

BEFORE

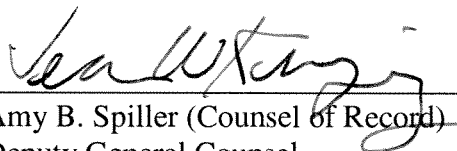
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)
Power Company for Approval of Full)
Legal Corporate Separation and) Case No. 12-1126-EL-UNC
Amendment to Its Corporate Separation)
Plan.)

**MOTION TO INTERVENE
BY
DUKE ENERGY RETAIL SALES, LLC**

Comes now Duke Energy Retail Sales, LLC (DER), by and through counsel, and moves to intervene, as a full party of record, in the above-captioned proceeding, pursuant to R.C. 4903.221 and O.A.C. 4901-1-11. The issues in this proceeding relate to Ohio Power Company's (AEP Ohio) application for legal corporate separation, to implement amendments to its current corporate separation plan, and for waivers of certain filing requirements. DER offers the following memorandum in support of its request.

DUKE ENERGY RETAIL SALES, LLC



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Memorandum in Support

On March 30, 2012, Ohio Power Company (AEP Ohio) filed an application seeking full legal corporate separation, to implement amendments to its current corporate separation plan, and for waivers for certain filing requirements.¹ Specifically, AEP Ohio states that it is proposing to separate the generation function from the transmission and distribution functions.² As proposed in its application, AEP Ohio's transmission and distribution assets will remain with AEP Ohio; however, AEP Ohio plans to transfer its generating assets to an affiliate.³ AEP Ohio's application also seeks a waiver of Commission rules requiring it to state the fair market value of the generating assets it plans to transfer and to have a hearing in the proceeding.⁴

R.C. 4903.221(B) sets forth several criteria that the Commission is required to consider in ruling on applications to intervene. Those criteria are listed as follows:

- (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.

The Commission has, itself, added additional detail to the intervention requirements through the promulgation of O.A.C. 4901-1-11. That rule, in section (A), 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 [its] ability to protect that interest, unless the person's interest is adequately represented

¹ Ohio Power Company's Application for Approval of Full Corporate Separation and Amendment to its Corporate Separation Plan, at 1 (March 30, 2012).

² *Id.*

³ *Id.*

⁴ *Id.* at 6-7.

by existing parties.” The rule goes on to list several factors that the Commission is required to consider in determining whether a potential intervenor meets that standard:

- (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.
- (5) The extent to which the person’s interest is represented by existing parties.

DER is a competitive retail electric services provider, certified to provide retail services in AEP Ohio’s territory. Indeed, DER is providing both nonresidential and residential services in AEP Ohio’s territory at this time. It is critical to the ongoing business of DER that it be able to compete successfully for business in this area. However, DER could be harmed by issues involved in the separation of the generation function from the transmission and distribution functions that was proposed by AEP Ohio. This issue is directly related to the issues being considered by the Commission in this proceeding.

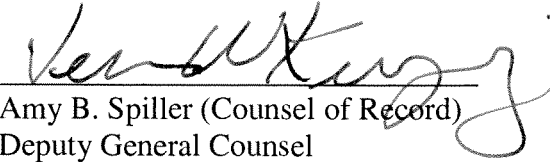
As no deadline for intervention has yet been determined in this case, intervention by DER will not unduly prolong or delay this proceeding. DER would also respectfully suggest that its intervention will significantly contribute to the full development and equitable resolution of the factual issues, based on its experience in the marketplace and understanding of competitive needs in general. Its interests are not represented by existing parties.

DER would also note that, although no determination has yet been made as to whether a hearing will be required, the Supreme Court of Ohio has made it clear that intervention is to be liberally allowed, regardless of whether a hearing is held.⁵

⁵ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 11 Ohio St.3d 384, 2006-Ohio-5853 (¶20).

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

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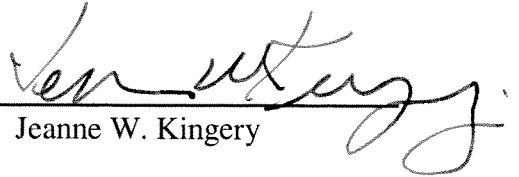
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 5th day of April, 2012, to the following:


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