

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
OF DUKE ENERGY OHIO, INC. FOR
RECOVERY OF PROGRAM COSTS, LOST
DISTRIBUTION REVENUE, AND
PERFORMANCE INCENTIVES RELATED
TO ITS ENERGY EFFICIENCY AND
DEMAND RESPONSE PROGRAMS.

CASE NO. 19-622-EL-RDR

ENTRY

Entered in the Journal on July 2, 2019

{¶ 1} Duke Energy Ohio, Inc. (Duke or the Company) is an electric distribution utility (EDU) as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4928.141 provides that an EDU shall provide customers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO must be either a market rate offer in accordance with R.C. 4928.142 or an electric security plan (ESP) in accordance with R.C. 4928.143.

{¶ 3} Pursuant to R.C. 4928.66, EDUs are required to implement energy efficiency and peak demand response (EE/PDR) programs. Through these programs, the EDUs are mandated to achieve a specific amount of energy savings every year.

{¶ 4} By Opinion and Order issued August 15, 2012, the Commission approved a stipulation entered into between Duke and some of the parties. *In re Duke Energy Ohio, Inc.*, Case No. 11-4393-EL-RDR. Specifically, among other things, the Commission approved the recovery of program costs, lost distribution revenue, and performance incentives related to Duke's EE/PDR programs.

{¶ 5} On March 29, 2019, Duke filed an application for recovery of program costs, lost distribution revenue, and performance incentives related to its energy efficiency and demand response programs for 2018.

{¶ 6} By Entry issued May 2, 2019, the attorney examiner established a procedural schedule, providing that motions to intervene and intervenor comments be filed by July 25, 2019 and reply comments be filed by August 8, 2019.

{¶ 7} On May 7, 2019, Ohio Consumers' Counsel (OCC) filed an interlocutory appeal, motion for certification to the Commission, and application for review of the procedural schedule. In its filing, OCC argues that the ruling setting a procedural schedule should be reversed and that Duke's application should be immediately approved as filed. OCC contends that there is no need for additional comments in this case because the Commission rules already allow parties to file objections and all parties had an opportunity to do so. OCC avers that the interlocutory appeal presents new and novel questions of law as OCC is not aware of any similar rider whose rates have become stale and unrepresentative of the cost they are intended to represent. OCC claims that the May 2, 2019 ruling exacerbates the problem by unnecessarily delaying the resolution of this case and therefore delaying Duke's customer's bill credit. Additionally, OCC states that a survey of similar, recent energy efficiency rider filings shows that no other cases allowed for comment in a procedural schedule. OCC argues that the ruling departs from past precedent by allowing parties to file comments and reply comments in addition to the objections that are permitted under the Commission's rules. Lastly, OCC contends that an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice to Duke's residential customers. OCC asserts that allowing for comments delays the proceeding thus requiring Duke's customers to continue to be overcharged for Duke's energy efficiency programs and withholding their bill credit.

{¶ 8} Ohio Adm.Code 4901-1-15 sets forth the substantive standards for interlocutory appeals. The rule provides that no party may take an interlocutory appeal

from a ruling by an attorney examiner unless that ruling is one of four specific rulings enumerated in paragraph (A) of the rule, which are not applicable in this instance, or unless the appeal is certified by the attorney examiner pursuant to paragraph (B) of the rule. Paragraph (B), specifies that an attorney examiner shall not certify an interlocutory appeal unless the attorney examiner finds that the appeal presents a new or novel question of law or policy, or is taken from a ruling which represents a departure from past precedent and an immediate determination by the Commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties should the Commission ultimately reverse the ruling in question.

{¶ 9} The ruling establishing a procedural schedule does not fall within the four enumerated rulings specified by Ohio Adm.Code 4901-1-15(A), from which interlocutory appeals may be taken without certification by the attorney examiner. Therefore, an interlocutory appeal of the May 2, 2019 Entry may be taken only if the attorney examiner certifies the appeal pursuant to Ohio Adm.Code 4901-1-15(B).

{¶ 10} The attorney examiner finds that the May 2, 2019 Entry establishing a procedural schedule in the proceeding does not involve a new or novel question of law or policy. Establishing a procedural schedule in a Commission proceeding is a routine matter with which the Commission and its examiners have had long experience. *In re Vectren Energy Delivery of Ohio*, Case No. 05-1444-GA-UNC, Entry (Feb. 12, 2007) at 7; *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 05-376-EL-UNC, Entry (May 10, 2005) at 2. Further, establishing a procedural schedule for these cases is fully within the Commission's broad discretion to manage its dockets, including the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay, and eliminate unnecessary duplication of effort. *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212 (1982).

{¶ 11} Moreover, the attorney examiner finds that the ruling does not depart from past precedent and that an immediate determination of the Commission regarding the May 2, 2019 Entry is not needed to prevent the likelihood of undue prejudice or expense to one or more of the parties should the Commission ultimately reverse the ruling in question. OCC has broadly alleged that the procedural schedule creates undue prejudice in this case; it has not specifically demonstrated how the procedural schedule results in such prejudice. The comment period is the sole specific example of prejudice alleged by OCC; however, there is no requirement under the Commission's rules requiring the application to be approved by statutory objections alone. The comment period provides an opportunity for parties to provide feedback on the application. Additionally, as OCC is aware, Duke's annual application for recovery of program costs is subject to Staff review. Therefore, OCC cannot be prejudiced by the comment period timeline.

{¶ 12} The attorney examiner finds that the issues identified by OCC in its interlocutory appeal, motion for certification to the Commission, and application for review do not present a new or novel question of interpretation, law, or policy and, further, are not taken from a new ruling which represents a departure from past precedent and an immediate determination by the Commission is not needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the Commission ultimately reverse the ruling in question. Accordingly, OCC's interlocutory appeal, motion for certification to the Commission, and application for review should not be certified to the Commission and should be denied.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the interlocutory appeal, motion for certification to the Commission, and application for review filed by OCC be denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Gregory A. Price

By: Gregory A. Price
Attorney Examiner

JRJ/sc

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Case No(s). 19-0622-EL-RDR

Summary: Attorney Examiner Entry denying the interlocutory appeal, motion for certification to the Commission, and application for review filed by the Ohio Consumers' Counsel - electronically filed by Sandra Coffey on behalf of Gregory Price, Attorney Examiner, Public Utilities Commission of Ohio