

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

Consolidated Duke Energy Ohio, Inc., Rate)	Case Nos. 03-93-EL-ATA
Stabilization Plan Remand and Rider)	03-2079-EL-AAM
Adjustment Cases)	03-2081-EL-AAM
)	03-2080-EL-ATA
)	05-724-EL-UNC
)	05-725-EL-UNC
)	06-1068-EL-UNC
)	06-1069-EL-UNC
)	06-1085-EL-UNC

ENTRY

The attorney examiner finds:

- (1) In *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case No. 03-93-EL-ATA (RSP Case), this Commission authorized Duke Energy Ohio (DE-Ohio)¹ to establish a rate stabilization plan and, as a part of that plan, to recover various costs through identified riders. The Commission's entry on rehearing, *inter alia*, modified or created various riders, as part of the rate stabilization plan.
- (2) On appeal of that Commission decision, the Ohio Supreme Court remanded the proceedings to the Commission, requesting, *inter alia*, that the Commission provide additional record evidence and sufficient reasoning to support the modification of its opinion and order on rehearing. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789.
- (3) On November 29, 2006, the attorney examiner issued an entry, finding "that a hearing should be held in the remanded RSP Case, in order to obtain the record evidence required by the court."

¹ DE-Ohio was formerly known as the Cincinnati Gas & Electric Company. In this entry, it will be referred to as DE-Ohio, regardless of its name at the time being discussed. Case names, however, will not be modified.

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- (4) On December 14, 2006, a prehearing conference was held in these proceedings. At that conference, the examiners indicated that they would address various issues, including the schedule for the completion of discovery, the filing of testimony, and the date of the hearing.
- (5) Based on the discussion of the various parties at the prehearing conference, the examiner finds that the following schedule should be established:
 - (a) The last date for serving written discovery requests should be Thursday, February 22, 2007. The parties are reminded that discovery responses are to be made no later than ten days after the requests are served. (Prehearing Tr. at 34-36.)
 - (b) Testimony of witnesses on behalf of DE-Ohio shall be filed no later than Wednesday, February 28, 2007.
 - (c) Testimony of witnesses on behalf of staff and intervenors shall be filed no later than Friday, March 9, 2007.
 - (d) Any depositions that are intended to be used in the hearing shall be filed no later than the start of the hearing, unless otherwise authorized by the examiner.
- (6) In order to allow for the an orderly presentation of testimony regarding a variety of connected issues, the examiner finds that the hearing should be structured to consider, first, the Ohio Supreme Court's remand of the *RSP Case*. Following the completion of that portion of the proceeding, the hearing will be recessed to allow the parties to prepare more effectively for the next phase of the hearing. The second portion of the hearing will address all issues relating to Case Nos. 05-724-EL-UNC, 05-725-EL-UNC, 06-1068-EL-UNC, 06-1069-EL-UNC, and 06-1085-EL-UNC.
- (7) Therefore, the first phase of the hearing in these consolidated cases shall commence on Monday, March 19, 2007, and the second phase on Tuesday, April 10, 2007, both at 10:00 a.m., in Hearing Room 11-

C, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.

- (8) Parties should also be aware that the schedule previously established in certain of these consolidated cases with regard to the filing of responses to motions will continue to apply. Specifically, in the *RSP Case*, the examiner ordered as follows:

In light of the timetable in these matters, the attorney examiner also requires that, in the event that any motion is made in this case, any memorandum contra shall be required to be filed within seven days after the service of such motion, and any reply memorandum within three days after the service of a memorandum contra. Paragraph (B) of Rule 4901-1-07, Ohio Administrative Code, which permits three additional days to take action if service is made by mail, will not apply.

RSP Case, Entry (February 18, 2004).

- (9) The examiner also notes that, on January 2, 2007, Duke Energy Retail Sales LLC (DERS) filed a document entitled "Duke Energy Retail Sales Memorandum Contra to the Ohio Consumers' Counsel's Motion to Strike Duke Energy Retail Sales Motion to Quash the Two Subpoena Duces Tecum Filed by the OCC and Motion to Intervene on a Limited Basis" (memorandum contra). The Office of the Ohio Consumers' Counsel (OCC) had filed subpoenas directed at DERS, to which DERS had filed a motion to quash. OCC had responded with, among other things, a motion to strike that motion to quash. In responding, on January 2, 2007, to the motion to strike, DERS stated that "[i]n the event that the Commission determines that DERS is not permitted to advance its motion to Quash as a nonparty, DERS moves this honorable Commission for leave to intervene in these cases for the limited purpose of protecting the confidential material sought by OCC through discovery." (Memorandum contra at 2-3.) Later in the document, DERS specifically conditioned its intervention on the ruling regarding its motion to quash. DERS explained that "if the Commission denies OCC's motion to Strike DERS's Motion to Quash, DERS need not intervene in these proceedings." (Memorandum contra at 15.) By entry of January 2, 2007, the examiner denied OCC's motion to strike the motion to

quash. Therefore, the examiner finds that DERS's motion to intervene is, by its own explicit terms, moot.

It is, therefore,

ORDERED, That the schedule for discovery, the filing of testimony and depositions, and the hearing be established in accordance with this entry. It is, further,

ORDERED, That the parties comply with the schedule for the filing of responses to motions, as set forth in finding (8). It is, further,

ORDERED, That the motion to intervene by DERS be considered as moot. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: 

Jeanne W. Kingery
Attorney Examiner

RRB:geb

Entered in the Journal

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Renee J. Jenkins
Secretary