process that the parties are proposing under ¶IV.X, by which the Commission can consider arguments in determining whether to eliminate the annual cost cap in the final two years of the Plan (2019-2020). (Joint Ex. 1 at 4, 12-13, Co. Ex. 4 at 4, 9-10).

{¶ 22} The Company witness also noted that ¶IV.A proposes provisions by which AEP Ohio will adjust its program budget to meet this annual cost cap. The Company's Application proposed a Plan budget that included new programs and existing program expenditures that could exceed the cap. However, Mr. Williams explained that, as part of the settlement bargaining process, the Company will reduce its Plan expenditures through the proposed annual cost cap. To that end, Mr. Williams sponsored a preliminary, good faith estimate of the Company's 2017 operating budget with the proposed cost cap in place as Settlement Exhibit JFW-2. While he noted that this budget is preliminary, and AEP Ohio may adjust program budgets or eliminate programs based on further budgetary development and operational realities, he asserted that the Company has a long track record of controlling costs while maximizing energy and demand savings below Plan budgets and intends to continue those efforts to stay within the lower overall cost cap. (Co. Ex. 4 at 4-5).

{¶ 23} ¶IV.D of the Stipulation continues the cap on the Company's shared savings at $20 million after tax annually, a cap, which Mr. Williams stated, has been in place since the Company's last EE/PDR Plan was approved in Case No. 11-5568-EL-POR. This provision also clarifies and modifies several aspects of the Company's eligibility for, and the calculation of shared savings, including an agreement in ¶IV.D.5 that avoided generation costs used for the purpose of calculating net benefits (and thus shared savings) are established in Attachment A of the Stipulation, which the Company will update in October 2018 for use in 2019-2020. (Joint Ex. 1 at 5-6, Attachment A at 1-2, Co. Ex. 4 at 5).

{¶ 24} The Stipulation also provides AEP Ohio commitments with respect to specific EE/PDR Plan programs. These include raising the floor of Combined Heat and

Power Program incentives to a total of 3.5 cents per kWh; working with NRDC to deliver efficient residential circulator pumps; partnering with OFBF, OHA and OMAEG to promote energy efficiency programs for agricultural, medical and manufacturing customers; and sourcing its Community Assistance Program to OPAE through the term of the 2017-20 Plan, as well as establishing performance targets and reporting of its progress to the Company's EE/PDR Collaborative. The Company will also work with IGS on a streamlined incentive process for smart thermostats, and has committed to pilot programs for local governments, non-residential customers energy audits, and LED lighting in partnership with Kroger. (Joint Ex. 1 at 7-12, Co. Ex. 4 at 6-7).

{¶ 25} Mr. Williams further noted that ¶IV.H of the Stipulation provides for an automatic approval of the rates proposed in each of the Company's annual EE/PDR Rider true-up filings to avoid the significant over- or under-collection balances that can accrue if there is a delay in implementing the Company's updated EE/PDR Rider rates, but asserted that the true-up filing will remain subject to a Commission prudence audit and final reconciliation, and does not prevent any party from raising objections in the true-up proceeding. (Joint Ex. 1 at 8, Co. Ex. 4 at 7-8).

{¶ 26} With respect to the bidding of EE/PDR resources in the PJM capacity auctions, Mr. Williams noted that ¶IV.K of the Stipulation continues the Company's current practice of passing through 80% of PJM revenues from Plan programs through the EE/PDR Rider to the customer's benefit with the AEP Ohio retaining 20% of such revenues. Further, this provision also addresses the manner in which the Company bids EE/PDR resources for unapproved plan years, given that the PJM base residual auction is conducted three years in advance of the delivery year. (Joint Ex. 1 at 8-9, Co. Ex. 4 at 8).

{¶ 27} Finally, Mr. Williams testified that the Stipulation meets each of the criteria under the Commission's three-part test for determining the reasonableness of

stipulations, and he sponsored the Company's exhibits regarding rate calculations and estimated bill impacts (Co. Ex. 4 at 10-13, Settlement Ex. JFW-2, JFW-3, and JFW-4).

V. COMMISSION CONCLUSION

{¶ 28} 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 accorded substantial weight, particularly where the stipulation is unopposed by any party and resolves all issues in the proceeding. *Consumers Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 1992-Ohio-122, 592 N.E.2d 1370, citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978).

{¶ 29} The Commission has established a three-prong test in considering whether a stipulation is reasonable and should be adopted: (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 use of 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, 1994-Ohio-435, 629 N.E.2d 423, 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. In determining the reasonableness of a stipulation, the Commission should consider the agreement as a package. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing (Oct. 12, 2016) at 99-100.

{¶ 30} As noted above, Stipulation is supported by AEP Ohio, Staff, EDF/OEC, ELPC, IGS, Kroger, MORPC, NRDC, OEG, OFBF, OHA, OMAEG, and OPAE. OCC did not sign the Stipulation, but does not oppose the Commission's adoption.

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

{¶ 31} As noted by AEP Ohio witness Williams, the Stipulation represents the culmination of a long and detailed settlement process with a diverse group of capable, knowledgeable parties, signing the agreement or not opposing its adoption (Co. Ex. 4 at 3, 101). Upon review of the record, the Commission finds that the first prong of the three-part test for the reasonableness of a stipulation has been met.

B. Does the settlement, as a package, benefit ratepayers and the public interest?

{¶ 32} The testimony of Mr. Williams identifies a number of clarifications and modifications to the Company's Application made by the Stipulation that, as a package, provide for AEP Ohio to offer a suite of programs in 2017 through 2020, that will allow AEP Ohio to meet its statutory EE/PDR benchmarks and provide numerous benefits to customers (Co. Ex. 4 at 11-12). The most significant of these provisions is the extension of the Plan to cover a four-year period, and the establishment of a $110 million annual cost cap that will continue from 2017 to 2020, unless otherwise ordered by the Commission for the final two years. The addition of an annual cost cap is a reasonable response to concerns which have been raised regarding potential increases in the costs of the EE/PDR programs, and the annual cost cap should incent AEP Ohio to manage the costs of the programs in the most efficient manner possible. In light of the importance of the annual cost cap, the Commission notes that we will be reluctant to approve stipulations in other EE/PDR program portfolio cases which do not include a similar cap on EE/PDR program costs.

{¶ 33} The Stipulation also continues the $20 million after-tax annual cap on the Company's shared savings, and modifies several aspects of the Company's eligibility for, and the calculation of shared savings, including an agreement on the avoided generation costs to be used for the purpose of calculating net benefits and shared savings. In addition, as noted above, the Stipulation contains numerous provisions that will benefit specific EE/PDR programs and customer groups such as increased Combined Heat and

Power Program incentives, and Company commitments regarding residential circulator pumps, smart thermostats, and programs for agricultural, medical and manufacturing customers, as well as pilot programs for local governments, non-residential customer energy audits, and LED lighting with Kroger (Joint Ex. 1 at 7-12).

{¶ 34} Accordingly, based upon the evidence of record, we find that the Stipulation, as a package, will benefit ratepayers and the public interest.

C. Does the settlement package violate any important regulatory principle or practice?

{¶ 35} No party has raised any claim that the Stipulation violates any important regulatory principles. Further, Mr. Williams testified that the settlement did not violate any important regulatory principles or practices (Co. Ex. 4 at 12). Therefore, based upon the evidence of record, we find that the settlement package does not violate any important regulatory principle or practice.

{¶ 36} Accordingly, we find that the Stipulation passes the three-part test and should be adopted.

VI. ORDER

{¶ 37} It is, therefore,

{¶ 38} ORDERED, That the Stipulation filed by AEP Ohio, and supported by Staff, by AEP Ohio, EDF/OEC, ELPC, IGS, Kroger, MORPC, NRDC, OEG, OFBF, OHA, OMAEG, and OPAE be approved. It is, further,

{¶ 39} ORDERED, That the Company's EE/PDR Program Portfolio Plan for 2017 through 2020 be approved as modified by the Stipulation. It is, further,

{¶ 40} ORDERED, That the Company take all other actions consistent with the Stipulation. It is, further,

{¶ 41} 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

RMB/dah

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JAN 18 2017

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Secretary