

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY FOR
ADMINISTRATION OF THE
SIGNIFICANTLY EXCESSIVE EARNINGS
TEST FOR 2017 PURSUANT TO R.C.
4928.143(F) AND OHIO ADM.CODE
4901:1-35-10.

CASE NO. 18-989-EL-UNC

OPINION AND ORDER

Entered in the Journal on July 17, 2019

I. SUMMARY

{¶ 1} The Commission adopts the Stipulation and Recommendation filed on June 3, 2019, which concludes that Ohio Power Company did not have significantly excessive earnings for the year 2017, pursuant to R.C. 4928.143(F).

II. DISCUSSION

A. *Applicable Law*

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or Company) is an electric distribution utility (EDU), 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} 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. 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.

{¶ 4} Ohio Adm.Code 4901:1-35-10 and 4901:1-35-03(C)(10)(a) direct that each electric utility file with the Commission, by May 15 of each year, testimony, information,

and analysis to demonstrate that the rate adjustments approved in the ESP do not result in significantly excessive earnings.

B. Background and Procedural History

{¶ 5} In Case No. 09-786-EL-UNC, the Commission established specific policies, filing directives, and procedures for conducting a significantly excessive earnings test (SEET) for the electric utilities under the Commission's jurisdiction. *In re Significantly Excessive Earnings Test*, Case No. 09-786-EL-UNC (*Generic SEET Case*), Finding and Order (June 30, 2010).

{¶ 6} In Case No. 13-2385-EL-SSO, et al., the Commission modified and approved AEP Ohio's application for an ESP for the period beginning June 1, 2015, through May 31, 2018, pursuant to R.C. 4928.143. *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015), Second Entry on Rehearing (May 28, 2015), Fourth Entry on Rehearing (Nov. 3, 2016), Seventh Entry on Rehearing (Apr. 5, 2017).

{¶ 7} On April 18, 2018, in Case No. 18-713-EL-WVR, AEP Ohio filed an application for a limited waiver of the SEET filing due date, until July 2, 2018, to file its application for administration of the SEET. By Entry issued May 2, 2018, AEP Ohio's application for a waiver of the due date was granted.

{¶ 8} On June 25, 2018, in the above-captioned case, AEP Ohio filed an application for the administration of the SEET for the year 2017, as required by R.C. 4928.143(F) and Ohio Adm.Code 4901:1-35-10. In support of the application, the Company filed the testimony of Andrea E. Moore, Tyler H. Ross, and William A. Allen.

{¶ 9} On July 31, 2018, Ohio Consumers' Counsel (OCC) filed a motion to intervene. No memorandum contra OCC's motion was filed. The Commission finds that OCC's motion to intervene is reasonable and should be granted.

{¶ 10} To assist the Commission with its review of AEP Ohio's SEET application, by Entry issued March 8, 2019, a procedural schedule was established such that motions to intervene were due by April 8, 2019, the testimony of Staff and intervenors was due by May 8, 2019, and the hearing was scheduled to commence on June 4, 2019. Consistent with the procedural schedule, Staff filed the testimony of Joseph P. Buckley.

{¶ 11} On June 3, 2019, AEP Ohio and Staff (Signatory Parties) filed a Stipulation and Recommendation (Stipulation), which purportedly resolves all the issues raised in this case.

{¶ 12} The hearing was held, as scheduled, on June 4, 2019. At the hearing, admitted into the record of evidence was the Stipulation (Joint Ex. 1), the Company's SEET application (Co. Ex. 1), the testimony of Andrea E. Moore (Co. Ex. 2), the testimony of William A. Allen (Co. Ex. 3), the testimony of Tyler H. Ross (Co. Ex. 4), and the testimony of Joseph P. Buckley (Staff Ex. 1). AEP Ohio witness Moore also testified in support of the Stipulation on behalf of the Signatory Parties.

C. *Summary of the Application*

{¶ 13} In its application for administration of the SEET for its 2017 earnings, AEP Ohio asserts that, consistent with the guidelines established in the *Generic SEET Case*, based on its calculations and the supporting testimony, the Company did not have significantly excessive earnings. Based on AEP Ohio's method and analysis, the Company proposes a SEET threshold of 17.00 percent based on an 11.52 percent mean earned return on equity (ROE) for the comparable group plus an adder of 5.48 percent based on 1.64 standard deviations. On that basis, AEP Ohio asserts that the Company has met its burden to prove that its earned 2017 ROE is not significantly excessive pursuant to the statute. Further, AEP Ohio notes that its earnings for 2017 are below the "safe harbor" threshold of 13.52 percent. Accordingly, AEP Ohio concludes the Company should not be required to issue a customer refund as a result of this proceeding. (Co. Ex. 1 at 1-2.)

III. STIPULATION OF THE PARTIES

A. *Summary of the Stipulation*

{¶ 14} As noted previously, on June 3, 2019, Signatory Parties filed a Stipulation that purports to resolve all the issues in this case. While OCC is not a signatory to the Stipulation, OCC states that it does not support nor oppose the Stipulation (Tr. at 9-10, 12). The Stipulation may be summarized as follows:¹

- (a) The Signatory Parties agree that the Stipulation violates no regulatory principle or precedent and is the product of serious arm's length bargaining among knowledgeable and capable parties, in an open and cooperative process in which all Signatory Parties were represented by able counsel and technical experts (Joint Ex. 1 at 2, 4).
- (b) The Signatory Parties agree that the Stipulation represents a fair and reasonable solution to all of the issues raised in this proceeding (Joint Ex. 1 at 3).
- (c) The Signatory Parties agree the Stipulation, as a package, benefits consumers and the public interest and the terms and conditions of the Stipulation satisfy the policies of the state of Ohio, as set forth in R.C. 4928.02, and do not violate any important regulatory policies or principles (Joint Ex. 1 at 4).
- (d) The Signatory Parties stipulate, agree, and recommend that the Commission should issue its Opinion and Order in this proceeding, accepting and adopting this Stipulation and

¹ This is a summary of the Stipulation and does not supersede or replace the Stipulation.

relying upon its provisions as the basis for resolving all issues raised by this proceeding (Joint Ex. 1 at 4).

(e) The Signatory Parties recommend that the Commission find:

1. The testimony filed by AEP Ohio on June 25, 2018, and by Staff on May 8, 2019, should be admitted as evidence, subject to cross-examination, at an evidentiary hearing (Joint Ex. 1 at 4).
2. Based upon the Company's testimony, AEP Ohio's 2017 adjusted SEET ROE was 9.87 percent, as supported in the testimony of AEP Ohio witness Tyler H. Ross (Joint Ex. 1 at 4).
3. AEP Ohio witness Allen's testimony supports a finding that the comparable risk group's mean earned ROE is 11.52 percent. Under the established method for calculating a SEET threshold, an adder is calculated based on 1.64 standard deviations. In this case, the adder would be 5.48 percent, resulting in a SEET threshold of 17.00 percent using the Company's calculations. (Joint Ex. 1 at 4.)
4. Staff witness Buckley's testimony supports a finding that the comparable risk group's mean earned ROE is 9.89 percent. Using an adder that is calculated based on 1.64 standard deviations,

Staff calculated a SEET threshold of 17.22 percent. (Joint Ex. 1 at 5.)

- (f) The Signatory Parties agree that the analysis in AEP Ohio's and Staff's testimony is consistent with the methodology used by the Commission in prior AEP Ohio SEET cases and supports a conclusion that AEP Ohio's 2017 earned ROE does not constitute significantly excessive earnings under R.C. 4928.143(F) and is within the 200 basis point safe harbor established by the Commission (Joint Ex. 1 at 5).
- (g) The Signatory Parties agree that AEP Ohio's 2017 earned ROE does not constitute significantly excessive earnings under R.C. 4928.143(F) (Joint Ex. 1 at 5).

B. Consideration of the Stipulation

{¶ 15} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon 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 is especially true where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 16} 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 Dominion Retail, Inc. v. The Dayton Power and Light Co.*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 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). 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. 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?

{¶ 17} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases 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, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio 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.

{¶ 18} Signatory Parties submit that the Stipulation is the product of serious bargaining among capable and knowledgeable parties. AEP Ohio witness Moore testified that all parties are experienced and knowledgeable about the issues in this proceeding and were afforded the opportunity to participate in settlement discussions. Signatory Parties contend the Stipulation represents a fair and reasonable result that, as a package, benefits ratepayers and is in the public interest. Additionally, Ms. Moore testified that the Stipulation benefits customers and the public interest as the Stipulation confirms, consistent with past Commission decisions, that AEP Ohio did not have excessive earnings in 2017. Finally, Ms. Moore offered that the Stipulation does not violate any important regulatory policies or principles. (Joint Ex. 1 at 2- 4; Tr. at 9.)

IV. COMMISSION CONCLUSION

{¶ 19} The Commission finds the Stipulation meets the three-part test used to evaluate stipulations. All parties to the case are familiar with Commission proceedings and are knowledgeable and capable participants in SEET cases. AEP Ohio, OCC, and Staff are represented by counsel and technical experts who have participated in numerous SEET proceedings since the enactment of R.C. 4928.143(F). It is undisputed that all parties were afforded the opportunity to participate in settlement discussions. Further, the Commission finds, as a package, the Stipulation advances the public interest by resolving all the issues raised in this proceeding pursuant to R.C. 4928.143(F), consistent with the methodologies recognized by the Commission and the rationale offered by the Commission in prior SEET proceedings. *In re Ohio Power Co.*, Case No. 17-1230-EL-UNC, Opinion and Order (Feb. 27, 2019); *In re Columbus Southern Power Co.*, Case No. 13-2250-EL-UNC, Opinion and Order (Mar. 26, 2014); *In re Ohio Power Co.*, Case No. 13-2251-EL-UNC, Opinion and Order (May 28, 2014); *In re Ohio Power Co.*, Case No. 14-875-EL-UNC, Opinion and Order (Dec. 3, 2014); *Generic SEET Case*, Finding and Order (June 30, 2010). The record evidence supports the SEET thresholds, as calculated by Staff and AEP Ohio, of 17.22 percent and 17.00 percent, respectively, which are in line with SEET thresholds underlying previous Commission orders. AEP Ohio's per books ROE for 2017 is 14.63 percent and the Company calculated a SEET-adjusted ROE for 2017 of 9.87 percent. AEP Ohio's per books ROE and SEET-adjusted ROE for 2017 earnings do not exceed the SEET thresholds as determined by Staff or AEP Ohio. Further, the Commission notes that AEP Ohio's adjusted SEET ROE does not exceed the "safe harbor" of 200 basis points above the mean of the comparable risk group, as recognized in the *Generic SEET Case*. *Generic SEET Case*, Finding and Order (June 30, 2010) at 29. The record evidence also supports a finding by the Commission that the Stipulation does not violate any important regulatory principle or practice. Accordingly, the Commission concludes that the Stipulation filed on June 3, 2019, meets the criteria used to evaluate stipulations, is reasonable, and should be adopted. (Co. Ex. 1 at 1-2; Co. Ex. 3 at 3-5, Ex. WAA-1 and WAA-2; Co. Ex. 4 at 3-10, Ex. THR 1; Staff Ex. 1 at 3-5; Joint Ex. 1 at 2-4; Tr. at 9.)

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 21} 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.

{¶ 22} On June 25, 2018, AEP Ohio 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.

{¶ 23} On June 3, 2019, AEP Ohio and Staff filed a Stipulation to resolve all the issues raised in this case.

{¶ 24} The evidentiary hearing was held in this matter on June 4, 2019. OCC does not support nor opposes the Stipulation.

{¶ 25} The record supports and the Signatory Parties agree that AEP Ohio's 2017 earned ROE does not constitute significantly excessive earnings under R.C. 4928.143(F).

{¶ 26} The Commission finds that the Stipulation is supported by the record, meets the criteria used by the Commission to evaluate stipulations, and is reasonable. On that basis, the Commission finds that the Stipulation should be adopted.

VI. ORDER

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 29} ORDERED, That the Stipulation be approved and adopted. It is, further,

{¶ 30} 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,

{¶ 31} ORDERED, That a copy of this Opinion and Order be served upon all interested persons of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

GNS/hac

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7/17/2019 2:28:32 PM

in

Case No(s). 18-0989-EL-UNC

Summary: Opinion & Order that the Commission adopts the Stipulation and Recommendation filed on June 3, 2019, which concludes that Ohio Power Company did not have significantly excessive earnings for the year 2017, pursuant to R.C. 4928.143(F). electronically filed by Docketing Staff on behalf of Docketing