

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review :
of the Capacity Charges of Ohio Power : Case No. 10-2929-EL-UNC
Company and Columbus Southern Power :
Company. :

MOTION TO INTERVENE
OF
DOMINION RETAIL, INC.

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Dominion Retail, Inc. ("Dominion Retail"), in accordance with the procedural schedule established by the attorney examiner's March 14, 2012 entry in this docket, hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

As more fully discussed in the accompanying memorandum, 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.

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.

The Commission initiated the above-styled investigation by entry of December 8, 2010 in response to an application filed with the Federal Energy Regulatory Commission by American Electric Power Service Corporation on behalf of Ohio Power Company and Columbus Southern Power Company (collectively, "AEP-Ohio" or "Companies") proposing to change the basis for compensation for capacity costs to a cost-based mechanism. The Commission determined that this investigation was necessary to assess the impact of the proposed recovery mechanism upon, among other things, Ohio competitive retail electric service ("CRES") providers and retail competition in this state. The entry called for comments by interested stakeholders, and comments and/or reply comments were filed by several entities in early 2011. By entry of August 11, 2011, the attorney examiner set the matter for hearing and established a procedural schedule. In accordance with this procedural schedule, AEP-Ohio filed written testimony on August 31, 2011. However, a stipulation submitted on September 7, 2011 in the Companies' pending ESP cases, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO, and a number of other related AEP-Ohio proceedings, included a proposed resolution of the capacity charge issues that

are the subject of this investigation. Accordingly, by entry of September 16, 2011, this case was consolidated with the other proceedings addressed in the stipulation.

Although the Commission initially approved the stipulation subject to certain modifications (including modifications to the capacity charge provisions), in its December 14, 2011 opinion and order in the consolidated cases, by its February 23, 2012 entry on rehearing, the Commission reversed its finding that the stipulation was in the public interest and rejected the stipulation. Thus, the capacity charge investigation that is the subject of this proceeding has now resumed under the procedural schedule established by the attorney examiner's March 14, 2012 entry in this docket. By the foregoing motion, Dominion Retail, which had previously been granted intervention in the Companies' ESP cases, now seeks to intervene in this proceeding in accordance with the terms of said entry, which requires motions to intervene to be filed by March 30, 2012.

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 AEP-Ohio's service territory. As such, Dominion Retail would be subject to the capacity charge structure that will ultimately emerge from this investigation. 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), Ohio Administrative Code ("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 provider, Dominion Retail plainly has a real and substantial interest in a proceeding in which the Commission will determine the price and availability of the capacity it would require to serve customers with the AEP-Ohio service territory, and this proceeding may, as a practical matter, impair or impede its ability to protect this interest. Moreover, unlike many of the other CRES providers who were previously granted intervention in this docket, Dominion Retail's focus is on the residential market, and those CRES providers that do focus on the residential market would be direct competitors of Dominion Retail. Thus, by definition, no existing parties adequately represent Dominion Retail's interest.¹

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.

¹ In this connection, Dominion Retail would point out that the December 8, 2010 entry initiating this investigation merely called for comments, and did not specifically contemplate intervention. Although the certain parties did move to intervene, and although those motions were subsequently granted, the March 14, 2012 entry is the first entry that established a deadline for intervention.

(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.

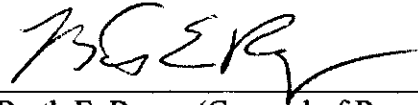
(5) The extent to which the person's interest is represented by existing parties.

First, as previously explained, Dominion Retail's interest in the price and availability of capacity is obviously direct and substantial. Second, although Dominion Retail will define its specific position as it participates in this investigation, Dominion Retail will certainly advocate that the charges and terms for obtaining capacity to serve end-user residential customers to be authorized as a result of this proceeding be fair, reasonable, non-discriminatory, and designed to promote retail electric competition. Third, Dominion Retail's motion to intervene is filed in accordance with the procedural schedule established by the attorney examiner's March 14, 2012 entry. Thus, by definition, granting 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. 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"² to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor certain CRES providers over others. Thus, granting Dominion Retail intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

² See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

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

Respectfully submitted,



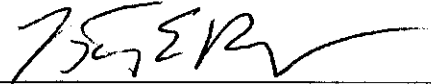
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class US mail, postage prepaid, and/or by electronic mail this 30th day of March 2012.


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