

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Application of Duke )  
Energy Ohio, Inc. for Authority to )  
Establish a Standard Service Offer )  
Pursuant to Section 4928.143, Revised ) Case No. 11-3549-EL-SSO  
Code, in the Form of an Electric Security )  
Plan, Accounting Modifications and )  
Tariffs for Generation Service. )

In the Matter of Application of Duke )  
Energy Ohio, Inc. for Authority to )  
Amend its Certified Supplier Tariff, ) Case No. 11-3550-EL-ATA  
P.U.C.O. No. 20. )

In the Matter of Application of Duke )  
Energy Ohio, Inc. for Authority to ) Case No. 11-3551-EL-UNC  
Amend its Corporate Separation Plan. )

ENTRY

The attorney examiner finds:

- (1) Duke Energy Ohio, Inc. (Duke) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On June 20, 2011, Duke filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. This application is for an electric security plan in accordance with Section 4928.143, Revised Code.
- (3) By entry dated June 21, 2011, the attorney examiner established July 6, 2011, as the deadline by which parties were required to file motions to intervene in these proceedings. The following parties timely filed motions to intervene in these proceedings:
  - Industrial Energy Users-Ohio
  - City of Cincinnati
  - Ohio Consumers' Counsel
  - The Ohio Energy Group
  - Ohio Partners for Affordable Energy

- Ohio Environmental Council
- The Greater Cincinnati Health Council
- FirstEnergy Solutions Corp.
- Ohio Manufacturers' Association
- People Working Cooperatively, Inc.
- The Kroger Company
- Environmental Law & Policy Center
- Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.
- Columbus Southern Power and Ohio Power Company
- AEP Retail Energy Partners, LLC
- EnerNOC, Inc.
- Eagle Energy, LLC
- Vectren Retail, LLC d/b/a Vectren Source
- PJM Power Providers Group
- Direct Energy Services, LLC and Direct Energy Business, LLC
- Miami University and The University of Cincinnati
- COMPETE Coalition
- Duke Energy Retail Sales, LLC
- American Municipal Power, Inc.
- Natural Resources Defense Council
- Interstate Gas Supply, Inc.
- Exelon Generation Company, LLC
- Wal-Mart Stores East, LP and Sam's East, Inc.
- Retail Energy Supply Association

No one filed memoranda contra to these motions to intervene. The attorney examiner finds that these motions are reasonable and should be granted.

- (4) On July 11, 2011, Dominion Retail, Inc. (Dominion) filed a request for leave to file its motion to intervene out of time and a motion to intervene in these proceedings. In support of its request for leave to file its motion to intervene out of time, Dominion explains that it was unaware of the July 6, 2011, deadline for the filing of motions to intervene. Moreover, Dominion asserts that no party will be prejudiced by Dominion's request and that it has contacted Duke, who does not oppose its request to file out of time or its motion to intervene. Upon consideration of Dominion's request to file out of time, the attorney examiner notes that no one filed memoranda contra Dominion's request; therefore, the attorney examiner finds

that the request is reasonable and should be granted. Likewise, in considering Dominion's motion to intervene, the attorney examiner finds that the motion is reasonable and should be granted.

- (5) On July 15, 2011, Cincinnati Bell Inc. (Cincinnati Bell) filed a request for leave to file a motion to intervene out of time and a motion to intervene. In support of its request, Cincinnati Bell explains that it was not a party to Duke's most recent standard service offer proceeding and, therefore, was not served with a copy of the June 21, 2011, entry setting forth the intervention deadline. Instead, Cincinnati Bell explains that it did not become aware of the intervention deadline until July 13, 2011. Cincinnati Bell further explains that no one will be prejudiced by its request. Moreover, in support of its intervention, Cincinnati Bell explains that its subsidiaries have 559 locations served by Duke that consume approximately 94 million kilowatt hours, and whose electric generation service may be affected by the outcome of Duke's application. Therefore, Cincinnati Bell explains that it has a real and substantial interest in these proceedings that is not adequately represented by an existing party, that its participation will contribute to the just and expeditious resolution of the issues and concerns raised in these proceedings, and that its participation will not unduly delay these proceedings or unjustly prejudice any existing party.
- (6) On July 18, 2011, Duke filed a memorandum in opposition to Cincinnati Bell's motion to intervene. In its motion, Duke explains that Cincinnati Bell fails to identify any interests that it may have that warrant its intervention because its interests are those of its subsidiaries. Moreover, Duke asserts that it could be prejudiced in the processing of its application because it could be unfairly denied access to discovery because such documents are not within the possession, custody, or control of Cincinnati Bell, but its subsidiaries who are not parties to the proceedings. Duke also argues that Cincinnati Bell's interests are adequately represented by other parties who timely intervened and have an interest in the nonresidential and residential rates to be charged by Duke.
- (7) On July 21, 2011, Cincinnati Bell filed a reply to Duke's memorandum contra its motion to intervene asserting that Cincinnati Bell does have a real and substantial interest in these proceedings. According to Cincinnati Bell, not only are its wholly-owned subsidiaries significant distribution customers of Duke, but

Cincinnati Bell is currently under contract with a competitive retail electric service (CRES) provider that covers its subsidiaries' electric usage through 2013. Cincinnati Bell explains that the rates paid by Cincinnati Bell to the CRES provider include both capacity and energy. Since the ESP plan proposed by Duke would require all distribution customers to purchase their capacity from Duke, Cincinnati Bell argues that the plan is in direct conflict with Cincinnati Bell's existing commitments.

- (8) Rule 4901-1-11(A)(1) and (2), Ohio Administrative Code (O.A.C.), provides that, upon the filing of a timely motion, a person shall be permitted to intervene in a proceeding upon a showing that either:
  - (a) a statute confers a right to intervene; or
  - (b) the person has a real and substantial interest in the proceeding and the person is so situated that the disposition of the proceeding may impair or impede the person's ability to protect that interest, unless the person's interest is adequately represented by existing parties.
- (9) In deciding whether to permit intervention under Rule 4901-1-11(A)(2), O.A.C., paragraph (B) of that same rule states that the Commission shall consider all of the following:
  - (a) The nature and extent of the movant's interest.
  - (b) The legal position advanced by the movant and its probable relation to the merits of the case.
  - (c) Whether the granting intervention will unduly prolong or delay the proceedings.
  - (d) Whether the movant will significantly contribute to full development and equitable resolution of the factual issues.
  - (e) The extent to which the person's interest is represented by existing parties.
- (10) Upon consideration of Cincinnati Bell's request to file out of time, the attorney examiner finds that the request is reasonable and should be granted. In considering Cincinnati Bell's motion to intervene, the attorney examiner does not believe that any prejudice accrues to Duke from Cincinnati Bell's intervention. Moreover, the attorney examiner believes that Cincinnati Bell has a real interest in the Commission's consideration of the capacity

issues in these cases and that Cincinnati Bell's interests may not be adequately represented by other parties who have filed to intervene. Accordingly, the attorney examiner finds that Cincinnati Bell's motion to intervene is reasonable and should be granted.

- (11) In order to provide Duke's customers a reasonable opportunity to provide public testimony in these proceedings, local public hearings will be conducted on the following dates:
- (a) Tuesday, August 30, 2011, at 12:30 p.m., at Cincinnati State Technical and Community College, Main Building, Room 342, 3520 Central Parkway, Cincinnati, Ohio 45223.
  - (b) Tuesday, August 30, 2011, at 6:30 p.m., at Union Township Civic Center Hall, 4350 Aicholtz Road, Cincinnati, Ohio 45245.
  - (c) Thursday, September 8, 2011, at 6:30 p.m., at City Building, City Council Chambers, Lower Level, 1 Donham Plaza, Middletown, Ohio 45042.
  - (d) Friday, September 9, 2011, at 12:30 p.m., at Cincinnati City Hall, Council Chambers, 801 Plum Street, Cincinnati, Ohio 45202.
- (12) Accordingly, Duke should publish notice of the local public hearings one time in a newspaper of general circulation in each county in its certified territory. The notice should not appear in the legal notices section of the newspaper. The notice should read as follows:

#### LEGAL NOTICE

The Public Utilities Commission of Ohio has scheduled local hearings in Case Nos. 11-3549-EL-SSO, 11-3550-EL-ATA, and Case No. 11-3551-EL-UNC, *In the Matter of the Application of Duke Energy Ohio, Inc. 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, for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20, and for Authority to Amend its Corporate*

*Separation Plan.* In its application, Duke requests approval from the Commission of its new electric security plan, which includes its standard service offer, effective from January 1, 2012 through May 31, 2021. Duke's proposed plan includes provisions regarding the supply of capacity to all customers, the acquisition and pricing of energy to service all standard service offer customers through a series of auctions, economic development and job retention, and other matters. According to the proposal, the rates for generation will be determined by an auction. For 2012, it is anticipated that residential customers using 1,000 kilowatt hours will have a 5% increase in their generation-related rates. During the period of the plan, Duke Energy Ohio proposes to recover costs for retail capacity and energy, alternative energy resources, uncollectible generation expense, and distribution reliability through riders. In addition, Duke Energy Ohio proposes an energy and ancillary services sales profit sharing mechanism rider and a fuel and purchased power reconciliation rider.

The local hearings are scheduled for the purpose of providing an opportunity for interested members of the public to testify in these proceedings. The local hearings will be held as follows:

Tuesday, August 30, 2011, at 12:30 p.m.,  
at Cincinnati State Technical and  
Community College, Main Building,  
Room 342, 3520 Central Parkway,  
Cincinnati, Ohio 45223.

Tuesday, August 30, 2011, at 6:30 p.m.,  
at Union Township Civic Center Hall,  
4350 Aicholtz Road, Cincinnati, Ohio  
45245.

Thursday, September 8, 2011, at 6:30  
p.m., at City Building, City Council  
Chambers, Lower Level, 1 Donham  
Plaza, Middletown, Ohio 45042.

Friday, September 9, 2011, at 12:30 p.m.,  
at Cincinnati City Hall, Council  
Chambers, 801 Plum Street, Cincinnati,  
Ohio 45202.

The evidentiary hearing will commence on September 20, 2011, at 10:00 a.m., at the offices of the Commission, Hearing Room 11-A, 180 East Broad Street, Columbus, Ohio 43215. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puco.ohio.gov>, or contacting the Commission's hotline at 1-800-686-7826.

It is, therefore,

ORDERED, That the motions to intervene filed by various parties be granted in accordance with finding (3). It is, further,

ORDERED, That the request for leave to file out of time and motion to intervene filed by Dominion and Cincinnati Bell be granted in accordance with findings (4) and (10). It is, further,

ORDERED, That local public hearings in these proceedings be held as set forth in finding (11). It is, further,

ORDERED, That Duke publish notice of the local public hearings as set forth in finding (12). It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Katie L. Stenman  
By: Katie L. Stenman  
Attorney Examiner

/dah <sup>715</sup>

Entered in the Journal

JUL 22 2011

Betty McCauley  
Betty McCauley  
Secretary