

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
AUTHORITY TO ISSUE SHORT-TERM
NOTES AND OTHER EVIDENCES OF
INDEBTEDNESS.

CASE NO. 15-538-GE-AIS

SECOND ENTRY ON REHEARING

Entered in the Journal on June 15, 2016

I. SUMMARY

{¶ 1} In this Second Entry on Rehearing, the Commission finds that, with the clarification set forth below, the application for rehearing filed by Duke Energy Ohio, Inc. should be denied.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is an electric light company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4905.401 permits a public utility that is an electric light company to issue notes or other evidences of indebtedness payable at periods of not more than 12 months, when authorized by the Commission. Pursuant to the statute, Commission authorization is not required for a public utility that is an electric light company to issue short-term notes and other evidences of indebtedness aggregating not more than five percent of the par value of the other stocks, bonds, notes, and other evidences of indebtedness of the company.

{¶ 4} In Case No. 14-803-GE-AIS, the Commission authorized Duke to participate in the Utility Money Pool Agreement (Money Pool) and borrow up to \$750 million through June 30, 2015. *In re Duke Energy Ohio, Inc.*, Case No. 14-803-GE-AIS, Finding and

Order (June 11, 2014). The Money Pool was created via an agreement between Duke Energy Corporation (Duke Corp.) and its multiple regulated utility subsidiaries. The Money Pool allows its participants to coordinate borrowing and loaning funds on a short-term basis.

{¶ 5} On March 26, 2015, Duke filed, in the above-captioned case, an application and supporting exhibits pursuant to R.C. 4905.401. Duke requested authority, through June 30, 2016, to continue its participation in the Money Pool and to make short-term borrowings of up to \$725 million from the Money Pool from time to time, consistent with the terms and conditions as described in the application. Duke proposed to use the proceeds from the short-term borrowing from the Money Pool for interim financing of its capital expenditure programs, working capital needs, and repayment of previous borrowings incurred for such purposes.

{¶ 6} By Finding and Order dated June 17, 2015, the Commission approved Duke's application, subject to several conditions intended to insulate the Company from the financial risks associated with other companies' participation in the Money Pool.

{¶ 7} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 8} On July 17, 2015, Duke filed an application for rehearing or clarification of the Commission's June 17, 2015 Finding and Order. No memoranda contra were filed.

{¶ 9} By Entry on Rehearing dated July 29, 2015, the Commission granted rehearing for further consideration of the matters specified in Duke's application for rehearing.

{¶ 10} In its application for rehearing, Duke notes that, in the June 17, 2015 Finding and Order, the Commission authorized the Company to loan funds to other companies that participate in the Money Pool, only if they are “regulated public utilities or such utilities’ subsidiaries.” Duke argues, in its sole assignment of error, that this condition lacks any articulated justification and is unreasonable, unlawful, and inconsistent with the Commission’s prior decisions approving the Money Pool.

{¶ 11} In support of the application for rehearing, Duke explains that, in 1995, the Commission authorized the Company to enter into the Money Pool, which was established to assist the utility subsidiaries of Cinergy Corp. in obtaining least-cost financing of their interim capital requirements, among other purposes. Duke further explains that the Money Pool, as approved by the Commission, also enables the Company’s service company affiliate, Duke Energy Business Services, LLC (DEBS), to use the pool’s funds for payroll purposes, thus maintaining the workforce that primarily provides service to the various regulated utilities. Duke notes that, in 2005, the Commission approved the merger between Cinergy Corp. and Duke Corp. and authorized the Company’s continued participation in the Money Pool, including authority to loan funds to DEBS and other participating companies. Duke reports that, since that time, the Company has filed annual applications for short-term financing approvals, each of which specifically addressed the Money Pool and referenced DEBS’ participation in the pool. According to Duke, the Commission authorized the Company, on an annual basis through 2010, to participate in the Money Pool with DEBS. Duke adds that, in 2011, the Commission again approved the Money Pool, including the addition of Progress Energy Service Company, LLC (PESC) as a participant in the pool, in connection with the merger of Duke Corp. and Progress Energy, Inc.

{¶ 12} Duke points out that, since 2011, the Company has loaned funds to DEBS and PESC, as contemplated under the Money Pool, with no problems or concerns. Duke explains that, in 2012, the Commission first imposed, without explanation, the same

condition adopted in the June 17, 2015 Finding and Order in this case that prohibits the Company from loaning funds to Money Pool participants that are not regulated public utilities or subsidiaries thereof. Duke acknowledges that it failed to note the new condition and, since that point, the Company has continued its standard participation in the Money Pool, with DEBS and PESC continuing to receive periodic loans. Now that Duke is aware of the condition, the Company states that it is concerned that, when taken literally, the condition appears to disallow Money Pool borrowings by DEBS and PESC, thus, defeating the pool's purpose of enabling both regulated utilities and their service companies to borrow funds at less cost than they could in the market. Duke argues that the Commission has offered no justification for its decision to impose the condition in question, which the Company believes is inappropriate, unnecessary, and inconsistent with the Commission's prior approvals of the Money Pool, as well as likely to result in greater costs for ratepayers.

{¶ 13} Duke, therefore, requests that the Commission grant rehearing or, alternatively, clarify its intention. With respect to the latter request, Duke notes that, on a quarterly basis, the Company has reported its Money Pool activity, which the Commission has not questioned, including loans to DEBS and PESC. On this basis, Duke states that the Commission may have intended to allow borrowings by Money Pool participants that are regulated utilities or service company affiliates of those regulated utilities, which would permit loans to DEBS and PESC.

{¶ 14} Upon review of Duke's application for rehearing, the Commission clarifies that, for purposes of the authority granted in this case, funds provided by Duke to the Money Pool should only be loaned to participating companies that are regulated public utilities or such utilities' subsidiaries, as well as such utilities' affiliated service companies, provided that the affiliated service companies maintain a de minimis amount of billed services in support of non-regulated affiliates. With this clarification, the Commission finds that Duke's application for rehearing should be denied.

III. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That Duke's application for rehearing be denied. It is, further,

{¶ 17} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

**Commissioners Voting: Asim Z. Haque, Chairman; M. Beth Trombold;
Thomas W. Johnson**

SJP/sc