

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Electric Distribution Rates.	)	Case No. 12-1682-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 12-1683-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 12-1684-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates.	)	Case No. 12-1685-GA-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 12-1686-GA-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.	)	Case No. 12-1687-GA-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 12-1688-GA-AAM

ENTRY

The attorney examiner finds:

- (1) Duke Energy Ohio, Inc. (Duke), is an electric company as defined by Section 4905.03, Revised Code, a natural gas company as defined by Section 4905.03, Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

- (2) On July 9, 2012, Duke filed an application seeking Commission authority to increase electric distribution rates, to update its tariffs, and to change certain accounting methods in Case Nos. 12-1682-EL-AIR, 12-1683-EL-ATA, and 12-1684-EL-AAM (electric rate case) and an application seeking Commission approval to increase gas distribution rates, for tariff approval, for approval of an alternative rate plan, and to change accounting methods in Case Nos. 12-1685-GA-AIR, 12-1686-GA-ATA, 12-1687-GA-ALT, and 12-1688-GA-AAM (gas rate case).
- (3) On January 4, 2013, Staff filed its report of investigation in both the gas and electric rate cases.
- (4) By entry issued January 10, 2013, the attorney examiner, *inter alia*, set February 4, 2013, as the deadline for Duke and intervenors to file testimony. Subsequently, by entry issued January 18, 2013, the attorney examiner revised the procedural schedule and extended the filing deadline for the testimony of Duke and intervenors to February 19, 2013, for the electric rate case and to February 25, 2013, for the gas rate case.
- (5) On March 7, 2013, Duke filed near identical motions in the gas and electric rate cases to extend the discovery deadline and to compel the Ohio Consumers' Counsel (OCC) to produce witnesses for deposition. Duke also requested an expedited ruling on its motion. In its motion, Duke explains that, on February 28, 2013, it filed a notice of deposition for a number of OCC witnesses to occur on March 11, 2013. According to Duke, on March 1, 2013, OCC sent a letter claiming that Duke's notice was filed nearly six weeks after the end of the discovery period and alerting Duke that it did not intend to make its witnesses available for deposition as requested. Duke avers that, on March 5, 2013, it contacted OCC in an attempt to resolve the dispute, but the parties were unable to reach agreement. In maintaining that the deadline for discovery has passed, Duke explains that OCC relies on Rule 4901-1-17(B), Ohio Administrative Code (O.A.C.), which provides "in general rate proceedings, no party may serve a discovery request later than fourteen days after the filing

and mailing of the staff report of investigation.” In response, Duke asserts OCC did not identify the experts that would testify on its behalf in the electric rate case until it filed witness testimony on February 19, 2013, and not until February 25, 2013, in the gas rate case. Duke argues that it had no way of knowing which experts it needed to depose until after the filing of testimony. Duke further explains that its actions were in the interest of administrative economy. To illustrate the inefficiency of serving notices of deposition too far in advance, Duke notes that OCC filed its notices of deposition on July 20, 2012, but has not, to date, identified which of Duke’s witnesses it intends to depose. In further support of its motion, Duke argues that Rule 4901-1-17(B), O.A.C. applies to the service of a discovery request, including such things as interrogatories and requests for productions of documents, which is distinguishable from a notice of deposition filed pursuant to Rule 4901-1-21, O.A.C. Accordingly, Duke requests that the Commission extend the discovery deadline for the purposes of taking depositions until two weeks following the filing of all testimony and grant its motion to compel.

- (6) Paragraph (F) of Rule 4901-1-12, O.A.C., provides that an expedited ruling may be issued by the attorney examiner on any motion without the filing of memoranda, where the issuance of such ruling will not adversely affect a substantial right of any party. Given the purpose of the motion, the attorney examiner finds that no substantial right of any party will be adversely affected by an expedited ruling. Therefore, in light of the timing of the motion to compel and the date set for the depositions, the attorney examiner finds that an expedited ruling is necessary.
- (7) Initially, contrary to the inference by Duke, the attorney examiner notes that depositions do fall within the scope of discovery envisioned in Rule 4901-1-17(B), O.A.C.; thus, the 14-day timeframe after the filing of the staff report in general rate cases does apply to notices of depositions. However, the attorney examiner agrees that, if the deadline for the filing of the notice of depositions falls well before

the deadline for the filing of witness testimony, as it did in these cases, then any notices of deposition equate to mere placeholder filings. While other types of discovery in these types of proceedings, i.e., interrogatories and requests for admission, can be served before the 14-day deadline, such is not always the case for the requests for depositions when the actual witnesses to be presented at hearing are not shared before the testimony deadline. In this case the staff reports in these cases were filed on January 4, 2013, and the testimony was filed on February 19, 2013 and February 25, 2013, well beyond the 14-day timeframe. Therefore, in the instant cases, the attorney examiner finds that a waiver of the requirement of Rule 4901-1-17(B), O.A.C., that discovery end 14 days after the filing and mailing of the staff report is reasonable and appropriate, for the limited purpose of allowing parties to submit notices of depositions. This waiver will allow the parties to conduct full discovery prior to the start of the hearing. The final testimony deadline, which occurred in the gas rate case, fell on February 25, 2013; therefore, the attorney examiner finds that this limited waiver should be extended until March 11, 2013, two weeks after the testimony deadline. Accordingly, Duke's motion for an extension of the discovery deadline should be granted to the extent set forth herein.

- (8) With respect to Duke's motion to compel the attendance of OCC's witnesses at the March 11, 2013, deposition, the attorney examiner finds that Duke's motion is reasonable and should be granted. However, the attorney examiner encourages Duke to work with OCC to accommodate its witnesses' schedules given the limited time between the issuance of this entry and March 11, 2013.

It is, therefore,

ORDERED, That Duke's motion for an extension of the discovery deadline be granted, to the extent set forth in finding (7). It is, further,

ORDERED, That Duke's motion to compel be granted. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in the above-captioned cases.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Katie Stenman

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By: Katie L. Stenman  
Attorney Examiner

SEF/sc

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**Case No(s). 12-1682-EL-AIR, 12-1683-EL-ATA, 12-1684-EL-AAM, 12-1685-GA-AIR, 12-1686-GA-ATA,**

Summary: Attorney Examiner Entry granting Duke's motion for an extension of the discovery deadline as set forth in finding (7) and granting Duke's motion to compel. - electronically filed by Sandra Coffey on behalf of Katie Stenman, Attorney Examiner, Public Utilities Commission of Ohio