

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) Case No. 11-3551-EL-UNC
Amend its Corporate Separation Plan.)

ENTRY

The attorney examiner finds:

- (1) Duke Energy Ohio, Inc. (Duke) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) 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 in accordance with Section 4928.143, Revised Code.
- (3) By entry dated June 21, 2011, the attorney examiner established July 6, 2011, as the deadline by which parties were required to file motions to intervene in these proceedings. Rule 4901-1-11(A)(1) and (2), Ohio Administrative Code (O.A.C.), provide that, upon the filing of a timely motion, a person shall be permitted to intervene in a proceeding upon a showing that either: (a) a statute confers a right to intervene; or (b) the person has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may impair or impede the person's

ability to protect that interest, unless the person's interest is adequately represented by existing parties.

- (4) In deciding whether to permit intervention under Rule 4901-1-11(A)(2), O.A.C., paragraph (B) of that same rule states that the Commission shall consider all of the following:
 - (a) The nature and extent of the movant's interest.
 - (b) The legal position advanced by the movant and its probable relation to the merits of the case.
 - (c) Whether the granting of intervention will unduly prolong or delay the proceedings.
 - (d) Whether the movant will significantly contribute to full development and equitable resolution of the factual issues.
 - (e) The extent to which the person's interest is represented by existing parties.
- (5) On September 20, 2011, the Sierra Club filed a motion to intervene and a motion for leave to file out of time. In support of its request for leave to file its motion to intervene out of time, the Sierra Club explains that the size and complexity of the organization caused administrative delays and is part of the reason for its late filing. Moreover, the Sierra Club states that it does not believe that any party will be prejudiced by its late-filed request for intervention.
- (6) On September 26, 2011, Duke filed a memorandum contra the Sierra Club's motion for leave to file its motion to intervene out of time. In its memorandum contra, Duke points out that the motion to intervene filed by the Sierra Club was filed 76 days after the intervention deadline, and that the administrative delays cited by the Sierra Club do not comprise sufficient cause for the Commission to grant the Sierra Club's motion to intervene. Moreover, Duke points out that the Sierra Club does not present any additional reasons for the delay in filing its motion to intervene; thus, the Sierra Club fails to support a finding of good cause for its late-filed motion. In addition, Duke argues that the Sierra Club does not demonstrate a real interest in this proceeding. The Sierra Club claims to have an interest in Duke's "proposed recovery process for the efficiency programs." However, Duke

asserts that its recovery for its energy efficiency programs is not the subject of this proceeding and is instead being considered in Case No. 11-4393-EL-RDR, wherein the Sierra Club has been granted intervention.

- (7) On September 28, 2011, the Sierra Club filed a reply to Duke's memorandum contra. In its reply, the Sierra Club explains that its primary interest in this proceeding is "supporting Duke's enhanced cost recovery issue" and participating in any settlement negotiations that arise. Moreover, the Sierra Club explains that there is still a significant amount of discovery that is still taking place among interested parties.
- (8) Upon consideration of the Sierra Club's motion for leave to file out of time and motion to intervene, the attorney examiner is mindful of the procedural timeline established in these cases. As stated previously, by entry issued June 21, 2011, the intervention deadline was July 6, 2011. By that same entry, discovery was to be served, and intervenor testimony and staff testimony was due in September, with the hearing commencing on September 20, 2011. However, at the request of the parties, the schedule in these cases was extended, with intervenor testimony being due October 5, 2011, discovery requests to be served by October 7, 2011, and the hearing rescheduled to October 20, 2011. Moreover, as evidenced by the motion for extension of the procedural schedule, the parties to these cases have already begun engaging in settlement discussions. Thus, the attorney examiner believes that permitting intervention by a new party, this late into the procedural schedule, could be detrimental to the progress already made by parties that timely intervened. In addition, the attorney examiner does not believe that the Sierra Club has a unique interest in these proceedings that is not adequately represented by other parties already granted intervention. The Natural Resource Defense Council, Ohio Environmental Council, and the Environmental Law and Policy Center filed timely motions to intervene and were granted intervention. Furthermore, with respect to the Sierra Club's stated interest in Duke's energy efficiency programs, as pointed out by Duke, the Sierra Club has already been granted intervention in Case No. 11-4393-EL-RDR. Accordingly, the attorney examiner concludes that the Sierra Club's motion for leave to file out of time and motion to intervene should be denied.

It is, therefore,

ORDERED, That the request for leave to file out of time and motion to intervene filed by the Sierra Club be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Katie L. Stenman

By: Katie L. Stenman
Attorney Examiner

gfh
dah

Entered in the Journal

OCT 04 2011

Betty McCauley

Betty McCauley
Secretary