

## 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. 21-887-EL-AIR

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

CASE NO. 21-888-EL-ATA

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

CASE NO. 21-889-EL-AAM

### ENTRY

Entered in the Journal on October 3, 2022

{¶ 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 October 1, 2021, Duke filed an application for an increase in electric distribution rates, for approval of tariff modifications, and for approval to changes in certain accounting methods.

{¶ 3} The Commission caused an investigation to be made of the facts set forth in the rate increase application by Duke, the exhibits attached thereto, and other matters connected with the application. On May 19, 2022, Staff filed a written report of its investigation (Staff Report). Copies of the Staff Report were mailed to Duke and other persons deemed to be interested in the case.

{¶ 4} By Entry issued May 20, 2022, the attorney examiner set forth the procedural schedule. Thereafter, the attorney examiner granted several requests to adjust the procedural schedule. In response to a motion to modify the procedural schedule filed by Staff, on September 2, 2022, the attorney examiner issued an Entry vacating the procedural

schedule, including postponing the September 19, 2022 evidentiary hearing. Also, the attorney examiner directed Duke to file a status update every week indicating the status of negotiations and whether a hearing should be scheduled.

{¶ 5} On September 19, 2022, Duke filed a Joint Stipulation and Recommendation (Stipulation) signed by certain parties to the case.

{¶ 6} On the same date, Duke filed an unopposed expedited motion for prehearing conference. Pursuant to a September 19, 2022 Entry granting the request, a prehearing was held on September 20, 2022, and a procedural schedule was discussed.

{¶ 7} Accordingly, on September 20, 2022, a procedural schedule was established as follows: The evidentiary hearing in this proceeding was to commence on October 4, 2022, at 10:00 a.m.; all testimony in support of the Stipulation was to be filed by September 22, 2022; all testimony in opposition to the Stipulation was to be filed by September 29, 2022; and Staff testimony in response to objections was to be filed by October 3, 2022.

{¶ 8} Ohio Adm.Code 4901-1-15 sets forth the Commission's requirements 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 or unless the appeal is certified to the Commission pursuant to paragraph (B) of the rule. Ohio Adm.Code 4901-1-15(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 interpretation, law, or policy, or is taken from a ruling that 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, if the Commission should ultimately reverse the ruling in question.

{¶ 9} On September 26, 2022, the Ohio Consumers' Counsel (OCC) filed an interlocutory appeal and a request for certification to the Commission. OCC states that the

procedural schedule established by the attorney examiner is a departure from past precedent and prejudices OCC, as a non-signatory party to the Stipulation. According to OCC, the procedural schedule does not provide enough time to prepare intervenor testimony. OCC also states that a discovery response time of five days is insufficient and deprives OCC of necessary time to review and prepare for hearing and infringes on rights under R.C. 4903.082 for full and ample discovery. OCC contends that the schedule is a departure from previous procedural schedules in other Duke rate cases and seeks an immediate ruling.

{¶ 10} Duke submitted a memoranda contra on September 28, 2022. Duke asserts OCC's appeal should not be certified. Duke states that the attorney examiner entry is not a departure from past precedent. As explained by Duke, the Staff Report in this case was filed on May 19, 2022, and the default discovery response time, pursuant to Ohio Adm.Code 4901-1-17(B), is 14 days. Further, adds Duke, the notice requirement of a hearing is only ten days written notice, as described in R.C. 4909.19(C). Duke points out other Commission cases with similar procedural schedules and observes that the schedule established in this case is thus not a departure from past precedent.

{¶ 11} The attorney examiner finds that OCC's interlocutory appeal does not present a new or novel question of law or policy or a departure from past precedent. As the Commission has noted on numerous prior occasions, the Commission and its attorney examiners have extensive experience with respect to establishing procedural schedules and determining filing deadlines, which are routine matters that do not involve a new or novel question of interpretation, law, or policy. *See, e.g., In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Entry (Feb. 8, 2018) at ¶ 24; *In re The Dayton Power and Light Co.*, Case No. 12-426-EL-SSO, et al., Entry (Jan. 14, 2013) at 5; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO, Entry (May 2, 2012) at 4; *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Entry (Oct. 1, 2008) at 7; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, Entry (Sept. 30, 2008) at 3; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No.

05-1444-GA-UNC, Entry (Feb. 12, 2007) at 7; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 05-376-EL-UNC, Entry (May 10, 2005) at 2. Further, as to OCC's claim that the procedural schedule is a departure from past precedent, the attorney examiner notes that, even in the cases cited by OCC, the procedural schedules vary, likely based on a number of factors, including, but not limited to, statutory requirements; schedules of the parties, witnesses, Staff, and the attorney examiners; and the availability of Commission resources.

{¶ 12} The attorney examiner also finds that OCC has failed to demonstrate that an immediate determination by the Commission is needed to prevent the likelihood of any undue prejudice resulting from the September 20, 2022 Entry. OCC has had ample time to conduct discovery and prepare for hearing and, in short, has not shown that the procedural schedule is unduly prejudicial or unreasonable under the circumstances of these proceedings. In this instance, the attorney examiner notes that the Commission must also be mindful of the timing requirements in R.C. 4909.42. The statute provides that, where the Commission fails to issue an order within 275 days of the filing of an application under R.C. 4909.18, a public utility requesting an increase on any rate, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice affecting the same, the increase shall go into effect upon the filing of a bond or a letter of credit by the public utility, subject to refund.

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the request for certification of the interlocutory appeal to the Commission 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/mef

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**Case No(s). 21-0887-EL-AIR, 21-0888-EL-ATA, 21-0889-EL-AAM**

Summary: Attorney Examiner Entry denying certification of the interlocutory appeal electronically filed by Ms. Mary E. Fischer on behalf of Gregory A. Price, Attorney Examiner, Public Utilities Commission of Ohio