

FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company and Columbus) Case No. 10-2376-EL-UNC
Southern Power Company for Authority)
to Merge and Related Approvals.)

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MOTION TO INTERVENE

BY

DUKE ENERGY RETAIL SALES, LLC

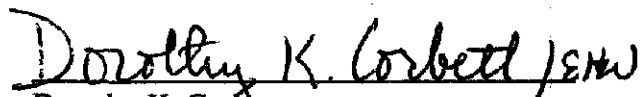
Now comes Duke Energy Retail Sales, LLC, (Duke Energy Retail) and moves to intervene, as a full party of record, in the above-captioned proceeding, pursuant to R.C. 4903.221 and O.A.C. 4901-1-11. The applicants in this proceeding, Ohio Power Company and Columbus Southern Power Company, ask for authority to merge, leading up to their next application for approval of a standard service offer. The resolution of issues in this proceeding will directly impact that standard service offer and, therefore, the ability of suppliers to compete in the retail market. Duke Energy Retail, as a certified retail electric supplier, therefore has a real and substantial interest in this proceeding that is not adequately represented by existing parties.

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Wherefore, for the reasons more fully set forth in the attached memorandum in support, Duke Energy Retail respectfully requests that the Commission grant this motion to intervene.

Respectfully submitted,

DUKE ENERGY RETAIL SERVICES, LLC

A handwritten signature in black ink that reads "Dorothy K. Corbett" followed by a stylized monogram "JEMW".

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MEMORANDUM IN SUPPORT

On October 18, 2010, Ohio Power Company (Ohio Power) and Columbus Southern Power Company (Columbus Southern) (collectively, the Companies) filed an application seeking the approval of the Public Utilities Commission of Ohio (Commission) to merge, with Ohio Power as the sole surviving entity. The Companies ask the Commission to act on their application "as expeditiously as possible" (Application, at p. 6), with the Agreement and Plan of Merger providing that the Certificate of Merger is to be filed as soon as practicable after execution and the merger is to become effective at 11:59 p.m. on the last day of the month during which the Certificate of Merger is filed (Application, Exhibit A, at Article II).

R.C. 4903.221(B) sets forth several criteria that the Commission is required to consider in ruling on applications to intervene. Those criteria are listed as follows:

- (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.

The Commission has, itself, added additional detail to the intervention requirements through the promulgation of O.A.C. 4901-1-11. That rule, in section (A), requires that the Commission allow intervention by a person who has a “real and substantial interest in the proceeding” and who “is so situated that the disposition of the proceeding may . . . impair or impede [its] ability to protect that interest, unless the person’s interest is adequately represented by existing parties.” The rule goes on to list several factors that the Commission is required to consider in determining whether a potential intervenor meets that standard:

- (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.

Duke Energy Retail Sales, LLC, (Duke Energy Retail) is a competitive retail electric services provider, certified to provide retail services in the territories of Columbus Southern and Ohio Power. Indeed, Duke Energy Retail is providing both nonresidential and residential services in the Companies’ territory at this time. It is critical to the ongoing business of Duke Energy Retail that it be able to compete successfully for business in these areas. However, Duke Energy Retail believes that the

merger proposed by the Companies may have a deleterious impact on that competitive market, in violation of both the spirit of S.B. 221 and S.B. 3 and the specifics of state policy, as set forth in R.C. 4928.02. This issue is directly related to the merits of the Application in this proceeding. Indeed, competitive interests of intervenors have been upheld as the basis for intervention in other proceedings at the Commission.¹

As no procedural schedule has yet been determined in this case, intervention by Duke Energy Retail will not unduly prolong or delay this proceeding. Duke Energy Retail would also respectfully suggest that its intervention will significantly contribute to the full development and equitable resolution of the factual issues, based on its experience in the marketplace and understanding of competitive needs in general. Its interests are not represented by existing parties.

Duke Energy Retail would also note that, although no determination has yet been made as to whether a hearing will be required, the Supreme Court of Ohio has made it clear that intervention is to be liberally allowed, regardless of whether a hearing is held.²

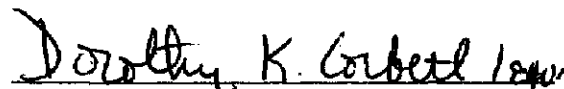
¹ See *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of The Cincinnati Gas & Electric Company and Related Matters*, Case No. 05-218-GA-GCR (Entry, November 15, 2005); *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc., and Related Matters*, Case No. 05-221-GA-GCR (Entry, November 17, 2005); and *In the matter of the Regulation of the Purchased Gas Adjustment Clause contained Within the Rate Schedules of The East Ohio Gas Company d.b.a. dominion East Ohio and Related Matters*, Case No. 05-219-GA-GCR (Entry, December 2, 2005).

² *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 11 Ohio St.3d 384, 2006-Ohio-5853 (¶20).

Duke Energy Retail therefore respectfully requests that the Commission grant its motion to intervene and that it be made a full party of record.

Respectfully submitted,


DUKE ENERGY RETAIL SERVICES, LLC

A handwritten signature in black ink, reading "Dorothy K. Corbett" with a stylized flourish at the end.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 19th day of November, 2010, by electronic mail, upon the persons listed below.


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