

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. 21-412-EL-UNC

FINDING AND ORDER

Entered in the Journal on May 4, 2022

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. Accordingly, the Commission finds that Duke Energy Ohio, Inc. did not have significantly excessive earnings in 2020.

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, 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 13, 2021, 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 Libbie S. Miller.

{¶ 5} By Entry issued January 11, 2022, the attorney examiner scheduled this matter for hearing to take place on March 22, 2022.

{¶ 6} By Entry issued March 17, 2022, the attorney examiner granted the February 22 and 23, 2022 motions to intervene from The Kroger Co. (Kroger) and the Ohio Manufacturers' Association Energy Group (OMAEG), respectively.

{¶ 7} On March 17, 2022, Duke filed a stipulation and recommendation (Stipulation) that purports to resolve all of the issues in this case. Duke and Staff signed in support of the Stipulation, while Kroger and OMAEG signed the Stipulation as non-opposing parties, agreeing not to challenge the Stipulation. Contemporaneously, Duke filed supplemental testimony of Libbie S. Miller in support of the Stipulation.

{¶ 8} On the same date, Duke filed correspondence requesting the admission of certain documents into the record and submitting the case for decision on the merits. According to Duke, the issues in this case are resolved by the Stipulation and it is prudent to resolve this case without a hearing. Further, Duke relays that the parties have agreed to the admission of a number of documents that have already been filed in this docket, and the parties waive cross-examination of all witnesses.

{¶ 9} Accordingly, the March 22, 2022 hearing was canceled by Entry on March 17, 2022.

III. DISCUSSION

{¶ 10} Initially, we will address the motion to admit documents and resolve this case on the merits without a hearing. Parties appear to be in agreement on the evidence to be

admitted into the record and there does not appear to be any issues that must be resolved at a hearing. Thus, the requested documents will be admitted into the record as follows:

- Duke Ex. 1 Application filed May 13, 2021;
- Duke Ex. 2 Direct Testimony of Ms. Miller filed May 13, 2021;
- Joint Ex. 1 Stipulation filed on March 17, 2022; and
- Duke Ex. 3 Supplemental Testimony of Ms. Miller filed March 17, 2022.

{¶ 11} Further, we find there is sufficient evidence on the record in order for the Commission to properly conduct a review and issue a decision without a hearing.

A. *Application*

{¶ 12} In its application, Duke requests that the Commission find that the Company's earnings were not significantly excessive with respect to the annual period ending December 31, 2020 (Duke Ex. 1 at 2). Duke's witness, Libbie S. Miller testified that the return on average electric common equity for Duke during 2020 was 8.82 percent, which is less than the Company's approved return on equity of 9.84 percent (Duke Ex. 2 at 10, 12). Ms. Miller testified that the Company's adjusted electric net income for 2020 was \$126,716,415, and the average electric common equity for 2020 was \$1,436,178,255 (Duke Ex. 2 att. LSM-1 at 1).

B. *Stipulation of the Parties*

{¶ 13} The Stipulation signed by the Company and Staff 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, 2020, to be 8.82 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 2020 as the Company's 2020 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 2020. (Joint Ex. 1 at 2-3.)

C. Commission Conclusion

{¶ 14} 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.

{¶ 15} 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 have 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?

{¶ 16} 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.

{¶ 17} Ms. Miller testified that the Stipulation was negotiated between parties who regularly participate in proceedings before the Commission, and specifically, have considered previous SEET applications. Further, Ms. Miller testified that the Stipulation resolves all issues between the parties. (Duke Ex. 3 at 3.) Upon review, we find that the first prong of the test is met.

{¶ 18} With regard to the second criterion, Ms. Miller explained that in her opinion, the Stipulation promotes an economic use of the Commission's and the stipulating parties' resources, provided that the Stipulation functions to avoid a hearing on an uncontested issue. Additionally, Ms. Miller testified that the Stipulation demonstrates to ratepayers that Duke's filings were thoroughly reviewed, and the Company's earnings were determined as not significantly excessive. (Duke Ex. 3 at 4.) The Commission agrees and finds the Stipulation also satisfies the second prong of the test.

{¶ 19} Finally, Ms. Miller testified that the Stipulation complies with all relevant and important regulatory principles and practices (Duke Ex. 2 at 3). 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.

{¶ 20} Accordingly, the Commission finds that the stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted. In doing so, we determine that Duke did not have significantly excessive earnings during 2020.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 22} R.C. 4928.143(F) requires the Commission to evaluate the earning of each electric utility's approved ESP to determine whether the plan produces significantly excessive earnings for the electric utility.

{¶ 23} On May 13, 2021, 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.

{¶ 24} The Stipulation was filed on March 17, 2022, intending to resolve all issues in this case. No party opposed the Stipulation. The attorney examiner determined that a hearing was unnecessary in this proceeding.

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

{¶ 26} The Commission finds that Duke did not have significantly excessive earnings during 2020.

V. ORDER

{¶ 27} It is, therefore,

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

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

{¶ 30} ORDERED, That nothing in this Finding 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 Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

NJW/IMM/hac

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Case No(s). 21-0412-EL-UNC

Summary: Finding & Order finding 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. Accordingly, the Commission finds that Duke Energy Ohio, Inc. did not have significantly excessive earnings in 2020. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio