

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

|   |   |                        |
|---|---|------------------------|
| Consolidated Duke Energy Ohio, Inc., Rate | ) | Case Nos. 03-93-EL-ATA |
| Stabilization Plan Remand and Rider       | ) | 03-2079-EL-AAM         |
| Adjustment Cases.                         | ) | 03-2081-EL-AAM         |
|   | ) | 03-2080-EL-ATA         |
|   | ) | 05-724-EL-UNC          |
|   | ) | 05-725-EL-UNC          |
|   | ) | 06-1068-EL-UNC         |
|   | ) | 06-1069-EL-UNC         |
|   | ) | 06-1085-EL-UNC         |

ENTRY

The Commission finds:

- (1) In *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA, *et al.* (RSP case), this Commission authorized Duke Energy Ohio (DE-Ohio)<sup>1</sup> to establish a rate stabilization plan and, as a part of that plan, to recover various costs through identified riders. The Commission's entry on rehearing, *inter alia*, modified or created various riders, as part of the rate stabilization plan.
- (2) On appeal of that Commission decision, the Ohio Supreme Court remanded the proceedings to the Commission, requesting, *inter alia*, that the Commission provide additional record evidence and sufficient reasoning to support the modification of its opinion and order on rehearing. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789 (*Consumers' Counsel*).
- (3) On November 29, 2006, the attorney examiner issued an entry, finding "that a hearing should be held in the remanded RSP case, in order to obtain the record evidence required by the court." The entry set a prehearing conference to discuss procedural issues

<sup>1</sup> DE-Ohio was formerly known as the Cincinnati Gas & Electric Company. In this entry, it will be referred to as DE-Ohio, regardless of its name at the time being discussed. Case names, however, will not be modified.

related to that hearing, including the schedule for the filing of testimony. The prehearing conference was held on December 14, 2006.

- (4) On December 13, 2006, DE-Ohio filed a motion seeking "clarification that the hearing proposed by the November 29, 2006, Entry is limited to *briefs and/or oral argument of the parties citing record evidence supporting the Commission's November 23, 2004, Entry on Rehearing as required by the Court.*" DE-Ohio asserts, in its supportive memorandum, that it is unnecessary and inappropriate "to reargue the case, create more evidence, or do anything other than support the Commission's Entry on Rehearing with record evidence."
- (5) The Office of the Ohio Consumers' Counsel (OCC), on December 20, 2006, filed a memorandum contra DE-Ohio's motion. OCC argues that an evidentiary hearing should be held by the Commission, following a period for discovery. On December 26, 2006, DE-Ohio filed a reply.
- (6) The Commission agrees that, in light of the Supreme Court's opinion, it is appropriate to hold a hearing in these consolidated proceedings. We will not, as requested by DE-Ohio, grant a motion to "clarify" that the hearing should be limited to the filing of briefs and/or oral argument citing evidence already of record. That ruling was correct. We will on our own, however, discuss the appropriate scope of the hearing.
- (7) The court, in its opinion, addressed the lack of cited evidentiary support for the changes to the opinion and order that were made in our entry on rehearing of November 23, 2004. *Consumers' Counsel* at para. 28. Further, the court stated that it was remanding "this matter to the commission for further clarification of all modifications made in the first rehearing entry to the order approving the stipulation." *Consumers' Counsel*, at para. 36. Therefore, we find that the hearing should, with regard to the remand of the RSP case, allow parties to present testimony and evidence in support of or in opposition to the modifications of our opinion and order made by the entry on rehearing.
- (8) In its memorandum contra, OCC pointed out, as one of its rationales for an evidentiary hearing, that the court required discovery of side agreements in order to enable the Commission to determine whether parties engaged in serious bargaining with regard to the stipulation.

- (9) The court required the Commission to compel disclosure of the information requested by OCC in its discovery and pointed out that side agreements might be relevant to the Commission's determination of "whether there exists sufficient evidence that the stipulation was the product of serious bargaining." *Consumers' Counsel* at para. 86. Therefore, we find that the hearing in these proceedings may also consider evidence relating to relevant side agreements and how such side agreements may have impacted the seriousness of the bargaining that led to the stipulation adopted in the opinion and order.

It is, therefore,

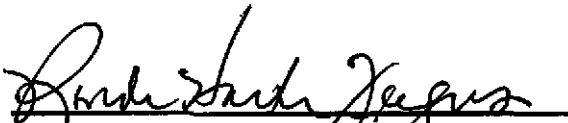

ORDERED, That the hearing in these consolidated proceedings shall include the presentation of testimony and introduction of evidence as set forth in this entry. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in these proceedings.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

  
Ronda Hartman Fergus  
Valerie A. Lemmie  
Judith A. Jones  
Donald L. Mason

JWK/SEF:geb

Entered in the Journal

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Renee J. Jenkins  
Secretary