

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of the Fuel)	
Adjustment Clauses for Columbus Southern)	Case No. 11-5906-EL-FAC
Power Company and Ohio Power Company)	
and Related Matters.)	

In the Matter of the Application of the Fuel)	
Adjustment Clauses for Columbus Southern)	Case No. 12-3133-EL-FAC
Power Company and Ohio Power Company.)	

In the Matter of the Application of the Fuel)	Case No. 13-572-EL-FAC
Adjustment Clauses for Ohio Power Company.)	

In the Matter of the Application of the Fuel)	Case No. 13-1286-EL-FAC
Adjustment Clauses for Ohio Power Company.)	

In the Matter of the Application of the Fuel)	Case No. 13-1892-EL-FAC
Adjustment Clauses for Ohio Power Company.)	

**REPLY
OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO THE OHIO POWER COMPANY'S MEMORANDUM CONTRA
THE RETAIL ENERGY SUPPLY ASSOCIATION'S MOTION TO INTERVENE**

I. Introduction

On January 16, 2015, the Retail Energy Supply Association ("RESA")¹ timely filed a motion to intervene in these proceedings pursuant to Section 4903.221, Revised Code and Rule

¹ Many of RESA members are certificated as competitive retail electric service ("CRES") providers and are active in the Ohio retail electric and natural gas markets providing service to residential, commercial, industrial and governmental customers. In addition, some of RESA's members currently provide CRES to retail customers in the Ohio Power Company ("Ohio Power") service area. RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Dynegy Energy Services; GDF SUEZ Energy Resources NA, Inc.; IDT Energy, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; Nordic Energy Services, LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

4901-1-11 of the Ohio Administrative Code.² RESA respectfully requested to be made a full party of record in these proceedings.³ RESA is a knowledgeable party who was a full-party participant in the prior relevant proceeding and who can contribute to the just and reasonable conclusion of the issues in these proceedings. More specifically, RESA was a full party in Ohio Power's proceeding involving the company's competitive bidding process (Case No. 12-3254-EL-UNC). During that competitive bidding process proceeding, the issue of double-recovery of costs related to Ohio Power's Fuel Adjustment Clause ("FAC") was raised, debated and deferred to these FAC proceedings; and (b) Ohio Power's FAC was unbundled.

On January 27, 2015, Ohio Power filed a memorandum contra RESA's full intervention in these proceedings. Ohio Power argued that only limited intervention should be given to RESA because RESA has not satisfied the intervention requirements "beyond how any credit or refund, if ordered, would be implemented."⁴ In particular, Ohio Power claimed that RESA has no real and substantial interest in the FAC or the threshold determination of double recovery.

Ohio Power's argument should be rejected as contrary to Ohio law concerning interventions and contrary to public policy. As detailed below, RESA should be granted intervention as a full party in these proceedings.

II. Ohio law and judicial fairness support RESA's intervention as a full party in these proceedings.

The Public Utilities Commission of Ohio ("Commission") should not limit RESA's

² By Entry issued January 9, 2015, the Attorney Examiner established January 16, 2015, as the deadline for motions to intervene from interested parties.

³ RESA noted its concern with the manner in which any double-recovery is returned/credited to customers, and pointed out that, in the October 6, 2014 report (at 3-4, 13-14) filed in the instant proceedings, the independent auditor (Baker Tilly Virchow Krause LLP) found that a double-recovery had taken place. RESA Motion to Intervene at 3-4.

⁴ Ohio Power Memorandum Contra at 2.

involvement in these proceedings for multiple reasons. First, the language of the intervention statute supports RESA's full intervention. Intervention in Commission proceedings is first and foremost governed by Section 4903.221, Revised Code, which provides that any person "who may be adversely affected" by a Commission proceeding may seek to intervene. In ruling upon applications to intervene in its proceedings, the Commission is required to 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; (3) whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and (4) whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues. Section 4903.221(B), Revised Code.

In addition, Rule 4901-1-11, Ohio Administrative Code, provide further guidance:

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 or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.⁵

Ohio Power acknowledges that RESA has a interest and legal position in these proceedings. Ohio Power has not claimed that RESA's intervention as a full party will unduly prolong or delay the proceedings, which it will not. In addition, Ohio Power has also not claimed that RESA will not significantly contribute to full development and equitable resolution of the factual issues, which RESA will do. RESA is a knowledgeable party who has participated in numerous Commission proceedings involving many issues of varying complexity. RESA can

⁵ The Commission's rules allow it to limit intervention. See, Rule 4901-1-11(D)(1), Ohio Administrative Code.

and will significantly contribute in these proceedings as well. Additionally, Ohio Power did not deny that RESA has a real and substantial interest in these proceedings. Ohio Power also did not dispute that the disposition of these proceedings may impair or impede RESA's ability to protect its interest. The implication of Ohio Power's argument against RESA's full intervention is that RESA could only watch as its real and substantial interest is impacted, without the ability to fully participate in the proceedings and protect its interest from a potential adverse outcome.

Ohio Power claims that only limited intervention should be granted because RESA has only one interest – the manner in which any double-recovery is returned/credited to customers. While Ohio Power has correctly stated RESA's primary concern, there is no factual basis for Ohio Power's assertion that RESA has no interest in whether there has been a double recovery.⁶ RESA has an interest in what constitutes the double recovery as the nature of the double recovery will influence how the Commission approaches the remedy. Stated another way, the mere fact that if Ohio Power prevails completely there will be no refund, which is the logical underpinning of Ohio Power's memoranda contra RESA's intervention, does not eliminate the strong possibility that without Commission action there will be an overpayment.⁷ RESA needs to participate in the portion of the hearing which examines whether there has been or will be a double recovery because the findings of fact as to what constitutes the over-recovery will influence the remedy.

RESA has demonstrated that it satisfies the statutory requirements for intervention. Moreover, RESA has demonstrated that it satisfies the requirements in Rule 4901-1-11, Ohio Administrative Code. As a result, nothing in Ohio law mandates that RESA's intervention must be limited. Rather, Ohio law supports RESA's intervention as a full party.

⁶ Ohio Power Memorandum Contra at 2.

⁷ The outside auditor found a double collection. *See*, the report filed on October 6, 2014 at 3-4, 13-14.

The second reason why Ohio Power's memorandum contra should be rejected is because the case law favors inclusion of public comment, not exclusion. The Ohio Supreme Court has held that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."⁸ Ohio Power has acknowledged that RESA has a real and substantial interest in these proceedings. Ohio Power cited to no precedent to justify its claim that RESA's participation should be limited to one and only one issue.

The third reason why RESA should be granted full-party status in these proceedings is that RESA was a full party to Case No. 12-3254-EL-UNC, the proceeding in which the double-recovery issue was previously raised. Now that the question is being addressed in the instant proceedings, RESA's participation should not be limited. It would be inequitable to now limit RESA's participation in the resolution of the double-recovery issue just because the issue was moved from one docket to another; if RESA's full participation was appropriate in the former docket, it is also appropriate in the latter docket.

Finally, RESA will note that none of the other parties in these proceedings adequately represents RESA's interests. This is a point that Ohio Power did not dispute.

III. Conclusion

Ohio Power seeks to limit, up front, the ability of RESA to participate in these proceedings. For all of the foregoing reasons, RESA respectfully requests that the Commission (a) grant RESA's request to intervene in these proceedings, (b) order that RESA be made a full

⁸ *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384, 388, 2006-Ohio-5853.

party of record in these proceedings, and (c) reject Ohio Power's argument to limit RESA's participation in these proceedings.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 3rd day of February 2015 upon the persons/entities listed below.


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Summary: Reply to the Ohio Power Company's Memorandum Contra electronically filed by
Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association