

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. to Establish and Adjust the Initial Level of its Distribution Reliability Rider.)))	Case No. 09-1946-EL-RDR
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ENTRY

The attorney examiner finds:

- (1) By opinion and order issued July 8, 2009, in *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates*, Case No. 08-709-EL-AIR (08-709), et al. the Commission approved a stipulation submitted by Duke Energy Ohio, Inc. (Duke) and other parties in that case. The stipulation, as approved, set the Distribution Reliability Rider (Rider DR) as a mechanism to recover reasonable and prudently incurred storm restoration costs associated with the September 2008 wind storm related to Hurricane Ike. The stipulation further provided that Rider DR was to be set at zero, but authorized Duke to file a separate application to establish the initial level of Rider DR. A process for the review of Duke's application to adjust Rider DR was also established in the stipulation.
- (2) On December 11, 2009, Duke filed an application to adjust Rider DR to allow recovery of the company's storm restoration costs associated with Hurricane Ike, along with testimony supporting the application.
- (3) In keeping with the procedure provided for in the stipulation in 08-709, Staff and any other interested parties have 60 days from the date of the filing of the application to file comments.
- (4) On February 9, 2010, Staff requested an extension of time be granted for the filing of comments. In support of its request, Staff states that its present work load, as well as a delay in receiving the information necessary to review the application, has resulted in Staff having inadequate time to complete its comments. Staff requests that the deadline for the filing of comments be extended to February 23, 2010.

- (5) Upon consideration of Staff's request for an extension, the attorney examiner finds that the request is reasonable and should be granted. Therefore, the procedural schedule in this case should be modified and parties should adhere to the following procedural schedule:
- (a) Motions to intervene shall be filed by February 23, 2010.
 - (b) Comments by Staff and any other interested parties shall be filed by February 23, 2010.
 - (c) Duke shall inform the Commission by March 25, 2010, as to whether or not all of the issues raised in the comments have been resolved.
- (6) On December 18, 2009, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this case. In its motion to intervene, OCC asserts that approval of Duke's application may result in a rate increase for 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. No one filed a memorandum contra the motion to intervene filed by OCC. The attorney examiner finds that OCC has set forth reasonable grounds for intervention. Accordingly, OCC's motion to intervene should be granted.
- (7) On December 18, 2009, OCC also filed a motion for expedited discovery citing Rule 4901-1-17(A), Ohio Administrative Code (O.A.C.), which provides that discovery may begin immediately after a proceeding has commenced and should be completed as expeditiously as possible. Furthermore, OCC requests that discovery requests and responses be served electronically, and that responses be provided within ten calendar days.
- (8) On December 23, 2009, Duke filed a memorandum in opposition to OCC's request for expedited discovery. In its memorandum, Duke argues that, in accordance with the stipulation in 08-709, discovery is not to begin in this case until after the parties have attempted to resolve the issues and it is determined that a hearing is necessary. According to Duke, if the issues cannot be resolved in this matter, a hearing will be scheduled, and the parties will then have an opportunity to conduct discovery. In addition, Duke submits that there is no need for expedited discovery in this proceeding because

there is no need to complete this case within a limited period of time.

- (9) The attorney examiner notes that, as pointed out by Duke, the stipulation in 08-709 provides that "[i]f Staff or any other interested party files an objection that is not resolved...a hearing process, including an opportunity for discovery...will be established." This is the process for the review of Rider DR that was agreed to by the stipulating parties, including OCC, and approved by the Commission. If not all of the issues raised by the parties in their comments in this case are resolved, then a hearing will be scheduled and the parties will be provided sufficient time for discovery at that time. Therefore, the attorney examiner finds that expedited discovery is not necessary, at this time, and OCC's motion for expedited discovery should be denied. However, the attorney examiner believes that, while the stipulation in 08-709 suggests that discovery would not commence until it is determined that a hearing is necessary, it is in the best interest of all of the parties to resolve any issues with the application expeditiously; therefore, the attorney examiner hopes that the parties are already engaging in an exchange of information.
- (10) The attorney examiner also finds that the instant case, which was originally docketed as Case No. 09-1946-EL-ATA, is more appropriately docketed with the RDR purpose code, as it specifically addresses the approval of Rider DR. Accordingly, now and hereafter, Case No. 09-1946-EL-ATA should be designated as Case No. 09-1946-EL-RDR.

It is, therefore,

ORDERED, That the procedural schedule set forth in finding (5) be observed. It is, further,

ORDERED, That the motion to intervene filed by OCC be granted. It is, further,

ORDERED, That OCC's motion for expedited discovery is denied. It is, further,

ORDERED, That Case No. 09-1946-EL-ATA be now and hereafter designated as Case No. 09-1946-EL-RDR. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Katie L. Stenman
By: Katie L. Stenman
Attorney Examiner

/dah ^{PSD}

Entered in the Journal

FEB 09 2010

Renee J. Jenkins

Renee J. Jenkins
Secretary