

## BEFORE

### THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of	)	
Duke Energy Ohio, Inc.'s	)	Case No. 18-1036-EL-RDR
Distribution Capital Investment Rider.	)	

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### POST HEARING BRIEF OF DUKE ENERGY OHIO, INC.

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#### I. Introduction

The Staff of the Public Utilities Commission of Ohio (Staff) and Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) along with the only intervenor in this proceeding, the Office of the Ohio Consumers' Counsel (OCC) engaged in negotiations to attempt to arrive at settlement regarding this proceeding. Staff and the Company were successful. OCC opposes the Stipulation that was ultimately submitted to the Commission. The Commission has a three-part test that is typically used to evaluate stipulations, and under that test, the stipulation must be approved where: (i) it is the product of serious bargaining among capable, knowledgeable parties; (ii) as a package, the settlement benefits ratepayers and the public interest; and (iii) the settlement does not violate any important regulatory principle or practice.<sup>1</sup> As demonstrated herein, the Stipulation satisfies this controlling three-part test and therefore must be approved.

#### II. History of the Case

The Public Utilities Commission of Ohio (Commission) modified and approved an application for an electric security plan for Duke Energy Ohio in 2015. In that case, the

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<sup>1</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide a Standard Service Offer Pursuant to R.C.4928.143 in the Form of an Electric Security Plan*, Case No.14-1297-EL-SSO, *et al.*, Opinion and Order, at p. 39 (March 31, 2016).

Commission established a distribution capital investment rider (Rider DCI) to allow for the return on capital costs and recovery of associated depreciation and property tax expenses for investment in distribution infrastructure. The Rider DCI is to be reviewed annually. In this proceeding, the Commission directed its Staff to retain an auditor to audit Rider DCI for accuracy, prudence and compliance with the Commission's order.

Rehmann Consulting was selected as the auditor and Rehmann filed an audit Report on December 7, 2018. Thereafter, the Attorney Examiner established a procedural schedule and the interested parties filed comments on February 26 and reply comments on March 12, 2019. After the parties filed comments, they engaged in settlement negotiations. Those discussions culminated in a Stipulation and Recommendation that was submitted on June 10, 2019. The OCC opted not to join the settlement. A hearing was held on July 24, 2019.

### **III. Discussion**

The only witness presented by the OCC to support its opposition to this settlement was Mr. James D. Williams. Mr. Williams explains that the OCC objects to the Stipulation and Recommendation for four distinct reasons; 1.) the stipulation provided that transmission costs were inappropriately included in Rider DCI, 2.) plant held for future use was inappropriately included in Rider DCI, 3.) the OCC believes the Stipulation did not require Duke to comply with its own capitalization policy guidelines or verify that only eligible distribution plant is being included in Rider DCI, and 4.) the stipulation violates regulatory practices and principles. The logic OCC applied in considering the terms of the Stipulation is flawed and should be disregarded.

#### **1. Transmission Costs in the Rider Would Have Been Recovered Elsewhere.**

The auditor's report made numerous recommendations that formed the basis for settlement discussions. The Company agreed to a number of those recommendations and as Staff witness

Doris McCarter stated, the resulting stipulation includes a reduction in Duke Energy Ohio's revenue requirement in the amount of \$2,299,414 for one quarter and \$146,329 thereafter for three quarters.<sup>2</sup>

The auditor's report notes that when reviewing documentation related to compliance with quarterly findings, the auditor observed that the Company had recorded an adjustment to reduce distribution plant-in-service in the fourth quarter of 2017 related to transmission costs that had been improperly included in distribution accounts. This adjustment was made for two quarters until the general ledger was corrected in the second quarter of 2018. The improperly recorded amount was related to costs that should have otherwise been included in the Company's Base Transmission Rider (Rider BTR). As explained by Duke Energy Ohio witness Sarah Lawler, if the costs had been properly classified, the Company would have applied a higher rate of return that applies to Rider BTR, and therefore, the Company in fact recovered less by mistakenly including the amount in Rider DCI. The net result is that customers benefitted from this error. Further, the stipulation provides for an adjustment to Rider DCI to exclude these transmission costs in the third quarter of 2017. As a result, Rider DCI will be corrected for the four quarters under review in this audit. OCC argues that the amounts outside of the audit period should also be refunded to customers. This is not reasonable as it would result in disallowing costs for which there is no question regarding recoverability.<sup>3</sup> The Stipulation recognizes the removal of this item since it will be recovered in the future in Rider BTR. This is a fair and reasonable result that recognizes an error, corrects the error and allows the Company to recover reasonable and prudent costs.

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<sup>2</sup> Direct Testimony of Doris McCarter at pg.4, Staff Ex.2.

<sup>3</sup> Transcript at pg.28.

## **2. Plant Held for Future Use**

The auditor's report details a filing error related to the inclusion of plant-held-for-future-use. After lengthy discussions including all interested parties, the stipulating parties agreed to an adjustment of \$62,464 for the four quarters within the audit period. OCC did not agree.

## **3. The Stipulation can be adequately enforced by the Commission**

Another disagreement OCC has with the Stipulation is that it lacks adequate enforcement. The Stipulation provides that Duke Energy Ohio will review its processes and procedures for billing Contributions In Aid of Construction,<sup>4</sup> review its work order estimating,<sup>5</sup> bring its un-unitized plant backlog current,<sup>6</sup> and bring its un-unitized RWIP backlog current.<sup>7</sup>

OCC argues that these concessions are not sufficiently punitive. OCC believes the Company should be required to quantify adjustments made by bringing the unitization processes current. In making such a recommendation, OCC assumes that such adjustments would be in the customer's favor. In fact, such adjustments could result in the Company's favor. The Stipulation ultimately provides for significant benefit to customers by ensuring that these processes are improved and the backlogs are brought current. For these reasons, the Stipulation results in a fair and reasonable settlement of these matters.

## **4. The Stipulation violates regulatory practices and principles.**

OCC's final disagreement with the Stipulation is that it violates regulatory practices and principles. The Stipulation provides that Duke Energy Ohio will make ALL of the auditor's recommended revenue requirement adjustments within the four quarters under review in this audit period. In any negotiated settlement, each of the parties may or may not agree with all elements

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<sup>4</sup> Joint Ex.1 at pg.6, para. 7.

<sup>5</sup> Joint Ex.1 at pg.6, para. 8

<sup>6</sup> Joint Ex.1 at pg.6, para. 9

<sup>7</sup> Joint Ex.1 at pg.6, para. 10.

of the settlement but will agree with the resulting overall resolution of the issues. OCC chose not to agree to some of the elements of this Stipulation. This does not mean that it violates any regulatory practices or principles, but rather that OCC simply didn't agree with the ultimate result. But as noted, the Company has agreed to ALL the auditor's recommended revenue requirement adjustments within the audit review period. For these reasons, the Stipulation results in a fair and reasonable settlement of these matters.

#### **IV. Conclusion**

For the reasons set forth above, Duke Energy Ohio respectfully requests that the Commission adopt and approve the Stipulation that was submitted for its consideration in this proceeding.

Respectfully submitted,

Duke Energy Ohio, Inc.

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## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal delivery, or electronic mail on this 28th day of August 2019, to the following parties.

/s/ Elizabeth H. Watts

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Summary: Brief Post Hearing Brief of Duke Energy Ohio, Inc. electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Watts, Elizabeth