

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of) Case No. 09-757-EL-ESS
Proposed Reliability Standards.)

ENTRY

The attorney examiner finds:

- (1) On August 28, 2009, as amended on September 4, 2009, Duke Energy Ohio, Inc. (Duke) filed an application, requesting approval of its system reliability standards pursuant to Rule 4901:1-10-10, Ohio Administrative Code (O.A.C.).
- (2) On March 24, 2010, the attorney examiner issued an entry establishing the procedural schedule in this case. Specifically, Duke was to file its testimony by April 20, 2010, Staff and intervenors were to file testimony by April 27, 2010, and the evidentiary hearing was to commence on May 4, 2010.
- (3) On April 8, 2010, as corrected on April 9, 2010, Albert E. Lane filed a motion to intervene in this matter. In accordance with Rule 4901-1-11, O.A.C., any person desiring to intervene in a proceeding shall file a motion to intervene with the Commission and serve said motion upon all parties in the case. Pursuant to Rule 4901-1-12(B)(1), O.A.C., any party may file a memorandum contra Mr. Lane's motion within 15 days after service of the motion and reply memorandum may be filed within seven days after service of a memorandum contra. Upon review of Mr. Lane's motion, it does not appear that Mr. Lane served a copy of his motion to intervene on the parties in this case. Therefore, the attorney examiner finds it necessary to establish a deadline for the filing of memorandum contra Mr. Lane's motion to intervene. Accordingly, memoranda contra Mr. Lane's motion to intervene must be filed by Tuesday, April 27, 2010, and reply memoranda must be filed by Tuesday, May 4, 2010. The attorney examiner will rule upon Mr. Lane's motion to intervene once the timeframes for the filing of memorandum contra and replies have expired.
- (4) On April 15, 2010, Duke filed a motion requesting an alteration of the procedural schedule in this matter. In support of its motion,

Duke asserts that the parties have participated in several settlement discussions which have been productive; therefore, additional time is requested to allow the parties to continue to attempt to negotiate a resolution of the issues in this matter through stipulation. Additionally, Duke asserts that all of the parties to this matter support an alternate procedural schedule.

- (5) The rules governing the process in proceedings before the Commission are contained in Chapter 4901-1, O.A.C. Specifically, Rule 4901-1-12, O.A.C., addresses the filing of motions in proceedings before the Commission. Paragraph (C) of Rule 4901-1-12, O.A.C., provides that "any motion may include a specific request for an expedited ruling . . . [i]f the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued."
- (6) Upon review of Duke's April 15, 2010, motion, the attorney examiner notes that Duke failed to request an expedited ruling; therefore, pursuant the Commission's procedural requirements in Rule 4901-1-12(B)(1), O.A.C., any party is to be given 15 days to file a memorandum contra Duke's motion. By not following the Commission's procedural rules, Duke has put the attorney examiner in a difficult position. The attorney examiner understands that parties are involved in settlement discussions and that Duke wishes to postpone the filing of testimony to allow these talks to continue. In light of these discussions and since testimony by Duke is to be filed today, the attorney examiner finds an alteration of the procedural schedule must be granted, at this time, even though the appropriate timeframe for memorandum contra has not run. However, in the future, the attorney examiner will no longer accept Duke's disregard for Commission process and procedure and expects Duke to adhere to the rules of practice before the Commission contained in Chapter 4901-1, O.A.C.
- (7) Accordingly, the attorney examiner finds that the parties should observe the following procedural schedule:
 - (a) Duke shall file its testimony by May 13, 2010.
 - (b) Staff and intervenors shall file testimony by May 20, 2010.

- (c) The evidentiary hearing shall commence on May 26, 2010, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-D, Columbus, Ohio 43215-3793.

It is, therefore,

ORDERED, That memoranda contra Mr. Lane's motion to intervene must be filed by Tuesday, April 27, 2010, and reply memoranda must be filed by Tuesday, May 4, 2010. It is, further,

ORDERED, That Duke's motion for an alteration of the procedural schedule be granted and that the procedural schedule set forth in finding (7) be adopted. 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

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Entered in the Journal

APR 20 2010

Renee J. Jenkins

Renee J. Jenkins
Secretary