

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio
Power Company to Amend its Tariff

Case No. 20-1603-EL-ATA

In the Matter of the Application of Ohio
Power Company for Approval of Certain
Accounting Authority

Case No. 20-1604-EL-AAM

**MOTION TO INTERVENE AND SUPPORTING MEMORANDUM OF
RETAIL ENERGY SUPPLY ASSOCIATION**

Frank Darr (Reg. No. 0025469)
6800 Linbrook Blvd.
Columbus, Ohio 43235
614-390-6750
Fdarr2019@gmail.com
(willing to accept service via email)

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**ATTORNEY FOR THE RETAIL ENERGY SUPPLY
ASSOCIATION**

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MOTION TO INTERVENE OF THE RETAIL ENERGY SUPPLY ASSOCIATION

Under R.C. 4903.221 and Rule 4901-1-11, Ohio Administrative Code, the Retail Energy Supply Association moves to intervene. The reasons supporting this motion are set out in the accompanying memorandum in support of this motion.

Respectfully submitted,

/s/ Frank P. Darr

Frank Darr (Reg. No. 0025469)
6800 Linbrook Blvd.
Columbus, Ohio 43235
614-390-6750
Fdarr2019@gmail.com
(willing to accept service via email)
Attorney for Retail Energy Supply Association

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

I. Introduction

Ohio Power Company (“Ohio Power”) is seeking authorization for a new “optional tariff” and related accounting changes. Under the proposed tariff, it intends to sell renewable energy credits to default generation service customers. Application at 1. Because the application seeks authorization by an electric distribution utility to market a competitive electric service or product or non-electric service or product in an unreasonable and unlawful manner, approval of the application would adversely affect the interests of the members of the Retail Energy Supply Association. Accordingly, RESA’s motion to intervene should be granted.¹

II. The Public Utilities Commission of Ohio has been directed to grant intervention liberally

R.C. 4903.221 provides for intervention in hearings before the Public Utilities Commission of Ohio (“Commission”) of any person who may be adversely affected by the outcome of the proceeding.² In assessing a motion to intervene, the Commission is to consider

¹ The statements expressed in this filing represent the position of the Retail Energy Supply Association as an organization, but may not represent the view of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of 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 to retail, residential, commercial, and industrial customers. More information on RESA can be found at www.resausa.org.

² R.C. 4903.221 provides:

Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided:

(A) That such other person files a motion to intervene with the commission no later than:

(1) Any specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established;

the nature and extent of the moving party's interest, the legal position of the moving party and its relation to the merits of the case, whether the intervention of the moving party will unduly prolong or delay the proceedings, and whether the moving party will significantly contribute to the full development and equitable resolution of the factual issues. R.C. 4903.221(B).³ The Supreme Court of Ohio further directs the Commission to liberally grant intervention so that the positions of all persons with a real and substantial interest in the proceeding can be considered by the Commission. *Consumers' Counsel v. Public Utils. Comm'n of Ohio*, 111 Ohio St. 3d 384, 388 (2006).

III. Members of RESA are actively engaged in the provision of renewable energy products and services

RESA is a non-profit 501(c)(6) organization headquartered in Harrisburg, Pennsylvania. State-specific chapters exist in each jurisdiction that permits retail competition.

RESA's member companies supply retail electricity and natural gas to residential, commercial, industrial, and governmental customers throughout Ohio, including the service

(2) Five days prior to the scheduled date of hearing. The public utilities commission may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.

(B) That the commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

- (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.

³ Under its rules of procedure, the Commission has also directed that it will decide whether to allow intervention based on the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues, and the extent to which the person's interest is represented by existing parties. Rule 4901-1-11(B), Ohio Administrative Code.

territory of Ohio Power. In particular, members are engaged in supplying “green” products and services to residential, commercial, and industrial customers.⁴

Since its inception, RESA is and has historically been active in many electric industry proceedings at the Commission in furtherance of its members’ activities in Ohio. It also has participated in Commission proceedings to assure that electric distribution utilities comply with requirements of Ohio law that proscribe their ability to leverage their monopoly status in competitive markets.

IV. RESA should be granted intervention

As noted, Ohio Power is seeking to liquidate an indeterminant amount of renewable energy credits that exceed the amount it needs to comply with alternative energy requirements as a result of the passage of House Bill 6 and increased customer shopping. Application at 2-3. To liquidate this inventory, it seeks authority in this proceeding to market the credits to its standard service offer customers. *Id.* at 3.

Based on the applicable requirements, RESA should be granted intervention.

Initially, RESA members have a direct interest in the outcome of this proceeding. As noted previously, RESA members are engaged in marketing renewable power and have a direct interest in the market for renewable energy credits. Further, RESA members have an interest that an electric distribution utility is not afforded unlawful or unreasonable entry into a competitive market.⁵ Accordingly, RESA members have a direct interest in the outcome of this

⁴ See, e.g., <https://www.igs.com/for-your-home/green-electricity>; <https://www.starionenergy.com/our-services/green-energy/#:~:text=Starion%20Energy%20believes%20in%20the,we%20can%20offer%20to%20you!>; and <https://www.constellation.com/solutions/for-your-home.html>.

⁵ Under R.C. 4928.17(A), an electric distribution utility’s lawful opportunity to sell a competitive electric product or service or any non-electric product or service is not permitted except as is permitted under R.C. 4928.142 or 4928.143. See, also, *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its Fourth Amended Corporate Separation Plan*, 148 Ohio St. 3d 510 (2016).

proceeding, and RESA's legal position that approval of this part of the application is not lawful or reasonable is readily apparent.

Additionally, RESA's motion to intervene is timely, and granting its intervention will not prolong or delay the proceeding.

Moreover, the expertise of RESA and its members will contribute to the full development and equitable resolution of the factual issues presented by Ohio Power's effort to market renewable energy credits to standard service offer customers.

Although RESA's interests may overlap with some parties in the proceeding, the totality of RESA's interests are unique and not adequately represented by other parties because the outcome in this matter has broader ramifications for the competitive retail electric market in the Ohio Power service territory and possibly beyond that.

V. Conclusion

For these reasons, the Commission should grant the motion of RESA to intervene.

Respectfully submitted,

/s/ Frank P. Darr

Frank Darr

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 9th day of November 2020. The following parties were provided by electronic mail a copy of this document.

/s/ Frank P. Darr

Frank Darr

Bethany.allen@igs.com
Joe.oliker@igs.com
Michael.nugent@igs.com
Stnourse@aep.com

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Summary: Motion Motion to Intervene electronically filed by Frank P. Darr on behalf of Retail Energy Supply Association