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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

OHIO POWER COMPANY'S AND COLUMBUS SOUTHERN POWER COMPANY'S MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE BY DUKE ENERGY RETAIL SALES, LLC.

Under Rule 4901-1-11(A)(2), O.A.C., the Commission will only grant intervention where the movant shows a real and substantial interest in the proceeding. This standard is consistent with Section 4903.221, Revised Code. The motion to intervene submitted by Duke Energy Retail Sales, LLC ("Duke") does not demonstrate any interest, substantial or otherwise, in the limited scope of this merger proceeding. The motion should be denied.

The only interest Duke asserts in this proceeding is in the eventual effect of a merger on the competitive retail market in Ohio. Approval of the merger, however, will have no direct effect on Applicants' customers, rates, or service area. As set out in the merger application:

> After the merger OPCo will continue to provide retail electric services to customers within the pre-merger certified territories of CSP and OPCo in accordance with their respective rates and terms and conditions in effect for CSP and OPCo prior to the merger until such time as the Commission approves new rates and terms and conditions. More specifically, approval of the merger will not affect CSP's and OPCo's rates. It is the Companies intent to blend its retail rates in future proceedings. The merged Company intends to implement rates, terms and conditions so that customers in each pre-merger Company's pre-merger service territory will continue to be charged existing pre-merger rates, terms and conditions until such time as the Commission approves new rates, terms and conditions for the merged Company. The merged Company also intends to utilize blended depreciation rates upon implementation of the merger and until such time as the Commission approves new depreciation rates.

(Application at para. 8).

As has been established previously, "it is the Commission's policy not to grant intervention to entities whose only real interest in the proceedings is that legal precedent may be established which may affect that entity's interest in a subsequent case." *In Re Complaint of WorldCom, Inc, et al. v. City of Toledo*; and *In Re Complaint of The Toledo Edison Co. and American Transmission Systems, Inc. v. City of Toledo*, PUCO Case Nos. 02-3207-AU-PWC and 02-3210-EL-PWC, Entry, at page 3 (March 4, 2003). "Although [an entity] has an interest in the proceeding and the precedent that might be set in [the] case, [it] has long held that interest is not a sufficient basis for intervention." *In Re Complaint of Dominion Retail, Inc. v. Ohio Edison Co. et al.*, PUCO Case No. 00-2526-EL-CSS, Entry, at page 2 (April 19, 2001). The Commission affirmed its Attorney Examiner's ruling in *Dominion Retail* when the entity whose motion to intervene was denied took an interlocutory appeal of the denial. Entry, at page 2 (May 15, 2001).

The Commission has further explained why allowing intervention on the basis of an interest in the precedent that might be set in a particular case is not appropriate as follows: "To grant intervention on this basis would render the Commission's rule on intervention meaningless and allow almost any person intervention in any case based on the proposition that the precedent established may affect them in some future case." *In Re FirstEnergy Corp. on Behalf of Ohio Edison Co. et al.*, PUCO Case Nos. 99-1212-EL-ETP, 99-1213-EL-ATA, 99-1214-EL-AAM, Entry, at pages 2-3 (March 23, 2000).

Further, in *Ohio Domestic Violence Network v. Pub. Util. Comm.* (1994), 70 Ohio St. 3d 311, 315, 1994 Ohio 165, 638 N.E.2d 1012, the Supreme Court of Ohio held that R.C. 4903.221 -- the statute governing intervention in PUCO proceedings – "clearly contemplates intervention in quasi-judicial proceedings, characterized by notice, hearing, and the making of an

evidentiary record," and when no hearing is held before the PUCO, "there is no right to intervene."

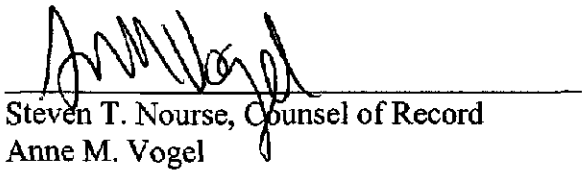
Duke admits that its only interest in this proceeding is a competitive interest the potential affect of the Commission's decision on future cases involving Applicants' retail rates. In the event the merger application is granted, Duke will have the opportunity to assert any interest it may have in the consolidated entity's rate structure and pricing in future rate cases. The merger application, however, is a straightforward, stand-alone request for authority to merge two affiliates -- applicants Ohio Power Company and Columbus Southern Power Company.

Applicants respectfully submit that the case presents no issues that require Duke's experience to resolve. The merger application narrowly affects the internal operations of two affiliates, with no direct impact on existing customers, customer base or external operations of the companies. (Application at paras 8-9.) Accordingly, Duke cannot "significantly contribute to full development and equitable resolution of the factual issues" as required by Section 4903.221, Revised Code. Particularly in light of the fact that no hearing is necessary or anticipated in connection with Applicants' merger application, intervention is not warranted. Rather, Duke's intervention in the proceeding can only serve to needlessly delay and prolong its resolution.

Conclusion

For the foregoing reasons, the Commission should deny Duke's motion to intervene.

Respectfully submitted,



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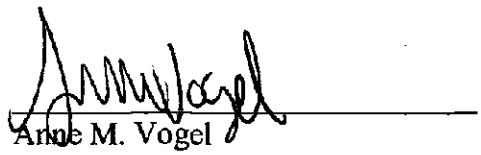
CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Power Company's and Columbus Southern Power Company's Memorandum in Opposition to Duke Energy Retail Sales, LLC's Motion to Intervene was served via electronic mail and First-Class U.S. Mail upon counsel for all parties of record in this case, on this 2nd day of December, 2010.



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