

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of the)	
Fourth Amended Corporate Separation Plan)	Case No. 15-0441-EL-UNC
Under Section 4928.17, Revised Code, and)	
Chapter 4901:1-37, Ohio Administrative)	
Code.)	

**MOTION TO INTERVENE OF THE
RETAIL ENERGY SUPPLY ASSOCIATION AND
INITIAL COMMENTS**

Now comes the Retail Energy Supply Association (“RESA”),¹ who pursuant to Section 4903.221, Revised Code and Rule 4901.1-11 of the Ohio Administrative Code moves for intervention in the above-styled proceeding as a full party of record. The reasons supporting the intervention are contained in the accompanying Memorandum in Support. RESA was a full party of record in the Duke Energy Ohio Inc. (“Duke”) ESP II case² and signed the Stipulation in that matter. The purpose of this intervention is for RESA to express its view that, in order for Duke to fulfill its obligation under the Stipulation in ESP II proceeding and Section 4927.17, Revised Code, Duke must transfer its generation holdings in the Kyger Creek and Clifty Creek generation plants (Ohio Valley Electric Corporation or “OVEC”) out of the regulated utility to a third party. Until such time as those OVEC generation assets are no longer owned and directed

¹ 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 the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² *In Re Duke Energy Ohio Inc.*, Case No. 11-3549-EL-SSO.

by Duke, it cannot be classified or maintain a corporate separation plan as a “wires only” utility that does not own generation.

WHEREFORE, RESA respectfully requests that the Commission grant this motion for leave to intervene, make RESA a full party of record, and accept RESA’s initial comments expressed in this pleading.

Respectfully Submitted,



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**MEMORANDUM IN SUPPORT OF
THE MOTION TO INTERVENE AND COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

I. RESA Meets the Statutory and Rule Requirements for Intervention

Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention as a full party of record in the above-styled proceeding.

Rule 4901-1-11 of the Ohio Administrative Code states in part:

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.

RESA participated in the Duke ESP II proceeding and signed the Stipulation in that proceeding, which set up the generating asset divestiture plan. Specifically, the stipulation which was adopted by the Public Utilities Commission of Ohio ("Commission") in the Opinion and Order in Duke ESP II proceeding called for Duke to achieve full legal corporate separation by transferring its competitive generation assets from the utility to a non-regulated entity, and then amend its corporate separation plan to reflect that change.³ As the trade association which represents a significant number of competitive retail electric service suppliers in Ohio, the separation of the competitive and non-competitive services into different companies with no subsidies or cross-over use is of direct interest to RESA and its members.

In addition to establishment of a direct interest, the factors that the Commission considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious

resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. (See also, Section 4903.221(B), Revised Code, upon which the above rule is authorized).

RESA is a broad and diverse group of energy retail suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. Several RESA members are certificated as competitive retail electric service providers and are active in the Duke service area. In addition, other RESA members could supply competitive retail electric service in the Duke service area in the future. RESA's interest is unique and not fully represented by any other party. Further, its intervention will not delay the proceeding as the schedule for comments and reply comments has already been set and will not be delayed by RESA's timely intervention. Finally, RESA's comments could assist the development of a record in this matter upon which the Commission can base its decision.

II. Comments

On March 2, 2015, Duke filed an application seeking approval of an amendment to its corporate separation plan. In its application, Duke states that it owns no generation assets, is not engaged in the generation business and seeks to amend its corporate separation plan to reflect that fact.⁴ Further, Duke indicates that the timing of its application is tied to the fulfillment of the Stipulation requirement in the Duke ESP II.

RESA commends Duke for divesting the vast majority of its former generation assets in a manner that truly is separated from Duke's regulated utility services. For the generation assets that have been divested, RESA agrees that there is no crossover of staff or resources between the

³ See, *Duke, supra*, Opinion and Order p. 45 (November 22, 2011).

⁴ Application at p. 2.

competitive services and the non-competitive utility services. Duke's filing to amend its corporate separation plan though is premature as Duke (the utility) has yet to complete the divestiture of its interest in the two Ohio Valley Electric Corporation generation plants, the Kyger Creek Plant in Ohio and the Clifty Creek plant in Indiana. The responsibility for the costs of those two plants and the ownership of the generation from those two plants must be in the hands of an entity other than Duke (the utility) prior to amending the utility's corporate separation plan based on Duke owning no generation assets.

Finally, the issue of whether Duke is under an obligation to divest its OVEC generation assets was answered definitively by the Commission in the Duke ESP III proceeding.⁵ In its Opinion and Order, the Commission held:

.... [I]t was not the Commission's intent in adopting the stipulation in the *ESP 2 Case* to exempt Duke from pursuing the divestiture or transfer of the OVEC contractual entitlement. Therefore, at this time, we direct Duke to pursue transfer of the OVEC contractual entitlement or to otherwise pursue divestiture of the OVEC asset. Duke should file a status report regarding the transfer or divestiture of the OVEC asset, in these dockets, by June 30 of each year of the ESP, with the first such filing to occur by June 30, 2015.⁶

As soon as Duke files its report to the Commission affirming that it has divested its OVEC generation, then it can resubmit its application to amend its corporate separation plan to reflect the fact that it does not own generation nor participate in the generation business.

III. Conclusion

RESA respectfully requests that its motion to intervene be granted, and that it be made a full party of record. Further, RESA requests that the Commission consider the above comments in ruling on the application.

⁵ *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO.

⁶ *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, Opinion and Order p. 48 (April 2, 2015).

Respectfully Submitted,



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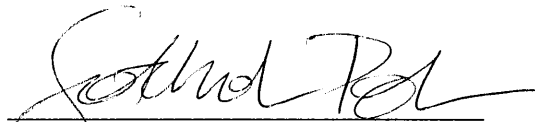
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The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 12th day of June 2015 upon all persons/entities listed below:

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Summary: Motion to Intervene and Initial Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association