

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to)
Establish a Standard Service Offer)
Pursuant to Section 4928.143, Revised) Case No. 11-3549-EL-SSO
Code, in the Form of an Electric Security)
Plan, Accounting Modifications, and)
Tariffs for Generation Service.)

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to)
Amend its Certified Supplier Tariff,) Case No. 11-3550-EL-ATA
P.U.C.O. No. 20.)

In the Matter of Application of Duke)
Energy Ohio, Inc. for Authority to)
Amend its Corporate Separation Plan.) Case No. 11-3551-EL-UNC

ENTRY

The attorney examiner finds:

- (1) On June 20, 2011, Duke filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (2) By entry issued June 21, 2011, the attorney examiner established a procedural schedule in this case which, *inter alia*, provides the following deadlines:
 - (a) Testimony on behalf of intervenors should be filed by September 7, 2011.
 - (b) Discovery requests, except for notices of deposition, should be served by September 9, 2011.
 - (c) Testimony on behalf of the Commission Staff should be filed by September 14, 2011.
 - (d) The evidentiary hearing shall commence on September 20, 2011, at 10:00 a.m.

- (3) On August 17, 2011, Constellation NewEnergy, Inc.; Constellation Energy Commodities Group, Inc.; Exelon Generation Company, LLC; COMPETE Coalition; Retail Energy Supply Association; PJM Power Providers Group; Ohio Manufacturers' Association; City of Cincinnati; The Ohio Energy Group; The Kroger Company; Ohio Consumers' Counsel; and Industrial Energy Users-Ohio (collectively, Joint Movants) requested the following extension of the procedural schedule:
- (a) Testimony on behalf of intervenors should be filed by November 7, 2011.
 - (b) Discovery requests, except for notices of deposition, should be served by November 9, 2011.
 - (d) The evidentiary hearing shall commence on November 21, 2011, at 10:00 a.m.

In support of their request, Joint Movants explain that Section 4928.143, Revised Code, provides that the Commission has a 275-day timeframe for consideration of an application for an ESP. Accordingly, Joint Movants assert that, because Duke has raised a host of novel issues in its ESP application, the Commission should not proceed on the expedited procedural schedule contained in the June 21, 2011, entry, but should extend the procedural schedule to provide for more time to prepare testimony and review the application.

- (4) On August 22, 2011, Duke filed a memorandum in opposition to Joint Movants' motion for an extension of the procedural schedule. Duke explains that Section 4928.143, Revised Code, does not mandate a 275-day review period; rather, it provides that the Commission should not render a decision later than 275 days after an application is filed. Moreover, Duke asserts that Joint Movants have failed to raise any justification for a two-month extension of the procedural schedule, as many of the issues raised in this application have been previously considered by the Commission. Finally, Duke explains that the alteration of the current procedural schedule may not provide sufficient time for the Commission to render a decision on the application so that Duke can implement its new rates by January 1, 2012. However, if an extension is granted, Duke believes that it should be limited to the hearing date, and that

the deadlines for discovery and the filing of testimony should remain the same.

- (5) Joint Movants filed a response to Duke's memorandum in opposition on August 25, 2011. In support of their motion to extend the procedural schedule, Joint Movants aver that they represent all customer classes, despite being only a limited number of the intervenors in this proceeding. Joint Movants also explain that Duke has misconstrued their argument that the Commission is mandated to take 275 days to consider an application. Rather, Joint Movants explain that the Commission may, at its discretion, take up to 275 days to consider an application, regardless of the timeline for approval requested by Duke. Finally, Joint Movants assert that Duke controlled the timing of its ESP filing and that timing should not be used to force parties to proceed in an expedited fashion. Joint Movants assert that, pursuant to Section 4928.141(A), Revised Code, if Duke's application is not approved in time for implementation of new rates by January 1, 2012, Duke's current ESP will continue in place.
- (6) Upon careful consideration of Joint Movants' request, the attorney examiner does not believe that a two-month extension of the procedural schedule is warranted at this time. However, the attorney examiner finds that it would be reasonable to allow for some additional time, so that Staff and intervenors may fully examine Duke's application and conduct discovery. Accordingly, Joint Movants' request for an extension of the procedural schedule is granted, in part, and the parties should observe the following procedural schedule:
 - (a) Testimony on behalf of intervenors should be filed by October 5, 2011.
 - (b) Discovery requests, except for notices of deposition, should be served by October 7, 2011.
 - (c) Testimony on behalf of the Commission Staff should be filed by October 13, 2011.
 - (d) The evidentiary hearing shall commence on October 20, 2011, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-A, Columbus, Ohio.

It is, therefore,

ORDERED, That, in accordance with finding (6), Joint Movants' request for an extension of the procedural schedule be granted, in part. It is, further,

ORDERED, That the procedural schedule for this proceeding be adopted as set forth in Finding (6). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

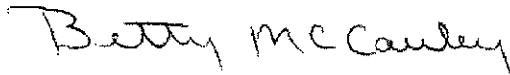


By: Katie L. Stenman
Attorney Examiner

 dah

Entered in the Journal

AUG 26 2011



Betty McCauley
Secretary