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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service.)	
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)	
)	Case No. 11-3549-EL-SSO
)	
)	
)	
In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.)	Case No. 11-3550-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio for Authority to Amend its Corporate Separation Plan.)	Case No. 11-3551-EL-UNC
)	

DUKE ENERGY OHIO, INC.'S
MEMORANDUM IN OPPOSITION TO CINCINNATI BELL, INC.'S
MOTION FOR LEAVE TO INTERVENE AND
MOTION TO INTERVENE

I. Introduction

On June 20, 2011, Duke Energy Ohio, Inc., (Duke Energy Ohio) filed an application for authority to establish a standard service offer, pursuant to section 4928.143, Ohio Revised Code, in the form of an electric security plan. On June 22, 2011, the attorney examiners issued a procedural schedule that established, among other things, an deadline of July 6, 2011, for the filing of motions to intervene. On July 15, 2011, Cincinnati Bell, Inc., (Cincinnati Bell) moved for leave and to intervene. For the reasons explained below, Duke Energy Ohio submits that the Commission should deny the Cincinnati Bell motion to intervene.

II. Argument

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A. Cincinnati Bell Does Not Have Standing to Intervene

In its motion for leave and motion to intervene, Cincinnati Bell asserts that it has a real and substantial interest in this proceeding, that it is so situated that the disposition of these proceedings without its participation may impede or impair its ability to protect its interests and that its participation will contribute to the just and expeditious resolution of the interests involved. Finally, Cincinnati Bell argues that its interests are not represented by any other existing party to the proceeding.

Ohio Administrative Code (O.A.C.) 4901-1-11 sets forth the elements a party must demonstrate in order to be permitted to intervene in a proceeding before the Public Utilities Commission of Ohio (Commission). It is important to note that the elements set forth in 4901:1-1-11(A)(2) that Cincinnati Bell has recited in its motion are cumulative and not a la carte:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(1) A statute of this state or the United States confers a right to intervene.

(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.

Cincinnati Bell claims that it has an interest in this proceeding that cannot be adequately represented by the current parties. In asserting this contention, however, Cincinnati Bell expressly fails to identify any interests that it may have that warrant such intervention. Rather, Cincinnati Bell states that other entities with whom it is associated – subsidiaries or affiliates – have an interest in this case. As this statement undeniably confirms, Cincinnati Bell does not

have any interest in this proceeding. Further, it could not be the real party in interest, with standing to assert the claims or defenses of other entities.

Importantly, allowing Cincinnati Bell to intervene on behalf of entities that are not parties to this proceeding undeniably prejudices Duke Energy Ohio in the prosecution of its application, including discovery. By way of example, Duke Energy Ohio could unfairly be denied access to documents and other relevant information where such information is not within the possession, custody, or control of Cincinnati Bell. Rather, to obtain discovery, including depositions, Duke Energy Ohio would need to seek the issuance of subpoenas to compel information from entities that are not parties to this proceeding. The illogic of such a convoluted procedure demonstrates the inappropriateness of allowing a party without standing to intervene.

B. Cincinnati Bell's Interests Are Adequately Represented

To the extent Cincinnati Bell's purported justification for intervening relates to charges for electric service that are paid by its affiliates, Duke Energy Ohio observes that such an interest is more than adequately represented by those entities to have timely intervened, on their own behalf, in this proceeding. Indeed, the Greater Cincinnati Health Council, the Ohio Energy Group, Industrial Energy Users-Ohio, Ohio Manufacturing Association, The Kroger Company, and Wal-Mart and Sam's LLP, to name a few, have an interest in the non-residential rates sought to be charged by Duke Energy Ohio and, through their capable counsel, can more than adequately represent the interest allegedly of concern to Cincinnati Bell's subsidiaries.

To the extent Cincinnati Bell's asserts that its subsidiaries are concerned with residential rates, such an interest is also adequately represented by parties such as the Office of the Ohio Consumers' Counsel, the City of Cincinnati, People Working Cooperatively, and Ohio Partners for Affordable Energy.

Cincinnati Bell cannot fulfill the requirements of 4901:1-11, O.A.C. Intervening as a corporation on behalf of that corporation's affiliates affirmatively demonstrates a lack of standing. Cincinnati Bell notes that it was not a party to Duke Energy Ohio's most recent standard service offer case and thus was not served a notice of this case. Indeed, Cincinnati Bell has not intervened in any of Duke Energy Ohio's rate cases in recent history. The reason for this is that if it has any interest at all in these cases, those interests are already protected by other parties.

III. Conclusion

In summary, the Cincinnati Bell's motion for leave and to intervene is based on the fallacious notion that it has standing in this proceeding and that it is necessary for Cincinnati Bell to represent interest its affiliates may have, if any. For the reasons set forth above, Cincinnati Bell's motion for leave and to intervene should be denied.

Respectfully submitted,

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