**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )

Ohio Power Company for Authority to ) Case No. 13-2385-EL-SSO

Establish a Standard Service Offer Pursuant )

To Section 4928.143, Revised Code, in the )

Form of an Electric Security Plan. )

)

In the Matter of the Application of )

Ohio Power Company for Approval of ) Case No. 13-2386-EL-AAM

Certain Accounting Authority. )

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**BORDER ENERGY ELECTRIC SERVICES, INC.’S**

**MOTION TO INTERVENE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Pursuant to R.C. 4903.221 and Ohio Adm. Code § 4901-1-11, Border Energy Electric Services, Inc. (“Border Energy”) respectfully requests that the Commission issue an entry granting its request to intervene in the above-captioned proceedings as a full party of record. As more fully discussed in the accompanying memorandum, Border Energy has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Border Energy’s interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party.

Accordingly, Border Energy respectfully moves that the Commission grant its Motion to Intervene and direct that Border Energy Electric Services, Inc. be made a full party of record.

Respectfully submitted,

**BORDER ENERGY ELECTRIC SERVICES, INC.**

By: */s/ Stephanie M. Chmiel*

Stephanie M. Chmiel

THOMPSON HINE LLP

41 S. High Street, Suite 1700

Columbus, OH 43215

Tel: (614) 469-3247

Fax: (614) 469-3361

[Stephanie.Chmiel@ThompsonHine.com](mailto:Stephanie.Chmiel@ThompsonHine.com)

*Attorneys for Border Energy Electric Services, Inc.*

**MEMORANDUM IN SUPPORT**

Through its December 20, 2013 application, AEP Ohio seeks approval of a standard service offer (“SSO”) in the form of an electric security plan (“ESP”) pursuant to R.C. 4928.14. AEP Ohio’s ESP would become effective beginning on June 1, 2015, after its current ESP expires. Border Energy seeks to intervene in this action because AEP Ohio’s proposed ESP would impact the retail electric market in Border Energy’s service territory.

Pursuant to R.C. 4903.221, any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding” so long as the person meets certain criteria for intervention. According to the Commission’s own Rules, intervention is appropriate where, as here, the person “has a real and substantial interest in the proceeding,” and the proceeding may “impair or impede his ability to protect that interest, unless the person’s interest is adequately represented by existing parties.” Ohio Adm. Code § 4901-1-11(A)(2). There are five criteria that the Commission considers when determining whether intervention is appropriate:

(1) The nature and extent of the prospective intervenor’s interest.

(2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.

(3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

(5) The extent to which the person’s interest is represented by existing parties.

Ohio Adm. Code § 4901-1-11(B); *see also* R.C. 4903.221(B) (setting forth criteria (1)-(4) as those which the Commission should consider when ruling on a motion to intervene).

Border Energy satisfies the criteria for intervening in this matter. Border Energy has a real and substantial interest in the outcome of this proceeding and could be adversely impacted by the Commission’s ruling. Border Energy is a Commission-certified competitive retail electric supplier (“CRES”), authorized to offer competitive retail electric service to customers within AEP Ohio’s service territory, pursuant to Certificate No. 11-325E (2). The Commission’s ruling on AEP Ohio’s application has the potential to impact the competitive retail electric market in Border Energy’s service territory. Indeed, the Commission is being asked to make decisions that will, among other things, impact the pricing of retail electric service, including setting the rate for electric generation, ruling on the various riders (including nonbypassable riders proposed by AEP Ohio), and ruling on the purchase of receivables program. These considerations have a substantial impact on competitive retail market and, thus, the viability of Border Energy’s business model and the sustainability of its business interests. Those interests are unique to Border Energy and cannot be adequately represented by other parties. Thus, this proceeding may impair or impede Border Energy’s ability to protect those interests.

Border Energy also satisfies each of the statutory and administrative criteria for intervening in this proceeding. *First*, as previously explained, Border Energy’s interest in the AEP-Ohio application is clearly direct and substantial. *Second*, although Border Energy must necessarily await further developments before determining the specific positions it will adopt with respect to the issues in these proceedings, it will certainly advocate that the terms of the ESP-based SSO authorized as a result of this proceeding be fair, reasonable, non-discriminatory, and designed to promote retail electric competition. *Third*, because this case is at its inception, the deadline to intervene has not yet passed, and the hearing is months away, granting Border Energy’s motion will not unduly delay or prolong the proceedings. *Fourth*, Border Energy will bring its experience as a CRES supplier and its experience as an intervenor in similar proceedings to bear on the issues raised. *Finally*, as explained above, Border Energy’s own financial and business interests will likely be impacted by the Commission’s decision in this proceeding. Therefore, other parties cannot adequately represent its interests.

Excluding Border Energy would be inconsistent with the Commission’s stated policy “to encourage the broadest possible participation in its proceedings.”[[1]](#footnote-1) Granting Border Energy’s motion to intervene is consistent with all the considerations set out in Ohio Adm. Code §4901-1-11(B) and R.C. 4903.221. Therefore, Border Energy respectfully requests that the Commission grant its Motion to Intervene.

Respectfully submitted,

**BORDER ENERGY ELECTRIC SERVICES, INC.**

By: */s/ Stephanie M. Chmiel*

Stephanie M. Chmiel

THOMPSON HINE LLP

41 S. High Street, Suite 1700

Columbus, OH 43215

Tel: (614) 469-3247

Fax: (614) 469-3361

[Stephanie.Chmiel@ThompsonHine.com](mailto:Stephanie.Chmiel@ThompsonHine.com)

*Attorneys for Border Energy Electric Services, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Border Energy Electric Services, Inc.’s Motion to Intervene and Memorandum in Support* has been served via e-mail this 6th day of March, 2014 upon the following:

|  |  |
| --- | --- |
| Devin Parram  Katherine Johnson  Werner Margard  Attorney General’s Section  Public Utilities Commission of Ohio  180 East Broad Street, 6th Floor  Columbus, Ohio 43215  [devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)  [katherine.johnson@puc.state.oh.us](mailto:katherine.johnson@puc.state.oh.us)  [werner.margard@puc.state.oh.us](mailto:werner.margard@puc.state.oh.us) | Mark A. Whitt  Andrew J. Campbell  Gregory L. Williams  Whitt Sturtevant LLP  The KeyBank Building  88 East Broad Street, Suite 1590  Columbus, Ohio 43215  [whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  [campbell@whitt-sturtevant.com](mailto:campbell@whitt-sturtevant.com)  [williams@whitt-sturtevant.com](mailto:williams@whitt-sturtevant.com) |
| Mark A. Hayden  Jacob A. McDermott  Scott J. Casto  FirstEnergy Service Company  76 South Main Street  Akron, Ohio 44313  [haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  [jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com)  [scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com) | Thomas J. O’Brien  Dylan F. Borchers  Teresa Orahood  Bricker & Eckler LLP  100 South Third Street  Columbus, Ohio 43215-4291  [tobrien@bricker.com](mailto:tobrien@bricker.com)  [dborchers@bricker.com](mailto:dborchers@bricker.com)  [torahood@bricker.com](mailto:torahood@bricker.com) |
| Vincent Parisi  Lawrence Friedeman  MatthewWhite  Interstate Gas Supply, Inc.  6100 Emerald Parkway  Dublin, Ohio 43016  [vparisi@igsenergy.com](mailto:vparisi@igsenergy.com)  [lfriedeman@igsenergy.com](mailto:lfriedeman@igsenergy.com)  [mswhite@igsenergy.com](mailto:mswhite@igsenergy.com) | David F. Boehm  Michael L. Kurtz  Jody Kyler Cohn  Boehm, Kurtz & Lowry  36 East Seventh Street, Suite 1510  Cincinnati, Ohio 45202  [dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  [mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  [jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com) |
| M. Howard Petricoff  Gretchen L. Petrucci  Vorys, Sater, Seymour & Pease LLP  52 East Gay Street  P.O. Box 1008  Columbus, Ohio 43216-1008  [mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  [glpetrucci@vorys.com](mailto:glpetrucci@vorys.com) | Kimberly W. Bojko  Mallory M. Mohler  Carpenter Lipps & Leland LLP  280 North High Street  280 Plaza, Suite 1300  Columbus, Ohio 43215  [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  [mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com) |
| Sandra Coffey  Public Utilities Commission of Ohio  180 East Broad Street  Columbus, Ohio 43215  [sandra.coffey@puc.state.oh.us](mailto:sandra.coffey@puc.state.oh.us) | Trent A. Dougherty  Ohio Environmental Council  1207 Grandview Avenue, Suite 201  Columbus, Ohio 43212  [Trent@theOEC.org](mailto:Trent@theOEC.org) |
| David I. Fein, Vice President  State Government Affairs – East  Exelon Corporation  10 South Dearborn Street, 47th Floor  Chicago, Illinois 60603  [david.fein@exeloncorp.com](mailto:david.fein@exeloncorp.com) | Cynthia Fonner Brady  Assistant General Counsel  Exelon Business Services Company  4300 Winfield Road  Warrenville, Illinois 60555  [cynthia.brady@constellation.com](mailto:cynthia.brady@constellation.com) |
| Deb J. Bingham  Maureen R. Grady  Office of the Ohio Consumers’ Counsel  10 West Broad Street, 18th Floor  Columbus, Ohio 43215-3485  [bingham@occ.state.oh.us](mailto:bingham@occ.state.oh.us)  [grady@occ.state.oh.us](mailto:grady@occ.state.oh.us) | Steven T. Nourse  Matthew J. Satterwhite  American Electric Power Corporation  1 Riverside Plaza, 29th Floor  Columbus, Ohio 43215-2373  [stnourse@aep.com](mailto:stnourse@aep.com)  [mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com) |
| Mark S. Yurick  Zachary D. Kravitz  Taft Stettinius & Hollister LLP  65 East State Street, Suite 1000  Columbus, Ohio 43215  [myurick@taftlaw.com](mailto:myurick@taftlaw.com)  [zkravitz@taftlaw.com](mailto:zkravitz@taftlaw.com) | Colleen L. Mooney  Cathryn N. Loucas  Ohio Partners for Affordable Energy  231 West Lima Street  Findlay, Ohio 45839  [cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  [cloucas@ohiopartners.org](mailto:cloucas@ohiopartners.org) |
| Richard L. Sites  General Counsel & Senior Director of  Health Policy  Ohio Hospital Association  155 East Broad Street, 15th Floor  Columbus, Ohio 43215-3620  [ricks@ohanet.org](mailto:ricks@ohanet.org) | Tyler A. Teuscher  Judi L. Sobecki  The Dayton Power & Light Company  1065 Woodman Drive  Dayton, Ohio 45432  [Tyler.teuscher@dplinc.com](mailto:Tyler.teuscher@dplinc.com)  [Judi.sobecki@aes.com](mailto:Judi.sobecki@aes.com) |
| Dianne Kuhnell  Duke Energy Business Services  139 East Fourth Street EA025  P.O. Box 960  Cincinnati, Ohio 45201  [Dianne.kuhnell@duke-energy.com](mailto:Dianne.kuhnell@duke-energy.com) | Gary A. Jeffries  Assistant General Counsel  Dominion Resources Services, Inc.  501 Martindale Street, Suite 400  Pittsburgh, Pennsylvania 15212-5817  [Gary.A.Jeffries@dom.com](mailto:Gary.A.Jeffries@dom.com) |
| Joseph M. Clark  Direct Energy  21 East State Street, 19th Floor  Columbus, Ohio 43215  [joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com) | Barth E. Royer  Bell & Royer Co., LPA  33 South Grant Avenue  Columbus, Ohio 34215-3927  [barthroyer@aol.com](mailto:barthroyer@aol.com) |
| Daniel R. Conway  Porter Wright Morris & Arthur  Huntington Center  41 South High Street  Columbus, Ohio 43215  [dconway@porterwright.com](mailto:dconway@porterwright.com) | John Finnigan  Senior Regulatory Attorney  Environmental Defense Fund  128 Winding Brook Lane  Terrace Park, Ohio 45174  [jfinnigan@edf.org](mailto:jfinnigan@edf.org) |
| Lisa M. Hawrot  Spilman Thomas & Battle, PLLC  Century Centre Building  1233 Main Street, Suite 4000  Wheeling, West Virginia 26003  [lhawrot@spilmanlaw.com](mailto:lhawrot@spilmanlaw.com) | Nicholas McDaniel  Environmental Law & Policy Center  1207 Grandview Avenue, Suite 201  Columbus, Ohio 43212  [NMcDaniel@elpc.org](mailto:NMcDaniel@elpc.org) |
| Marissa J. Bach  Hess Energy Marketing, LLC  One Hess Plaza  Woodbridge, New Jersey 07030  [mbach@hess.com](mailto:mbach@hess.com) | Lael Campbell  Exelon  101 Constitution Avenue, NW  Washington, DC 20001  [Lael.Campbell@constellation.com](mailto:Lael.Campbell@constellation.com) |
| Michael R. Smalz  Ohio Poverty Law Center  555 Buttles Avenue  Columbus, Ohio 43215  [msmalz@ohiopovertylaw.org](mailto:msmalz@ohiopovertylaw.org) | Rocco D’Ascenzo  Duke Energy Ohio, Inc.  139 East Fourth Street, 1303-Main  Cincinnati, Ohio 45202  [rocco.dascenzo@duke-energy.com](mailto:rocco.dascenzo@duke-energy.com) |
| Samuel C. Randazzo  Joseph E. Oliker  Frank P. Darr  Matthew R. Pritchard  McNees Wallace & Nurick LLC  21 East State Street, 17th Floor  Columbus, Ohio 43215  [sam@mwncmh.com](mailto:sam@mwncmh.com)  [joliker@mwncmh.com](mailto:joliker@mwncmh.com)  [fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  [mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com) | Peggy P. Lee  Southeastern Ohio Legal Services  964 East State Street  Akron, Ohio 45701  [plee@oslsa.org](mailto:plee@oslsa.org) |
| Derrick Price Williamson  Spilman Thomas & Battle, PLLC  1100 Bent Creek Blvd., Suite 101  Mechanicsburg, Pennsylvania 17050  [dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com) | Samantha Williams  Natural Resources Defense Council  20 North Wacker Drive, Suite 1600  Chicago, Illinois 60606  [swilliams@nrdc.org](mailto:swilliams@nrdc.org) |

*/s/ Stephanie M. Chmiel*

Stephanie M. Chmiel

761328.2

1. *See Cleveland Elec. Illum. Co.*,Case No. 85-675-EL-AIR (Entry dated January 14, 1986), at 2. [↑](#footnote-ref-1)