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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Increase in) Case No. 08-709-EL-AIR
Electric Rates.)

In the Matter of the Application of Duke) Case No. 08-710-EL-ATA
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to) Case No. 08-711-EL-AAM
Change Accounting Methods.)

ENTRY

The attorney examiner finds:

- (1) Duke Energy Ohio, Inc. (Duke), formerly known as the Cincinnati Gas & Electric Company, is an electric light company as defined in Section 4905.03(A)(4), Revised Code, and a public utility as defined in Section 4905.02, Revised Code. As such, Duke is subject to the jurisdiction of the Commission.
- (2) On July 25, 2008, Duke filed applications in Case Nos. 08-709-EL-AIR, 08-710-EL-ATA, and 08-711-EL-AAM (collectively, rate cases) for approval of an increase in electric rates and related applications for tariff approval and approval of a change in accounting methods.
- (3) The Commission has caused an investigation to be made of the facts set forth in the rate increase application, the exhibits attached thereto, and the matters connected with the application.
- (4) A written report of the staff's investigation was filed on January 27, 2009. Copies of the staff report were mailed to Duke and other persons deemed to be interested in the case.
- (5) Objections to the staff report should be filed in accordance with Section 4909.19, Revised Code, and Rule 4901-1-28(B), Ohio Administrative Code (O.A.C.), which requires, among other things, that all objections must be specific. Any objection that is

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not specific enough to convey what is actually being placed at issue will be struck pursuant to the above-cited rule.

- (6) Motions to intervene in these proceedings should be filed no later than February 26, 2009.
- (7) Motions to strike objections should be filed by March 6, 2009, and memoranda contra motions to strike objections shall be filed by March 13, 2009. Unless an objection is struck or withdrawn, each objection must be discussed in the initial post-hearing brief of the objecting party. If the objection is not discussed in the initial brief, the objection will, without further action, be deemed withdrawn.
- (8) Each party filing objections should also file a brief summary of the issues it designates as major issues, in order of their importance, for purposes of the notice required by Section 4903.083, Revised Code. Prefiled testimony should be filed in accordance with Rule 4901-1-29, O.A.C. Testimony by staff of the Commission should be filed no later than 3:00 p.m. on March 26, 2009.
- (9) A prehearing conference will be held on March 17, 2009, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-C, 180 E. Broad Street, Columbus, Ohio 43215. The purpose of the conference will be to discuss procedural aspects of the case and to provide an opportunity for the parties to conduct settlement discussions.
- (10) An evidentiary hearing in these proceedings will commence at 10:00 a.m., on March 31, 2009, at the offices of the Commission, Hearing Room 11-C, 180 E. Broad Street, Columbus, Ohio 43215.
- (11) The local public hearing will be scheduled, and publication of notice required, by subsequent entry.
- (12) Motions to intervene were filed by the Ohio Energy Group, on July 1, 2008; Ohio Partners for Affordable Energy, on July 9, 2008; Kroger Company, Inc., on July 18, 2008; Ohio Consumers Counsel (OCC), on August 5, 2008; the city of Cincinnati, on August 13, 2008; People Working Cooperatively, Inc., on September 3, 2008; the Ohio Cable Telecommunications Association (OCTA), on October 17, 2008; the Greater Cincinnati Health Council, on December 2, 2008; TW telecom of Ohio, LLC

(TWTC), on January 9, 2009, and Albert E. Lane, on January 13, 2009. On January 26, 2009, Duke filed a memorandum contra the motion to intervene filed by TWTC. TWTC filed a reply to Duke's memorandum contra on February 2, 2009.

- (13) Section 4903.221, Revised Code, states that any person who may be adversely affected by a Commission proceeding may seek to intervene. Rule 4901-1-11, O.A.C., requires that the person demonstrate, among other things, a real and substantial interest in the proceeding, the extent to which the person's interest is represented by existing parties, and that the person's interest will not unduly delay the proceeding. With the exception of TWTC, there was no opposition to any of the motions to intervene. The attorney examiner finds that all other movants have satisfied the requirements of Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C., and therefore, each of these motions to intervene should be granted.
- (14) In its motion to intervene, TWTC indicates that it has a pole attachment agreement with Duke and that charges for its pole attachments may be affected by these proceedings. TWTC also states that its involvement in this case will not unduly delay these proceedings and that its interests are not represented by any other party to these proceedings.
- (15) On January 26, 2009, Duke filed a memorandum contra TWTC's motion to intervene. Duke contends that the pole attachment tariff proposed by Duke pertains to pole attachments by entities other than public utilities like TWTC. As a result, Duke asserts that the agreement it has with TWTC will not be impacted by the proposed modifications to the pole attachment tariff. Duke also claims that OCTA, another intervenor, adequately represents the interests of TWTC. Duke also argues that the participation of TWTC would unduly delay the proceedings because these proceedings are not the vehicle through which TWTC should seek to challenge the attachment rate contained in its negotiated contract with Duke.
- (16) On February 2, 2009, TWTC filed a reply to Duke's memorandum contra. TWTC argues that it should be granted intervention because the outcome of these proceedings will have consequences on the operations and business interests of the members of the OCTA which represents direct competitors

of TWTC. TWTC also claims that allowing OCTA to participate in these proceedings to address issues relating to the proposed pole attachment tariff rates, while prohibiting TWTC from doing so, would place TWTC at a competitive disadvantage. TWTC also contends that it will bring a valuable depth of knowledge on the issues and competing considerations that attend the subject of pole attachment rates.

- (17) The thrust of Duke's argument is that TWTC does not have a real and substantial interest in these proceedings. The examiner finds that issues related to pole attachments and rates may arise in these proceedings and that such issues, while not directly applicable to TWTC, may affect its ability to compete effectively. Therefore, the examiner finds that a real and substantial interest has been stated and that the interests of TWTC are not represented by OCTA. The motion by TWTC for intervention should therefore be granted.
- (18) On July 9, 2008, a motion was made to admit David C. Rinebolt to practice *pro hac vice* before the Commission. On November 14, 2008, a motion was made to admit Gardner F. Gillespie to practice *pro hac vice* before the Commission. On January 9, 2009, a motion was made to admit Pamela H. Sherwood to practice *pro hac vice* before the Commission. There was no opposition to these motions. The motions shall be granted.

It is, therefore,

ORDERED, That the prehearing conference in these proceedings be scheduled in accordance with Finding (9). It is, further,

ORDERED, That the evidentiary hearing in these proceedings commence at 10:00 a.m. on March 31, 2009, at the offices of the Commission. It is, further,

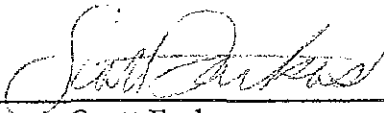
ORDERED, That the parties comply with the directives set forth in this entry. It is, further,

ORDERED, That the motions to intervene filed by Ohio Energy Group; Ohio Partners for Affordable Energy; Kroger Company, Inc.; OCC; the city of Cincinnati; People Working Cooperatively, Inc.; OCTA; the Greater Cincinnati Health Council; TWTC, and Mr. Lane be granted. It is, further,

ORDERED, That the motions to admit David C. Rinebolt, Gardner F. Gillespie, and Pamela H. Sherwood to practice *pro hac vice* before the Commission be granted. It is, further,

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

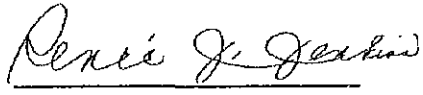
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Scott Farkas
Attorney Examiner

.ct ^{AND}

Entered in the Journal

FEB 05 2009


Renee J. Jenkins
Secretary