

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
DUKE ENERGY OHIO, INC. FOR AN  
ADJUSTMENT TO RIDER AMRP RATES  
TO RECOVER COSTS INCURRED IN 2017.

CASE No. 17-2318-GA-RDR

IN THE MATTER OF THE APPLICATION OF  
DUKE ENERGY OHIO, INC. FOR TARIFF  
APPROVAL.

CASE No. 17-2319-GA-ATA

OPINION AND ORDER

Entered in the Journal on April 25, 2018

I. SUMMARY

{¶ 1} The Commission approves the stipulation and recommendation filed by Duke Energy Ohio, Inc. and Staff regarding the adjustment of the company's accelerated main replacement program rider.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Duke Energy Ohio, Inc. (Duke or Company) 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 this Commission.

{¶ 3} R.C. 4929.11 provides that the Commission may allow any automatic adjustment mechanism or device in a natural gas company's rate schedules that allows a natural gas company's rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs.

{¶ 4} On May 30, 2002, the Commission approved a stipulation, which included a provision establishing Duke's accelerated main replacement program (AMRP) rider (Rider AMRP). *In re The Cincinnati Gas & Elec. Co.*, Case No. 01-1228-GA-AIR, et al. (*CG&E Rate Case*), Opinion and Order (May 30, 2002). The purpose of Rider AMRP was to recover the

expenditures associated with Duke's ten-year plan to replace all 12-inch and smaller cast iron and bare steel gas mains in its distribution system. In accordance with the stipulation approved in the *CG&E Rate Case*, the rider was to be adjusted annually to account for any over- or under-recovery and Duke was to file applications annually supporting adjustments to the Rider AMRP rates.

{¶ 5} On May 28, 2008, the Commission approved a stipulation, which, inter alia, provided that the AMRP would be substantially completed by the end of 2019 and that the riser replacement program (RRP) would be completed by the end of 2012. In addition, the stipulation further defined the process for adjustments to Rider AMRP. *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008).

{¶ 6} Subsequently, the Commission approved a stipulation in which the parties in the case agreed, in part, that the incremental increase to the AMRP for residential customers would be capped at \$1.00 annually on a cumulative basis through 2016. *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al. (2012 *Duke Rate Case*), Opinion and Order (Nov. 13, 2013).

{¶ 7} On April 19, 2017, the Commission approved Duke's current Rider AMRP rates and permitted the Company to recover AMRP costs incurred in 2016, as follows: residential customers - \$3.73 per month; general service and firm transportation customers - \$34.81 per month; and interruptible transportation customers - \$0.13 per thousand cubic feet (Mcf). *In re Duke Energy Ohio, Inc.*, Case No. 16-2209-GA-RDR, et al., Finding and Order (Apr. 19, 2017).

{¶ 8} On November 28, 2017, Duke filed its pre-filing notice in the above-captioned cases, requesting approval to recover the AMRP costs incurred for 2017. On February 26, 2018, Duke filed its application to adjust Rider AMRP for the recovery period January 1, 2017, through December 31, 2017. A motion to intervene was filed by the Ohio Consumers'

Counsel (OCC) on March 9, 2018. The attorney examiner granted the motion to intervene filed by OCC by Entry dated March 15, 2018.

{¶ 9} On March 28, 2018, comments were filed by Staff and OCC. Thereafter, OCC and Duke filed direct testimony and supplemental direct testimony, respectively, on April 5, 2018, and OCC filed supplemental direct testimony on April 10, 2018.

{¶ 10} On April 5, 2018, a stipulation and recommendation (Stipulation) was entered into by Duke and Staff (Jt. Ex. 1). OCC was not a signatory party to the Stipulation.

{¶ 11} The hearing in this matter was initially scheduled to commence on April 3, 2018. Following two requests by the parties to extend the procedural schedule in these cases, the hearing was held, as rescheduled, on April 10, 2018. At the hearing, having agreed to forgo the cross examination of witnesses, the parties submitted the pre-filed testimony of Sarah E. Lawler for Duke and James D. Williams and Daniel J. Duann for OCC. Briefs were filed by Duke, Staff, and OCC on April 16, 2018.

#### **B. *Summary of the Evidence and Stipulation***

{¶ 12} As stated previously, with the exception of OCC, the parties in these cases filed a Stipulation, which purports to resolve all of the issues in these matters. However, as delineated later in this Opinion and Order under our consideration of the Stipulation, OCC contests the Stipulation, stating that it does not meet the three-prong test utilized by the Commission in reviewing stipulations, because, as a package, it does not benefit ratepayers, is not in the public interest, and violates important regulatory principles and practices. The following is a summary of the application, the comments, and the Stipulation, followed by our consideration of the Stipulation and overall conclusion.

##### **1. APPLICATION**

{¶ 13} Duke proposes in its application that the Rider AMRP rates for the Company's revenue requirement of approximately \$28,632,202 be as follows:

Rate Class	Current Rates	Proposed Rates	Proposed Decrease
Residential	\$3.73 per month	\$3.30 per month	\$0.43 per month
General Service and Firm Transportation	\$34.81 per month	\$31.00 per month	\$3.81 per month
Interruptible Transportation	\$0.13 per Mcf	\$0.11 per Mcf	\$0.02 per Mcf

{¶ 14} In support of its application, Duke submitted schedules with its application and the testimony of Sarah E. Lawler, an employee of Duke Energy Business Services, LLC, an affiliate service company of Duke. The schedules and the supporting testimony detail costs associated with the AMRP. Schedules 1 and 2 provide the annualized revenue requirement for Duke's revised Rider AMRP rates. The information on these schedules is supported by Schedules 3 through 14.

{¶ 15} Ms. Lawler, Director, Rates and Regulatory Planning for Duke and Duke Energy Kentucky, Inc., explains, in her testimony, the supporting schedules filed by Duke in these proceedings for both the AMRP and the RRP. In addition, Ms. Lawler states her belief that Duke's request for revised Rider AMRP rates is fair and reasonable. She testifies that the costs of service are properly allocated to customer classes. Further, Ms. Lawler states that the proposed Rider AMRP rates are within the established rate caps and that the rate design was properly performed in accordance with the terms and conditions of the stipulation in the *2012 Duke Rate Case*.

## 2. COMMENTS AND TESTIMONY

### a. Staff

{¶ 16} In its comments, Staff states that Duke proposes an AMRP revenue requirement of \$28,378,696.81 and \$253,505.14 for the RRP, for a total Rider AMRP revenue requirement of approximately \$28,632,202. Staff also observes that Duke completed the

AMRP in 2015 and that, as of 2016, it no longer has any bare steel or cast iron mains in its system. However, Staff notes that Duke 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. Staff notes that, 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. (Staff Ex. 1 at 4.)

{¶ 17} Staff notes that Duke's recommended reduction in Rider AMRP includes the Company's proposal to recognize the federal income tax rate reduction pursuant to the Tax Cuts and Jobs Act of 2017 (TCJA). Staff explains that Duke proposes to reduce the pre-tax rate of return used in the AMRP and RRP revenue requirement calculations from 10.60 percent to 9.16 percent, in order to recognize the federal income tax rate reduction from 35 percent to 21 percent. Staff adds that Duke's application does not reflect the impact of the TCJA on excess accumulated deferred income taxes (ADIT) associated with its AMRP program. Further, Staff notes that the Commission is currently investigating the financial impacts of the TCJA in *In re the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*Tax COI Case*), 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. (Staff Ex. 1 at 4-5.)

{¶ 18} Staff, therefore, 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 further recommends that, in its order in these cases, the Commission expressly notify Duke that next year's Rider AMRP rates may be adjusted to reflect any reconciliation or refunds resulting from ongoing investigations of the impacts of the federal income tax rate reduction. In addition, Staff recommends 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. (Staff Ex. 1 at 6.)

*b. OCC*

{¶ 19} OCC states that Duke has not sufficiently lowered its costs to reflect the full impact of the reduced corporate taxes that it has experienced since January 1, 2018, when the U.S. Congress passed the TCJA. OCC states that the tariff language recommended for adoption via the Stipulation in these cases also engenders uncertainty as to whether Duke's customers will receive the full benefits of the TCJA or refunds associated with over-collections through the rider. In addition, OCC maintains that the revenue requirement for the AMRP includes a gross-up factor that allows Duke to collect uncollectible account expenses from its customers, which should not be included in the rates. According to OCC, this means that the rates Duke would collect from customers under this settlement are not just and reasonable and should be rejected by the Commission. (OCC Ex. 2 at 2-3; OCC Ex. 4 at 2-3.)

{¶ 20} OCC notes that, in the *Tax COI Case*, the Commission ordered all Ohio utilities to record on their books as a deferred liability an amount equal to the estimated reduction in federal income tax resulting from the TCJA. OCC argues that, in approving any new rates for the AMRP or RRP, the Commission should reinforce Duke's obligation to maintain a deferred liability for the benefit of customers. OCC argues that, to the extent the AMRP and/or the RRP impacts the amount of Duke's excess ADIT, Duke should expeditiously quantify the amount of the excess ADIT and maintain a deferred liability in the amount of the excess ADIT. In addition, OCC contends that the Commission should require Duke to return that excess ADIT to customers, consistent with OCC's recommendations in the *Tax COI Case* (i.e., that Ohio utilities be required to estimate their excess ADIT and begin providing bill credits to customers as soon as possible). (OCC Ex. 4 at 4-5.)

{¶ 21} OCC states that the AMRP and RRP tariffs should include an explicit provision that the rider is charged subject to refund to customers. Citing a recent decision of the Supreme Court of Ohio (Court) in *In re Rev. of Alternative Energy Rider Contained in the Tariffs of Ohio Edison Co.*, Slip Op. 2018-Ohio-229 (*FirstEnergy Rider Case*), in which a

Commission decision ordering a refund to FirstEnergy customers was overturned on appeal, OCC states that the Court in the *FirstEnergy Rider Case* emphasized that FirstEnergy's alternative energy rider tariff did not state that the rates were subject to refund. In Duke's AMRP rider cases, OCC notes that the AMRP and RRP tariffs do not contain language stating that the charges are subject to refund. Therefore, OCC recommends that the Commission add the following language to the AMRP and RRP tariffs: "Any charge collected from customers under this rider later determined unlawful, unreasonable, or imprudent by the Commission or Ohio Supreme Court is refundable to customers." (OCC Ex. 4 at 6-7.)

{¶ 22} Furthermore, OCC states that the settlement between Staff and Duke includes no requirement for Duke to file a distribution rate case. OCC notes, however, that Duke's last natural gas distribution rate case was in 2012 and that the AMRP was completed in 2015. Further, OCC states that there has not been a full examination of Duke's revenues and expenses since the AMRP was completed. OCC argues that a base rate case is the appropriate forum where all operational savings from the AMRP will be evaluated and that a base rate proceeding provides the opportunity for total revenues and expenditures during a test year to be examined. OCC argues that, therefore, the Commission should require Duke to file a base rate case, which provides the opportunity for a more complete review of all Duke's revenues and expenses to demonstrate that customers are being billed just and reasonable charges for natural gas distribution services. (OCC Ex. 2 at 3-4, 6, 9.)

{¶ 23} More specifically, OCC argues that, in calculating the annualized revenue requirements of the AMRP and RRP for the period of May 1, 2018, to April 30, 2019, Duke used an overstated pre-tax rate of return of 9.16 percent. OCC states that this pre-tax rate of return of 9.16 percent proposed by Duke in the application is unreasonable and should be reduced to 9.12 percent. OCC explains that this pre-tax rate of return of 9.16 percent is calculated, in part, by including an uncollectible account expense factor for gross-up of rate of return for Rider AMRP; however, there are no uncollectible account expenses associated

with Duke's Rider AMRP because Rider AMRP is subject to annual reconciliation and true-up. OCC argues that, by including this uncollectible account expense factor of 0.5425 percent in the gross-up calculation, the resulting pre-tax rate of return of 9.16 percent proposed by Duke will be higher than it otherwise should be. Thus, according to OCC, the 9.16 percent pre-tax rate of return in Duke's AMRP application is overstated and unreasonable to collect from customers. OCC recommends that the Commission reduce the proposed annualized revenue requirement of Rider AMRP by approximately \$74,261 (from \$28,632,202 to \$28,557,941) to account for the reduction in the pre-tax rate of return. (OCC Ex. 1 at 4-9.)

{¶ 24} In addition, OCC recommends that the Commission further reduce the proposed annualized revenue requirement by \$921,365 (from \$28,557,941 to \$27,636,576) to account for the over-collection of federal income taxes by Duke from customers through Rider AMRP for the first four months of 2018 when a lower tax rate of 21 percent was in effect (OCC Ex. 1 at 4, 11; OCC Ex. 4 at 4).

{¶ 25} OCC notes that other Ohio gas utilities, The East Ohio Gas Company d/b/a Dominion Energy Ohio and Columbia Gas of Ohio, Inc., have proposed to reduce their proposed revenue requirements for their pipeline replacement programs to account for the lower federal corporate income tax rate in effect during the first four months of 2018. OCC thus argues that Duke's failure to pass back to customers the benefits of a reduced federal income tax rate is inconsistent with what similar Ohio gas utilities have done under their pipeline replacement programs. OCC states that the Rider AMRP revenue requirement for the next 12 months can and should be adjusted now. Further, OCC argues that this adjustment should include the over-collection for taxes for the time period of January 1 to April 30, 2018, and that it will be inefficient and unfair to customers to approve the Rider AMRP charges only to adjust them later after the completion of the Commission's investigation in the *Tax COI Case*. (OCC Ex. 1 at 12.)

c. *Duke*

{¶ 26} Duke, noting OCC's argument that, because Rider AMRP is reconciled and trued up annually, there is nothing to account for as an uncollectible expense, argues that OCC's assertion is incorrect. Duke states that there is no annual reconciliation and true-up in Rider AMRP and there has never been an annual reconciliation and true-up in the entire history of Rider AMRP. Duke states that the stipulation in the *CG&E Rate Case* did not mention any provision for over- or under-recovery, other than an adjustment for over-recovery in the event the Company exceeded the cap for residential customers. Duke argues that the limited provision requiring a correction in the event the cap was exceeded has nothing to do with the uncollectible expense factor. Further, Duke argues that OCC's attempt to remove the uncollectible account expense factor from the calculation of the gross revenue conversion factor (GRCF) is, therefore, unjustified. (Duke Ex. 4 at 2-3.)

{¶ 27} Duke states that the expense included in the GRCF is not bad debt expense. Duke explains that it sells its receivables to a third party and that the amount for "uncollectible accounts expense" in the GRCF is directly tied to revenue (in this case, receivables) and includes a "collection fee" and a component for the time value of money. Duke maintains that the collection fee and time value of money components are not recovered in the gas operations uncollectible rider (Rider UE-G). (Duke Ex. 4 at 3.)

{¶ 28} Duke further states that, except for the change in the federal income tax rate from 35 percent to 21 percent, the Company has not made any changes to the GRCF, nor is there any reason to do so. Duke notes that the Staff Report in the *2012 Duke Rate Case*, in which the Commission last approved the AMRP, clearly shows the inclusion of uncollectibles in the calculation of the GRCF in that case, and the stipulation and recommendation in that case, which included OCC as a signatory party, relied on the Staff Report for resolution of all issues not addressed therein. Duke notes that, as the stipulation said nothing about the calculation of the GRCF, the Staff Report schedule controlled and that the same GRCF calculation has been used in each annual adjustment of Rider AMRP

rates since the Company's 2012 *Duke Rate Case*. Duke states that, in fact, its response to an OCC interrogatory in these cases (OCC-INT-01-005) shows how the GRCF was calculated in these cases. Duke observes that this schedule demonstrates that the uncollectible accounts expense was included in precisely the same manner in which it was included in the 2012 *Duke Rate Case*. (Duke Ex. 4 at 3-4.)

{¶ 29} Duke states that the revenue requirement in this Rider AMRP filing should not be further reduced to account for the over-collection of federal corporate income tax from January 1, 2018, to April 30, 2018. Duke argues that this matter should be addressed in the *Tax COI Case*. Duke states that both the Company and OCC have filed comments in that docket and that the outcome of that case will determine how these amounts are handled and will allow for consistency among all regulated utilities. (Duke Ex. 4 at 4.)

{¶ 30} Duke states that, pursuant to Commission orders in the *Tax COI Case*, the Company has recorded a deferred liability for the estimated reduction in federal income tax and a deferred liability for the estimated excess ADIT balances resulting from the TCJA. Duke notes that ADIT balances are currently recorded as a component of net rate base. Further, with regard to how excess ADIT balances will be recorded in future AMRP filings, Duke states that excess ADIT balances will still be included as a component of net rate base so that rate base is not impacted by this change until they begin being amortized and that the amortization of those excess ADIT balances and associated refunds to customers will be addressed in the *Tax COI Case*. (Duke Ex. 4 at 4-5.)

{¶ 31} Duke states that operational expense savings of \$929,670 have been provided to customers either through base rates (\$617,138) or through the proposed Rider AMRP rates (\$312,532). Further, Duke notes that total operational expenses to repair gas mains listed in base rates are \$3,661,102, and total operational expenses to repair gas mains in 2017 were \$4,169,680. Therefore, Duke notes that 2017 expenses were actually greater than amounts in

base rates by \$508,578. Duke states that there are no other savings the Company could provide. (Duke Ex. 4 at 5-6.)

{¶ 32} Duke states that the Company does not believe a new gas distribution base rate case is in the best interest of its customers. Duke explains that, if the Company were to file a gas distribution base rate case, actual operational expenses would be greater than those included in base rates in the last gas distribution base rate case and, as a result, customers would experience an increase related to operational expenses, rather than the savings they are realizing currently. Additionally, Duke notes that, as the AMRP program has been fully deployed since 2015, this rider filing and future rider filings will reflect a lower revenue requirement each year as the assets are depreciated. According to Duke, if the Company were to file a distribution rate case, the amount of net plant would be “locked in” in that rate case and future reductions in plant would not be realized by customers. (Duke Ex. 4 at 6.)

### 3. STIPULATION

{¶ 33} As previously stated, a Stipulation signed by Duke and Staff (Signatory Parties) was submitted on the record at the hearing held on April 10, 2018. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. OCC, however, contests the Stipulation. The following is a summary of the provisions agreed to by the Signatory Parties and is not intended to replace or supersede the Stipulation:

- a. The Signatory Parties agree that the Rider AMRP rates proposed by Duke 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 the *Tax COI Case*.

- b. 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.

- c. The Signatory Parties expressly agree to all other matters addressed in the Company's application.

(Jt. Ex. 1 at 4-5.)

*C. Consideration of the Stipulation*

{¶ 34} 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. *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.

{¶ 35} 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?

{¶ 36} 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* at 126. Additionally, 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.

**1. IS THE SETTLEMENT A PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES?**

{¶ 37} OCC witness Williams states that the settlement is not a product of serious bargaining between capable and knowledgeable parties. He notes that, although two of the three parties in these cases were able to agree, those two parties (Staff and Duke) did not appear to seriously bargain and that Staff and Duke, in these proceedings, seemed to have similar interests, not diverse interests. Mr. Williams states that, when diverse interests are present, there can be much greater weight accorded to the agreement that is reached, and the Commission can be assured that there was serious bargaining; however, with this Stipulation, there was no representative of any customer group, including residential customers. Mr. Williams argues that the Commission should find the settlement fails the first prong of the test. (OCC Ex. 3 at 5-6.)

{¶ 38} Duke witness Lawler testified in support of the Stipulation, stating that it was the product of serious bargaining among capable, knowledgeable parties. Specifically, Ms. Lawler explains that representatives of the Company met multiple times with both Staff and representatives of OCC. Ms. Lawler notes that the parties in those discussions were represented by experienced, competent counsel and subject matter experts and that all parties were provided with an opportunity to express their concerns and to respond to the concerns of others. Ms. Lawler states that, for these reasons, the Company believes that 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. (Duke Ex. 4 at 7.)

{¶ 39} The Commission finds, as Duke noted, that serious negotiations over the Stipulation did take place among the parties, including OCC; that the parties were represented by experienced counsel and other representatives; and that the Stipulation resulted from negotiations by parties representing different stakeholders (Duke Ex. 4 at 7). We note that the test utilized by the Commission to consider a stipulation, and recognized by the Ohio Supreme Court, does not incorporate a diversity of interests component. We have rejected previous attempts by OCC to revise the test to require consideration of a stipulation based on the diversity of the signatory parties. *See, e.g., In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016) at 52-53. Additionally, the fact that OCC chose not to sign the negotiated document that has been presented to us does not alter our opinion that the Stipulation was the product of serious bargaining among capable, knowledgeable parties. Therefore, we conclude that the first prong of the three-prong test for our consideration and approval of stipulations has been met.

**2. DOES THE SETTLEMENT, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?**

{¶ 40} OCC answers this question in the negative. According to OCC witness Williams, under the settlement in these cases, Duke will be able to charge customers rates through Rider AMRP that do not reflect the full benefits of the TCJA, which customers should be receiving since January 1, 2018. Further, Mr. Williams states that there is no certainty that customers will ever receive the full benefits of the TCJA. He maintains that it is in the public interest for Duke or the Commission to enable consumers to receive the full benefits of Duke's reduced corporate income tax obligation promptly and fully that resulted from the TCJA. In addition, Mr. Williams states that Duke spent millions of dollars on the replacement of bare steel and cast iron mains that is being collected directly from customers through Rider AMRP. He argues that, since Duke has completed the pipeline replacements,

this investment should be included in rate base as part of a distribution rate case and that Duke's customers, who pay for the AMRP (and other riders) on Duke's bills, should not be denied the opportunity for a full examination of Duke's financial records through a rate case review. Mr. Williams states that Duke's total revenues and expenses should be fully examined in the context of a base rate case for Duke, with Duke being required to demonstrate that it is charging just and reasonable rates for natural gas service. (OCC Ex. 3 at 6-7.)

{¶ 41} Duke witness Lawler believes that the Stipulation demonstrates that stakeholders have examined information relevant to the Company's Rider AMRP and the rates to be charged thereunder. Ms. Lawler states that the public interest is served when such parties intervene and represent diverse interests in examining the record and ensuring that regulatory requirements are met. (Duke Ex. 4 at 8.)

{¶ 42} The Commission finds that the Stipulation, as a package, benefits ratepayers and the public interest. The Stipulation adopts Duke's proposed reduction in Rider AMRP rates, passes through to customers both operational savings and some of the tax benefits of the TCJA, and ensures that customers will receive additional tax benefits following additional review by the Commission in the *Tax COI Case*. As Duke witness Lawler noted, the Stipulation is also consistent with the Commission's objective of improving pipeline safety in the state of Ohio. (Duke Ex. 4 at 5-6, 8; Staff Ex. 1 at 4-5.) With respect to OCC's concerns, the Commission notes, as the parties recognized in their pleadings, that the Commission has a docket open in the *Tax COI Case* to determine the issues raised by the TCJA that were discussed by the parties' witnesses in their testimony. The Commission, therefore, finds that the Stipulation reasonably provides that the Rider AMRP rates proposed by Duke in its application should be approved, subject to potential reconciliation, adjustments, or refunds that may result from the Commission's findings and directives in the *Tax COI Case*.

{¶ 43} The Commission observes that, consistent with the Commission's initial directive in the *Tax COI Case*, Duke has recorded a deferred liability for the estimated reduction resulting from the TCJA. Duke has also reduced its pre-tax rate of return to reflect the federal income tax reduction. As Duke witness Lawler acknowledged, the outcome of the *Tax COI Case* will determine any other tax issues in a forum that will allow for consistency among all regulated utilities. (Duke Ex. 4 at 4-5; Staff Ex. 1 at 4-5.) Further, the Commission does not find it necessary for Duke's AMRP costs to be examined through a base rate proceeding at this time. As Duke argued, because the AMRP program has been fully deployed since 2015, rider filings will reflect a lower revenue requirement each year as assets are depreciated and customers will benefit; whereas, with a base rate case, the amount allotted for net plant depreciation would be fixed in the order for that case and savings for lower amounts would not be realized by Duke's customers. (Duke Ex. 4 at 6.) Finally, as Duke witness Lawler explained, other than accounting for the reduced federal income tax rate, the GRCF calculation used by Duke in these cases has also been used in the Company's prior Rider AMRP adjustment cases (Duke Ex. 4 at 3-4).

**3. DOES THE SETTLEMENT PACKAGE VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?**

{¶ 44} OCC witness Williams argues that the Stipulation contradicts important ratemaking principles because the Rider AMRP rates have not been shown to be just and reasonable pursuant to R.C. 4905.22. Mr. Williams states that Duke's proposed Rider AMRP rates are unjust and unreasonable and are not reflective of the reduced corporate income taxes that Duke is benefiting from. Mr. Williams argues that corporate income tax reductions that are reflected in the TCJA, which became effective January 1, 2018, are not being fully and promptly passed on to consumers through Rider AMRP. (OCC Ex. 3 at 7-8.)

{¶ 45} Duke witness Lawler states her understanding is that the Stipulation complies with all relevant and important regulatory principles and practices. Ms. Lawler states that,

based upon her experience with regulatory matters, her involvement in these proceedings, and her examination of the Stipulation, the Stipulation does not violate any regulatory ratemaking principle. (Duke Ex. 4 at 7.)

{¶ 46} The Commission has already determined that OCC's proposals in these cases are not ripe for our consideration of Duke's application and the Stipulation, and are more appropriately addressed in the *Tax COI Case*. Further, after a review of the record in these matters, including the parties' testimony and comments, we believe that Staff and Duke have offered an appropriate and reasonable resolution of the issues in these matters and that OCC's assertions with regard to the third prong of our review of the Stipulation are without merit. Therefore, we find that the third prong of our test is met and the Stipulation, as a package, does not violate any important regulatory principle or practice (Duke Ex. 4 at 7).

#### D. Conclusion

{¶ 47} Upon consideration of the record in these cases, the Commission finds that the Stipulation is reasonable and that it should be approved. Further, the Commission notes that Duke's Rider AMRP may be adjusted, in the Company's next annual adjustment proceeding, to reflect any reconciliation or refunds resulting from ongoing investigations of the impact of the federal income tax rate reduction and based on the outcome of the Commission proceedings in the *Tax COI Case*. Duke, therefore, should be authorized to implement the proposed rates for Rider AMRP, consistent with the Stipulation and this Opinion and Order.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 49} On February 26, 2018, Duke filed its application to adjust Rider AMRP.

{¶ 50} By Entry dated March 15, 2018, OCC was granted intervention in these matters.

{¶ 51} On March 28, 2018, comments were filed by OCC and Staff.

{¶ 52} On April 5, 2018, Duke and Staff filed a Stipulation that purports to resolve all of the issues in these proceedings.

{¶ 53} The evidentiary hearing was held on April 10, 2018.

{¶ 54} Briefs were filed by the parties on April 16, 2018.

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

{¶ 56} Duke should be authorized to implement the new rates for Rider AMRP, consistent with the Stipulation and this Opinion and Order.

#### IV. ORDER

{¶ 57} It is, therefore,

{¶ 58} ORDERED, That the Stipulation filed in these proceedings is approved and adopted. It is, further,

{¶ 59} ORDERED, That Duke take all necessary steps to carry out the terms of the Stipulation. It is, further,

{¶ 60} ORDERED, That Duke is authorized to file tariffs, in final form, consistent with this Opinion and Order. Duke shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

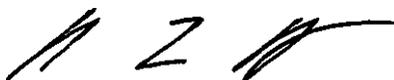
{¶ 61} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 62} ORDERED, That Duke notify its customers of the changes to the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

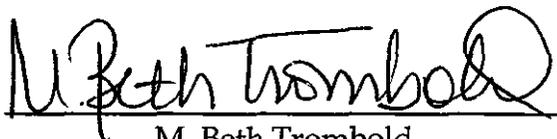
{¶ 63} ORDERED, That nothing in this Opinion and Order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

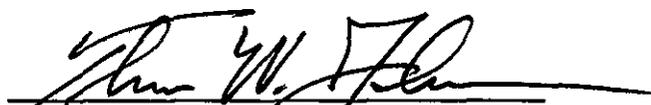
THE PUBLIC UTILITIES COMMISSION OF OHIO



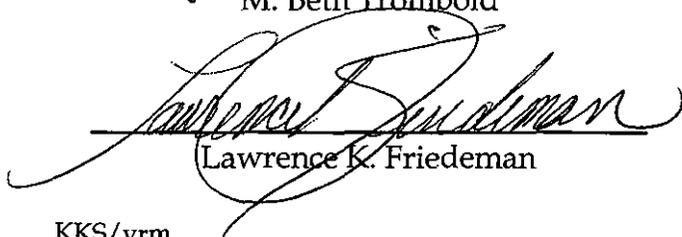
Asim Z. Haque, Chairman



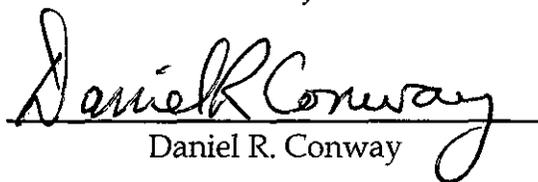
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

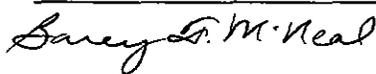


Daniel R. Conway

KKS/vrm

Entered in the Journal

**APR 25 2018**



Barcy F. McNeal  
Secretary