

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 DUKE ENERGY
OHIO, INC.

CASE NO. 16-781-EL-UNC

OPINION AND ORDER

Entered in the Journal on September 6, 2017

I. SUMMARY

{¶ 1} The Commission finds that the stipulation between Duke Energy Ohio, Inc. 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} Duke Energy Ohio, Inc. (Duke 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 jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4928.141, 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). Further, 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. 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. Duke's ESP was approved by the Commission on April 2, 2015, which found, among other things, that the Duke's previous SEET methodology should continue to be determined within the context of each annual SEET case. *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, et al., Opinion and Order (Apr. 2, 2015) at 84 (ESP Order).

{¶ 4} On April 15, 2016, the Company 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 Company also filed the supporting testimony of Peggy A. Laub.

{¶ 5} A stipulation and recommendation (Stipulation) between the Company and Staff was filed on July 29, 2016. By Entry issued April 21, 2017, the attorney examiner scheduled this matter for hearing to take place on June 14, 2017. At the June 14, 2017 hearing, the Stipulation was introduced and admitted into the record (Jt. Ex. 1).

III. DISCUSSION

{¶ 6} In the application, Duke requests that the Commission find that the Company's earnings were not significantly excessive with respect to the annual period ending December 31, 2015 (Duke Ex. 1 at 1). Duke witness Peggy Laub testified that the most recently approved return on common equity is 9.84 percent and that Duke's return on common equity for 2015 was 5.34 percent (Duke Ex. 2 at 7.) According to Duke, the Company's return on equity was below the most recently approved threshold and is not significantly excessive as compared to other publicly traded companies facing similar business and financial risks (Duke Ex. 1 at 4).

IV. STIPULATION OF THE PARTIES

{¶ 7} The Stipulation was filed on July 29, 2016 and purports to resolve all outstanding issues in this proceeding. The Stipulation states that the earned return on equity for the Company for 2015, as adjusted by specific items contemplated in the *SEET Test Case*, was 5.34 percent. On that basis, the signatory parties recommend the Commission determine that significantly excessive earnings did not occur with respect to the Company's ESP in 2015. (Jt. Ex. 1 at 2.)

V. CONCLUSION

{¶ 8} 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.

{¶ 9} 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?

{¶ 10} 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.

{¶ 11} Mr. Joseph Buckley, a Utility Specialist at the Public Utilities Commission, testified regarding the Staff's support for the agreement in this case. He testified that the Stipulation is a product of serious bargaining among knowledgeable and capable parties. (Tr. at 8.) Upon review, we find that the first prong of the test is met.

{¶ 12} With regard to the second criterion, Mr. Buckley explained that the Stipulation benefits the public interest by avoiding needless litigation. Further, Mr. Buckley asserted that the Stipulation accurately reflected Staff's view that Duke's earnings were not excessive. (Tr. at 8-9.) The Commission agrees and finds the Stipulation also satisfies the second prong of the test.

{¶ 13} Finally, Mr. Buckley testified that the Stipulation does not violate any important regulatory policy or principle (Tr. at 9). 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

{¶ 14} Duke is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.

{¶ 15} 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.

{¶ 16} On April 15, 2016, the Company 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.

{¶ 17} The evidentiary hearing was held in this matter on June 14, 2017. At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No party opposed the Stipulation.

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

VII. ORDER

{¶ 19} It is, therefore,

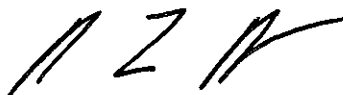
{¶ 20} ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is, further,

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

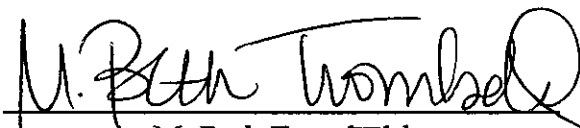
{¶ 22} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

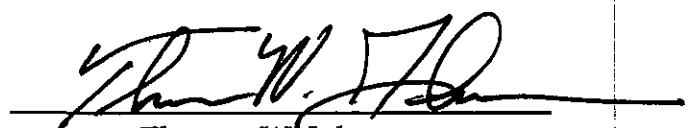
THE PUBLIC UTILITIES COMMISSION OF OHIO



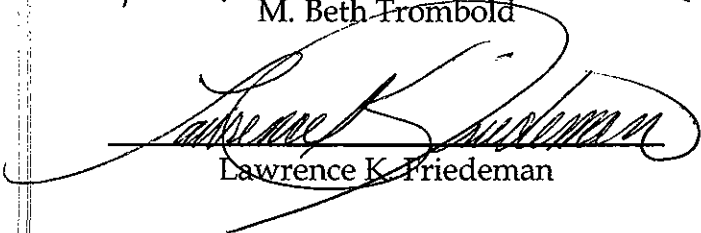
Asim Z. Haque, Chairman



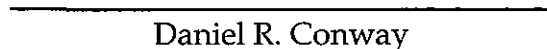
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

NW/SD/vrm

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Barcy F. McNeal
Secretary