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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio, Inc., to Adjust and Set the ) Case No. 08-1025-EL-UNC  
Annually Adjusted Component of its Market )  
Based Standard Service Offer. )

ENTRY

The attorney examiner finds:

- (1) On October 24, 2007, the Commission issued an order on remand, approving a standard service offer rate stabilization plan (RSP) for Duke Energy Ohio, Inc., (Duke) in Case No. 03-93-EL-ATA (03-93). As part of the RSP, the Commission found that it was reasonable to allow Duke to collect for expenditures in the areas of environmental compliance, homeland security, and taxes, to the extent that calculations of incremental expenditures are based on changes in costs after December 31, 2000, through a rider known as the annually adjustable component (AAC). This AAC rider is comparable to the identically named rider that had previously been approved by the Commission in the same proceeding, prior to remand by the Supreme Court of Ohio.
- (2) Prior to the issuance of the order on remand in 03-93, Duke twice applied for adjustments to the AAC rate, which adjustments were considered by the Commission in Case Nos. 06-1085-EL-UNC and 07-973-EL-UNC.
- (3) On August 28, 2008, Duke filed an application to adjust the AAC rate, in order to incorporate and account for changes in underlying portions of the AAC. Duke states that the current AAC rate is based on recovery of investments and operating expenses as of the twelve months ended May 31, 2007, and that it has experienced changes since that date.
- (4) On September 5, 2008, the Ohio Energy Group (OEG) filed a motion to intervene. On September 8, 2008, the Ohio Consumers' Counsel (OCC) filed a motion to intervene and a motion to dismiss the application. No opposition to OEG's or OCC's motion to intervene was filed and the examiner finds that

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both OEG and OCC satisfy the requirements for intervention and that, therefore, their motions should be granted.

- (5) With regard to the motion to dismiss, OCC argues that Duke's RSP terminates at the end of 2008 and that, therefore, the application in this case seeks adjustment of a rate that will no longer be in effect after that date.
- (6) On September 19, 2008, Duke filed a memorandum contra the motion to dismiss. Duke asserts that the Commission has the authority to approve an adjustment to the AAC at any time, even prior to January 1, 2009. In addition, Duke contends that Section 4928.143(C), Revised Code, allows its effective competitive offer to continue until a new offer is approved by the Commission. Thus, it says, its entire RSP pricing mechanism could continue in effect if a new plan is not in place by January 1, 2009. Further, Duke asserts, the relevant statute specifically allows for the continuation of all provisions, terms, and conditions of the current offer, along with expected changes in fuel costs. Duke believes that the reference to changes in fuel costs does not limit continuing changes to those related to fuel costs but that, rather, fuel costs are specifically included among the other provisions, terms, and conditions that are to continue. Duke also submits that the requested adjustment to the AAC would provide a baseline for recovery under its electric security plan that is under consideration in another proceeding.
- (7) On September 24, 2008, OCC filed a reply to Duke's memorandum contra. OCC argues that the application stated that it was based on the Commission's entry on rehearing and a subsequent entry in 03-93, but that the memorandum contra was based on the Commission's prior practice of granting AAC adjustments. That argument, says OCC, fails to recognize the impact of recent changes in applicable Ohio law. OCC further argues that, if Duke's standard service offer must be extended into 2009, that extension can only include adjustments for fuel costs, not other costs.
- (8) The question of whether the adjustment of the AAC could occur during 2009 if the RSP were to continue due to the failure of the Commission to approve a new offer prior to the end of 2008 is not relevant to the question of whether the AAC can be amended during 2008. The application made by Duke is an

application for a current adjustment of the AAC rate. Therefore, the examiner will not consider the statutory construction argument raised by the parties.

- (9) The question to be considered in determining whether this application should go forward is whether Duke's RSP allows for its adjustment at this time. Although Duke cites to the Commission's entry on rehearing and a subsequent entry approving tariffs to reflect the first, preset, increase in the AAC, both from the 03-93 case, the examiner finds that these are not the controlling documents. In the order on remand, the Commission determined that the stipulation in 03-93 should be rejected and that an RSP should be established on the basis of the application in that proceeding. The Commission did allow the continuation of the AAC as a mechanism to recover expenditures, in excess of the levels approved in the last rate case prior to unbundling, for homeland security, environmental compliance, and taxes. (03-93 Order on Remand at 34.) In that determination, the Commission did not prohibit modification of the rate of recovery of those expenditures or limit such modifications to any particular times. Therefore, the examiner finds that the present application for a modification of the AAC rate should not be dismissed.
- (10) As the Commission's order on remand also does not set forth any process that must be followed in order to adjust the AAC rate, the examiner finds that it is appropriate to allow the parties to file comments on the application, if they desire to do so. Such comments shall be filed no later than November 10, 2008.

It is, therefore,

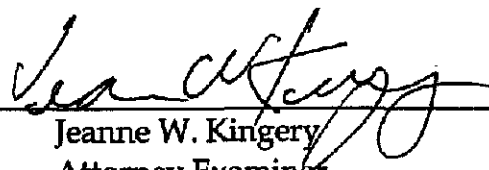
ORDERED, That OEG's and OCC's motions for intervention in this proceeding be granted. It is, further,

ORDERED, That OCC's motion to dismiss the application in this proceeding be denied. It is, further,

ORDERED, That the parties may file comments on the application, no later than November 10, 2008. It is, further,

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

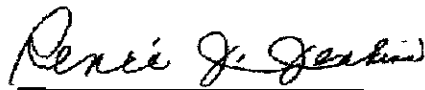
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Jeanne W. Kingery  
Attorney Examiner

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geb

Entered in the Journal

**OCT 29 2008**



Renee J. Jenkins  
Secretary