

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Electric Distribution Rates.)	Case No. 12-1682-EL-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 12-1683-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 12-1684-EL-AAM
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates.)	Case No. 12-1685-GA-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.)	Case No. 12-1686-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.)	Case No. 12-1687-GA-ALT
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.)	Case No. 12-1688-GA-AAM
)	

ENTRY

The attorney examiner finds:

- (1) By entry issued on January 10, 2013, the attorney examiner, *inter alia*, established the procedural schedule for the above-captioned cases, Case Nos. 12-1682-EL-AIR, 12-1683-EL-ATA, and 12-1654-EL-AAM (electric rate case) and Case Nos. 12-1685-GA-AIR, 12-1686-GA-ATA, 12-1687-GA-ALT, and 12-1688-GA-AAM (gas rate case).

- (2) The following parties timely filed motions to intervene in the electric rate case:

- Ohio Consumers' Counsel (OCC)
- Ohio Energy Group
- Interstate Gas Supply, Inc. (IGS)
- The Kroger Company (Kroger)
- City of Cincinnati (Cincinnati)
- Ohio Partners for Affordable Energy (OPAE)
- Cincinnati Bell Telephone Company, LLC, Cincinnati Bell Wireless, LLC, and CyrusOne, Inc.
- Ohio Environmental Council
- Natural Resources Defense Council
- The Greater Cincinnati Health Council (GCHC)
- People Working Cooperatively, Inc. (PWC)
- Ohio Manufacturers' Association (OMA)

No one filed memoranda contra to these motions to intervene. The attorney examiner finds that these motions are reasonable and these entities should be granted intervention in the electric rate case.

- (3) The following parties timely filed motions to intervene in the gas rate case:

- Stand Energy Corporation
- IGS
- Cincinnati
- OPAE
- OCC
- Cincinnati Bell Telephone Company, LLC
- GCHC
- Kroger
- Direct Energy Services, LLC and Direct Energy Business, LLC
- OMA
- PWC

No one filed memoranda contra to these motions to intervene. The attorney examiner finds that these motions are reasonable and these entities should be granted intervention in the gas rate case.

- (4) On June 20, 2012, tw telecom of ohio, llc, (TWTC) filed a motion to intervene in the electric rate case. In support of its motion, TWTC explains that it has a pole attachment agreement with Duke that charges a rate for pole attachments based on a formula from the Federal Communications Commission (FCC). According to TWTC, it has a significant number of attachments to Duke's poles. TWTC submits that the pole attachment rate application filed in the electric rate case, if granted, could significantly impact the price paid and terms of use by TWTC, once its current pole attachment agreement expires, if the rate applies in a nondiscriminatory fashion regardless of the underlying technology used. TWTC asserts that it has a real and substantial interest that is not represented in the electric rate case, and granting its motion will not unduly delay these proceedings or unjustly prejudice any existing party.
- (5) On July 5, 2012, Duke filed a memorandum contra TWTC's motion to intervene, stating that TWTC does not meet the criterion for intervention set forth in Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code (O.A.C.). Duke asserts that: TWTC will not be adversely affected by the electric rate case proceedings; the legal position advanced by TWTC is unrelated to the merits of the electric rate case; TWTC's intervention would prolong and delay the electric rate case; and TWTC would not contribute to the full development or equitable resolution of the factual issues in the electric rate case. Duke points out that, while TWTC has a pole attachment agreement with Duke, the rest of TWTC's arguments are not true. According to Duke, pole attachment agreements are negotiated and there is no mention of or reference to the FCC formulae. Moreover, to the best of Duke's knowledge, TWTC does not have any direct attachments to Duke's poles and Duke is not currently billing TWTC under the pole attachment agreement. In addition, Duke notes that the application in the electric rate case does not propose any changes to the rate or terms of the pole attachment tariff and, even if the pole attachment tariff was proposed to be amended, such changes would have no impact on TWTC, as TWTC is a utility and the tariff only applies to entities that are not utilities. Duke believes it likely that, if TWTC was granted intervention, it would interject issues into the electric rate case that are unrelated to the application; therefore, such intervention would unduly prolong or delay the proceedings. TWTC did not file a

reply to Duke's memorandum contra TWTC's motion to intervene.

- (6) Upon consideration of the motion to intervene filed by TWTC in the electric rate case and Duke's memorandum contra, the attorney examiner finds that TWTC has not shown that it meets the criterion for intervention required by Section 4903.221, Revised Code, and Rule 4901-1-11, O.A.C. Therefore, TWTC's motion should be denied.
- (7) On January 11, 2013, OCC, Cincinnati, Kroger, IGS, and OPAE filed a motion in the electric rate case requesting a 15-day extension of time to file intervenor testimony and a request for an expedited ruling, in accordance with Rule 4901-1-12(C), O.A.C. Likewise, on that same date, OCC, Cincinnati, Kroger, and OPAE filed a motion in the gas rate case requesting a 21-day extension of time to file intervenor testimony and a request for an expedited ruling. On January 15, 2013, IGS filed a memorandum in support of the motion for extension in the gas rate case. The parties requesting the extension in both the electric rate case and the gas rate case will be collectively referred to herein as joint movants. In support of their motions in these proceedings, joint movants point out that the testimony and objections in both the electric rate case and the gas rate case are currently due on the same day. Therefore, parties must review the staff reports, develop objections, and draft testimony in support of the objections to be filed concurrently in both proceedings. Joint movants also note that they have witnesses who are involved in both proceedings. According to the joint movants, the requested extension of time will not cause undue delay and should not prejudice any party. Joint movants offer that they have contacted all the parties to these proceedings, pursuant to Rule 4901-1-12(C), O.A.C., to inquire if they object to an expedited ruling of the motions for extension; however, at the time of filing their motions, they could not certify that no party objects to an expedited ruling.
- (8) On January 16, 2013, Duke filed memoranda contra the joint movants' motions for extension of time to file testimony in the electric rate case and the gas rate case. In its memoranda contra, Duke argues that the rules requiring the filing of testimony at the same time as objections has been in place for many years and joint movants should have anticipated the

filings since Duke's initial notices of the rate cases in June 2012. Should the motions for extension be granted, Duke maintains that it is imperative that any extension be applicable to all parties, including Duke. Furthermore, Duke believes that any extension afforded should only be for one week and should be limited to testimony and not the objections. Finally, Duke notes that it is opposed to any extension or delay in the start date of the hearings in these proceedings.

- (9) Rule 4901-1-12(F), O.A.C., provides that the attorney examiner may issue an expedited ruling on any motion, with or without the filing of memorandum, where the issuance of such ruling will not adversely affect a substantial right of any party. Given the timeframe for these proceedings and given the breath of the issues involved, the attorney examiner finds it necessary to issue an expedited ruling in accordance with Rule 4901-1-12(F), O.A.C.
- (10) Upon consideration of the joint movants' motions and Duke's response, the attorney examiner finds that the motions for an extension of time to file testimony should be granted, to the extent set forth below. Accordingly, the attorney examiner finds that the parties to both the electric rate case and gas rate case should adhere to the following procedural schedule. If there is not a distinction between the cases, parties should assume that the following schedule applies to both the electric rate case and the gas rate case.
 - (a) February 4, 2013 - Deadline for the filing of objections to the staff reports.
 - (b) February 4, 2013 - Deadline for the filing of motions to intervene.
 - (c) February 14, 2013 - A prehearing conference will be held in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215. The purpose of the conference will be to discuss procedural aspects of the cases and to provide an opportunity for the parties to conduct settlement discussions. The prehearing will commence at 10:00 a.m. for the electric rate case and will commence, for the gas

rate case, promptly at the conclusion of the prehearing for the electric rate case.

- (d) February 19, 2013 – Deadline for the filing of motions to strike objections to the staff reports.
- (e) February 19, 2013 – Deadline for the filing of testimony on behalf of Duke and intervenors in the electric rate case, in accordance with Rule 4901-1-29, O.A.C.
- (d) February 25, 2013 – Deadline for the filing of testimony on behalf of Duke and intervenors in the gas rate case, in accordance with Rule 4901-1-29, O.A.C.
- (f) February 26, 2013 – Deadline for the filing of memoranda contra motions to strike objections to the staff reports. Unless an objection is struck or withdrawn, each objection must be discussed in the initial post-hearing brief of the objecting party. If an objection is not discussed in the initial brief, the objection will, without further action, be deemed withdrawn.
- (g) March 25, 2013 - The evidentiary hearing for the electric rate case will begin at 10:00 a.m. in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.
- (h) The evidentiary hearing for the gas rate case will commence no later than one business day after the conclusion of the electric rate case at 10:00 a.m. in Hearing Room 11-A, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215.

It is, therefore,

ORDERED, That the motions to intervene in the electric rate case filed by the entities listed in finding (2) be granted. It is, further,

ORDERED, That the motions to intervene in the gas rate case filed by the entities listed in finding (3) be granted. It is, further,

ORDERED, That TWTC's motion to intervene in the electric rate case be denied. It is, further,

ORDERED, That joint movants' motions for extension of time be granted, to the extent set forth in finding (10). It is, further,

ORDERED, That the parties adhere to the procedural schedule set forth in finding (10). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in the above-captioned cases.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Christine M. T. Pirik

By: Christine M.T. Pirik
Attorney Examiner

JRJ/vrm/dah

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Case No(s). 12-1682-EL-AIR, 12-1683-EL-ATA, 12-1684-EL-AAM, 12-1685-GA-AIR, 12-1686-GA-ATA,

Summary: Attorney Examiner Entry granting motion for extension and revising procedural schedule; electronically filed by Debra Hight on behalf of Christine M. T. Pirik, Attorney Examiner, Public Utilities Commission of Ohio.