THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC. FOR AUTHORITY TO ABANDON CERTAIN PROPANE-AIR FACILITIES.	**CASE NO. 21-986-GA-ABN**
IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC. FOR AUTHORITY TO CHANGE ACCOUNTING METHODS.	**CASE NO. 21-1035-GA-AAM**

OPINION AND ORDER

Entered in the Journal on October 5, 2022

I. SUMMARY

{¶ 1} Consistent with this Opinion and Order, the Commission adopts the stipulation and recommendation resolving all issues related to the application of Duke Energy Ohio, Inc. for approval to abandon certain propane-air facilities and to change accounting methods.

II. PROCEDURAL HISTORY

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

{¶ 3} R.C. 4905.20 and 4905.21 establish the statutory requirements pertaining to abandonment of facilities that have been dedicated to public use or service provided therefrom. R.C. 4905.21 requires that, upon written application to abandon facilities, "the commission shall thereupon cause reasonable notice of the application to be given, stating the time and place fixed by the commission for the hearing of said application."

{¶ 4} On October 7, 2021, Duke filed an application for authority to abandon certain propane-air facilities pursuant to R.C. 4905.20 and 4905.21. According to Duke, it has used manmade caverns since 1959 to store propane that it uses, along with the associated propane-air facilities, to supplement natural gas during peak usage periods and when otherwise needed. Duke notes that these caverns cannot be inspected or repaired. Duke further notes that it has determined that the caverns and associated propane-air facilities, specifically facilities at East Works, Dick's Creek, and the portion of facilities in Erlanger, Kentucky allocated to Ohio customers, should be abandoned and replaced by alternative methods to provide reliable natural gas distribution service. According to Duke, the Central Corridor Pipeline approved by the Ohio Power Siting Board, and scheduled for an in-service date of February 2022[1], enables Duke to retire the caverns and associated propane-air peaking facilities while maintaining safe and reliable service to customers. *In re the Application of Duke Energy Ohio, Inc.*, Case No. 16-253-GA-BTX, Opinion, Order, and Certificate (Nov. 21, 2019). Furthermore, Duke asserts that environmental remediation of its manufactured gas plants, which was addressed in Case No. 14-375-GA-RDR, et al., cannot be completed until the caverns and associated facilities have been decommissioned. Accordingly, Duke submits that the abandonment is reasonable, is in the best interest of the public, and should be approved. Included within its application, Duke also requests authority to defer approximately $39 million stemming from the abandonment of the facilities as a regulatory asset on its books and records, including costs associated with the propane inventory, decommissioning, and removal of the facilities. (Co. Ex. 2 at 1-8.)

{¶ 5} On January 6, 2022, Commission Staff filed its Review and Recommendation regarding Duke's application (Staff Report).

{¶ 6} On February 2, 2022, Duke filed a motion for a procedural schedule such that parties could file comments regarding the Staff Report.

{¶ 7} By Entry issued on February 8, 2022, the attorney examiner granted Duke's motion, which directed parties to file initial comments to the Staff Report or to the

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[1] Duke ultimately began commercial operations of the Central Corridor Pipeline on March 14, 2022. *In re the Application of Duke Energy Ohio, Inc.*, Case No. 16-253-GA-BTX, Correspondence (Mar. 15, 2022).

application by March 7, 2022, and file reply comments by March 21, 2022, and directed motions for intervention to be filed no later than March 7, 2022.

{¶ 8} No motions to intervene were filed.

{¶ 9} Duke filed comments on March 7, 2022. No parties filed reply comments.

{¶ 10} On April 27, 2022, Duke filed a Stipulation and Recommendation (Stipulation) entered into by Duke and Staff, purporting to resolve all issues in the proceeding. On the same date, Duke filed direct testimony in support of the Stipulation.

{¶ 11} By Entry issued August 12, 2022, a public hearing was scheduled to be held on September 8, 2022, in accordance with R.C. 4905.21. Also, Duke was directed to publish legal notice of the hearing in a newspaper of general circulation in all of the affected service territory once a week for two consecutive weeks prior to the date of the hearing.

{¶ 12} On September 7, 2022, Duke filed proof of publication of the hearing notice in accordance with the August 12, 2022 Entry (Co. Ex. 4).

{¶ 13} On September 8, 2022, the public hearing was held, as scheduled, at the Commission's offices.

III. DISCUSSION

A. Staff Report

{¶ 14} As noted above, the Staff Report was filed on January 6, 2022. With regard to Duke's request for abandonment, Staff recommends approval of the application for abandonment since it appears to be in the public interest and no customers will be negatively affected (Staff Ex. 1 at 6). With regard to Duke's request for deferral authority, Staff states that, historically, it has considered six criteria when determining authority to defer expenses. It applied these criteria independently to the deferral authority requests related to the propane inventory, the net book value (NBV) of remaining assets, and the decommissioning costs of the propane facilities (Staff Ex. 1 at 2). The six criteria are the following:

(1) Whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral;

(2) Whether the cost requests to be deferred are material in nature;

(3) Whether the problem was outside of the utility's control;

(4) Whether the expenditures are atypical and infrequent;

(5) Whether the costs would result in financial harm to the utility; and,

(6) Whether the Commission could encourage the utility to do something it would not otherwise do through the granting of the deferral authority.

(Staff Ex. 1 at 2-3.)

{¶ 15} In weighing these criteria, Staff recommends approval of deferral authority for the propane inventory. Staff notes that the costs related to the propane inventory are outside of Duke's control and are expected to be material in nature. According to Staff, the costs may result in financial harm to Duke, though the actual propane inventory levels may be further depleted over the upcoming winter heating season and until the Central Corridor Pipeline placed in service, meaning the deferral balance will be reduced, which in turn will minimize the potential financial harm the propane levels may have on Duke. Staff further recommends that the propane deferral balance be updated at the time of recovery to reflect actual inventory levels and the delta, which is the difference between the inventory propane cost and the cost Duke will charge customers through its gas cost recovery (GCR) mechanism. (Staff Ex. 1 at 2-3.)

{¶ 16} Regarding NBV of remaining assets, Staff recommends denial of deferral authority, primarily because deferring authority of the NBV would amount to deferral of assets which are no longer used and useful. According to Staff, a majority of the net investments made after the date certain in Duke's previous natural gas base rate case occurred within the past five years concurrent with the various design, planning, and construction stages of the Central Corridor Pipeline. Staff asserts that these investments have not been audited or evaluated to determine whether the investments are used and useful. Staff argues that a significant amount of the incremental investment occurred during the various design, planning, and construction stages of the Central Corridor Pipeline, so it is possible that the investments may not have been necessary or prudent given Duke's plan to retire the caverns. If any of the investment made during this period was deemed not useful or necessary, then, according to Staff, the NBV would be reduced, lessening the materiality and potential financial harm incurred. Further, Staff asserts that the assets for the Erlanger, Kentucky cavern and equipment in the requested deferral at these facilities should not be included as these facilities are not currently included in Duke's Ohio rate base or tariffed rates. (Staff Ex. 1 at 3-5.)

{¶ 17} Regarding deferral authority for decommissioning costs, Staff recommends approval of such authority on the basis that these costs were outside of Duke's control and could cause financial harm to Duke. Further, Staff asserts that excluding the decommissioning costs associated with Erlanger, Kentucky results in a reduction of $1,300,000. (Staff Ex. at 5-6.)

{¶ 18} Staff also recommends that, for any items for which deferral authority is granted, the Commission reject Duke's request to include the deferred asset balances in rate base such that recovery is limited to the return of the deferred amount, with no return on the balance. Staff further requests that the Commission emphasize that recovery is not guaranteed until the deferred amounts have been reviewed and addressed in appropriate future proceedings. (Staff Ex. 1 at 7.)

B. Summary of the Comments

{¶ 19} On March 7, 2022, Duke filed comments in response to the Staff Report. Duke asserts that the propane cavern retirement is unique in that the entire class of assets will eventually be taken out of service, meaning, absent approval to defer the remaining NBV of the propane assets, no place exists for the remaining undepreciated NBV to go on Duke's balance sheet, which would result as an expense. This expense, according to Duke, would require Duke to write-off approximately 19.6 percent of 2020 operating income, resulting in material financial harm to Duke. (Co. Ex. 5 at 1-2.) Further, Duke criticizes Staff's approach of analyzing the three impacts of abandonment independently, arguing that this approach ignores the total magnitude of the issues involved (Co. Ex. 5 at 2-3). Also, with regard to Staff's review of the NBV of remaining assets, Duke asserts that deferral authority should not be denied based on whether the asset would be used and useful at the time of the next rate case, investments made since the last rate case should not impact deferral authority, the write-off of the remaining NBV of the propane assets did have a material negative impact on Duke's financial results, and the Commission should use this situation as an opportunity to encourage safe operation of assets that are nearing the end of their useful lives. Furthermore, Duke contends that there is no evidence that the amount of capital investment made since the last rate case was within Duke's control, and investments made since the last rate case do not have to be audited for deferral authority to be granted. (Co. Ex. 5 at 3-7.)

C. Stipulation

1. STANDARD OF REVIEW

{¶ 20} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. 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 supported by all parties and resolves all issues presented in the proceeding in which it is offered.

{¶ 21} The standard of review for considering the reasonableness of a stipulation has been discussed in numerous prior Commission proceedings. *See, e.g.*, *Dominion Retail v. Dayton Power and Light*, 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 Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, et al., 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 the stipulation, the Commission has 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?

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).

2. Summary of the Stipulation

{¶ 22} As stated above, the Stipulation filed on April 27, 2022, was executed by Duke and Staff with the intent to resolve all issues in this proceeding. The following is a summary of—and is not intended to supersede or replace—the terms of the Stipulation.

(1) Duke's request to abandon certain propane-air facilities should be approved as filed.

(2) Duke's request to create regulatory assets for deferral and for recovery of certain costs as described in Duke's application should be approved in the following manner:

   a. The Commission should permit deferral into a FERC 182 regulatory asset account of the following (Authorized Deferral):

      i. The remaining NBV of the East Works and Dick's Creek propane caverns and related propane-air facilities. The amount deferred will be the remaining NBV of the assets at the time of retirement less the amount currently being recovered in base rates until new base rates are effective from Duke's natural gas base rate case;

      ii. An estimate of costs to decommission the East Works and Dick's Creek propane caverns and related propane air-facilities less any amounts already included in cost of removal. This estimate will be trued-up to actual costs incurred not to exceed $7.1 million;

iii. The delta between the propane inventory cost and the cost Duke will charge its customers through the GCR mechanism for the remaining propane inventories and, as applicable, any other revenue generated from the remaining propane inventories;

iv. A credit for any operations and maintenance (O&M) savings associated with O&M currently included in base rates for the operation of the propane caverns from the time the Central Corridor Pipeline was placed into service until new base rates are effective as a result of Duke's next natural gas base rate case.

b. Duke should not be authorized to defer the remaining NBV of the Erlanger cavern or Ohio's share of the decommissioning costs associated with the Erlanger cavern.

(3) Duke shall seek recovery of the Authorized Deferral through its next natural gas base rate case proceeding, at which time Duke shall propose an amortization period of no less than ten years and will bear the burden of demonstrating prudence of such costs. The true-up to actual costs incurred for the decommissioning costs included in the regulatory asset will be reflected in a future rate proceeding if the actual costs are not known at the time of Duke's next natural gas base rate case proceeding.

(4) When Duke seeks to recover the costs related to the deferrals of the remaining NBV for East Works and Dick's Creek incremental to the amounts reflected in Duke's current natural gas base rates:

a. In establishing prudency of the investments made at the East Works and Dick's Creek plants, Duke shall include an independent engineering study, funded by Duke, that analyzes the necessity and prudency of the incremental investments made at the plants since March 31, 2012, the date certain of Duke's last natural gas base rate case, Case No. 12-1685-GA-AIR, et al.

b. Duke shall not seek to earn a return on the deferred amounts.

c. In Duke's next natural gas base rate case, Duke shall ensure that its rate case test period O&M shall not include any amounts related to ongoing operations of the propane facilities prior to their abandonment and retirement.

d. As a part of Duke's next natural gas base rate case test year, Duke shall include an annualized amount of allocated O&M related to the operation of its Central Corridor Pipeline to service Ohio customers.

(Joint Ex. 1 at 4-6.)

3. CONSIDERATION OF THE STIPULATION

{¶ 23} Initially, we find that the first prong of the three-part test is met. Ms. Lawler, Duke's witness offering testimony in support of the Stipulation, stated that the signatory parties regularly participate in proceedings before the Commission, are knowledgeable about regulatory matters, and were represented by experienced, competent counsel. Further, she stated that the parties met on multiple occasions to negotiate a settlement, and the parties had the opportunity to raise their respective issues, the resolution of which produced the Stipulation. Ms. Lawler represents that both parties made compromises in reaching the settlement and that additional terms and conditions not originally raised in the application or Staff Report were instrumental in being able to resolve their differences, such as Duke's agreement to fund an independent engineering audit of its propane facility investments since Duke's last base rate case. (Co. Ex. 1 at 8-9.) Accordingly, the Commission finds that the Stipulation is a product of serious bargaining among capable, knowledgeable parties.

{¶ 24} Regarding the second part of the test, Ms. Lawler testifies that the Stipulation benefits ratepayers and the public for multiple reasons. According to Ms. Lawler, the Stipulation establishes a process whereby Duke has an opportunity to recover costs related to the propane facilities, subject to a future prudency review by the Commission. Further, Ms. Lawler claims that Duke has agreed to disallowances related to facilities located in Erlanger, Kentucky despite these facilities being used to serve Duke's Ohio natural gas customers. As noted above, Duke has also agreed to fund an independent engineering study to demonstrate prudency of its investments in the East Works and Dick's Creek propane facilities before it can recover such costs. Additionally, Ms. Lawler notes that the agreed-to ten-year amortization period for any costs associated with the propane facilities will mitigate the impact of any rate increases that may occur in the future related to these facilities. Finally, Ms. Lawler asserts that Duke has also agreed that it will not seek a return on any of the investments. (Co. Ex. 1 at 10-11.) Considering the above, the Commission finds that the Stipulation, as a package, benefits customers and the public interest, thus satisfying the second part of the three-part test.

{¶ 25} Finally, as to the third prong, Ms. Lawler states that, based upon her experience in regulatory proceedings before the Commission and in her position at Duke, the Stipulation does not violate any important regulatory principle or practice. She contends that the Stipulation does not result in any anti-competitive subsidies, is not inconsistent with principles of gradualism, and will not produce rate shock. (Co. Ex. 1 at 9-10.) Upon review, there is no indication from the Stipulation or testimony in support that the Stipulation violates any regulatory principle. Therefore, the Commission finds that the Stipulation does not violate any important regulatory law or principle.

D. Commission Conclusion

{¶ 26} Based on the foregoing, the Commission concludes that the Stipulation is a product of serious bargaining among capable, knowledgeable parties; presents a settlement that, as a package, benefits ratepayers and the public interest; and does not violate any important regulatory principle or practice. Accordingly, we find that the Stipulation is reasonable and should be adopted, consistent with this Opinion and Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 27} Duke is a natural gas company and a public utility as defined by R.C. 4905.03 and 4905.02, respectively. As such, Duke is subject to the Commission's jurisdiction.

{¶ 28} On October 7, 2021, Duke filed the application for authority to abandon certain propane-air facilities and for authority to change accounting methods.

{¶ 29} On January 6, 2022, Staff filed its Staff Report.

{¶ 30} On March 7, 2022, Duke filed comments in response to the Staff Report.

{¶ 31} On April 27, 2022, the Stipulation was filed along with supporting testimony.

{¶ 32} September 7, 2022, Duke filed proof of publication of the hearing notice in accordance with the August 12, 2022 Entry.

{¶ 33} On September 8, 2022, the public hearing was held at the offices of the Commission in accordance with R.C. 4905.21.

{¶ 34} Based on the record, we find that the Stipulation satisfies the three criteria used by the Commission to evaluate such settlement packages, is reasonable, and should be adopted, consistent with this Opinion and Order.

V. ORDER

{¶ 35} It is, therefore,

{¶ 36} ORDERED, That, consistent with this Opinion and Order, the Stipulation filed on April 27, 2022, be approved and adopted. It is, further,

{¶ 37} 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,

{¶ 38} ORDERED, That a copy of this Opinion 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

MJS/dmh