

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy	)	
Ohio, Inc., for the Establishment of a Charge	)	Case No. 12-2400-EL-UNC
Pursuant to Revised Code Section 4909.18.	)	

In the Matter of the Application of Duke Energy	)	
Ohio, Inc., for Approval to Change Accounting	)	Case No. 12-2401-EL-AAM
Methods.	)	

In the Matter of the Application of Duke Energy	)	
Ohio, Inc., for the Approval of a Tariff for a	)	Case No. 12-2402-EL-ATA
New Service.	)	

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**DUKE ENERGY OHIO, INC.'S MEMORANDUM  
CONTRA THE MOTION TO INTERVENE OF  
INTERSTATE GAS SUPPLY, INC.**

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On August 29, 2012, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) filed an application (Application) with this honorable Public Utilities Commission of Ohio (Commission), seeking determination of a charge for capacity services pursuant to the newly adopted state compensation mechanism, authority for a deferral of the difference between such charge and the market prices for capacity services currently being received by Duke Energy Ohio, and approval of a tariff pursuant to which such deferral could subsequently be recovered.

On October 15, 2012, Interstate Gas Supply, Inc., (IGS) moved to intervene in these proceedings. As IGS correctly indicates in its motion, interventions in Commission proceedings are governed by R.C. 4903.221 and O.A.C. 4901-1-11. However, IGS errs in applying the relevant legal parameters to the issues relevant to these proceedings, as set forth in the Company's Application. Consequently, as demonstrated herein, IGS's motion should be denied.

### **Nature of the Prospective Intervenor's Interest**

The first element to be considered by the Commission, pursuant to R.C. 4903.221, is the nature and extent of the prospective intervenor's interest. Here, IGS does not articulate an interest that is implicated by, or relevant to, Duke Energy Ohio's Application. Rather, IGS merely submits that its "existing and potential future retail customers...would be affected by the relief requested in the matter above."<sup>1</sup> IGS further states that it made business plans assuming a "capacity rate based upon the PJM price established by on (sic) the RPM price."<sup>2</sup>

Although Duke Energy Ohio recognizes that IGS operates in its territory as both a competitive retail and wholesale supplier, it fails to explain any way in which the Application in these proceedings could possibly impact such businesses. The proposal, designed to mirror that which was recently set in place by the Commission for another, similarly situated utility, will not impact suppliers. It does not change any of a retail or wholesale supplier's costs of doing business. It does not impose any additional charges, or raise any current charges, due from a retail or wholesale supplier. Indeed, in the Application, Duke Energy Ohio concedes that suppliers will continue to be charged the final zonal capacity price, which is a market-based price.<sup>3</sup> Thus, the proposal has no impact on IGS or its business plans and, as such, IGS's claim that it has a real and substantial interest in these proceedings is misplaced.

Further, IGS infers that its status as a signatory to the stipulation and recommendation filed in Case No. 11-3549-EL-SSO, *et al.*, (ESP Stipulation) warrants its status as an intervenor in these proceedings. But IGS is incorrect. The ESP Stipulation did address the amount that retail or wholesale suppliers would be charged for capacity. Significantly, however, it did not address the fair and reasonable compensation to which Duke Energy Ohio is entitled in exchange for

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<sup>1</sup> IGS Memorandum in Support of Motion to Intervene, at pg. 3 (October 15, 2012).

<sup>2</sup> *Id.*

<sup>3</sup> Duke Energy Ohio Application, at paragraph 7 (August 29, 2012).

fulfilling as obligations as a fixed resource requirement entity under Ohio's newly adopted state compensation mechanism. Thus, the Application here has no impact on the ESP Stipulation and IGS cannot now base intervention on its status as a signatory to the ESP Stipulation.

IGS has failed to identify an interest sufficient to warrant intervention in these proceedings.

#### **Legal Position and Probable Relation to Merits of the Case**

The second element to be considered by the Commission, pursuant to R.C. 4903.221, is the prospective intervenor's legal position and its probable relation to the merits of the case. Again, however, IGS fails to identify any position that it might take that is related to the actual merits of the case. The proceedings will have no impact on IGS business or its ability to engage in the competitive retail market. Indeed, as discussed above, the capacity charges applicable to suppliers – at both the wholesale and retail levels – are unchanged by the Company's Application. IGS should not be granted intervention, as it is undeniably unaffected by this Application.

#### **Undue Delay and Significant Contribution**

The third and fourth elements to be considered by the Commission, pursuant to R.C. 4903.221, are whether the requested intervention will unduly prolong or delay the proceeding and whether the prospective intervenor will provide a significant contribution to full development and equitable resolution of the factual issues. Neither of these elements is satisfied – or even addressed – in the instant request for intervention.

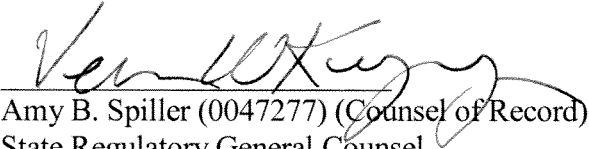
As Duke Energy Ohio fully explained in the Application, these proceedings seek approval of a tariff to collect for services not previously covered by a tariff and do not seek any increase; thus, no hearing is required under R.C. 4909.18 unless the Application may be unjust or unreasonable. As the Commission has just adopted the state compensation mechanism and

approved the determination of a charge pursuant thereto, with a deferral and subsequent recovery over time for a comparable entity, the Application here cannot be deemed unjust or unreasonable. The Application merely seeks arithmetic calculations and the application of an outcome that has already been found to be just and reasonable. It is indisputable that the Application does not require a hearing. Thus, IGS's effort to intervene in these proceedings can have no other impact than to delay the resolution. As there is no factual inquiry to be made, since the state mechanism relies on existing federal filings, IGS's input will not provide a significant contribution to development or resolution of factual issues.

The elements to be considered for intervention in Commission proceedings have not been met by IGS.

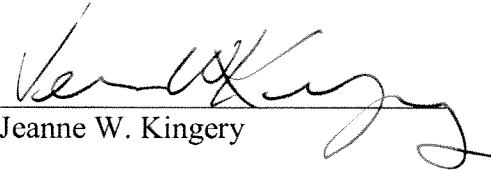
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Respectfully submitted,  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 16<sup>th</sup> day of October 2012, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.

  
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Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum Contra the Motion to Intervene of Interstate Gas Supply, Inc. electronically filed by Miss Kristen Cocanougher on behalf of Duke Energy Ohio and Spiller, Amy B. Mrs. and D'Ascenzo, Rocco Mr. and Kingery, Jeanne W. Mrs. and Watts, Elizabeth Mrs.