

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Retail Sales, LLC, for Certification as ) Case No. 04-1323-EL-CRS  
a Competitive Retail Electric Service )  
Provider in Ohio. )

ENTRY

The attorney examiner finds:

- (1) On August 23, 2008, Duke Energy Retail Sales, LLC, (DERS) filed an application for renewal of its certificate allowing it to provide competitive retail electric service in Ohio. DERS seeks a renewal of its certification that was issued to DERS, f.k.a. Cinergy Retail Sales, LLC, on October 7, 2004 (Certificate No. 04-124(1)), and its renewal certificate that was issued on October 3, 2006 (Certificate No. 04-124(2)).
- (2) On September 15, 2008, the Office of the Ohio Consumers' Counsel (OCC) moved to intervene in the proceeding and to suspend and deny DERS' renewal application, or in the alternative, to set the matter for hearing. OCC makes numerous allegations regarding DERS' compliance with the Commission's rules and its activities in Ohio's competitive retail electric market.
- (3) Pursuant to Section 4928.08, Revised Code, and Rules 4901:1-24-06(A) and 4901:1-24-09(C), Ohio Administrative Code (O.A.C.), DERS' renewal certification application is subject to a 30-day automatic approval process. Additionally, Rule 4901:1-24-06(A)(1), O.A.C., provides that, upon good cause shown, the Commission or an attorney examiner may suspend consideration of a certification application.
- (4) The attorney examiner finds that good cause exists to suspend the 30-day automatic approval process for DERS' renewal application for certification, in order that the Commission and its staff may further review this matter and the allegations raised by OCC.
- (5) The attorney examiner notes that Rule 4901:1-24-06(A)(2)(b), O.A.C., requires that, if consideration of a certification application is suspended, the Commission must act to approve or deny the

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application within 90 days of the suspension. In addition, Rule 4901:1-24-06(A)(2)(c), O.A.C., allows the Commission or the attorney examiner to set the matter for hearing. Although no decision has been made regarding any process that may be appropriate in this proceeding, the attorney examiner finds that an expedited motion process should be followed. Therefore, in the event that any motion is made in this case, any memorandum contra shall be filed within seven days after the service of such motion, and any reply memorandum shall be filed within four days after the service of a memorandum contra. Paragraph (B) of Rule 4901-1-07, O.A.C., which permits three additional days to take action if service is made by mail, will not apply.

- (6) The attorney examiner also finds that further review of the application will be benefitted by allowing DERS to respond to OCC's motion to suspend and deny DERS' renewal application. Therefore, DERS may file a memorandum contra OCC's motion, as well as OCC's motion for intervention. Such memorandum contra must be filed no later than seven days from the date of this entry. If DERS files such a memorandum contra, OCC may also file a reply. Such reply must be filed no later than four days from the date when the memorandum contra is filed.

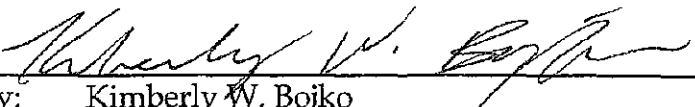
It is, therefore,

ORDERED, That consideration of the renewal application by Duke Energy Retail Sales, LLC, for certification as a competitive retail electric service provider in Ohio be suspended. It is, further,

ORDERED, That the parties comply with the requirements set forth in this entry. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record in these proceedings.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
By: Kimberly W. Bojko  
Attorney Examiner

grr  
/ct

Entered in the Journal

SEP 18 2008



Renee J. Jenkins  
Secretary