

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio to Adjust and Set its Gas and Electric Recovery Rate for SmartGrid Deployment Under Riders AU and DR-IM.)	Case No. 09-543-GE-UNC
)	
In the Matter of the Application of Duke Energy Ohio for Tariff Approval.)	Case No. 09-544-GE-ATA
)	
In the Matter of the Application of Duke Energy Ohio to Change its Accounting Methods.)	Case No. 09-545-GE-AAM
)	

ENTRY

The attorney examiner finds:

- (1) By opinion and order issued May 28, 2008, in *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Rates*, Case No. 07-589-GA-AIR, et al. (Gas Distribution Rate Case), the Commission approved a stipulation that, *inter alia*, provided a process for filing deployment plans for the installation of a gas SmartGrid system, and a method for recovering costs associated with the plans, which was designated the advanced utility rider (Rider AU).
- (2) By opinion and order issued December 17, 2008, in *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al. (ESP Case), the Commission approved a stipulation that, *inter alia*, provided a process for recovering costs associated with the deployment of an electric SmartGrid system, designated the distribution rider-infrastructure modernization rider (Rider DR-IM).
- (3) On June 30, 2009, Duke Energy Ohio (Duke) filed the above-captioned applications requesting approval to adjust the gas and electric recovery rates for SmartGrid deployment, pursuant to the processes approved in the Gas Distribution Rate Case and the ESP Case.

- (4) By entry dated August 19, 2009, the attorney examiner established a procedural schedule in order to accomplish the review of Duke's proposed adjustments to Riders AU and DR-IM envisioned in the stipulations approved by the Commission in the Gas Distribution Rate Case and the ESP Case. Amongst other things, the entry set September 16, 2009, as the deadline for the filing of motions to intervene, October 8, 2009, as the deadline for the filing of comments on the applications by Staff and intervenors, and October 15, 2009, as the deadline for all parties to file reply comments.
- (5) On July 16, 2009, a motion for admission *pro hac vice*, requesting that David Rinebolt be admitted to practice before the Commission in these proceedings was filed. Mr. Rinebolt represents Ohio Partners for Affordable Energy (OPAE). Mr. Rinebolt is an active member of the District of Columbia Bar, and has been granted permission to practice *pro hac vice* before the Commission on numerous occasions. The attorney examiner finds that the motion is reasonable and should be granted.
- (6) The Office of the Ohio Consumers' Counsel (OCC), OPAE, and the Kroger Company (Kroger) each timely filed motions to intervene in these cases. In its motion to intervene, OCC asserts that approval of Duke's applications would affect the rates of numerous residential customers, whom OCC represents. OCC states that its significant experience in Commission proceedings will allow for the efficient processing of these matters with consideration of the public interest. OPAE asserts, in its motion to intervene, that its stated purpose, advocating for affordable energy policies for low and moderate income Ohioans, indicates that it has a real and substantial interest in these matters, which will address the costs, rates, tariffs, and accounting associated with Duke's SmartGrid deployment. OPAE also contends that, because it provides essential services, including bill payment assistance programs, and weatherization and energy efficiency services to low income customers of Duke, and counts Duke's ratepayers among its members, it is a proper intervenor. Kroger argues, in its motion to intervene, that its status as a significant consumer of electric and gas distribution service in numerous locations throughout Duke's service territories indicates that it has a real and substantial interest in these proceedings. Additionally, Kroger argues that the disposition of these

proceedings, without its full participation, would impede its ability to protect its business interests. No one filed memorandum contra the motions to intervene filed by OCC, OPAE, and Kroger. The attorney examiner finds that OCC, OPAE, and Kroger have set forth reasonable grounds for intervention. Accordingly, their motions to intervene should be granted.

- (7) OCC, Kroger, and Staff timely filed comments on Duke's applications.
- (8) On October 13, 2009, OCC filed a motion for extension of time to file reply comments and a request for an expedited ruling. OCC requested a five-day extension of the time for the filing of reply comments, shifting the deadline to October 20, 2009. In support of its motion, OCC argues that, although only three parties filed comments, Staff's comments were extensive and raised new ideas about resolving issues in the proceedings. OCC contends that some members of its team that are needed to assist in addressing Staff's comments are unavailable and, as such, it needs more time to establish a position regarding those comments.
- (9) As OCC has requested only a five-day extension, under Rule 4901-1-12(C), Ohio Administrative Code, an immediate ruling may be issued without the filing of memoranda. Accordingly, the attorney examiner finds that the request for a five-day extension of time, until October 20, 2009, to file reply comments is reasonable, under the circumstances, and should be granted. Therefore, all parties should be given until October 20, 2009, to file their reply comments.

It is, therefore,

ORDERED, That the motion for admission *pro hac vice* of David Rinebolt be granted.
It is, further,

ORDERED, That the motions to intervene filed by OCC, OPAE, and Kroger be granted. It is, further,

ORDERED, That OCC's motion for an extension of time to file reply comments be granted, and reply comments will be due on October 20, 2009, consistent with finding (9). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Rebecca Hussey
By: Rebecca Hussey
Attorney Examiner

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Entered in the Journal

OCT 15 2009

Renee J. Jenkins

Renee J. Jenkins
Secretary