

5

FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO


RECEIVED-BIDDETING DIV
2010 NOV 29 PM 4:11
PUCO

In The Matter of the Application of Duke :
Energy Ohio For Approval of a Market :
Rate Offer to Conduct a Competitive : 10-2586-EL-SSO
Bidding Process for Standard Service Offer :
Electric Generation Supply, Accounting :
Modifications Associated with Reconciliation :
Mechanism, and Tariffs for Generation Service :

DUKE ENERGY RETAIL SALES LLC'S MOTION TO INTERVENE

Duke Energy Retail Sales, LLC, by and through its attorneys and pursuant to Ohio Revised Code Section 4903.221 and Ohio Administrative Code Section 4901-1-11, respectfully moves this Commission for leave to intervene in this proceeding. The bases for this motion are set forth in the attached memorandum in support, which is incorporated by reference herein.

Respectfully submitted,



Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street
Suite 200
Columbus, OH 43215
(614)464-2000
(614)464-2002 (fax)
mdortch@kravitzllc.com

Attorneys for
DUKE ENERGY RETAIL SALES, LLC

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Duke Energy Retail Sales, LLC ("Duke Retail") is a certified Competitive Retail Electric Service ("CRES") provider, having been issued Certificate No. 04-124 by this Commission. Duke Retail is a wholly owned subsidiary of Cinergy Capital & Trading, Inc. ("CC&T"). On November 15, 2010, Duke Energy Ohio, Inc. ("Duke Energy Ohio") filed an Application for approval of a market rate offer ("MRO") to conduct a competitive bidding process for a standard service offer ("SSO") of generation supply, pursuant to Ohio Rev. Code ("R.C.") §4928.141 and 4928.142.

Both Duke Retail and CC&T are affiliates of Duke Energy Ohio. Further, Duke Retail, CC&T and Duke Energy Ohio are each members of the Duke Energy Corporation family of companies. Duke Retail is currently authorized to conduct business within, and is in good standing within, the States of Ohio, Delaware, Illinois and New Jersey. Duke Retail has for some time marketed the services it provides to large commercial and industrial consumers of electric power within the State of Ohio, and it has recently begun marketing its services to residential consumers of electric power within the State of Ohio. Thus, the Commission's treatment of Duke Energy Ohio's application for approval of an MRO in this proceeding will directly affect Duke Retail as a participant in Ohio's competitive electric market.

II. LAW AND ARGUMENT

A. This Commission's Standard Regarding Intervention

Pursuant to Ohio Admin. Code ("O.A.C.") §4901-1-11(A), upon timely motion, any person is permitted to intervene in a proceeding before this Commission upon a showing that:

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical

matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Further, O.A.C. §4901-1-11(B) provides that the following factors are to be considered in evaluating requests to intervene:

- (1) The nature of the person's interest;
- (2) The extent to which the person's interest is represented by existing parties;
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

See also R.C. §4903.221.

B. Duke Energy Retail Sales, LLC Should Be Permitted To Intervene In This Proceeding.

Duke Retail should be granted leave to intervene in this proceeding. "Any person" is permitted to intervene in a proceeding upon a showing that the person has a real and substantial interest in the proceeding and that the person is so situated that the disposition of the proceeding may impair or impede his or her ability to protect that interest. O.A.C. Section 4901-1-11(A)(2).

Duke Retail's interest is real and substantial. Duke Retail is a CRES provider which will be competing in the MRO-based retail market after the Duke Energy Ohio MRO auction. Thus, Duke Retail has an interest in the instant proceedings because the Commission will assess the means by which Duke Energy Ohio conducts the MRO auction, as well as making other decisions affecting the viability of the market. Duke Retail therefore possesses a real and substantial interest in this proceeding that it is entitled to pursue and protect.

Duke Energy Ohio does not adequately represent Duke Retail's interests in this proceeding. As a CRES provider, Duke Retail supplies many¹, of the same services provided by Duke Energy Ohio. Duke Retail's position, however, is unique. It must compete against Duke

¹ As a CRES, Duke Retail does not have an obligation to provide, and does not provide, Provider of Last Resort ("POLR") service to its customers.

Energy Ohio, as well as against other CRES providers for market share. Duke Retail's interest therefore cannot be represented by Duke Energy Ohio. The other parties to this action do not adequately represent Duke Retail's interests because they are either competitors of Duke Retail or are customers of electric services providers (or representative thereof) rather than producers of electric services.

Duke Retail has significant experience in supplying competitive electric energy products and in participating in Commission proceedings. As a result, Duke Retail will meaningfully contribute to the resolution of issues raised by Duke Energy Ohio's filing.

Finally, permitting Duke Retail to intervene will not unduly delay the proceeding or unduly prejudice any existing party. Under these circumstances, Duke Retail should be permitted to intervene in this proceeding.

IV. CONCLUSION

For the foregoing reasons, Duke Retail respectfully asks that this Commission GRANT its Motion to Intervene.

Respectfully submitted,



Michael D. Dortch (0043897)
KRAVITZ, BROWN & DORTCH, LLC
65 East State Street, Suite 200
Columbus, OH 43215
(614)464-2000
(614)464-2002 (fax)
mdortch@kravitzllc.com

Attorneys for
DUKE ENERGY RETAIL SALES, LLC

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing were served upon the following parties to this proceeding this 27 day of November, 2010, by depositing the same in the United States Mail, postage prepaid, addressed as follows:

Amy Spiller
Duke Energy Business Services, Inc.
221 E. Fourth Street, 25 AT II
Cincinnati, OH 45202

Mark Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Samuel C. Randazzo
Industrial Energy Users of Ohio
21 E. State Street, 17th Floor
Columbus, OH 43215

Will Reisinger
Ohio Environmental Council
1207 Grandview Avenue
Columbus, OH 43212

Robert A. Wishaar, Jr.
McNees, Wallace & Nurick, LLC
Fifth Third Center
21 East State Street, Suite 1700
Columbus, OH 43215

Howard M. Petricoff
Vorys, Sater, Seymour and Pease, LLP
52 E. Gay Street P.O. Box 1008
Columbus, OH 43216

Mark Yurick
Christine Schulenberg
Chester, Wilcox & Saxbe, LLP
65 E. State Street, Suite 1000
Columbus, OH 43215


Kyle L. Verrett
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215

Michael L. Kurtz
David Boehm
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, OH 45202

David C. Rinebolt
Ohio Partners for Affordable Energy
231 W. Lima Street
P.O. Box 1793
Findlay, OH 45840

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202

Cynthia Fonner Brady
Constellation Energy Resources, LLC
550 W. Washington Street, Suite 300
Chicago, IL 60661



Michael D. Dortch