

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Application	:	
of Duke Energy Ohio, Inc., for an	:	Case No. 17-2318-GA-RDR
Adjustment to Rider AMRP Rates to	:	
Recover Costs in 2017	:	
	:	
In the Matter of the Application of Duke	:	Case No. 17-2319-GA-ATA
Energy Ohio, Inc., for Tariff Approval.	:	

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Mike DeWine
Ohio Attorney General

William L. Wright
Section Chief

Steven L. Beeler
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Fl.
Columbus, OH 43215-3793
614.466.4397 (telephone)
614.644.8764 (fax)
steven.beeler@ohioattorneygeneral.gov

April 16, 2018

TABLE OF CONTENTS

Page

INTRODUCTION	1
DISCUSSION.....	6
I. The Stipulation meets the Three-Part Test for reasonableness.	6
A. Serious Bargaining	7
B. Public Interest.....	8
C. The Stipulation does not violate any important regulatory principle or practice, rather it promotes public policy.....	12
CONCLUSION	13
PROOF OF SERVICE	14

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual	:	
Application of Duke Energy Ohio,	:	Case No. 17-2318-GA-RDR
Inc., for an Adjustment to Rider	:	
AMRP Rates to Recover Costs in	:	
2017.	:	
	:	
In the Matter of the Application of	:	Case No. 17-2319-GA-ATA
Duke Energy Ohio, Inc., for Tariff	:	
Approval.	:	

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

The Stipulation presented in this case enhances the benefits to rate payers identified in Duke Energy Ohio, Inc.'s (Duke or the Company) Application and addresses the concerns raised by the Staff of the Public Utilities Commission of Ohio (Staff) in this proceeding. The Accelerated Main Replacement Program (AMRP) was originally authorized by the Public Utilities Commission of Ohio (Commission) in Case No. 01-1478-GA-AIR, *et al.*, and continued in Case No. 07-589-GA-AIR, *et. al.* As part of a 2013 Stipulation, in Case No. 12-1685-GA-AIR, *et al.*, parties agreed that (1) the incremental increase to residential customers for AMRP would be capped at \$1.00 annually on a cumulative basis through 2016; (2) Duke would be allowed to include the amortization of deferred camera expense approved in Case No. 09-1097-GA-AAM over a

five-year period beginning with the 2013 AMRP case; (3) Duke was also permitted to include in the AMRP revenue requirement ongoing expenses for camera inspections; and (4) the AMRP revenue requirement calculation and procedural timelines would remain the same as was approved in prior proceedings and that the cost of capital used in the future AMRP cases would be set at the amount approved in the case.¹

In this case, on February 26, 2018, the Company filed its Application to modify AMRP rates along with supporting testimony and schedules with actual data updated through December 31, 2017.² Duke completed the AMRP in 2015 and states that, as of 2016, it no longer has any bare steel or cast iron mains in its system. However, it will continue to incur costs related to the AMRP such as depreciation and property tax expenses and continue to reduce Rider AMRP by the annual operation and maintenance savings. As a result, the Company will continue to file annual applications until the AMRP costs are included in its base rates in its next base rate case.

The Staff reviewed the application, conducted an extensive and thorough review of Duke's administration of the AMRP Program, and filed Staff Comments on March 28,

¹ *In the Matter of the Application of Duke energy Ohio, Inc., for an Increase in Gas Rates*, Case Nos. 12-1685-GA-AIR, *et. al.*, (Amended Stipulation and Recommendation), (May 10, 2013).

² *In the Matter of the Annual Application of Duke Energy Ohio, Inc., for an Adjustment to Rider AMRP Rates to Recover Costs in 2017*, Case No. 17-2318-GA-RDR, *et. al.*, Staff Ex. 1 (Staff Comments at 3), (March 28, 2018).

2017.³ Staff recommended approving Duke's application with the following modifications:

- (1) Staff noted that in Case No. 18-0047-AU-COI, the Commission is investigating the financial impact of the Tax Cut and Jobs Act of 2017 (TCJA) and determining what, if any, adjustments should be made to utility company rates in Ohio as a result of the federal income tax rate reduction. The Commission's investigation is ongoing and the Commission has issued no directives to utilities on how to reflect the tax rate change in their rates. Staff noted that Duke's Application and proposal for addressing the impact of the TCJA tax reduction does not include a discussion or recognition of excess deferred income taxes (EDIT) that may be present due to accumulation of deferred income taxes (ADIT) at the prior 35 percent federal income tax rate versus the 21 percent rate under the TCJA. Staff will continue its investigation of these matters, including reviewing Duke's proposed approach to recognizing the federal income tax rate reduction filed on February 26, 2018, and follow any Commission findings in Case No. 18-0047-AU-COI. Staff reserves the right to recommend adjustments to Duke's AMRP Rider rates proposed to take effect in 2019, including potential refunds to customers, on the basis of Staff's ongoing investigation

³

In the Matter of the Annual Application of Duke Energy Ohio, Inc., for an Adjustment to Rider AMRP Rates to Recover Costs in 2017, Case No. 17-2318-GA-RDR, et. al.

and/or Commission findings and directives in the 18-0047-AU-COI case.

Therefore, Staff recommends that the Commission accept Duke's proposed Rider AMRP rates as proposed in its Application, subject to potential reconciliation, adjustments, or refunds next year. Staff recommends that, in its Opinion and Order in this case, the Commission expressly notify Duke that next year's AMRP Rider rate may be adjusted to reflect any reconciliation or refunds resulting from ongoing investigations of the impacts of the federal income tax rate reduction⁴; and

- (2) Staff recommended that the Commission direct Duke to note in its tariffs that Rider AMRP is subject to reconciliation and potential refunds as determined by the Commission.⁵

The Stipulation accepts Staff's recommendations in the following manner⁶:

- (1) The Stipulating Parties agree that the Rider AMRP rates proposed by Duke Energy Ohio in its Application in the above-captioned proceedings should be accepted and approved, subject to potential reconciliation, adjustments, or refunds that may result from the Commission's findings and directives in Case No. 18-47-AU-COI; and

⁴ Staff Ex. 1 (Staff Comments at 5-6), (March 28, 2018).

⁵ *Id.* at 6.

⁶ Joint Ex. 1 (Stipulation and Recommendation at 4-5).

- (2) The Signatory Parties also agree that Rider AMRP (P.U.C.O No. 18, Sheet No. 65) shall be amended to add the following language:

This Rider is subject to reconciliation, including, but not limited to, refunds or additional charges to customers, ordered by the Commission (a) as the result of annual audits by the Commission in accordance with the November 13, 2013, Opinion and Order in Case Nos. 12-1685-GA-AIR, *et al.*, if determined to be unreasonable or imprudent by the Commission in the docket in which those rates were approved; provided, however, that such reconciliation shall be limited to the twelve-month period of expenditures upon which the rates were calculated; or (b) based upon the impact to the rates recovered through the rider due to changes in federal corporate income taxes, including the Tax Cuts and Jobs Act of 2017 (TCJA), and pursuant to a final order by the Commission directing changes to this rider as a result of the TCJA.⁷

The Stipulation between Duke and the Staff provides a reasonable outcome for Duke customers. The signatory parties recommend that the Commission approve the Stipulation.

⁷

The Signatory Parties reserved their rights to assert or argue for or against the filed-rate doctrine in this or other proceedings.

DISCUSSION

I. The Stipulation meets the Three-Part Test for reasonableness.

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such agreements are to be accorded substantial weight.⁸ The ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings.⁹ 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?

⁸ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978).

⁹ See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Order on Remand) (Apr. 14, 1994); *Ohio Edison Co.*, Case No. 92-1463-GA-AIR, *et al.* (Opinion and Order) (Aug. 26, 1993); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (Order on Remand) (Aug. 19, 1993); *The Cleveland Electric Illumination Co.*, Case No. 88-170-EL-AIR (Opinion and Order) (Jan. 31, 1989); and *Restatement of Accounts and Records (Zimmer Plant)*; Case No. 84-1187-EL-UNC (Opinion and Order) (Nov. 26, 1985).

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases.¹⁰ When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that the requirement of evidentiary support remains operative. While the Commission “may place substantial weight on the terms of a stipulation,” it “must determine, from the evidence, what is just and reasonable.”¹¹ The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement.¹²

Duke and the Staff respectfully submit that the Stipulation here satisfies the reasonableness criteria, and that the evidence of record supports and justifies a finding that its terms are just and reasonable.

A. Serious Bargaining

The Stipulation is the product of an open process in which Representatives of the Company met multiple times with both Staff and representatives of OCC.¹³ The parties in those discussions were represented by experienced, competent counsel and subject matter experts.¹⁴ All parties were provided with an opportunity to express their concerns

¹⁰ *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994), citing, *Consumers' Counsel*, *supra*, at 126.

¹¹ *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992).

¹² *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46 (2011).

¹³ Duke Ex. 4 (Lawler Supplemental Testimony at 7).

¹⁴ *Id.*

and to respond to the concerns of others.¹⁵ The Stipulation resulted from thorough analysis, discussion, and understanding among capable parties with divergent interests and, therefore, represents the product of the efforts of capable, knowledgeable parties.¹⁶ In sum, the Stipulation represents a comprehensive, reasonable resolution of the issues in this case by informed parties with diverse interests.

B. Public Interest

The Stipulation, as a package, benefits ratepayers and the public interest. The Stipulation demonstrates that stakeholders have examined information relevant to the Company's Rider AMRP and the rates to be charged thereunder.¹⁷ The public interest is served when such parties intervene and represent diverse interests in examining the record and ensuring that regulatory requirements are met.¹⁸

The Stipulation further continues the ability of the Commission to encourage the improvement of pipeline safety in the state of Ohio and, thus, is beneficial to consumers and the public.¹⁹ It is consistent with (1) established regulatory principles and practices, (2) commitments made in prior Commission decisions involving the relevant issues, and

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 8.

¹⁸ *Id.*

¹⁹ *Id.*

prior Commission determinations as to Rider AMRP rates.²⁰ It also represents a timely and efficient resolution of the issues raised in these proceedings, following thoughtful deliberation and discussion by the Signatory Parties.²¹

OCC contends that the Stipulation does not benefit customers and the public interest because Duke will be able to charge customers rates through the AMRP rider do not reflect the full benefits of the TCJA, which customers should be receiving since January 1, 2018.²² Staff would note, however, that the Rider AMRP rates recommended for approval by the Stipulation includes reductions that reflect the TCJA reduction in the federal corporate income tax rate from 35 percent to 21 percent.²³ Duke lowered the rate of return used to develop the proposed Rider AMRP rates to recognize the lower corporate tax rate, which contributed to the proposed Rider AMRP rates for residential customers being reduced from \$3.73 per month last year to \$3.30 per month for rates to take effect on May 1 this year.²⁴ General service and firm transportation customers will see Rider AMRP rates drop from \$34.81 per month to \$31.00 per month, and interruptible transportation customers will see a reduction from \$0.013 per CCF to \$0.011

²⁰ *Id.*

²¹ *Id.*

²² OCC Ex. 3 (Williams Supplemental Testimony at 6).

²³ Staff Ex. 1 (Staff Comments at 4).

²⁴ *Id.* at 4-5.

per CCF per month.²⁵ Similarly, the Stipulation provides that customers will also see the benefit of any future reductions stemming from the TCJA.

As Staff pointed out in its Comments, in Case No. 18-0047-AU-COI, the Commission is investigating the financial impact of the Tax Cut and Jobs Act of 2017 (TCJA) and determining what, if any, adjustments should be made to utility company rates in Ohio as a result of the federal income tax rate reduction.²⁶ The Commission's investigation is ongoing and the Commission has issued no directives to utilities on how to reflect the tax rate change in their rates.²⁷ Staff also noted in its Comments that Duke's Application and proposal for addressing the impact of the TCJA tax reduction does not include a discussion or recognition of excess deferred income taxes (EDIT) that may be present due to accumulation of deferred income taxes (ADIT) at the prior 35 percent federal income tax rate versus the 21 percent rate under the TCJA.²⁸ Staff will continue its investigation of these matters, including reviewing Duke's proposed approach to recognizing the federal income tax rate reduction filed on February 26, 2018 and follow any Commission findings in Case No. 18-0047-AU-COI.²⁹ Staff will recommend adjustments to Duke's AMRP Rider rates proposed to take effect in 2019, including

²⁵ *Id.* at 5.

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 5-6.

potential refunds to customers, on the basis of Staff's ongoing investigation and/or Commission findings and directives in the 18-0047-AU-COI case.³⁰

Staff also recommended in its Comments that the Commission accept Duke's proposed Rider AMRP rates as proposed in its Application, subject to potential reconciliation, adjustments, or refunds next year.³¹ Staff further recommended that, in its Opinion and Order in this case, the Commission expressly notify Duke that next year's AMRP Rider rate may be adjusted to reflect any reconciliation or refunds resulting from ongoing investigations of the impacts of the federal income tax rate reduction.³²

The Stipulation accepts Staff's recommendations where the Stipulating Parties agree that the Rider AMRP rates proposed by Duke Energy Ohio in its Application in the above-captioned proceedings should be accepted and approved, subject to potential reconciliation, adjustments, or refunds that may result from the Commission's findings and directives in Case No. 18-47-AU-COI.³³ The Signatory Parties also agree that Rider AMRP (P.U.C.O. No. 18, Sheet No. 65) shall be amended to add the following language:

This Rider is subject to reconciliation, including, but not limited to, refunds or additional charges to customers, ordered by the Commission (a) as the result of annual audits by the Commission in accordance with the November 13, 2013, Opinion and Order in Case Nos. 12-1685-GA-AIR, *et al.*, if determined to be unreasonable or imprudent by the Commission in the docket in which those rates were approved; provided, however, that such reconciliation shall be

³⁰ *Id.* at 6.

³¹ *Id.*

³² *Id.*

³³ Joint Ex. 1 (Stipulation and Recommendation at 4).

limited to the twelve-month period of expenditures upon which the rates were calculated; or (b) based upon the impact to the rates recovered through the rider due to changes in federal corporate income taxes, including the Tax Cuts and Jobs Act of 2017 (TCJA), and pursuant to a final order by the Commission directing changes to this rider as a result of the TCJA.³⁴

This agreed-upon language between Duke and the Staff provides a reasonable outcome for Duke customers while the Commission continues to investigate the matter.

Customers will see the full tax benefit of the TCJA as a result of Case No. 18-47-AU-COI.

Staff asks that the Commission exercise its discretion to find that the Stipulation, as a whole, benefits the public interest. The opposing intervenor was part of the settlement discussions and now has an opportunity to challenge them in this case through the hearing process. Again, the Stipulation is to be evaluated as a package. The package, in this case, provides significant benefits to customers as mentioned above.

C. The Stipulation does not violate any important regulatory principle or practice, rather it promotes public policy.

The final prong of the Commission's three-part test is passed, as the Stipulation does not violate any important regulatory principle or practice.³⁵ The terms of the Stipulation represent a compromise of the Signatory Parties. None of the individual

³⁴ *Id.* at 5.

³⁵ Duke Ex. 4 (Lawler Supplemental Testimony at 8).

provisions of the Stipulation is inconsistent with or violates any important Commission principle or practice.

CONCLUSION

The Stipulation meets all prongs of the three-part test for determining the reasonableness of the Stipulation. Therefore, the Commission should adopt the Stipulation as its order in this case.

Respectfully Submitted,

Mike DeWine
Ohio Attorney General

William L. Wright
Section Chief

/s/ Steven L. Beeler

Steven L. Beeler
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Fl.
Columbus, OH 43215-3793
614.466.4397 (telephone)
614.644.8764 (fax)
steven.beeler@ohioattorneygeneral.gov

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Post-Hearing Brief submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, hand-delivered, and/or electronic mail upon the following parties of record, this 16th day of April, 2018.

/s/ Steven L. Beeler

Steven L. Beeler

Assistant Attorney General

Parties of Record:

Jeanne W. Kingery
Rocco O. D'Ascenzo
Duke Energy Ohio
139 E. Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45201
jeanne.kingery@duke-energy.com
rocco.d'ascenzo@duke-energy.com

Zachary E. Woltz
Terry Etter
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
zachary.woltz@occ.ohio.gov
terry.etter@occ.ohio.gov

Attorney Examiner:
kerry.sheets@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/16/2018 2:38:12 PM

in

Case No(s). 17-2318-GA-RDR, 17-2319-GA-ATA

Summary: Brief Post Hearing Brief electronically filed by Mrs. Tonnetta Y Scott on behalf of
PUCO