

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.)

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

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."¹ IGS further states that it made business plans assuming a "capacity rate based upon the PJM price established by on (sic) the RPM price."²

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.³ 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

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

² *Id.*

³ 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.

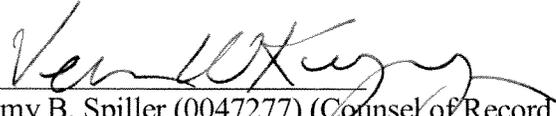
As Duke Energy Ohio fully explained in the Application, these proceedings seek approval of a tariff to collect for services not previously covered by a tariff and do not seek any increase; thus, no hearing is required under R.C. 4909.18 unless the Application may be unjust or unreasonable. As the Commission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

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the motion by Interstate Gas Supply, Inc., for intervention in the above-referenced proceedings.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277) (Counsel of Record)
State Regulatory General Counsel

Rocco O. D'Ascenzo (0077651)

Associate General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Elizabeth H. Watts (0031092)

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street

1303-Main

Cincinnati Ohio 45202

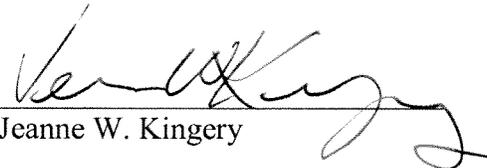
513-287-4359 (telephone)

513-287-4385 (facsimile)

amy.spiller@duke-energy.com (e-mail)

CERTIFICATE OF SERVICE

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


Jeanne W. Kingery

Steven Beeler
John Jones
Assistant Attorneys General
Public Utilities Section
180 East Broad St.
Columbus, Ohio 43215
Steven.beeler@puc.state.oh.us
John.jones@puc.state.oh.us

Counsel for Staff of the Commission

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

**Counsel for Industrial Energy Users-
Ohio**

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-1793
cmooney@columbus.rr.com

**Counsel for Ohio Partners for
Affordable Energy**

Maureen R. Grady
Kyle L. Kern
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
grady@occ.state.oh.us
kern@occ.state.oh.us

**Counsel for the Ohio Consumers'
Counsel**

David F. Boehm
Michael L. Kurtz
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com

Counsel for the Ohio Energy Group

Douglas E. Hart
441 Vine Street
Suite 4192
Cincinnati, Ohio 45202
dhart@douglasehart.com

Counsel for Cincinnati Bell Inc.

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
tobrien@bricker.com

Counsel for City of Cincinnati

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold LLP
1405 East Sixth Street
Cleveland, Ohio 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

Counsel for FirstEnergy Solutions Corp.

Douglas E. Hart
441 Vine Street
Suite 4192
Cincinnati, Ohio 45202
dhart@douglasehart.com

Counsel for The Greater Cincinnati Health Council

Kimberly W. Bojko
Mallory M. Mohler
Carpenter Lipps & Leland LLP
280 North High Street
Suite 1300
Columbus, Ohio 43215
Bojko@CarpenterLipps.com
Mohler@CarpenterLipps.com

Counsel for The Kroger Company

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
haydenm@firstenergycorp.com

Counsel for FirstEnergy Solutions Corp.

J. Thomas Siwo
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
tsiwo@bricker.com
mwarnock@bricker.com

Counsel for The Ohio Manufacturers' Association

Samuel C. Randazzo
Frank P. Darr
Joseph E. Olikier
Matthew R. Pritchard
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com

Counsel for Wausau Paper Towel & Tissue, LLC

Mr. Lawrence W. Thompson
Energy Strategies, Inc.
525 South Main Street, Suite 900
Tulsa, Oklahoma 74103-4510
lthompson@energy-strategies.com

For Wausau Paper Towel & Tissue, LLC

Jay E. Jadwin
Yazen Alami
American Electric Power Service Corporation
155 Nationwide Ave.
Columbus, Ohio 43215
jejadwin@aep.com
yalami@aep.com

Counsel for AEP Energy

David Stahl
Eimer Stahl LLP
224 S. Michigan Ave., Ste 1100
Chicago, Illinois 60604
dstahl@eimerstahl.com

For Constellation NewEnergy, Inc. and Exelon Generation Company, LLC

Mr. Thomas W. Craven
Wausau Paper Corp.
200 Paper Place
Mosinee, Wisconsin 54455-9099
tcraven@wasaupaper.com

For Wausau Paper Towel & Tissue, LLC

Ms. Karen Campbell
Energy Strategies, Inc.
525 South Main Street, Suite 900
Tulsa, Oklahoma 74103-4510
kcampbell@energy-strategies.com

For Wausau Paper Towel & Tissue, LLC

M. Howard Petricoff
Lija Kaleps-Clark
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
lkalepsclark@vorys.com

Counsel for Constellation NewEnergy, Inc. and Exelon Generation Company, LLC

Stephen Bennett
Exelon Corporation
300 Exelon Way
Kennett Square, Pennsylvania 19348
Stephen.bennett@exeloncorp.com

For Constellation NewEnergy, Inc. and Exelon Generation Company, LLC

David I. Fein
Constellation Energy Group, Inc.
550 W. Washington Blvd., Suite 300
Chicago, Illinois 60661
David.fein@constellation.com

Cynthia Fonner Brady
Constellation Energy Resources, LLC
550 W. Washington Blvd., Suite 300
Chicago, Illinois 60661
Cynthia.brady@constellation.com

**For Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC**

**For Constellation NewEnergy, Inc. and
Exelon Generation Company, LLC**

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Service
Corporation
1 Riverside Plaza 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsattershite@aep.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Counsel for Ohio Power Company

Counsel for Interstate Gas Supply, Inc.

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

**Counsel for Miami University and the
University of Cincinnati**

**Counsel for the Retail Energy Supply
Association**

Joseph G. Strines
DPL Energy Resources Inc.
1065 Woodman Drive
Dayton, Ohio 45432
Joseph.strines@DPLINC.com

Judi L. Sobecki
Randall V. Griffin
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, Ohio 45432
Judi.sobecki@DPLINC.com
Randall.griffin@DPLINC.com

Counsel for DPL Energy Resources

**Counsel for The Dayton Power and
Light Company**

Kevin J. Osterkamp
Roetzel & Andress LPA
PNC Plaza, 12th Floor
155 East Broad Street
Columbus, Ohio 43215
kosterkamp@ralaw.com

Rick D. Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73105
Rdc_law@swbell.net

**Counsel for Wal-Mart Stores East, LP,
and Sam's East, Inc.**

**Counsel for Wal-Mart Stores East, LP,
and Sam's East, Inc.**

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
BarthRoyer@aol.com

Gary A. Jeffries
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, Pennsylvania 15212-5817
Gary.A.Jeffries@dom.com

Counsel for Dominion Retail, Inc.

Counsel for Dominion Retail, Inc.

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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.