

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. 17-32-EL-AIR

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR TARIFF
APPROVAL.

CASE No. 17-33-EL-ATA

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR APPROVAL
TO CHANGE ACCOUNTING METHODS.

CASE No. 17-34-EL-AAM

ENTRY

Entered in the Journal on October 16, 2017

{¶ 1} Duke Energy Ohio, Inc. (Duke) is an electric light company and public utility as defined by R.C. 4905.03(C) and R.C. 4905.02, respectively. As such, Duke is subject to the Commission's jurisdiction pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 2} On March 2, 2017, Duke filed applications for an increase in electric distribution rates, for approval of tariff modifications, and for approval to changes in certain accounting methods.

{¶ 3} On September 1, 2017, The Ohio Consumers' Counsel (OCC) filed a motion to compel discovery responses from Duke. On September 18, 2017, Duke filed a memorandum contra the motion to compel. OCC filed a reply to the memorandum contra on September 25, 2017.

{¶ 4} In its motion to compel, OCC argues that Duke's responses to OCC's request for discovery are inadequate. OCC contends that, under R.C. 4903.082, parties to Commission proceedings are to be granted ample rights of discovery and that, pursuant to Ohio Adm.Code 4901-1-16, a party may obtain discovery of any matter which is relevant to the subject matter of the proceeding. OCC alleges that the information sought through discovery is relevant to the question of whether Duke's current property is used and useful for consumers and whether

Duke should replace current infrastructure with new infrastructure that will cost consumers \$143 million. Accordingly, OCC submits that Duke's objection that the requested information would not lead to the discovery of admissible evidence is without merit.

{¶ 5} In its memorandum contra the motion to compel, Duke argues that OCC's discovery request seeks information and documents that are irrelevant to this proceeding and that production of the documents would be unduly burdensome. Duke claims that OCC seeks to re-litigate matters not relevant to this case from other, prior proceedings that have already been resolved. Further, Duke maintains OCC was an active party in those proceedings and participated in the discovery process. Thus, Duke argues that it is inequitable and unduly burdensome to request Duke to locate and produce information that OCC already has in its possession or is publicly available in the docket.

{¶ 6} In its reply to Duke's memorandum contra, OCC argues that the discovery request is reasonably calculated to lead to the discovery of admissible evidence. OCC contends the prior proceedings are relevant to this case and that Duke's directives lacked specificity. OCC states that under Ohio Adm.Code 4901-1-19(C) and 4901-1-20(D) a discovery response may only specify documents from another proceeding that were made available in the past year. According to OCC, the information it is requesting is over a year old.

{¶ 7} Upon review, and after an October 13, 2017 telephone conference held at the request of the parties, the attorney examiner finds the motion to compel should be granted. The information sought through the discovery request is related to the subject matter of this proceeding and appears to be reasonably calculated to lead to the discovery of admissible evidence. Further, Duke has not demonstrated that the discovery requests are unduly burdensome. Accordingly, Duke is directed to produce the relevant information, or, when applicable, direct with specificity the location of the information, to OCC by October, 20, 2017.

{¶ 8} It is, therefore,

{¶ 9} ORDERED, That OCC's motion to compel discovery be granted. It is, further,

{¶ 10} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Stacie Cathcart

By: Stacie E. Cathcart
Attorney Examiner

JRJ/sc

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in

Case No(s). 17-0032-EL-AIR, 17-0033-EL-ATA, 17-0034-EL-AAM

Summary: Attorney Examiner Entry granting OCC's motion to compel discovery. -
electronically filed by Sandra Coffey on behalf of Stacie Cathcart, Attorney Examiner, Public
Utilities Commission of Ohio