

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for an) Case No. 05-59-EL-AIR
Increase in Electric Distribution Rates.)

In the Matter of the Application of The)
Cincinnati Gas & Electric Company for) Case No. 05-60-EL-AAM
Approval to Change Accounting Methods.)

ENTRY

The attorney examiner finds:

- (1) On January 18, 2005, the Cincinnati Gas & Electric Company (CG&E) filed both a notice of intent to file an application for an increase in its electric distribution rates and, also, an application for approval to change accounting methods. On February 9, 2005, the Commission issued an entry establishing the date certain and test period for CG&E's application. On February 17, 2005, CG&E filed its application to increase its electric distribution rates.
- (2) On September 9, 2005, staff filed its report of investigation of CG&E's applications.
- (3) Section 4909.19, Revised Code, requires that objections to a staff report are to be filed within 30 days of the filing of the report. The statute does not include any authority for the extension of that time requirement. Section 1.14, Revised Code, allows additional time when a deadline would otherwise fall on a weekend or a holiday. Rule 4901-1-29(A)(1)(b), Ohio Administrative Code (O.A.C.), provides that all direct expert testimony to be offered by any party, other than the applicant, in a general rate proceeding shall be filed and served no later than the deadline for filing objections to the staff report of investigation.
- (4) On September 14, 2005, the attorney examiner issued an entry directing that objections to the staff report be filed by October 14, 2005. Upon further review by the attorney examiner, and in order to comply with the statutory provisions set forth above, the deadline for filing objections was revised by attorney

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examiner entry dated September 20, 2005, to require that objections to the staff report be filed no later than October 11, 2005. All parties, with the exception of the Ohio Energy Group (OEG), filed objections by October 11, 2005.

- (5) On October 13, 2005, the Ohio Energy Group (OEG) filed a motion to file its objections to the staff report, its summary of major issues, and testimony of its witnesses out of time, due to its miscalculation of the due date. The issues raised by OEG in its proposed objections relate to (a) the scale back of the rate increase should the Commission not approve the amount requested by CG&E, (b) staff's failure to recommend that the TS demand charge be reduced to 100 percent of the cost of service indicated number, and (c) staff's acceptance of the company's cost of service study when the study is flawed and overstates distribution costs assignable to TS customers.
- (6) In this case, OEG's objections were filed 32 days after the filing of the staff report. On November 3, 2005, the attorney examiner issued an entry (November 3 entry) finding that the objections were filed beyond the statutory deadline and, therefore, could not be allowed. The attorney examiner did, however, find that the content of all of OEG's proposed objections was covered by other objections that were timely-filed in these proceedings. The attorney examiner also noted, in the November 3 entry, that Rule 4901-1-28, O.A.C., provides that "the attorney examiner may designate additional issues or areas of inquiry." However, the attorney examiner refused to designate OEG's proposed objections as additional areas of inquiry. In addition, in the November 3 entry, the attorney examiner refused to allow the late filing of expert testimony. However, OEG was advised that it would have the opportunity to present rebuttal testimony in the case and that it could use that opportunity to include the testimony of its witness if the testimony would qualify as rebuttal testimony.
- (7) Rule 4901-1-15, O.A.C., provides that a party that is adversely affected by a procedural ruling issued by an attorney examiner may file an application for certification of an interlocutory appeal to the Commission. The attorney examiner may not certify such an appeal to the Commission unless it "presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past

precedent" and the party requires an immediate determination by the Commission in order to prevent undue prejudice or expense.

- (8) On November 7, 2005, OEG filed an application for an interlocutory appeal and an "interlocutory appeal of the November 3, 2005 entry denying motions of the Ohio Energy Group to file testimony and objections to staff report and summary of major issues out of time."
- (9) OEG requests in its interlocutory appeal that the "Ohio Energy Group's Motion to file testimony of Stephen Baron out of time should be granted." OEG sets forth ten reasons which justify the granting of its request to file its testimony out of time. Upon further review, the attorney examiner concludes that the erroneous date that was initially identified in the September 14, 2005, attorney examiner entry was, in part, a cause of OEG's late filing of its testimony. Under the circumstances of this case, the attorney examiner is willing to conclude that it is reasonable that OEG should be permitted to late-file the direct testimony of its witness Stephen Barron.
- (10) Based on the attorney examiner's prior determination that OEG's late-filed objections will be considered within the context of other parties' objections, and the current determination that OEG's testimony will be permitted, any other issues in the interlocutory appeal are now moot.

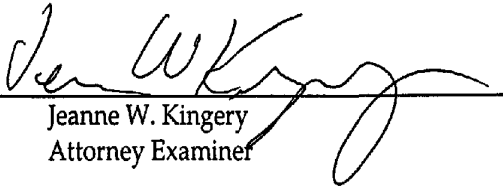
It is, therefore,


ORDERED, That OEG's late-filed testimony be accepted. It is, further,

ORDERED, That OEG's interlocutory appeal be deemed moot and, therefore, not certified to the Commission. It is, further,

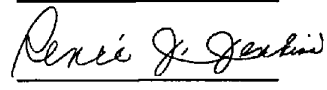
ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Jeanne W. Kingery
Attorney Examiner

JWK:ct 

Entered in the Journal
NOV 25 2005


Renee J. Jenkins
Secretary