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FAX

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January 27, 2011

VIA FAX
Ms. Renee Jenkins
Public Utilities Commission of Ohio
Docketing Division
180 E. Broad Street, 11th Floor
Columbus, OH 43215

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Re: *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 Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service,* Case No. 10-2586-EL-SSO

Dear Ms. Jenkins:

Please find attached the Initial Brief of Eagle Energy, LLC, which is seven (7) pages in length, to be filed in this proceeding by fax. The original and twenty copies will be sent by overnight delivery. As indicated on the Certificate of Service, all parties will be served copies by e-mail.

Very truly yours,

Douglas E. Hart

Enclosure

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 Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service.	Case No. 10-2586-EL-SSO

INITIAL BRIEF OF EAGLE ENERGY, LLC

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I. INTRODUCTION.

By Entry dated December 13, 2010, the Attorney Examiners granted all pending motions to intervene, including that of Eagle Energy, LLC. Eagle Energy, LLC joins in all of the arguments contained in the Initial Brief of the Greater Cincinnati Health Council ("GCHC"). For the sake of brevity, Eagle Energy, LLC will not repeat that analysis, but hereby incorporates it by reference. In addition, Eagle Energy, LLC would like address additional issues of interest to it in this brief. The failure to address any other issues should not be taken as a concession that Duke has met its burden of proof for approval of an MRO. Eagle Energy, LLC reserves the right to address additional issues raised by any other party on reply.

II. ARGUMENT.

A. The Commission Should Ensure That Duke's Move From MISO to PJM Does Not Harm Competition.

Contemporaneous with the start of the MRO period, Duke plans to move its transmission assets from MISO to PJM. Duke has not established that the level of competition it currently experiences in its local market would continue after the switch. The competition that has developed in Duke's territory to date occurred while Duke was a transmission owner in MISO, and was caused by CRES suppliers who participate in MISO. (Tr. I, p. 72). Duke does not know the market impact of its planned move to PJM on current MISO participants. (*Id.*). Duke has not presented any evidence of which, or how many, CRES suppliers that are currently active in its territory through MISO will continue to offer CRES service once Duke is a transmission owning member of PJM. (Tr. I, pp. 73, 233). Duke has not analyzed whether MISO-based suppliers would follow Duke to PJM (Tr. I, p. 233), or whether the competitive suppliers who are active in MISO are active in PJM (Tr. I, p. 240).

Competitive resources that are physically located within MISO will have to deliver power to the Duke energy zone within PJM. (Tr. I, p. 231). They may experience higher costs to deliver power across two RTOs. (Tr. I, p. 232). And, marketers in MISO will likely experience higher transmission costs within MISO after Duke withdraws than they would with Duke as a transmission owning member as they can no longer participate on a financial basis, but would have to do so on a physical basis.

Given the lack of analysis by Duke of how its switch to PJM will affect competitive conditions, the Commission should not simply accept Duke's assertion that its market will remain as competitive as it is now. The Commission should take steps to ensure that competition is not harmed consistent with the State's policy on competition, as articulated in R.C. § 4928.02, before approving an MRO. The Commission should require Duke to put MISO market participants in a competitively neutral position compared to what exists today, thereby not harming the competitive environment. Duke should not be allowed to rely on existing competition to justify an MRO and at the same time impair that competition through its RTO change. Accordingly, the Commission should require Duke to guarantee MISO market participants that its move to PJM will not increase their costs to serve Duke customers compared to the costs they would experience if Duke remained in MISO.

B. If the Commission Permits Duke To Recover RTO Transition Costs, Those Costs Should Be Fully Bypassable.

Eagle Energy, LLC disagrees with any costs associated with the change in RTO, such as MISO exit fees and duplicate expansion costs, not being bypassable. Duke plans to flow at least some of the MISO exit fee and RTEP costs that it will incur through Duke's proposed Rider BTR. (Tr. III, p. 674). It is unclear at this time what MISO exit fees, MTEP costs, PJM realignment costs, or RTEP costs that might be approved would go into Rider BTR and which would go into Rider RTO. Those costs are all presently unknown, whether FERC will approve their recovery is unknown, and whether this Commission will have an opportunity to pass on their prudence and whether it would approve them is unknown.

What should be a given, however, is that the Commission has the authority to determine which riders would be used to recover which costs and whether those riders would be bypassable. Duke caused these costs to be incurred through its unilateral business decision to change RTOs. Duke made the decision based on conservative assumptions contained in confidential documents and still found it beneficial to the Company. (IEU-Ohio Exs. 1, 2, 6; Tr. II, p. 341-44). Customers should not be forced to bear those costs and should be protected from adverse consequences to the maximum extent possible. Therefore, if and when Duke receives approval to pass any such costs on customers, the Commission should require Duke to place all costs attributable to its decision to move to PJM into a bypassable rider, and not be permitted to charge them in a non-bypassable rider such as Rider BTR.

III. CONCLUSION

Eagle Energy, LLC joins in the issues raised by the GCHC and the results that it requests. In addition, Eagle Energy, LLC requests that the Commission require Duke to ensure that the competitive environment is not harmed by its move from MISO to PJM and that any MISO exit fees or duplicate expansion costs that Duke incurs and is allowed to pass on to customers be fully bypassable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Brief of Eagle Energy, LLC has been served to the parties listed below by electronic delivery this 27th day of January 2011.

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