

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of Proposed)
Reliability Standards)
)

Case No. 09-757-EL-ESS

**DUKE ENERGY OHIO, INC.'S MEMORANDUM
IN OPPOSITION TO ALBERT E. LANE'S MOTION TO INTERVENE**

I. INTRODUCTION

Duke Energy Ohio, Inc. (Duke Energy Ohio) opposes the Motion to Intervene filed by Mr. Albert E. Lane (Mr. Lane) in Case No. 09-757-EL-ESS.¹ Mr. Lane filed this motion on April 8, 2010, and then refilled it on April 9, 2010, as a "corrected substitute."² Mr. Lane has not demonstrated that he meets any of the five factors to be considered in reviewing the propriety of intervention, and his motion must therefore be denied.

In addition, Mr. Lane seeks to intervene in this matter not to participate in the subject matter of the case – a consideration of proposed electric reliability standards -- but to instead demand that this Commission authorize a "public customer inquiry" into Duke Energy Ohio's response to the windstorm resulting from Hurricane Ike. Mr. Lane has identified no legal authority for the inquest he wishes to conduct. The structure Mr. Lane proposes for this inquiry,

¹ Mr. Lane renewed his request for intervention in Case No. 09-1946-EL-RDR through the same motion, and asks for the consolidation of that case (and this case) with cases that have already been fully and finally resolved by this Commission – Cases No. 05-737-EL-MER and 08-709-EL-AIR.

² Despite being labeled as a "corrected substitute," the motion to intervene Mr. Lane filed on April 9, 2010, is verbatim the same motion to intervene he filed on April 8, 2010, apart from the "corrected substitute" notation.

and his expectations for how the results of the inquiry would be used, are very difficult to discern due to the unique grammatical structure of his Motion to Intervene.

In any event, Mr. Lane's Motion to Intervene makes several requests and posits several arguments that are wholly unrelated to Case No. 09-757-EL-ESS. These requests and arguments appear to be the same requests and arguments (at times, verbatim) contained within still another Motion to Intervene that Mr. Lane filed in Case No. 09-1946-EL-RDR on March 2, 2010. On April 15, 2010, the attorney examiner in Case No. 09-1946-EL-RDR denied Mr. Lane's motion to intervene in that case. To the extent that Mr. Lane's instant Motion to Intervene simply repeats the requests and arguments contained in his March 2, 2010 and April 8 and 9, 2010 Motions filed within Case No. 09-1946-EL-RDR, Duke Energy Ohio respectfully refers this Commission to, and incorporates by reference herein, its March 8, 2010 Memorandum in Opposition to Mr. Lane's Motion to Intervene, filed in Case No. 09-1946-EL-RDR.

II. ARGUMENT

Pursuant to Ohio Admin. Code Section 4901-1-11(A)(2), upon timely motion,³ intervention in a proceeding before this Commission is permitted upon a showing that:

The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Ohio Admin. Code Section 4901-1-11(B) provides that the following factors are to be considered in evaluating motions to intervene:

- (1) The nature and extent of the prospective intervenor's interest.
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.

³ Pursuant to the Entry of September 25, 2009, in Case No. 09-757-EL-ESS, motions to intervene were required to be filed by December 13, 2009. Thus, Mr. Lane's Motion to Intervene was filed nearly four months after the intervention deadline, and Mr. Lane has not sought leave to intervene out-of-time. Therefore, this Commission should reject Mr. Lane's Motion to Intervene as not timely.

- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

See also Ohio Revised Code Section 4903.221.

1. The nature and extent of the prospective intervenor's interest

Mr. Lane has an interest in these proceedings, which relate to Duke Energy Ohio's Reliability Standards, as a residential customer of Duke Energy Ohio. However, the Office of the Ohio Consumers' Counsel (OCC), which has already been granted intervention in these proceedings, competently represents Mr. Lane's interest as a residential Duke Energy Ohio customer.⁴ Therefore, this factor weighs against granting intervention.

2. The legal position advanced by the prospective intervenor and its probable relation to the merits of the case

As noted above, the majority of Mr. Lane's Motion to Intervene discusses matters completely unrelated to this case, simply repeating arguments he made in the Motion(s) to Intervene he filed in Case No. 09-1946-EL-RDR. To the extent the instant Motion to Intervene does relate to this case, however, it fails to state any legal position concerning Duke Energy Ohio's Proposed Reliability Standards. Instead, it simply notes that Mr. Lane experienced power outages during 2007 and 2009, and requests a public inquiry regarding Duke Energy Ohio's handling of those events. Mr. Lane, however, advances no legal position and cites no authority regarding the propriety of Duke Energy Ohio's Proposed Reliability Standards or as to why a

⁴ *See infra*, Subsection 5 of this Memorandum in Opposition, for a discussion of the adequacy of OCC's representation of Mr. Lane's interest in these proceedings.

public inquiry should be held.⁵ Therefore, this factor weighs against granting Mr. Lane intervention.

3. Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings

Mr. Lane's intervention will unduly prolong and delay the proceedings. Again, Mr. Lane appears to be most interested in litigating cases already decided by the Commission and from which he did not appeal. To allow him to file additional pleadings in this case that discuss cases already decided will prolong these proceedings without any discernable benefit. Furthermore, the prose of Mr. Lane's pleadings filed in this and other cases is sometimes quite difficult to follow. Requiring the parties to attempt to respond to unfounded arguments posited in future pleadings filed by Mr. Lane will only delay this case. Indeed, Mr. Lane's pleadings tend to show a lack of understanding of the issues before the Commission, as well as the attendant processes of this Commission. Furthermore, regarding past cases, other positions Mr. Lane appears to wish to propose, such as his allegation that PUCO Staff, OCC, and Duke Energy Ohio "sold . . . Duke Energy of Ohio Consumer customers [sic] and [him]self [sic] . . . down-the river [sic]" are simply unjustified, and demean this Commission and its Staff, the OCC and its Staff, and Duke Energy Ohio. Such allegations contribute nothing to the resolution of this case. Therefore, this factor weighs against granting Mr. Lane intervention.

4. Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues

Mr. Lane's intervention will not significantly contribute to full development and equitable resolution of the factual issues. The issue presented in this case is whether Duke Energy Ohio's Proposed Reliability Standards comply with the ESSS rules. Mr. Lane has not alleged that he is

⁵ Mr. Lane does make references to the United States Constitution and Bill of Rights in his Motion to Intervene, but fails to explain how the nation's founding documents support his Motion to Intervene.

an expert in utilities' regulation or in electric service and safety standards. Thus, it is unlikely he can provide any informed opinion regarding whether Duke Energy Ohio's Proposed Reliability Standards comply with the ESSS rules. Therefore, this factor weighs against granting Mr. Lane intervention.

5. The extent to which the person's interest is represented by existing parties

Ultimately, however, Mr. Lane's motion should be denied because his interest in these proceedings is more than adequately represented by OCC. Mr. Lane is a residential customer of Duke Energy Ohio. OCC was created, in part, to "intervene in . . . [Commission] proceedings . . . on behalf of the residential consumers"⁶ and to represent residential consumers "whenever an application is made to the public utilities commission by any public utility desiring to establish, modify, amend, change, increase, or reduce any rate, joint rate, toll, fare, classification, charge, or rental."⁷ OCC's only interest in these proceedings is to represent the interests of Duke Energy Ohio's residential customers, including Mr. Lane.

OCC's comments filed in this case make clear that it believes that are numerous deficiencies in Duke Energy Ohio's Proposed Reliability Standards. For example, it has argued that Duke Energy Ohio's reliability projections based on SmartGrid Automation are unfounded.⁸ OCC has also requested that the Commission convene a hearing in this case. While Mr. Lane has actually advanced no legal position regarding the propriety of Duke Energy Ohio's Proposed Reliability Standards, he has noted that Duke Energy Ohio "will be able to blame any inadequacy to [sic] the mechanical Smart System, thus eradicating the need for the PUCO for a human consumer prospective,. [sic]" While it is not fully clear what Mr. Lane intends to state

⁶ Ohio Rev. Code Section 4911.02(B)(2)(c).

⁷ Ohio Rev. Code Section 4911.15.

⁸ Comments by the Office of the Ohio Consumers' Counsel, *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Proposed Reliability Standards*, PUCO Case No. 09-757-EL-ESS, at 8–9 (Dec. 14, 2009).

with this sentence, he apparently has some qualm with Duke Energy Ohio's use of SmartGrid Automation to improve reliability. Thus, he is advancing a position that is the same or very similar to OCC's position regarding SmartGrid Automation. Mr. Lane has also requested a "public consumer inquiry," which, charitably, can perhaps be viewed as similar to OCC's request for a hearing in this matter. Thus, Mr. Lane is advocating very similar or the same positions as OCC, which is adequately representing those positions. Therefore, this factor weighs also against granting Mr. Lane intervention.

III. CONCLUSION

Because all the Ohio Admin. Code Section 4901-1-11(B) intervention factors weigh against granting Mr. Lane intervention, Duke Energy Ohio respectfully requests that this Commission deny Mr. Lane's Motion to Intervene.

In addition, as Duke Energy Ohio requested in its Memorandum in Opposition to Mr. Lane's Motion to Intervene in Case No. 09-1946-EL-RDR, it requests that the Commission strike Mr. Lane's instant Motion to Intervene from Case No. 05-0732-EL-MER, as Mr. Lane has requested no relief regarding that case.

To the extent not fully addressed within the attorney examiner's decision of April 15, 2010 in Case No. 09-1946-EL-RDR, Duke Energy Ohio also respectfully requests that the Commission deny Mr. Lane's request to reactivate Case No. 08-0709-EL-AIR and consolidate it with this case.

Respectfully submitted,

/s/ Elizabeth Watts

Amy B. Spiller (0047277)

Associate General Counsel

Elizabeth H. Watts (0031092)

Assistant General Counsel

Duke Energy Business Services, LLC

Room 2500 Atrium II

P.O. Box 960

Cincinnati, Ohio 45201-0960

(513) 419-1810 (telephone)

(513) 419-1846 (facsimile)

e-mail: amy.spiller@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served via first-class mail delivery, postage prepaid, and/or electronic mail delivery on this the 26th day of April, 2010, to the following persons:

Duane Luckey
Assistant General Attorney
Chief, Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215

Ann Hotz
Richard Reese
Office of Consumers' Counsel
10 West Broad St, Suite 1800
Columbus, Ohio 43215

Albert E. Lane
7200 Fair Oaks Drive
Cincinnati, Ohio 43237-2922

Matthew White
Chester, Wilcox & Saxbe, LLP
65 E. State Street, Suite 1000
Columbus, Ohio 43215

Shirley M. Hayes
3730 Sarah St.
Franklin, OH 45005

/s/ Elizabeth Watts _____
Elizabeth Watts

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/26/2010 11:37:33 AM

in

Case No(s). 09-0757-EL-ESS

Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum in Opposition to Albert E. Lane's Motion to Intervene electronically filed by Mr. Michael D. Dortch on behalf of Duke Energy Ohio, Inc.