

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
ADMINISTRATION OF THE SIGNIFICANTLY
EXCESSIVE EARNINGS TEST.

CASE NO. 18-568-EL-UNC

OPINION AND ORDER

Entered in the Journal on January 30, 2019

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, 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.

{¶ 4} On May 15, 2018, 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 Sarah E. Lawler.

{¶ 5} By Entry issued October 29, 2018, the attorney examiner scheduled this matter for hearing to take place on November 20, 2018.

{¶ 6} A stipulation and recommendation (Stipulation) between the Company and Staff was filed on November 16, 2018. At the February 6, 2018 hearing, the Stipulation was introduced and admitted into the record (Jt. Ex. 1).

III. APPLICATION

{¶ 7} In the application, Duke requests that the Commission find that the Company's earning were not significantly excessive with respect to the average annual period ending December 31, 2017 (Duke Ex. 1 at 5). Duke witness Sarah E. Lawler testified that the return electric common equity for Duke during 2017 was 6.28 percent, which is substantially less than the Company's approved return on equity of 9.84 percent (Duke Ex. 2 at 9). Ms. Lawler testified that the Company's adjusted electric net income for 2017 was \$65,025,284, and the average electric common equity for 2017 was \$1,034,974,886 (Duke Ex. 2, att. SEL-1 at 1).

{¶ 8} Staff witness, Joe Buckley, testified that in determining significant excessive earnings Staff used the companies that comprise the SPDR Select Sector Fund-Utility (XLU) as its comparable group (Comparable Group), totaled the net income earned by the Comparable Group, and divided it by the aggregate total common equity of the Comparable Group to produce an average return on equity (ROE) of approximately 8.73 percent in 2017. However, Staff testified a few of the companies in the Comparable Group had earnings that injected too much volatility into the average. Mr. Buckley testified that once these companies were removed from the Comparable Group the calculation of the Comparable Group's ROE became 9.98 percent. Accordingly, Staff testified it does not believe the Company exceeded the SEET threshold (Staff Ex. 1 at 4-5.)

IV. STIPULATION OF THE PARTIES

{¶ 9} The Stipulation signed by the Company and Staff filed on November 16, 2018, purports to resolve all outstanding issues in this proceeding. The Stipulation states that Duke has calculated its earned return on average electric common equity for the year ending on December 31, 2017, to be 6.28 percent. Staff reviewed the information provided by Duke, conducted an independent assessment of the Company's earnings, and determined that Duke did not have significantly excessive earnings in 2017 as the Company's 2017 return on average electric common equity is below the most recent allowed rate of 9.84 percent. On that basis, the signatory parties recommend the Commission determine that significantly excessive earnings did not occur in 2017. (Jt. Ex 1 at 2.)

V. DISCUSSION

{¶ 10} 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.

{¶ 11} 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?

{¶ 12} 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.

{¶ 13} Joseph Buckley, a Utility Rates Specialist 3 for the Public Utilities Commission of Ohio, testified regarding his support for the agreement in this case. Mr. Buckley testified that the Stipulation was negotiated between parties who are sophisticated and well informed. Further, Mr. Buckley testified that the Stipulation resolves all issues between the parties. (Tr. at 9.) Upon review, we find that the first prong of the test is met.

{¶ 14} With regard to the second criterion, Mr. Buckley explained that in his opinion, the Stipulation benefits the public interest by avoiding litigation (Tr. at 9). The Commission agrees and finds the Stipulation also satisfies the second prong of the test.

{¶ 15} Finally, Mr. Buckley testified that the Stipulation does not violate any significant public policy provision or statute (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

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

{¶ 17} 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.

{¶ 18} On May 5, 2018, 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.

{¶ 19} The evidentiary hearing was held in this matter on November 20, 2018. At the hearing, the Stipulation was submitted, intending to resolve all issues in this case. No party opposed the Stipulation.

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

VII. ORDER

{¶ 21} It is, therefore,


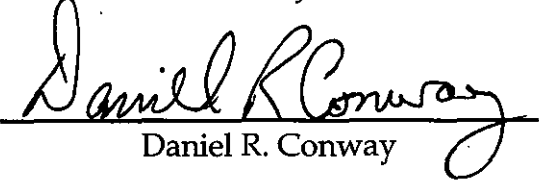
{¶ 22} ORDERED, That the Stipulation filed in this proceeding be approved and adopted. It is, further,

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

{¶ 24} 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,

{¶ 25} 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

SEC/sc

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JAN 30 2019


Tanowa M. Troupe

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Secretary