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JANUARY 12, 2008

**THE PUBLIC UTILITIES COMMISSION OF OHIO
ATTENTION DOCKETING DIVISION, MS. RENEE JENKINS
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COLUMBUS, OHIO 43215-3793**

DEAR COMMISSIONER SCHRIEBER AND FELLOW COMMISSIONERS:

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Duke Energy
Ohio, Inc. for an Increase in Electric Distribution Rates.-- Case No. 08-709-EL-AIR**

**In the Matter of the Application of Duke Energy
Ohio, Inc. for Tariff Approval. ----- Case No. 08-710-EL-ATA**

**In the Matter of the Application of Duke Energy
Ohio, Inc. for Approval to Change Accounting Methods. Case No. 08-711-EL-AAM**

**In the Matter of the Application of the Cincinnati
Gas & Electric Company for approval of its
Rider BDP, Backup Delivery Point----- Case No. 06-718-EL-ATA**

**In the Matter of the Application of "The Consumers for
Reliable Electricity in Ohio" Request for an investigation
in which certain Ohio Electric Utilities
(including Duke Energy of Ohio),
Should be required to show that their Service to Ohio
Customers is adequate and Request for PUCO investi-
gation and Hearings.-----Case No. 08-1299-EL-UNC**

**In the Matter of the merger application between
Duke Energy of Charlotte North Carolina &
Cinergy of Cincinnati Ohio in which Albert E. Lane
An opponent filed with PUCO six documents.
PUCO DID NOT ALLOW DISCOVERY: -----CASE NO. 05-0732-EL-MER**

**This is to certify that the images appearing are an
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NOTE: ALBERT E. LANE IS NOT AN ATTORNEY. FORMAT AND SOME WORDING COPIED FROM DOCKET/CASE # 08-1299-EL-UNC- FILED DEC 15, 2008 BY THE OFFICE OF THE OHIO CONSUMERS COUNSEL REPRESENTING THE CONSUMERS FOR RELIABLE ELECTRICITY IN OHIO AND DOCKET/CASE # 08-709-EL-AIR (CONSOLIDATED CASES) FILED BY OHIO ATTORNEY DOUGLAS E. HART ON BEHALF OF THE GREATER CINCINNATI HEALTH COUNCIL ON DEC 2, 2008. ALSO COPIED ARE PARAGRAPHS FROM THE OFFICE OF OHIO CONSUMER COUNSEL DOCUMENT OF AUGUST 5, 2008 FROM DOCKET/CASE # 08-709-EL-AIR.

OTHER CONTENTS IN THIS LETTER ARE FROM ME ALBERT E. LANE, A DUKE ENERGY OF OHIO CONSUMER RESIDENTIAL CUSTOMER, ACCOUNT #7170- 0391-20-0. MY COMMENTS ARE AGAINST THE DUKE ENERGY OF OHIO REQUESTS IN THE PREVIOUS PAGE CASES. THE PUCO MUST NOT ALLOW THE APPROXIMATE 4.73% AVERAGE ELECTRIC RATE INCREASE FOR RESIDENTIAL DISTRIBUTION FOR CUSTOMERS OF DUKE AS REQUESTED JULY 2S, 2008. (The average percentage increase in the total bill of customers under Rate RS4 including a firm supply of electric generation, should the increase be granted in full is 4.73%*) *SOURCE DUKE ENERGY PUCO FILING JULY 2S, 2008, VOLUME 3 PUCO.

FURTHER, THE DUKE ENERGY REQUEST OF DECEMBER 22, 2008. ASKING THE PUCO FOR SEPARATE ACCOUNTING FOR THE "IKE" WIND STORM OUTAGES EXPENSES, FOLLOWING SEPT 14, 2008 FOR MONEY RECOVERY FROM THEIR CUSTOMERS IN THE ESTIMATED AMOUNT OF \$30 MILLION (O SE M) AND 1 MIL IN CAPITAL COSTS BE DENIED. My wording in this paragraph has been previously sent to PUCO and is recorded in Docket/Case # 08-709-EL-AIR

MEMORANDUM IN SUPPORT

On July 25, 2008 Duke Energy Ohio ("DE-Ohio") filed an Application in the above captioned proceedings for approval of an increase in its electric distribution rates under Revised Code § 4909.18 that would change DE-Ohio's charges for electric distribution service. On September 12, 2008, the Commission ordered the consolidation of pending Case No. 06-718-EL-ATA, in which DE-Ohio sought approval of a rider for backup delivery points, with the most recent application.

As stated previously ALBERT E. LANE is an Ohio individual consumer customer of Duke Energy of Ohio. The application filed by DE-Ohio, if granted by the Commission, would significantly impact the price paid by customer Albert E. Lane for electric distribution service.

MOTION/REQUEST TO INTERVENE

MOTION BY ALBERT E. LANE TO AMEND MY COMMENT LETTER FILED WITHIN DOCKET/CASE # 08-709-EL-AIR, (posted PUCO Dec 31, 2008) NOW REQUESTING TO INTERVENE AS AN INDIVIDUAL DUKE ENERGY OF OHIO RESIDENTIAL CUSTOMER. FURTHER THAT PUCO WILL ALLOW DISCOVERY IN ANY OF THE QUOTED DOCKET CASES PREAMBLED HEREIN.

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The standard for intervention in Commission proceedings is governed by Revised Code § 4903.221, as further stated in Commission Rule 4901-1-11, Ohio Administrative Code: Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As stated within this consolidated case 08-709-EL-AIR preamble referring to case # 05-0732-EL-MER. I Albert E. Lane have been opposed to the Cinergy-Duke Merger since my first of six filings within Docket # 05-0732-EL-MER starting 7/25/05.

Further within Docket/Case # 05-0732-EL-Mer I filed documents on 2/27/07 and 3/25/07 in reference to the "monitoring by PUCO of the service, safety and reliability performance of Duke Energy of Ohio" during the Cincinnati, Ohio Ice storm. In reference to PUCO Docket # 05-0732-EL-MER press release of Dec 21, 2005.

My last comment posted on docket # 05-0732-EL-MER was on 3/26/07 where I requested for a PUCO inquiry of Duke Energy electric service during February 13+, 2007 Cincinnati ice storm calamity. Included with my comment on that docket is a 40 page edited transcript record which PUCO should use as a format, similar to S.Carolina.. This information is from the Office of Regulatory staff of the South Carolina Electric Department. The review (INQUIRY) and public hearing of Duke Energy of North Carolina's service during the northern part of South Carolina recovery work from an ice storm in late 2005 is recorded.

I did not have electricity at my home due to outages for 5 days during the "Ike" windstorm starting SEPT 14, 2008 and for 36 hours starting with the evening of Feb 13, 2007 ice storm. We stayed at a motel at our expense the night of Feb 14*. Because of the need for gathering of information from an inquiry/Discovery from Duke Energy of Ohio, data would be available to be an individual intervenor/expert on Case # 08-709-EL-AIR.

Factors that the PUCO considers when applying the rule include the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding.

The PUCO has not established any deadline for intervention in this proceeding. Other than DE-Ohio's initial filings and the Commission's initial procedural entries setting the test period and date certain, waiving certain standard filing requirements and ordering consolidation, nothing of substance has occurred as of yet. A number of motions to intervene by other parties remain pending. In its July 23, 2008 Entry, the Commission established a test period for this case of January 1, 2008 to December 31, 2008. The relevant Duke Energy's distribution expenses are not yet known to me. Therefore, my Motion to Intervene is timely.

I have these further requests:

The following items requested/related by The Ohio Consumers' Counsel on August 5, 2008 within docket # 08-709-EL-AIR should be addressed by PUCO for all concerned.

To wit:

OCC also meets the criteria for intervention in R.C. 4903.221(B), which requires the PUCO, in ruling on motions to intervene, to consider the following:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and
- (4) Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.

First, the nature and extent of the OCC's interest is to represent the residential customers of Duke, regarding rates paid by residential customers, terms for service and the service quality provided by Duke, among other issues. This interest is different than that of any other party and especially different than that of the utility whose advocacy includes the financial interest of stockholders.

Second, OCC's legal positions include, without limitation, that residential customers' rates must be just and reasonable as established under R.C. 4909.18, with adequate service quality. This legal position directly relates to the merits of the cases. Third, OCC's intervention will not unduly prolong or delay the proceedings, but should provide insights that will expedite the PUCO's effective treatment of the cases. OCC, with its longstanding expertise and experience in PUCO proceedings, will duly allow for the efficient processing of the proceedings with consideration of the public interest.

Fourth, OCC's intervention will significantly contribute to the full development and equitable resolution of the factual issues. OCC will obtain and develop information that the PUCO should consider for equitably and lawfully deciding the cases in the public interest.

OCC also satisfies the intervention criteria in the Ohio Administrative Code (which are subordinate to the criteria that OCC satisfies in the Ohio Revised Code). To intervene, a party should have a "real and substantial interest according to Ohio Adm. Code 4901-1-11(A)(2). As the residential utility consumer advocate for the State of Ohio, OCC has a real and substantial interest in these proceedings where the outcome will have an effect on the service rates paid by residential consumers.

In addition, OCC meets the criteria of Ohio Adm. Code 4901-1-11(B)(1)-(4).

These criteria mirror the statutory criteria in R.C. 4903.221(B) that OCC already has addressed and that OCC satisfies.

Ohio Adm. Code 4901-1-11(B)(5) states that the Commission shall consider the "extent to which the person's interest is represented by existing parties." While OCC does not concede the lawfulness of this criterion, OCC satisfies this criterion in that it uniquely has been designated as the state representative of the interests of Ohio's residential utility consumers. That interest is different from, and not represented by, any other entity in Ohio.

Moreover, the Supreme Court of Ohio recently confirmed OCC's right to intervene in PUCO proceedings, in ruling on an appeal in which OCC claimed the PUCO erred by denying its intervention. The Court found that the PUCO abused its discretion in

denying OCC's intervention and that OCC should have been granted intervention.

The Office of Consumers Council in Docket/Case # 08-1299-EL-UNC Dec 15, 2008 on behalf of The Consumers for Reliable Electricity in Ohio said the following about Duke Energy of Ohio to the PUCO about a Duke Energy of Ohio investigation (an Inquiry) starting on their numbered page 25 (to copy enter page 33) to their page 29, (to copy enter page 37) (sources left out) to wit:

Duke

The windstorm affected 700,000 Duke customers, or about 90% of Duke's Ohio and Kentucky customers. According to a news report quoting a Duke spokeswoman the windstorm-related outages were the largest ever in the Ohio-Kentucky area. Some 50,000 Duke customers remained without power a week after the storm. The breadth of the outages experienced by Duke's customers warrants a closer look by the PUCO. Duke's outage restoral performance as measured by the System Average Interruption Duration Index ("SAIDI") has also declined in recent years as noted in a recent PUCO Staff Report and in response to discovery. ^^ While Duke may have still been hitting its "targets" as part of its compliance with Ohio Adm. Code 4901:1-10-10(B)2, the decline in performance is troublesome.

IV. PROPOSAL FOR COMMISSION INVESTIGATION

The Commission should investigate the distribution system reliability of the investor-owned electric utilities in the state of Ohio, and undertake the following in connection with its investigation:

- A. Investigate, monitor and determine if the electric utilities are complying with reliability standards as set forth in the ESSS rules of the Commission, the National Electric Safety Code and any other applicable safety and reliability standards. The Commission should hold evidentiary and local public hearings in order to determine whether the applicable rules and laws are being complied with by all electric utilities.
- B. Undertake an evaluation of the effectiveness of the current ESSS rules, including setting performance targets for momentary interruptions, to promote reliability and to determine if such rules should be amended to help ensure safe and reliable distribution operations by the electric utilities, and effective oversight by the Commission, and provide a mechanism that ensures that all electric utilities are complying with the ESSS rules.
- C. Require each electric utility to file a comprehensive report of its past and current activities to control vegetation in right-of-ways, including current tree-trimming programs and remedial plans. This should include development of a reasonable, routine vegetation management cycle plan, including the requirement for annual reports on the progress and efforts to maintain system reliability.
- D. Provide significant financial consequences for failure to meet reliability standards, including the provision of bill credits to customers who experience extended outages.
- E. Review all formal and informal reliability complaints filed at or submitted to the Commission, with OCC and others having access to review the complaints.
- F. Review the electric utilities' compliance with the provisions of Ohio

Adm. Code 4901:1-10-27(D) which require electric utilities to establish and maintain a program "for the inspection, maintenance, repair, and replacement of its transmission and distribution equipment," including "[c]onductors."^^ In the recent AEP Service Quality Case, Staff found that AEP's circuits experienced "a high and neutral (the electric wires)" and that AEP treatment of a wind-caused outage was to "add a protective zone" that assists some customers but does not "address the root cause of the problem" that affects other customers.^ The Staff's findings regarding wind-caused outages should be revisited in light of the extent of the recent windstorm-related outages.

G. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which provide that an electric utility must, "at a minimum, inspect its electric transmission and distribution facilities (circuits and equipment) to maintain safe and reliable service," inspecting "at least one-fifth of all distribution circuits and equipment * * * annually" and inspecting "transmission and distribution substations and equipment * * * at least once each month." The utilities' performance relative to this standard should be reviewed in the investigation.

H. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which require electric utilities to establish and maintain a program "for the inspection, maintenance, repair, and replacement of its transmission and distribution equipment," including "[p]oles and towers."^^ Staff reported an alarming number of poles that needed replacement or reinforcement during its inspections of AEP equipment, having "a major impact on the reliability and performance of the Companies' systems [and] also * * * public and employee safety."^ The Staff's concerns regarding pole inspections should be incorporated into the investigation of all the utilities.

recordkeeping practices of an electric utility are not in compliance with Ohio Adm. Code 4901:1-10-27(D), the utility should not be permitted to recover the costs of the audit from ratepayers. The results of the audit should be publicly filed with the Commission and be available for the public and evidentiary hearings conducted as part of the Commission's investigation.

J. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which provide that electric utilities must inspect their distribution facilities and maintain a program of preventative maintenance of its transmission and distribution systems. The adequacy of the electric utilities' preventative programs must be evaluated as part of the COL A remedial preventative maintenance program should be ordered by the PUCO and the Commission should require an independent audit to review the transmission and distribution facilities inspection, maintenance, repair, and replacement programs of each electric utility. Should such independent audit find that the relevant practices of an electric utility are not in compliance with Ohio Adm. Code 4901:1-10-27(D), the utility should not be permitted to recover the costs of the audit from ratepayers. The results of the audit should be publicly filed with the Commission and be

available for the public and evidentiary hearings conducted as part of the Commission's investigation.

K. Review whether the electric utilities' failure to timely restore service after interruptions in service caused by the windstorm may be an unreasonable, unjust, inadequate, insufficient, improper and inadequate practice that is causing unreasonable, unjust, insufficient, improper and inadequate service to end-use consumers, including residential customers, who are served by the electric utilities. The Commission should remedy this situation by requiring an independent audit to review the outage restoral efforts of each electric utility to the windstorm. The audit should include a review of the electric utilities' mutual assistance agreements and how the implementation of such agreements may have exacerbated problems with outage restoral efforts subsequent to the windstorm. Should such independent audit find that the outage restoral practices of an electric utility are not sufficient, the utility should not be permitted to recover the costs of the audit from ratepayers. The results of the audit should be publicly filed with the Commission and be available for the public and evidentiary hearings conducted as part of the Commission's investigation.

L. Perform an audit to determine actual utility expenditures since January 1, 1995, as compared to the amount customers paid in rates for adequate and reliable service. It should also be determined to what extent customers have prepaid for improvements that utilities have failed to deliver on. The calculation of any over or under-recovery dating from January 1, 1995 to present should be expressed based on the net present value.

The focus of an investigation should be the enforcement of standards for the reliable provision of electric distribution service to electric customers. CREO recommends that any investigation should include an audit which reviews the distribution reliability practices of the electric utilities as noted above. As in prior service quality-related cases, the Commission should order the electric utilities to file proposals "in the docket which would provide information regarding who would perform such an audit, their qualifications, the proposed scope of the audit and proposed timelines. In the Ameritech Service Quality Case, the PUCO Staff "developed a Request for Proposal ("RFP") to solicit responses for conducting the audit...," and the Commission then reviewed the RFP. That approach should be followed here, for any retaining of an auditor. The PUCO should also ensure that any selection of an auditor is for an "independent, outside auditor..." and not for the utilities' internal auditors. The auditor should consider the PUCO Staff, not the electric utilities, as its client. Etc.

1. Review the electric utilities' compliance with the provisions of Ohio Adm. Code 4901:1-10-27(D) which require electric utilities to "maintain records sufficient to demonstrate compliance with its transmission and distribution facilities inspection, maintenance, repair, and replacement programs." The Commission should require an independent audit to include the recordkeeping practices of each electric utility. Should such independent audit find that the

There are other participatory matters that the PUCO should follow and all other opponents of the Duke Energy of Ohio requested electric distribution increases should request in addition to what I have already written in this 8 page document.

1. Bunched PUCO Cases # 08-709-EL-AIR should be merged with 08-1299-EL-UNC. The PUCO and the State of Ohio should allow \$500,000.00 for customers to be spent for experts by the entire PUCO-OCC . \$200,000.00 for Duke Energy of Ohio, the rest for the other Electric Companies mentioned in 08-1299-EL-UNC. and not \$40,000.00 For all of Duke's consumer customers and opponents/intervenors.
2. A total PUCO Duke Energy inquiry (with discovery) as to their electric rate increase request and re-couping \$30,000,000.00 (Ike windstorm) and one million capital asset (Ike windstorm) loss would be the topic. This inquiry would have Discovery of Duke Energy of Ohio and Cinergy (Cincinnati Gas & Electric Co.,) as to all electric distribution labor costs, number of in-house overhead Ohio wire, pole workers and traffic guards timely comparison of replacement of assets including vehicles & tree trimming-including workers cost and timeliness of work, ~~All~~ accounting records for each year from 2004 through 2008 to be open for inspection by PUCO & OCC CPA's. Neglect of infrastructure, if any should be reported. Most of all the investment return to the stockholders each year from 2004 to 2008.

ALL ITEMS
EACH YEAR
2004 TO 2008

Consistent with the requirements of Revised Code § 4903.221 and Commission Rule 4901-1-11, my MotionS/requests are timely, I am a real party of interest herein, my total interest is not represented by existing parties, it will contribute to the just and expeditious resolution of the issues and concerns raised in these proceedings, and its participation in these proceedings will not cause undue delay or unjustly prejudice any existing party. For these reasons, I ask that my motion to intervene in the above-captioned proceedings be granted and my requests of PUCO considered.

ENCL: SERVICE LIST

VERY TRULY YOURS



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