

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Application of Duke )  
Energy Ohio, Inc. for Authority to )  
Establish a Standard Service Offer )  
Pursuant to R.C. 4928.143 in the Form of ) Case No. 14-841-EL-SSO  
an Electric Security Plan, Accounting )  
Modifications, and Tariffs for Generation )  
Service. )

In the Matter of Application of Duke )  
Energy Ohio, Inc. for Authority to )  
Amend its Certified Supplier Tariff, ) Case No. 14-842-EL-ATA  
P.U.C.O. No. 20. )

ENTRY

The attorney examiner finds:

- (1) Duke Energy Ohio, Inc. (Duke) is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of this Commission.
- (2) On May 29, 2014, Duke filed an application for a standard service offer (SSO) pursuant to R.C. 4928.141. This application is for an electric security plan (ESP) in accordance with R.C. 4928.143 that will begin on June 1, 2015.
- (3) By Entry issued June 6, 2014, the attorney examiner, inter alia, established July 8, 2014, as the deadline by which parties were required to file motions to intervene in these proceedings. The following parties timely filed motions to intervene:
  - Industrial Energy Users-Ohio
  - City of Cincinnati
  - Ohio Consumers' Counsel (OCC)
  - Ohio Energy Group (OEG)
  - Ohio Partners for Affordable Energy (OPAE)
  - Ohio Environmental Council
  - The Greater Cincinnati Health Council
  - FirstEnergy Solutions Corp.
  - Ohio Manufacturers' Association (OMA)

- People Working Cooperatively, Inc.
- The Kroger Company (Kroger)
- Environmental Law & Policy Center
- Ohio Power Company
- EnerNOC, Inc.
- Direct Energy Services, LLC and Direct Energy Business, LLC
- Miami University
- University of Cincinnati
- Natural Resources Defense Council
- Interstate Gas Supply, Inc. (IGS)
- Constellation NewEnergy, Inc. and Exelon Generation Company, LLC
- Wal-Mart Stores East, LP and Sam's East, Inc.
- Retail Energy Supply Association
- Energy Professionals of Ohio
- Dayton Power and Light Company
- Sierra Club

No one filed memoranda contra to these motions to intervene. The attorney examiner finds that these motions are reasonable and should be granted.

- (4) Gov.Bar R. XII(2)(A) provides rules governing eligibility to practice pro hac vice in Ohio. Pursuant to Gov.Bar R. XII(2)(A)(6), motions for admission pro hac vice must be accompanied by a certificate of pro hac vice registration furnished by the Supreme Court Office of Attorney Services.
- (5) Motions to practice pro hac vice and certificates of pro hac vice registration were filed on behalf of the following attorneys:
  - Samantha Williams - July 8, 2014
  - Justin Vickers - July 23, 2014
  - Rick D. Chamberlain - July 31, 2014, as amended August 1, 2014

No one filed memoranda contra to these motions. The attorney examiner finds that the motions for admission pro hac vice should be granted.

- (6) In the June 6, 2014 Entry, the attorney examiner established the following procedural schedule:
  - (a) Discovery requests, except for notices of deposition, should be served by August 22, 2014.
  - (b) Testimony on behalf of intervenors should be filed by August 26, 2014.
  - (c) Testimony on behalf of Staff should be filed by September 3, 2014.
  - (d) The evidentiary hearing shall commence on September 8, 2014, at 10:00 a.m.
- (7) On July 9, 2014, Kroger, OMA, OPAE, and OCC (July 9<sup>th</sup> Movants) filed a joint motion to reject Duke's May 29, 2014 application and request to vacate the procedural schedule, arguing that the application fails to provide essential information required for ESP cases under Ohio Adm.Code Chapter 4901:1-35. Specifically, the July 9<sup>th</sup> Movants state that Duke failed to provide projected rate impacts, detailed information related to the alternative regulation mechanisms or programs, details of the costs and benefits of an infrastructure modernization plan, and a proposed newspaper notice that fully discloses the substance of the application and projected rate impacts. The July 9<sup>th</sup> Movants note that, while the rules provide that Duke may file a request for waiver of any filing requirement, Duke did not file such a waiver and has not shown good cause for such a waiver. Rather, in its application, Duke sets forth a broad request that merely seeks a waiver of any requirement necessary to support the findings in the application, rather than file a specific waiver request. Therefore, they assert the procedural schedule should be vacated and a new procedural schedule should be ordered once Duke files an application that complies with the rules.
- (8) On July 14, 2014, Duke filed a memorandum contra the July 9<sup>th</sup> Movants' motion. Contrary to the assertions of the July 9<sup>th</sup> Movants, Duke notes that, in its application, it provided an illustrative bill, which even the movants admit is all that is available until the auctions are held. In addition, Duke states that the Commission, not the applicant, prepares the public

notice that must be issued; thus, the Commission will modify the proposed notice, without the need for a waiver, as the Commission sees fit. Duke submits that the July 9<sup>th</sup> Movants' objection is misplaced, pointing out that information has been provided in the application and the supporting testimony. Moreover, Duke points out that none of the movants have executed a confidentiality agreement, which would enable them to obtain confidential information. Finally, contrary to the assertions of the July 9<sup>th</sup> Movants, Duke states that Commission precedent does not support the movants' request. Therefore, Duke submits that the motion is legally and factually incorrect and should be denied.

- (9) Upon consideration of the motion filed by the July 9<sup>th</sup> Movants, the attorney examiner finds that it is unfounded. The information and testimony submitted by Duke in support of its application is consistent with previous ESP applications submitted by Duke, as well as other electric distribution utilities. Through the discovery process, parties may obtain discoverable information from Duke in order to further understand the information and testimony provided by Duke. When necessary, confidentiality agreements may be entered into. Ultimately, however, Duke carries the burden of proof in these matters and the Commission will consider whether the application should be approved based upon the information provided by Duke and the parties in these cases. Accordingly, the attorney examiner finds that the July 9<sup>th</sup> Movants' motion should be denied in its entirety.
- (10) On June 18, 2014, IGS, OEG, OMA, OPAE, and OCC (collectively, June 18<sup>th</sup> Movants) filed a joint motion for a two-month continuance of the procedural schedule in these cases in order to allow Staff and interested parties sufficient time to review and analyze Duke's proposal. The June 18<sup>th</sup> Movants note that, in its application, Duke proposed an aggressive procedural schedule that would have had the evidentiary hearing commencing on August 19, 2014. Under Duke's proposal, parties would only have had 56 days to conduct an investigation of Duke's ESP proposal. The June 18<sup>th</sup> Movants assume that Duke's rationale for the aggressive schedule was Duke's plan to conduct two auctions prior to the first delivery year of June 1, 2015, with auctions scheduled for January and

April 2015; however, they believe past experience has shown that Duke can conduct an auction with as little as three weeks preparation time. Acknowledging that the procedural schedule set by the June 6, 2014 Entry rejected Duke's proposed schedule and extended the dates by 32 days, the June 18<sup>th</sup> Movants still believe the three-month period for discovery, filing of testimony, and hearing established by the Entry is too short of a time period. Noting that R.C. 4928.143(C)(1) provides that the Commission has 275 days to consider the application, the June 18<sup>th</sup> Movants point out that this longer time frame gives parties seven months to conduct discovery and proceed to hearing. The June 18<sup>th</sup> Movants submit that, since the ESP would have significant impact on customers' bills and the rate proposals are complex, the procedural schedule should be extended by two months.

- (11) Duke filed a memorandum contra the June 18<sup>th</sup> Movants' motion for continuance on June 23, 2014, maintaining that the arguments relied on by the movants do not warrant any revision of the existing procedural schedule. Initially, Duke asserts that the 275-day time frame mentioned by the June 18<sup>th</sup> Movants is only directory in nature, with the Commission being authorized to determine its case management. Moreover, Duke argues that, contrary to the assertions of the movants, there are many factors that play into a determination of when the auctions for the first delivery year must occur, including the post-hearing briefing phase of these proceedings and the auction process itself, which the June 18<sup>th</sup> Movants fail to take into consideration. While the June 18<sup>th</sup> Movants contend that Duke was in control of when it would file its ESP and could have filed it sooner, Duke responds that it did not unilaterally determine when the filing would be made; rather, the filing date was dictated by terms the June 18<sup>th</sup> Movants agreed to in the last ESP proceeding,<sup>1</sup> wherein parties agreed that Duke would not make its filing before June 1, 2014. Duke also notes that the June 18<sup>th</sup> Movants have been parties in other proceedings with similar issues; therefore, what they term complex rate proposals contained in Duke's ESP have been reviewed by the parties in other similar proceedings.

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<sup>1</sup> *In re Application of Duke Energy Ohio, Inc.*, Case No. 11-3549-EL-SSO, et al. (2011 ESP Case).

- (12) The June 18<sup>th</sup> Movants filed a reply to Duke's memorandum contra the motion for continuance on June 26, 2014.
- (13) Upon consideration of the June 18<sup>th</sup> Movants' motion for continuance and the responsive pleadings, the attorney examiner finds that it should be granted, in part. Given the time periods established by the parties in the *2011 ESP Case*, which called for this case to be filed after June 1, 2014, as well as proposed auction dates for early 2015, the goal of reviewing this case before the end of 2014 should not come as a surprise to the movants. However, balancing this time frame with the need to provide sufficient time for discovery is essential. Therefore, the attorney examiner finds that a shorter one-month continuance of the procedural schedule would still be possible in these cases. Accordingly, the procedural schedule should be revised, as follows:
  - (a) Discovery requests, except for notices of deposition, should be served by September 22, 2014.
  - (b) Testimony on behalf of intervenors should be filed by September 26, 2014.
  - (c) Testimony on behalf of Staff should be filed by October 2, 2014.
  - (d) The evidentiary hearing shall commence on October 7, 2014, at 10:00 a.m., at the offices of the Commission, Hearing Room 11A, 180 East Broad Street, Columbus, Ohio 43215
- (14) In order to provide Duke's customers a reasonable opportunity to provide public testimony in these proceedings, local public hearings will be conducted on the following dates:
  - (a) Monday, September 8, 2014, at 6:30 p.m., at Cincinnati State Technical and Community College, Main Building, Room 342, 3520 Central Parkway, Cincinnati, Ohio 45223.

- (b) Tuesday, September 9, 2014, at 6:30 p.m., at Union Township Civic Center Hall, 4350 Aicholtz Road, Cincinnati, Ohio 45245.
  - (c) Wednesday, September 10, 2014, at 6:30 p.m., at City Building, City Council Chambers, Lower Level, 1 Donham Plaza, Middletown, Ohio 45042.
  - (d) Thursday, September 18, 2014, at 12:30 p.m., at Cincinnati City Hall, Council Chambers, 801 Plum Street, Cincinnati, Ohio 45202.
- (15) Accordingly, Duke should publish notice of the local public hearings one time in a newspaper of general circulation in each county in its certified territory. The notice should not appear in the legal notices section of the newspaper. The notice should read as follows:

#### LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled local hearings in Case Nos. 14-841-EL-SSO and 14-842-EL-ATA, *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service, and for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20*. In its application, Duke requests approval from the Commission of its new electric security plan, which includes its standard service offer, effective from June 1, 2015, through May 31, 2018. Duke's proposed plan includes provisions regarding the supply of capacity to all customers, the acquisition and pricing of energy to service all standard service offer customers through a series of auctions, economic development and job retention, and other matters. During the period of the plan, Duke proposes to recover costs for retail capacity and energy, alternative energy resources, uncollectible generation expense, and distribution capital investment and storm recovery through riders. In addition, Duke proposes a price stabilization rider.

According to the proposal, the rates for generation will be determined by an auction. It is anticipated that residential customers using 1,000 kilowatt hours will have a 1.3 percent increase in their total monthly bill (or \$1.42 per month) related to distribution capital improvements. The other rider rates are unknown.

The local hearings are scheduled for the purpose of providing an opportunity for interested members of the public to testify in these proceedings. The local hearings will be held as follows:

Monday, September 8, 2014, at 6:30 p.m., at Cincinnati State Technical and Community College, Main Building, Room 342, 3520 Central Parkway, Cincinnati, Ohio 45223.

Tuesday, September 9, 2014, at 6:30 p.m., at Union Township Civic Center Hall, 4350 Aicholtz Road, Cincinnati, Ohio 45245.

Wednesday, September 10, 2014, at 6:30 p.m., at City Building, City Council Chambers, Lower Level, 1 Donham Plaza, Middletown, Ohio 45042.

Thursday, September 18, 2014, at 12:30 p.m., at Cincinnati City Hall, Council Chambers, 801 Plum Street, Cincinnati, Ohio 45202.

The evidentiary hearing will commence on October 7, 2014, at 10:00 a.m., at the offices of the Commission, Hearing Room 11A, 180 East Broad Street, Columbus, Ohio 43215. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puco.ohio.gov>, or contacting the Commission's hotline at 1-800-686-7826.

- (16) As a final matter, the attorney examiner notes that the following motions have been filed: May 29, 2014, and July 8, 2014, Duke's motions for protective order; and July 18, 2014,



OCC's motion to hold in abeyance Duke's motion for protective order and motion to compel responses to discovery. Pleadings in response to these motions have also been filed. In order to consider these motions, as well as any other procedural matter, the attorney examiner finds it necessary to schedule a prehearing conference. At this conference, the parties are expected to be prepared to argue the issues presented in the pending motions. The conference will be transcribed. Accordingly, a prehearing conference shall be held on Tuesday, August 12, 2014, at 1:30 p.m., at the offices of the Commission, Hearing Room 11A, 180 East Broad Street, Columbus, Ohio 43215.

It is, therefore,

ORDERED, That the motions to intervene filed by various parties be granted, in accordance with finding (3). It is, further,

ORDERED, That the motions for admission pro hac vice be granted, in accordance with finding (5). It is, further,

ORDERED, That, in accordance with finding (9), the motion filed by the July 9<sup>th</sup> Movants be denied. It is, further,

ORDERED, That, in accordance with finding (13), the motion for continuance filed by the June 19<sup>th</sup> Movants be granted, in part. It is, further,

ORDERED, That local public hearings in these proceedings be held as set forth in finding (14). It is, further,

ORDERED, That Duke publish notice of the local public hearings as set forth in finding (15). It is, further,

ORDERED, That a prehearing conference is scheduled, in accordance with finding (16). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Christine M.T. Pirik

By: Christine M.T. Pirik  
Attorney Examiner

jrj/vrm

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA**

Summary: Attorney Examiner Entry grants extension of the evidentiary hearing to October 7, 2014, orders publication of local hearings, and schedules a prehearing conference for August 12, 2014, at 1:30 p.m.; electronically filed by Vesta R Miller on behalf of Christine M.T. Pirik, Attorney Examiner, Public Utilities Commission of Ohio