

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. 22-297-EL-UNC

FINDING AND ORDER

Entered in the Journal on June 28, 2023

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 2021.

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 12, 2022, 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 on March 7, 2023, the attorney examiner established a procedural schedule, with the motions to intervene to be filed by April 7, 2023, stipulations to be filed by June 6, 2023, and a hearing, if necessary, to take place on June 15, 2023.

{¶ 6} On May 10, 2023, Duke filed a stipulation and recommendation (Stipulation) that purports to resolve all the issues in this case. Duke and Staff signed in support of the stipulation.

III. DISCUSSION

{¶ 7} Initially, we will address the request made in the Stipulation 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 12, 2022;
- Duke Ex. 2 -- Direct Testimony of Libbie S. Miller filed May 12, 2022; and
- Joint Ex. 1 -- Stipulation filed on March 7, 2023.

{¶ 8} 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

{¶ 9} 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, 2021 (Duke Ex. 1 at 1). Duke's witness, Libbie S. Miller, testified that the return on average electric common equity for Duke during 2021 was 5.46 percent, which is less than the Company's approved return on equity of 9.84 percent (Duke Ex. 2 at 12). Ms. Miller testified that the Company's adjusted electric net income for 2021 was \$88,631,560, and that the average electric common equity for 2021 was \$1,623,334,647 (Duke Ex. 2, Att. LSM-1).

B. Stipulation of the Parties

{¶ 10} 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, 2021, to be 5.46 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 2021 as the Company's 2021 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 2021. (Joint Ex. 1 at 2).

C. Commission Conclusion

{¶ 11} 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 proceedings in which it is offered.

{¶ 12} 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 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?

{¶ 13} 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 Consumer 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.

{¶ 14} The Stipulation was negotiated between knowledgeable and capable parties who regularly participate in proceedings before the Commission, and specifically have considered previous SEET applications (Joint Ex. 1 at 1). Upon review, we find that the first prong of the test is met. With regard to the second criterion, the Stipulation demonstrates to ratepayers that Duke's filings were thoroughly reviewed, and the Company's earnings

were determined as not excessive. 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

{¶ 16} 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.

{¶ 17} On May 12, 2022, 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.

{¶ 18} The Stipulation was filed on May 10, 2023, intending to resolve all issues in this case. No party opposed the Stipulation.

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

{¶ 20} The Commission finds that Duke did not have significantly excessive earnings during 2021.

V. ORDER

{¶ 21} It is, therefore,

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

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

{¶ 24} 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,

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

COMMISSIONERS:

Approving:

Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

NJW/dr

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Case No(s). 22-0297-EL-UNC

Summary: Finding & Order that 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 2021 electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.