

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF
DUKE ENERGY OHIO, INC.'S
DISTRIBUTION CAPITAL INVESTMENT
RIDER.

CASE NO. 17-1118-EL-RDR

OPINION AND ORDER

Entered in the Journal on September 26, 2018

I. SUMMARY

{¶ 1} The Commission adopts the stipulation entered into by Staff and Duke Energy Ohio, Inc. regarding the distribution capital investment rider of Duke Energy Ohio, Inc.

II. PROCEDURAL HISTORY

{¶ 2} Duke Energy Ohio, Inc. (Duke) is an electric distribution utility (EDU) as defined by 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} R.C. 4928.141 provides that an EDU shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 4} On April 2, 2015, the Commission modified and approved an application for an ESP filed by Duke for the period June 1, 2015, through May 31, 2018. *In re Duke Energy Ohio*, Case No. 14-841-EL-SSO, et al. Opinion and Order (April 2, 2015). In the Opinion and Order, the Commission established a distribution capital investment (Rider DCI) rider to allow for the recovery of capital costs for distribution infrastructure investments. The rider is to be reviewed annually for accounting accuracy, prudence,

and compliance with the Commission's Order. Further, the Commission found that a compliance audit of the Rider DCI is to be completed annually to ensure conformance with the Opinion and Order.

{¶ 5} By Entry issued June 7, 2017, the Commission directed Staff to issue a Request for Proposal (RFP) to acquire audit services to assist the Commission with the review of Duke's Rider DCI.

{¶ 6} On June 13, 2017, The Ohio Consumers' Counsel (OCC) filed a motion to intervene and memorandum in support. No memoranda contra the motion to intervene was filed. The Commission finds that the motion to intervene filed by OCC complies with the requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, and should, therefore, be granted.

{¶ 7} On July 12, 2017, the Commission issued an Entry selecting Rehmann consulting to perform the consulting activities for Duke's Rider DCI and directed Duke to enter into a contract with Rehmann for the purpose of providing payment for its auditing services. Thereafter, on November 28, 2017, Rehmann submitted its audit report. Comments were filed by Staff and OCC on March 28, 2018.

{¶ 8} On June 22, 2018, Staff and Duke filed a joint stipulation and recommendation (Stipulation). OCC signed the Stipulation as a non-opposing party.

{¶ 9} On August 7, 2018, a hearing was held regarding the Stipulation. Staff witness Doris McCarter testified in support of the Stipulation.

III. DISCUSSION

A. *Audit Report*

{¶ 10} On November 28, 2017, Rehmann filed the compliance audit of Duke's Rider DCI for July 1, 2016 to June 30, 2017. Rehmann states it obtained and reviewed all relevant documentation. Below is a summary of its recommendations:

- (1) Rehmann recommended that Duke records, in the next Rider DCI filing, \$20,494.992 in the adjustment column of the plant-in-service summary so that Adjusted Total Company plant-in-service is reduced by \$20,494,992. Further, Rehmann recommends more timely unitization to avoid accidental errors in capturing and recording unitization pricing by adhering to the Duke Capitalization Guidelines of unitizing within six months after an asset is placed in service for specific work orders or seven months after an asset is placed in service for blanket work orders.
- (2) Duke charged \$135,413 to the Meter account but was supposed to have charged the Utility of the Future Meters account. Rehmann recommended that the next Rider DCI filing include this correction and Duke should be compensated for the error. This error only applied to the June 30, 2017 Rider DCI filing.
- (3) Rehmann recommended that the next Rider DCI filing records a reduction to plant-in-service by the extrapolated amount of \$2,011,170 for the June 30, 2017 Rider DCI impact and reflects an adjustment for all previous Rider DCIs that had a tree trimming overcharged.

- (4) Duke agreed to pursue a \$352,000 refund for unbilled Contribution in Aid of Construction (CIAC) on a work order. Rehmann recommended an adjustment for all previous Rider DCIs that had not reflected the CIAC of \$352,000 and Duke customers should be compensated for the unbilled amount.
- (5) Rehmann noted in the test of 50 transactions charged to plant-in-service and 10 transactions charged to cost of removal that the supporting contractor invoices, in five of 50 transactions charged to plant-in-service and four or ten transactions charged to cost of removal, did not allocate labor, material, and equipment charges between install and remove in a reasonable relationship to the work order estimate. Rehmann recommended that a preventative internal control be implemented to correct these invoice discrepancies upon the review of the contractor invoice so that the Rider DCI filings reflect more accurate and timely recording of install and remove transactions.
- (6) Rehmann visited 15 work orders that included new additions to plant-in service or retirement of plant-in service. It was found that one work order disclosed that project was billable to two customers with \$391,116 in costs but no contributions in aid of construction were received. Rehmann recommended the customers be billed and the next Rider DCI filing have a reduction in plant-in-service for the amount received from the customers. Additionally, Rehmann recommended that immediately upon receiving agreement from a customer on a billable amount, that an accounts

receivable control account be established for monitoring aged contributions in aid of construction invoices and for recording the credit to the work order. Additionally, Rehmann found that 11 of the 15 work orders field visited had cost estimates that were exceeded by more than 25 percent. Rehmann recommends that the PowerPlan work order estimate process be investigated to determine whether more accurate estimates can be calculated before work begins.

{¶ 11} On March 28, 2018, Staff filed comments in the docket stating it reviewed the auditor's findings and recommendations and recommends the Commission adopt the auditor's findings and recommendations.

{¶ 12} On March 28, 2018, OCC also filed comments in the docket. OCC argued that Duke customers should not be required to pay for significant cost overruns on capital projects until the determination is made by the Commission that the costs associated with the overruns were prudently incurred. OCC cites Duke's significant cost overruns as evidence that Duke's current implementation and management of the Rider DCI is inadequate. Additionally, OCC argued that, in the next Rider DCI audit, Duke should quantify the costs and the impact to reliability of the 19 Rider DCI programs because Duke represents that these programs are vital in maintaining customer reliability but the audit does not mention these programs. OCC further avers that the Commission should order Duke to incorporate the lower federal corporate tax rates from the Tax Cuts and Jobs Act into Rider DCI and that the next Rider DCI auditor should be instructed to also review tax changes. Lastly, OCC argues that Duke's Rider DCI and supporting tariff language should be amended to reflect the Ohio Supreme Court Decision in *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229.

B. *Stipulation and Recommendation*

{¶ 13} The Stipulation filed June 22, 2018, sets forth the understanding and agreement of the parties and purports to resolve all outstanding issues in this proceeding. At the August 7, 2018 hearing, the Stipulation was introduced and admitted into the record (Jt. Ex. 1). The signatory parties recommended that the Commission approve this Stipulation in accordance with the following:

- (a) The specific findings presented in the “Detailed Findings and Recommendations by Task” of the Rehmann audit report are reasonable and should be adopted by the Commission.
- (b) Duke will reduce its revenue requirement by \$4,283,979 on its next Rider DCI filing.
- (c) In the next Rider DCI Annual Audit proceeding the Staff will include requirements in a request for proposal for the independent auditor to review and render detailed findings in the Audit Report on the effectiveness of Duke’s work order estimating process.
- (d) To the extent Rider DCI continues beyond May 31, 2018, Duke will file an annual report with the Commission, beginning in December of 2018, that includes the following information, where applicable, for each of the 19 Rider DCI programs approved as part of Case No. 14-841-EL-SSO, et al.
 - A general description of the program;

- A description of how the program is designed to improve reliability for customers (i.e., measures for reliability improvements);
- A description of how the program affects Duke's annual filing under Ohio Admin. Code 4901:1-10-11 (i.e., how many circuits were involved in the program);
- The expected reliability improvement under the program;
- The equipment that is affected by the program;
- The unit of measure for the program;
- The costs expended under the program; and
- The costs estimated for the program.

IV. CONCLUSION

{¶ 14} 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.

{¶ 15} 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?

{¶ 16} 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.

{¶ 17} Doris McCarter, the Division Chief of the Capital Recovery and Financial Analysis Division for the Public Utilities Commission of Ohio, testified that the Stipulation was negotiated between parties who were represented by able counsel and technical experts. Further, Ms. McCarter testified that the Stipulation represents a

comprehensive compromise of issues raised by the parties with diverse interests. (Staff Ex. 1 at 2.) Upon review, we find that the first prong of the test is met. We note that Duke, Staff, and OCC are represented by counsel that regularly appear before the Commission.

{¶ 18} With regard to the second criterion, Ms. McCarter explained that in her opinion, the Stipulation benefits the public interest because it results in a reduction of the Company's Rider DCI revenue requirement, requires an annual report be filed detailing the 19 Rider DCI programs, provides for the inclusion in the next Rider DCI audit for review of the effectiveness of Duke's work order estimating process, recommends the adoption of all adjustment recommended by Rehmann, and avoids the cost of litigation. (Staff Ex. 1 at 3-4.) The Commission agrees and finds the Stipulation also satisfies the second prong of the test.

{¶ 19} Finally, Ms. McCarter testified that the Stipulation does not violates any significant public policy provision or statute (Staff Ex. 1 at 4). 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.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 21} On April 2, 2015, the Commission established a distribution capital investment (Rider DCI) rider to allow for the recovery of capital costs for distribution infrastructure investments. The rider is to be reviewed annually for accounting accuracy,

prudence, and compliance with the Commission's Order. *In re Duke Energy Ohio*, Case No. 14-841-EL-SSO, et al. Opinion and Order (April 2, 2015).

{¶ 22} On July 12, 2017, the Commission issued an Entry selecting Rehmann consulting to perform the consulting activities for Duke's Rider DCI and directed Duke to enter into a contract with Rehmann for the purpose of providing payment for its auditing services. Thereafter, on November 28, 2017, Rehmann submitted its audit report.

{¶ 23} On June 22, 2018, Staff and Duke filed a joint stipulation and recommendation. OCC signed the Stipulation as a non-opposing party.

{¶ 24} The evidentiary hearing was held in this matter on August 7, 2018. At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No party opposed the Stipulation.

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

VI. ORDER

{¶ 26} It is, therefore,

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

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

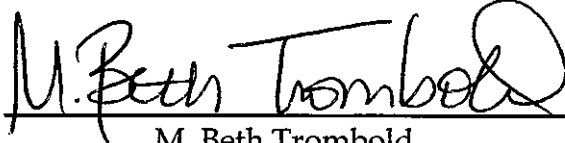
{¶ 29} ORDERED, That nothing in this Opinion and Order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 30} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

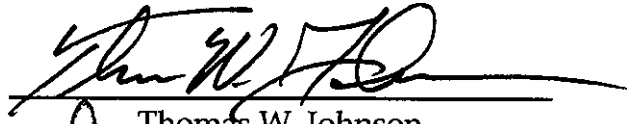
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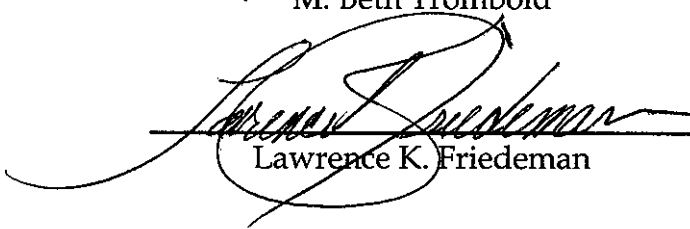
Asim Z. Haque, Chairman



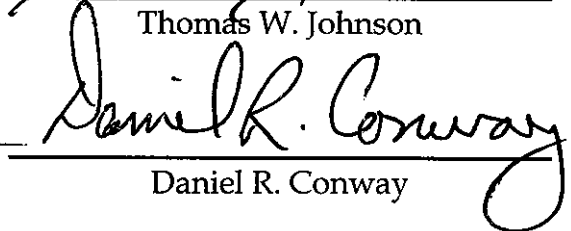
M. Beth Trombold



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Lawrence K. Friedeman




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Barcy F. McNeal
Secretary