

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates.))	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.))	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.))	Case No. 08-711-EL-AAM
In the Matter of the Application of the Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.))	Case No. 06-718-EL-ATA

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) At the evidentiary hearing on March 31, 2009, all but two parties were present. Those parties informed the examiners that they had reached a settlement of all of the issues, memorialized in a stipulation and recommendation (stipulation). They stated that they were prepared to file that stipulation, as well as testimony in support thereof, later on March 31, 2009. In addition, each stipulating party indicated that it was willing to waive cross-examination of the witnesses whose testimony was to be filed in support of the stipulation.

- (4) By entry dated March 31, 2009, the parties not present at the hearing were provided with notice of the filing of the stipulation and the testimony of the witnesses supporting the stipulation, and were given an opportunity to request a hearing to cross-examine those witnesses. No party filed a request for such a hearing.
- (5) On May 8, 2009, Duke filed a motion for admission of a late-filed Schedule A-1, which it stated should have been attached to the stipulation. On May 12, 2009, one intervenor in the proceeding, Albert Lane, filed an objection to the admission of the Schedule A-1 as a late-filed exhibit. On May 29, 2009, staff of the Commission filed a letter to the attorney examiners, for the purpose of clarifying the Schedule A-1. The clarifying letter is executed by all parties to the stipulation, with the exception of the Ohio Consumers' Counsel (OCC).
- (6) By entry of May 29, 2009, the attorney examiners established a schedule allowing any party the opportunity to cross-examine witnesses with regard to the Schedule A-1 filed on May 8, 2009, or the clarifying letter filed on May 29, 2009. That schedule required that any such party file a request no later than June 4, 2009, and, if such a request was filed by June 4, 2009, a hearing would be held on June 8, 2009.
- (7) On June 1, 2009, Mr. Lane filed a request to delay the deadline of June 4, 2009, for filing a request to cross-examine witnesses on the A-1. In his request, Mr. Lane states various reasons why the request should be granted including: that OCC had not indicated why it was not a signatory to the May 29, 2009, Schedule A-1 letter; that Duke had not responded to discovery questions submitted by Mr. Lane to Duke; that issues related to the merger of Duke and the Cincinnati Gas & Electric Company and issues associated with the 1935 Public Utilities Holding Act need further examination; and that the timing of the local public hearings held in these proceedings was flawed and such hearings must be repeated. Mr. Lane also seeks a continuance of the June 8, 2009, hearing.
- (8) On June 2, 2009, Duke filed a memorandum contra Mr. Lane's request. Duke maintains that it previously responded to all of Mr. Lane's discovery questions and that no extension of the June 4, 2009, deadline or the hearing is warranted.

- (9) Upon review of the pleadings, the attorney examiner finds that the June 4, 2009, deadline should not be extended. Therefore, any party seeking the opportunity to cross-examine witnesses with regard to the Schedule A-1, filed on May 8, 2009, or the clarifying letter, filed on May 29, 2009, must file a request no later than June 4, 2009. Nevertheless, if such a request is timely filed, the attorney examiner finds that a short continuance of the hearing should be granted. Accordingly, if any request for a hearing with regard to the Schedule A-1, filed on May 8, 2009, or the clarifying letter, filed on May 29, 2009, is filed by June 4, 2009, then the hearing on those two items only will commence at 10:00 a.m. on June 17, 2009, in Hearing Room 11-C, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43209.
- (10) If a hearing is going to be held, then at least one witness shall be made available, by at least one stipulating party, to testify in support of Schedule A-1, filed on May 8, 2009, and the clarifying letter, filed on May 29, 2009. The testimony of such witness(es) shall be prefiled with the Commission and electronically served on all other parties, no later than two business days prior to the hearing. Any other party intending to present direct, expert testimony shall also prefile such testimony with the Commission and electronically serve all other parties, no later than two business days prior to the hearing.
- (11) The parties present on March 31, 2009, waived the right to file post-hearing briefs. If a hearing is held, under the procedure set forth in this entry, then such waiver may be reconsidered.

It is, therefore,

ORDERED, That any party may request the opportunity to cross-examine witnesses concerning the Schedule A-1, filed on May 8, 2009, or the clarifying letter, filed on May 29, 2009, as set forth in this entry. It is, further,

ORDERED, That, if a request is made for a hearing as set forth in this entry, the hearing be continued as set forth above and the parties comply with the procedures set forth in this entry. It is, further,

ORDERED, That any party intending to present a witness in support of Schedule A-1, filed on May 8, 2009, or the clarifying letter, filed on May 29, 2009, shall file the prefiled

testimony and electronically serve a copy of such testimony on all other parties no later than two business days prior to the hearing. It is further,

ORDERED, That any party intending to present expert testimony comply with Finding (10). It is, further,

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

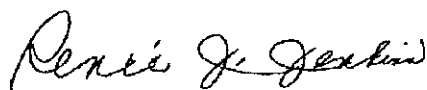
THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Scott E. Farkas
Attorney Examiner

GRJ
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Renee J. Jenkins
Secretary