

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. TO ADJUST
RIDER AU FOR 2018 GRID
MODERNIZATION COSTS.

CASE NO. 19-664-GA-RDR

FINDING AND ORDER

Entered in the Journal on February 10, 2021

I. SUMMARY

{¶ 1} The Commission approves the joint stipulation and recommendation filed by Duke Energy Ohio, Inc. and Staff, resolving all of the issues related to Rider Advanced Utility.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} In Case No. 07-589-GA-AIR, et al., the Commission approved a stipulation and recommendation that, among other things, provided a process for the filing of Duke's deployment plans for the installation of an automated gas meter reading system, which would share the SmartGrid communications technology for the Company's electric system, and a method for recovering costs associated with the plans, which was designated Rider Advanced Utility (Rider AU). *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al. (*Gas Distribution Rate Case*), Opinion and Order (May 28, 2008).

{¶ 4} By Opinion and Order dated July 2, 2019, the Commission approved Duke's application to adjust Rider AU for 2017 grid modernization costs. Additionally, in light of Duke's plans to replace certain advanced metering infrastructure (AMI) components for the gas distribution system, the Commission determined that Staff, in the Company's next annual proceeding to adjust Rider AU, should thoroughly evaluate whether the Company's

customers are paying charges through Rider AU for costs associated with equipment that is no longer used and useful. Staff was directed to perform, as necessary, a field audit or other physical verification of Duke's AMI components for its natural gas operations. *In re Duke Energy Ohio, Inc.*, Case No. 18-837-GA-RDR (2018 Rider AU Case), Opinion and Order (July 2, 2019) at ¶¶ 23-24.

{¶ 5} On June 25, 2019, in the above-captioned case, Duke filed an application, along with supporting testimony, to adjust Rider AU for grid modernization deployment costs incurred in 2018, pursuant to the process approved in the *Gas Distribution Rate Case*.

{¶ 6} By Entry dated July 3, 2019, the attorney examiner established a procedural schedule to accomplish the review of Duke's proposed adjustments to Rider AU, with comments and reply comments due on October 25, 2019, and November 8, 2019, respectively.¹ In the event all of the issues raised in the comments were not resolved, or if the Commission determined that the application may be unjust or unreasonable, Staff and intervenor testimony would be due on November 22, 2019, with Duke's supplemental testimony to be filed on November 29, 2019. Finally, the attorney examiner scheduled a hearing to occur, if necessary, on December 5, 2019.

{¶ 7} On October 25, 2019, Staff filed its review and recommendations, stating that, due to Duke's inability to provide sufficient financial information to support the locational data of its capital equipment, Staff was unable to adequately complete the audit ordered by the Commission in the *2018 Rider AU Case*. Staff, therefore, recommended that a request for proposal (RFP) be issued for the necessary audit of Duke's capital equipment and that Rider AU be suspended until the audit was completed.

{¶ 8} Duke filed reply comments on November 8, 2019.

¹ Motions for intervention were due by September 27, 2019. No such motions were filed in this proceeding.

{¶ 9} On November 21, 2019, the attorney examiner determined that the procedural schedule should be held in abeyance, pending the Commission's consideration of Staff's recommendations.

{¶ 10} By Entry issued on December 4, 2019, the Commission directed Staff to issue an RFP for audit services to review Duke's capital assets associated with Rider AU. The Commission also directed that collection of the rider charge be suspended until otherwise ordered by the Commission.

{¶ 11} By Entry dated February 26, 2020, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) to review Duke's capital assets associated with Rider AU.

{¶ 12} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the Department of Health regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID-19 emergency no longer exists. The Department of Health is making COVID-19 information, including information on preventative measures, available via the internet at coronavirus.ohio.gov/.

{¶ 13} On July 6, 2020, Blue Ridge filed its audit report.

{¶ 14} Duke filed comments in response to the audit report on August 5, 2020.

{¶ 15} On December 9, 2020, Duke and Staff filed a joint stipulation and recommendation (Stipulation) that would resolve all of the issues raised in this case.

{¶ 16} On February 1, 2021, supplemental testimony in support of the Stipulation was filed on behalf of Duke by Sarah E. Lawler.

{¶ 17} On that same date, Duke and Staff filed a joint motion requesting that certain documents be admitted into the record in this proceeding and that the case be submitted to the Commission, without the need for an evidentiary hearing. Duke and Staff propose that the following documents be admitted into the record: the Stipulation filed on December 9, 2020 (Joint Exhibit 1), the Company's application filed on June 25, 2019 (Duke Ex. 1), the direct testimony of Sarah E. Lawler filed on June 25, 2019 (Duke Ex. 2), the supplemental testimony of Sarah E. Lawler filed on February 1, 2021 (Duke Ex. 3), and Blue Ridge's audit report filed on July 6, 2020 (Staff Ex. 1). In support of the joint motion, Duke and Staff assert that, because there are no outstanding issues remaining in this case and no intervenors, an evidentiary hearing is unnecessary and would be an inefficient use of resources. In light of the Executive Order issued by the governor and the continued state of emergency, the Commission finds that the joint motion is reasonable and should be granted.

B. Summary of Staff's Review and Recommendations and Duke's Response

{¶ 18} In its review and recommendations, Staff noted that Duke seeks to recover approximately \$2.5 million in costs incurred over the 12-month period ending December 31, 2018, through a per-meter customer charge. With respect to its capital equipment audit, Staff stated that it first compared the transactional details within Duke's continuing property records (CPR) and its historical annual Rider AU filings. Staff found that the CPR showed an amount that was \$130,557 less than the amounts reported in Duke's annual Rider AU filings, which the Company was unable to explain in response to Staff's subsequent inquiry. Next, in order to perform a physical inspection to verify the existence and valuation of the capital assets, Staff sampled a set of transactions from the CPR transactional details provided by Duke; however, the Company stated that it was unable to connect the capital transactions from the CPR with the locations of the capital equipment. Staff noted that Duke merely provided a listing of its capital equipment with addresses, which did not include the financial information necessary to support the locational data of the capital equipment. As

a result, Staff indicated that it was unable to perform an adequate physical inspection to confirm both the existence and valuation of the capital equipment. Because it was unable to complete the audit, Staff advised that it could not address the used-and-useful status of the capital equipment, as directed by the Commission in the *2018 Rider AU Case*. Accordingly, Staff recommended that a third-party auditor be obtained to review Duke's capital equipment and that the Rider AU charge be suspended until the audit was completed.

{¶ 19} In its reply to Staff's review and recommendations, Duke stated that, if the Commission orders the Company to discontinue Rider AU, the Commission should ensure that the Company can fully recover its investment, given that the Company was encouraged to complete its initial SmartGrid deployment and there has been no finding, in any of the annual Rider AU adjustment proceedings, that any of the Company's investment was imprudent. According to Duke, it would be improper for the Commission to deny the Company full recovery of costs for an investment that was prudently incurred, based on all of the information available at the time of the decision to complete the initial SmartGrid deployment. Duke asserted that the early retirement of natural gas meters installed since March 31, 2012, should not truncate recovery of that investment and that the issue of whether the investment being recovered through Rider AU remains used and useful is not relevant to whether those costs can be recovered.

{¶ 20} Additionally, Duke argued that the AMI transition affects both electric and natural gas infrastructure and that the accounting treatment for gas operations should not differ from the accounting treatment for electric operations. Consistent with the approach used for its electric operations in Case No. 17-32-EL-AIR, et al., Duke stated that, pursuant to R.C. 4905.13, the Commission should consider the creation of a dying asset account to address, in the Company's next natural gas rate case, the recovery of the Company's natural gas operations investment in meters that are retired before the end of their useful lives. Duke also contended that an audit of the Rider AU assets was unnecessary and that its application should be approved as filed. Alternatively, Duke proposed that Rider AU be

discontinued only if a dying asset account is created for the natural gas investments or if the metering infrastructure cost recovery continues through its proposed capital expenditure program rider (Rider CEP), following a combined audit of the Rider AU and Rider CEP assets.

C. Summary of Blue Ridge's Audit Report and Duke's Response

{¶ 21} In its audit report, Blue Ridge recommended the following five adjustments:

Audit Report Adjustment No. 1: Remove \$9,527,398 of Leased AMI Meters transferred to a non-Rider AU project in 2016 and to the Electric Business Segment in 2017. The adjustment also removes \$836,667 for the related net post-in-service carrying costs (PISCC) regulatory asset. (Staff Ex. 1 at 7.)

Audit Report Adjustment No. 2: Remove \$32,974 of five-year life auto-retired assets that occurred in 2017 and 2018 (Staff Ex. 1 at 7).

Audit Report Adjustment No. 3: Remove 60,771 Badger modules that were replaced with Itron OpenWay modules and 15,995 Ambient communication nodes that were removed and replaced with connected grid routers (Staff Ex. 1 at 7).

Audit Report Adjustment No. 4: Adjust for the difference of \$130,557 between the CPR and Rider AU filing for 2012-2015 identified in Staff's review and recommendations in this case (Staff Ex. 1 at 8).

Audit Report Adjustment No. 5: Correct opening December 31, 2017 excess deferred income taxes (EDIT) balance in connection with PISCC, operating expense deferrals, and related carrying charges (Staff Ex. 1 at 8).

{¶ 22} The effect of these adjustments would reduce the annualized Rider AU revenue requirement as of December 31, 2018, from \$2,552,117 to \$411,414 (Staff Ex. 1 at 8).

{¶ 23} Blue Ridge also offered the following five recommendations:

Audit Report Recommendation No. 1: The Company stated that equipment that was changed out is not being recovered. Recovery is proposed as part of the Company's Rider CEP application in Case No. 19-791-GA-ALT. Blue Ridge found that the Company's proposal to seek recovery of the replacement equipment through Rider CEP could result in over recovery if the original assets (that were replaced and not retired) continue to be recovered through Rider AU. Blue Ridge recommends a thorough and careful reconciliation of the recovery mechanisms, if both should continue. (Staff Ex. 1 at 8-9.)

Audit Report Recommendation No. 2: Blue Ridge also recommends that, in future filings, the Company continue to reflect in Rider AU the retirement of equipment that will be replaced through 2022 and not rely on auto-retirement for assets that have been replaced. The onus is on the Company to reflect accurate and used-and-useful balances in its approved recovery mechanisms. (Staff Ex. 1 at 9.)

Audit Report Recommendation No. 3: Blue Ridge found the Company's corrections to the opening balances in the Rider AU schedules to be not unreasonable; however, its handling of the revisions obfuscated and distorted the reported 2018 activity on Schedules 1 and 1A. While the Company may rationalize that "the error in the prior year filing was in the customer's favor" and was, therefore, not necessary to call out, Blue Ridge recommends the Company take into consideration issues of transparency and public trust in addressing prior filing mistakes going forward. (Staff Ex. 1 at 9.)

Audit Report Recommendation No. 4: The Company provided the Microsoft Excel files that support the Rider AU schedules included in the Company's filing in this case. Blue Ridge found the accuracy by which the schedules were assembled and calculated in Excel to be error prone and reliant upon the experience and attention to detail of the analyst. For example, model inputs were not clearly visible and centrally organized so that a change to one variable would flow through the schedules. Additionally, there were no built-in cross-checks and balances to ensure internal

consistency between schedules. In some instances, variables were derived through formula calculation, while, in others, they were entered as hard values. Blue Ridge recommends the Company address these spreadsheet modeling deficiencies and formalize its procedures in writing. (Staff Ex. 1 at 9.)

Audit Report Recommendation No. 5: Blue Ridge recommends that EDIT associated with each recommended plant adjustment remain in Rider AU while the manner of their disposition and treatment is determined in Case No. 18-1830-GA-UNC, the Company's Tax Cuts and Jobs Act docket. The EDIT liabilities in Rider AU were established as of December 31, 2017; they represent income tax expense that the Company previously collected from ratepayers for which it is no longer obligated to remit to the Internal Revenue Service as a result of the federal tax rate change from 35 to 21 percent. Retaining them in Rider AU will ensure their visibility so that the Company and stakeholders can better track them. (Staff Ex. 1 at 9.)

{¶ 24} In response to Blue Ridge's audit report, Duke stated that it agrees with Adjustment Nos. 1, 2, 4, and 5 and has incorporated them in its most recent Rider AU filing on July 31, 2020, in Case No. 20-1117-GA-RDR. With respect to Adjustment No. 3, Duke noted that, unless and until dying asset accounting treatment or another path for recouping the Company's investment in the removed equipment is granted, the Company opposes removal of the assets from Rider AU. More specifically, Duke asserted that, although it does not disagree with Blue Ridge on the number of modules and nodes removed and does not dispute the calculation of plant-in-service amounts associated with these items, the Company disagrees on the appropriate treatment of the assets. According to Duke, in the absence of any alternate mechanism to recover the remaining costs, it would be inappropriate to remove these assets from Rider AU, because they were previously found to be a prudent investment by the Commission and the need to replace the equipment is largely attributable to circumstances beyond the Company's control. For the same reasons, Duke stated that it opposes Recommendation No. 2. Duke, however, agreed to implement Recommendation Nos. 1, 3, 4, and 5. Duke concluded that the Commission should either

permit Rider AU collections to resume, regardless of whether the equipment has been removed from the field; or, alternatively, approve the creation of a dying asset account for the removed equipment, discontinue Rider AU, and address cost recovery in the Company's next natural gas base rate case.

D. Consideration of the Stipulation

{¶ 25} 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 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.

{¶ 26} 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 Western Reserve Telephone 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:

- (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?

{¶ 27} 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.

{¶ 28} As previously stated, a Stipulation signed by Duke and Staff (collectively, Signatory Parties) was filed on December 9, 2020. The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation:

- (1) The Signatory Parties agree that it is appropriate that the Company be permitted to fully recoup its investment in the Rider AU capital assets, the deployment of which was approved by the Commission in Case Nos. 07-589-GA-AIR, 10-2326-GE-UNC, and 12-1685-GA-AIR (Joint Ex. 1 at 6).
- (2) The Signatory Parties agree with all of the recommended adjustments proposed by Blue Ridge in the report filed with the Commission on July 6, 2020, except for Adjustment No. 3 (Joint Ex. 1 at 7).
- (3) The Signatory Parties agree that the remaining net plant in service in Rider AU will be placed in one or more dedicated accounts and treated as dying assets. This recommendation is consistent with the treatment of dying accounts authorized in Case No. 17-32-EL-AIR and Case No. 08-709-EL-AIR. The total net plant-in-service balance that will be treated as a dying

account is \$18,490,894, as depicted in Attachment A to the Stipulation. The Company will maintain the deferred PISCC of \$2,700,712 depicted in Attachment A in a Federal Energy Regulatory Commission 182 regulatory asset account. (Joint Ex. 1 at 7.)

- (4) The Signatory Parties agree that the Company will obtain recovery of the \$21,191,606 depicted in Attachment A in its next natural gas base rate case, with an accelerated recovery period of ten years, consistent with the treatment of similar dying accounts in the Company's most recent electric base rate case, Case No. 17-32-EL-AIR (Joint Ex. 1 at 7).
- (5) Any EDIT associated with Rider AU will be refunded to customers in accordance with the final order in Case No. 18-1830-GA-UNC, after a final order in that case is issued (Joint Ex. 1 at 7).
- (6) Within 45 days of an order approving the Stipulation, if no applications for rehearing have been filed in this case, the Company will file a motion to withdraw its application in Case No. 19-1873-GE-AAM and agree not to file another pension deferral application until the Company's next filed natural gas base rate case (Joint Ex. 1 at 7-8).
- (7) Within 45 days of an order approving the Stipulation, if no applications for rehearing have been filed in this case, the Company will file a motion to withdraw its application in Case No. 20-1117-GA-RDR, which is the most recent Rider AU filing (Joint Ex. 1 at 8).

- (8) Within 45 days of an order approving the Stipulation, if no applications for rehearing have been filed in this case, Rider AU shall be discontinued (Joint Ex. 1 at 8).

{¶ 29} Upon review, we find that the Stipulation submitted by the Signatory Parties satisfies the three-part test used by the Commission in the consideration of stipulations. Sarah E. Lawler, Vice President of Rates and Regulatory Strategy with Duke Energy Business Services LLC, testified that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Ms. Lawler explained that both Duke and Staff were represented by experienced counsel and subject matter experts in an open process that resulted in the resolution of all of the issues in this case. With respect to the second part of the three-part test, Ms. Lawler testified that, pursuant to the Stipulation, Duke will discontinue Rider AU and recover the remaining assets in its next natural gas base rate case, which will simplify billing and improve transparency for customers. Ms. Lawler added that the Stipulation also benefits ratepayers and serves the public interest through the reduction of the Rider AU plant in service by \$6,094,937, as well as the withdrawal of Duke's application for deferral of pension costs in Case No. 19-1873-GE-AAM. Finally, Ms. Lawler testified that the Stipulation complies with all relevant and important regulatory principles and practices. According to Ms. Lawler, the Stipulation is also consistent with commitments made in prior Commission decisions involving the relevant issues, prior Commission determinations as to the Rider AU assets, and the treatment of similar dying asset accounts in previous cases. (Duke Ex. 3 at 5-7; Joint Ex. 1 at 1, 4.)

{¶ 30} Accordingly, the Commission finds that the Stipulation is a reasonable resolution of the issues related to Rider AU. The Stipulation should, therefore, be adopted in its entirety. Further, consistent with our ruling above on the joint motion filed by the Signatory Parties on February 1, 2021, we find that no hearing is necessary in this proceeding.

{¶ 31} Finally, Staff and Blue Ridge have raised concerns in this proceeding regarding Duke's property and accounting records. For example, Blue Ridge noted that it was unable to provide a determination of the accuracy, completeness, and occurrence of the Company's historical plant records and CPR as of December 31, 2018. Blue Ridge further noted that Duke did not have locational data for the Badger gas modules or for many of its assets. (Staff Ex. 1 at 6, 7.) We, therefore, direct Duke to evaluate its record-keeping and retention policies in an effort to ensure that documents and records likely to be needed for audits, annual reviews, or rate cases are properly maintained for an extended period of time.

III. ORDER

{¶ 32} It is, therefore,

{¶ 33} ORDERED, That the Stipulation be adopted and approved in its entirety. It is, further,

{¶ 34} ORDERED, That Duke comply with the directive set forth in Paragraph 31. It is, further,

{¶ 35} ORDERED, That the joint motion filed by Duke and Staff on February 1, 2021, be granted. It is, further,

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

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

COMMISSIONERS:

Approving:

M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

SJP/kck

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Case No(s). 19-0664-GA-RDR

Summary: Finding & Order approving the joint stipulation and recommendation filed by Duke Energy Ohio, Inc. and Staff, resolving all of the issues related to Rider Advanced Utility. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio