

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

The Stipulation presented in this case enhances the benefits to rate payers identified in Duke Energy Ohio, Inc.'s (Duke or the Company) Application, provides a reasonable outcome for Duke customers, and addresses the concerns raised by the Staff of the Public Utilities Commission of Ohio (Staff) in the annual audit of Duke's Distribution Capital Investment Rider (DCI Rider or Rider DCI). As described in Staff's Initial Brief, the Stipulation is reasonable and meets the Commission's three-part test for approval of stipulations. It should be adopted by this Commission. Below are Staff's responses to arguments made by the Ohio Consumers Counsel (OCC) in their initial brief.

DISCUSSION

OCC argues that the Stipulation: (1) inappropriately includes transmission costs in Rider DCI; (2) inappropriately includes plant held for future use in Rider DCI; (3) fails to require Duke to comply with its own capitalization policy

guidelines; and (4) violates regulatory practices and principles. OCC's arguments are misguided and should be disregarded.

I. The Stipulation appropriately addresses transmission costs in Rider DCI.

OCC argues that the Stipulation inappropriately recovers a transmission plant cost through a distribution charge.¹ The audit report notes that Duke 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. The improperly recorded amount was related to costs that should have otherwise been included in the Company's Base Transmission Rider (Rider BTR).² Duke witness Lawler explained that if the costs had been properly classified, the Company would have applied a higher rate of return that applies to Rider BTR.³ As a result, the Company recovered less by mistakenly including the amount in Rider DCI.⁴ The net result is that customers benefitted from this error. The Stipulation corrects the improper classification and provides for an adjustment to Rider DCI to exclude these transmission costs for the four quarters under review in this audit.⁵ With no harm to Duke customers, rather a

¹ OCC Initial Brief at 5.

² Tr. 27.

³ *Id.*

⁴ *Id.*

⁵ Joint Ex. 1 (Stipulation and Recommendation) at 5.

benefit for customers, the Stipulation appropriately addresses the transmission costs in the DCI Rider and makes an adjustment to Rider DCI to exclude these transmission for the four quarters under review in this audit. This is a fair and reasonable result that recognizes a misclassification and allows the Company to recover reasonable and prudent costs. In addition, this term of the Stipulation is consistent with the prohibition against retroactive ratemaking⁶ as well as the legal doctrines of *res judicata* and collateral estoppel.⁷

II. The Stipulation appropriately includes plant held for future use in Rider DCI.

The audit report details a filing error related to the inclusion of plant held for future use. OCC argues that because the electric plant is held for future use it is not used and useful plant, and therefore the distribution charge should be reduced for 14 quarterly charge filings.⁸ Staff agrees with the filing error detailed in the audit report, but as a negotiated compromise, the stipulating parties agreed to an adjustment of \$62,464 for the four quarters within the audit period.⁹ The Stipulation appropriately includes plant held for future use in Rider DCI. Furthermore, like the transmission-cost issue above, this

⁶ See *Keco Industries v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St.254.

⁷ See, *Office of Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 9, 475 N.E.2d 782, 1985 Ohio LEXIS 287, limiting refund of over recovered system loss costs to the period under review.

⁸ OCC Brief at 8.

⁹ Joint Ex. 1 (Stipulation and Recommendation) at 5.

term of the Stipulation is consistent with the prohibition against retroactive ratemaking as well as the legal doctrines of *res judicata* and collateral estoppel.

III. The Stipulation properly addresses Duke's unitization of plant accounting.

OCC argues that the Stipulation should be rejected because Duke's unitization of plant accounting is not in compliance with its own policies.¹⁰ The Stipulation, however, provides that Duke will review its processes and procedures for billing Contributions in Aid of Construction (CAIC), review its work order estimating, bring its un-unitized plant backlog current, and bring its un-unitized Retirement Work in Progress (RWIP) backlog current.¹¹ These are appropriate measures for Duke going forward.

OCC believes Duke 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. Such adjustments, however, could result in the Company's favor. The Stipulation provides for significant benefit to customers by ensuring that these processes are improved and the backlogs are brought current.¹² The Stipulation results in a fair and reasonable settlement of these matters.

¹⁰ OCC Initial Brief at 9.

¹¹ Joint Ex. 1 (Stipulation and Recommendation) at 6.

¹² Staff Ex. 2 (McCarter Direct) at 4.

IV. The Stipulation does not violate any regulatory practice or principle.

OCC argues that the Stipulation violates regulatory practices and principles.¹³ The Stipulation provides that Duke will make all of the auditor's recommended revenue requirement adjustments within the four quarters under review in the audit period subject to this proceeding. This is not inconsistent with any regulatory practice or principle.¹⁴ In any negotiated settlement, each of the parties may or may not agree with all elements of the settlement but will agree with the resulting overall resolution of the issues. OCC disagrees with some of the elements of this Stipulation, but this does not mean that that the Stipulation violates regulatory practices or principles. OCC simply disagreed with the final result. But again, Duke has agreed to all of the auditor's recommended revenue requirement adjustments within the audit review period. The Stipulation results in a fair and reasonable settlement of these matters.

CONCLUSION

The Stipulation meets all prongs of the three-part test and OCC's arguments to the contrary should be rejected. The Commission should adopt the Stipulation as its order in this case.

¹³ OCC Initial Brief at 11-13.

¹⁴ Joint Ex. 1 (Stipulation and Recommendation).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named counsel via electronic mail, this 11th day of September, 2019.

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Summary: Brief electronically filed by Mrs. Tonneta Y Scott on behalf of PUCO