

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 the instant application, requesting approval of its system reliability standards pursuant to Rule 4901:1-10-10, Ohio Administrative Code (O.A.C.). In support of its application, Duke states that the proposed standards are consistent with the standards approved by the Commission 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 (08-920), et al., Opinion and Order (December 17, 2008).
- (2) On April 8, 2010, as corrected on April 9, 2010, Albert E. Lane filed a motion to intervene in the present case.
- (3) By entry issued April 20, 2010, the attorney examiner set April 27, 2010, as the deadline for the filing of memoranda contra Mr. Lane's motion to intervene, and May 4, 2010, as the deadline for reply memoranda.
- (4) On April 23, 2010, Mr. Lane filed a "corrected substitute" for his April 8, 2010, filing. In addition to Mr. Lane's request to intervene, he requests that a public inquiry be made of Duke's residential customers, concerning Duke's safety and reliability performance since 2005. In support of his motion, Mr. Lane states that he is a residential customer of Duke, who was opposed to the merger that was approved by the Commission in *In the Matter of the Joint Application of Duke Energy Holding Corp. and Cinergy Corp. on Behalf of The Cincinnati Gas & Electric Company for Consent and Approval of a Transfer and Acquisition of Control*, Case No. 05-732-EL-MER (05-732), opposes the implementation of smart metering technology, and opposes the recovery of the costs of the storm related to Hurricane Ike in *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 (09-1946). Mr. Lane also

asserts that he has contacted the Ohio Consumers' Counsel (OCC) and he has been instructed to correspond with a specific staff person at OCC, rather than an attorney at OCC. Therefore, Mr. Lane argues that OCC does not represent his interests.

- (5) On April 26, 2010, as supplemented April 27, 2010, Duke filed memorandum in opposition to Mr. Lane's motion to intervene. In its memorandum, Duke argues that Mr. Lane does not demonstrate how he satisfies any of the five factors to be considered for granting intervention as articulated in Rule 4901-1-11(B), O.A.C. With regard to the nature and extent of Mr. Lane's interest in this proceeding and whether his interest is represented by existing parties, Duke acknowledges that Mr. Lane, as a residential customer of Duke, has a slight financial interest; however, Duke notes that OCC has already been granted intervention in this case and OCC competently represents Mr. Lane's interests. Duke also asserts that there was no legal position advanced by Mr. Lane that relates to the merits of this case, and to the extent Mr. Lane's motion relates to the instant case, it does not state any legal position concerning Duke's proposed reliability standards. Furthermore, Duke believes that granting Mr. Lane intervention will unduly prolong or delay the proceedings because Mr. Lane appears to be interested in litigating cases already decided by the Commission. Duke also states that Mr. Lane will not significantly contribute to full development and equitable resolution of the factual issues in this case, pointing out that the issue in this case is whether Duke's proposed reliability standards comply with the Commission's electric service and safety standard rules, an area in which Mr. Lane has not demonstrated any specific expertise. Finally, Duke asserts that, although Mr. Lane argues that OCC does not represent his interests, OCC's request that Mr. Lane correspond with a specific staff member does not demonstrate that his interests are not adequately represented by OCC.
- (6) On May 3, 2010, Mr. Lane filed a reply to Duke's memorandum contra his intervention, in which he repeats many of the arguments made in his original filings. Mr. Lane again asserts that, because OCC has requested that he correspond with a specific person, OCC does not adequately represent his interests.
- (7) Upon consideration of Mr. Lane's request for intervention, the attorney examiner notes that he does not specify why his request for intervention in the instant case should be granted. The

attorney examiner finds that Mr. Lane does not have a statutory right to intervene in this case in accordance with Rule 4901-1-11(A)(1), O.A.C. In addition, upon review of the five considerations for intervention contained in Rule 4901-1-11(B), O.A.C., Mr. Lane does not satisfy the criteria necessary to intervene under Rule 4901-1-11(A)(2), O.A.C. Of particular concern to the attorney examiner is that Mr. Lane does not specifically address the subject matter of the instant case, Duke's proposed system reliability standards; instead he focuses on his disagreement with Duke in other cases. In addition, Mr. Lane does not indicate how his interest is not adequately represented by other parties to this case. Even though he asserts that he does not have unfettered access to all personnel at OCC, he does not explain why OCC does not represent his interests. Therefore, the attorney examiner finds that Mr. Lane's motion to intervene is substantively deficient and should be denied.

- (8) In addition to his request to intervene in the instant case, Mr. Lane also requests intervention in 09-1946. With respect to Mr. Lane's request to intervene in 09-1946, by entry issued April 14, 2010, in 09-1946, the attorney examiner denied Mr. Lane's motion to intervene in that case. The attorney examiner finds that it would be inappropriate to consider his motion to intervene in 09-1946 in the instant docket; therefore, his request is denied.
- (9) Furthermore, Mr. Lane asks, in his motion filed in this case, that 09-1946 be consolidated with 05-732 and *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates, 08-709-EL-AIR (08-709)*. As previously concluded by the attorney examiner in the April 14, 2010, entry in 09-1946, 09-1946 will not be consolidated with 08-709 or 05-732. Likewise, the attorney examiner finds that the instant case should not be consolidated with 09-1946.
- (10) As a final matter, the attorney examiner points out that, it is apparent from the case headers on Mr. Lane's filings in this case that Mr. Lane is listing every case number which he is concerned about at the Commission, regardless of whether the case is still active or closed, or whether the case is being processed separately from the other cases in the headers. For example, Mr. Lane continues to file documents in 05-732, even though 05-732 has been closed and no future filings should be made in that docket. At this time, the attorney examiner finds it necessary to clarify that the instant case, 09-1046, 08-709, and 05-732 are separate cases and will

not be consolidated. Therefore, the examiner directs that, in the future, if Mr. Lane desires to make additional filings with the Commission, he should make such filings only in the specific case in which he is making a request and not include all case numbers he is concerned about in the case header.

It is, therefore,

ORDERED, That the request to intervene filed by Mr. Lane be denied. It is, further,

ORDERED, That Mr. Lane's motion to intervene in 09-1946 in the instant docket be denied. It is, further,

ORDERED, That Mr. Lane's request to consolidate this case with 09-1946 be denied. It is, further,

ORDERED, That the directive in finding (10) be observed. 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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/dah

Entered in the Journal

MAY 19 2010

Renee J. Jenkins

Renee J. Jenkins
Secretary