

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke :
Energy Ohio for Approval of a Market :
Rate Offer to Conduct a Competitive :
Bidding Process for Standard Service : Case No. 10-2586-EL-SSO
Offer Electric Generation Supply, :
Accounting Modifications, and Tariffs :
for Generation Service. :

MOTION TO INTERVENE
OF
DOMINION RETAIL, INC.

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By the above-styled application, Duke Energy Ohio ("Duke") seeks approval of a standard service offer ("SSO") in the form of a competitively-bid market rate offer ("MRO") to replace the electric security plan ("ESP") SSO approved by the Commission in Case No. 08-920-EL-SSO, which expires by its terms on December 31, 2011. As more fully discussed in the accompanying memorandum, Dominion Retail, Inc. ("Dominion Retail") 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. Further, Dominion Retail'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, Dominion Retail hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code ("OAC").

WHEREFORE, Dominion Retail respectfully requests that the Commission grant its motion to intervene.

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Respectfully submitted,



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MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
DOMINION RETAIL, INC.

By its application filed herein on November 15, 2010, Duke seeks approval of an MRO-based SSO pursuant to Sections 4928.141 and 4928.142, Revised Code, and Chapter 4901:1-35, Ohio Administrative Code ("OAC"). Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." Dominion Retail is a Commission-certified CRES provider authorized to offer competitive retail electric service to customers within Duke's service territory. As such, Dominion Retail must compete against the Duke SSO to attract and retain customers. Moreover, Dominion Retail is also a potential bidder in the proposed auction process by which Duke's MRO will be established. Thus, there can be no question that Dominion Retail may be adversely affected by this proceeding. Further, not only does Dominion Retail satisfy the underlying statutory test for intervention in Commission proceedings, but it also satisfies the standards governing intervention set forth in the Commission's rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding 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 ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As a CRES supplier, Dominion Retail plainly has a real and substantial interest in a proceeding in which the Commission is being asked to determine how the price against which it must compete will be established. As a potential wholesale supplier, Dominion Retail clearly has a real and substantial interest in a proceeding in which the Commission is being asked to determine how the competitive bidding process to secure generation supply for the SSO will be conducted. At this juncture, none of the pending motions to intervene in this proceeding have been granted. Thus, by definition, no existing parties adequately represent Dominion Retail's interest.

Although Dominion Retail does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard, also fully support granting Dominion Retail's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

(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;

First, as previously explained, Dominion Retail's interest in connection with these proposals is obviously direct and substantial. Second, although Dominion Retail must necessarily await further developments before determining the specific positions it will adopt with respect to the issues in these proceedings, Dominion Retail will certainly advocate that any process adopted as a result of the applications be fair, reasonable, non-discriminatory, and designed to promote competition. Third, Dominion Retail's motion has been filed prior to the December 7, 2010 deadline for intervention established by the attorney examiner's entry in this docket of November 16, 2010. Thus, by definition, Dominion Retail's motion to intervene will not unduly delay or prolong the proceeding. Fourth, Dominion Retail has been a frequent participant in cases involving the establishment of competitive electric and gas markets in Ohio and the numerous other states in which it does business, and was a party to Case No. 08-920-EL-SSO. As a result, Dominion Retail will bring substantial experience to bear on the issues raised. Finally, not only are there no existing parties that represent Dominion Retail's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2) to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor certain CRES providers or potential bidders over others. Thus, granting Dominion Retail intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, Dominion Retail respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 1st day of December 2010.


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