

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The	)	
Dayton Power and Light Company for	)	Case No. 16-395-EL-SSO
Approval of its Electric Security Plan.	)	
In the Matter of the Application of The	)	
Dayton Power and Light Company for	)	Case No. 16-396-EL-ATA
Approval of Revised Tariffs.	)	
In the Matter of the Application of The	)	
Dayton Power and Light Company for	)	
Approval of Certain Accounting	)	Case No. 16-397-EL-AAM
Authority Pursuant to Ohio Rev. Code §	)	
4905.13.	)	

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**MOTION TO INTERVENE**

**BY**

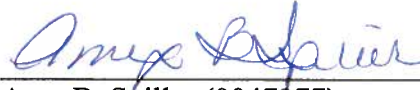
**DUKE ENERGY OHIO, INC.**

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Now comes Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and moves to intervene as a full party of record in the above-captioned proceedings pursuant to R.C. 4903.221 and O.A.C. 4901-1-11. The basis for Duke Energy Ohio's motion is set forth in the attached memorandum in support, which is incorporated herein by reference.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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## **MEMORANDUM IN SUPPORT**

### **I. Introduction**

R.C. 4928.142 requires each electric utility, such as The Dayton Power and Light Company (DP&L), to provide a standard service offer (SSO) “of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.” DP&L currently provides that SSO in the form of an electric security plan (ESP), approved under R.C. 4928.143, that will terminate on May 31, 2017.<sup>1</sup> On February 22, 2016, DP&L filed its application for a new ESP, to become effective on January 1, 2017.<sup>2</sup> Duke Energy Ohio – an electric distribution utility with an interest in the competitive and wholesale markets – will be affected by DP&L’s proposed ESP and thus seeks intervention pursuant to R.C. 4903.221.

### **II. Legal Standard**

R.C. 4903.221(B) sets forth the criteria that the Public Utilities Commission of Ohio (Commission) is required to consider in ruling on applications to intervene. These criteria include:

- (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.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.<sup>3</sup>

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<sup>1</sup> *In the Matter of the Application of Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-346-EL-SSO, *et al.*, Amended Opinion and Order (September 6, 2013).

<sup>2</sup> *In the Matter of the Application of Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 16-395-EL-SSO, *et al.*, Application (February 22, 2016) (DP&L ESP III Application). (Duke Energy Ohio does not attempt to explain the discrepancy between the termination and subsequent filing dates as it is immaterial to this motion.)

<sup>3</sup> R.C. 4903.221.

The Commission has provided additional detail on the intervention requirements through the promulgation of O.A.C. 4901-1-11. Specifically, that rule requires that the Commission allow intervention by a person who has a “real and substantial interest in the proceeding” and who “is so situated that the disposition of the proceeding may...impair or impede [their] ability to protect that interest, unless the person’s interest is adequately represented by existing parties.”<sup>4</sup> Consistent with the statutory provisions, the Commission has incorporated the statutory requirements into its rule including the additional criteria of determining the extent to which the person’s interest is represented by existing parties.<sup>5</sup>

As discussed below, Duke Energy Ohio satisfies these criteria and its intervention in these proceedings is therefore warranted.

### **III. Duke Energy Ohio Should be Granted Intervention in These Proceedings.**

As part of its third ESP, DP&L is proposing a competitive process of purposes of procuring all of the supply needed to serve its SSO load.<sup>6</sup> DP&L has further proposed bid documents for such a competitive process that are predicated upon the bid documents currently used by Duke Energy Ohio.<sup>7</sup> Duke Energy Ohio is a wholesale energy market participant and prospective participant in the competitive procurement process proposed by DP&L. As such, Duke Energy Ohio has a real and substantial interest in these proceedings and its intervention is warranted so that Duke Energy Ohio may protect the same.<sup>8</sup> Intervention is further appropriate

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<sup>4</sup> O.A.C. 4901-1-11(A).

<sup>5</sup> O.A.C. 4901-1-11(B).

<sup>6</sup> DP&L ESP III Application, at pp. 7.

<sup>7</sup> *Id.*, Application and Supporting Testimony of DP&L witness Lee.

<sup>8</sup> See generally, *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, *et al.*, Entry (August 5, 2014)(After having supported its motion to intervene with the contention that it is a potential bidder in Duke Energy Ohio’s proposed competitive auction, DP&L granted intervention in Duke Energy Ohio’s SSO proceeding) and *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, *et al.*, Entry, (April 21 2014).

as Duke Energy Ohio has conducted several competitive procurements and can thus effectively aid in the development of such procurements for DP&L.<sup>9</sup>

Duke Energy Ohio's intervention is also warranted given the proposals advanced by DP&L in respect of the Ohio Valley Electric Corporation (OVEC). Like DP&L, Duke Energy Ohio has a contractual interest in OVEC and a contractual entitlement to the output of generating assets owned and operated by OVEC and should be permitted to intervene in order to protect that interest.<sup>10</sup> That is, Duke Energy Ohio's intervention would enable it to protect its contractual entitlement and its interest in the partnership going forward. Moreover, the Company is so situated that the disposition of these proceedings may, as a practical matter, impair or impede its ability to protect that interest.

Duke Energy Ohio's intervention is further supported DP&L's request for a purchase power arrangement that extends to generating stations located in Duke Energy Ohio's service territory. In connection therewith this arrangement, DP&L has raised the potential for plant closures if its arrangement is not approved. The Commission's decision, therefore, will have an effect on the local economy in Duke Energy Ohio's service territory and may have an impact on reliability and market prices. As these factors directly impact Duke Energy Ohio, its intervention in these proceedings is justified.

Duke Energy Ohio has a real and substantial interest in these proceedings that is directly related to the merits of the case. No existing party represents Duke Energy Ohio's interests. Further, Duke Energy Ohio's participation will contribute to the development of the issues and

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<sup>9</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, *et al.*, Entry (August 4, 2014)(Arguing that it is a participant in wholesale energy auctions and can assist in a better outcome to the proceeding, DP&L granted intervention in Duke Energy Ohio's SSO proceeding).

<sup>10</sup> *Id.* (DP&L granted intervention, citing its status as a co-owner of OVEC assets as justifying such intervention). See also, *In the Matter of the Application of Ohio Company to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case No. 13-2385-EL-SSO, *et al.*, Entry (April 21, 2014)(same).

an equitable resolution. As no deadline for intervention has been set in these proceedings, Duke Energy Ohio's intervention will not unduly prolong or delay them and its interests are not represented by existing parties.

Given Duke Energy Ohio's own experience with an SSO in the form of an ESP, Duke Energy Ohio would also respectfully suggest that its intervention will significantly contribute to the full development and equitable resolution of the factual issues, based on its experience in the marketplace and understanding of competitive needs in general.

Duke Energy Ohio therefore respectfully requests that the Commission grant its motion to intervene and that it be made a full party of record.

Respectfully submitted,

DUKE ENERGY OHIO, INC.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 15<sup>th</sup> day of April 2016, by electronic transmission or U.S. mail, postage prepaid, upon the persons listed below.

  
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Summary: Motion Motion to Intervene by Duke Energy Ohio, Inc. electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Watts, Elizabeth H.