

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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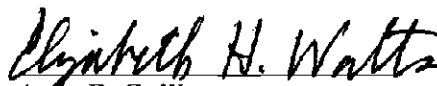
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In The Matter of an Application of)
Duke Energy Ohio for the) Case No. 09- 495-EL-UNC
Approval of the Second Amended Corporate)
Separation Plan Under Section 4928.17, Revised)
Code and 4901:1-37, Ohio Administrative Code)

MOTION OF DUKE ENERGY OHIO FOR LEAVE TO FILE
A CORPORATE SEPARATION PLAN *INSTANTER*

Now comes Duke Energy Ohio, and moves this Honorable Public Utilities Commission of Ohio (Commission) for leave to file, *instanter*, its Second Amended Corporate Separation Plan pursuant to the requirements set forth in Revised Code 4928.17(A) and Rule 4901:1-37-05, O.A.C. The reasons for this motion are more fully set forth below.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

Amended Substitute Senate Bill 221 (SB 221) required the Commission to promulgate these new rules to address procedures for corporate separation between regulated and non-regulated entities. In Case No. 08-777-EL-ORD, the Commission Staff submitted proposed changes to various provisions of the Ohio Administrative Code, including those on corporate separation. In its Finding and Order of September 17, 2008, the Commission adopted new rules contained in new Chapter 4901:1-37, O.A.C., and rescinded old rules that had been contained in Chapter 4901:1-20, O.A.C. The new rules contain a requirement that each electric utility file an application for approval of its corporate separation plan within 60 days of the effective date of Chapter 4901:1-1-37, O.A.C.

On July 31, 2008, DE-Ohio filed its application for approval of a standard service offer – pursuant to requirements set forth in SB 221 – in the form of an electric security plan.¹ Among the documents submitted with that filing was a current version of Duke Energy Ohio’s amended corporate separation plan, which had been approved by the Commission in Case No. 99-1658-EL-ETP and amended in Case No. 03-93-EL-ATA, et al.² In its application, Duke Energy Ohio noted that it was operating pursuant to this corporate separation plan and thus proposed that it be permitted to continue to do so. This proposal was adopted in the Stipulation and Recommendation submitted to the Commission relative to Duke Energy Ohio’s electric security plan. Significantly, all Parties agreed that Duke Energy Ohio’s “Corporate Separation Plan shall remain in effect as filed in these proceedings,” with the exception of the transfer of certain gas-fired generating assets.³ Thereafter, on December 17, 2008, the Commission approved, with

¹ *In Re Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, (Application of Duke Energy Ohio, July 31, 2008).

² *Id.*, at *Application* Volume 2 of 2, Part 2, p. 48.

³ *Id.*, at *Stipulation and Recommendation*, para. 26 (October 27, 2008).

slight modification, the Stipulation and Recommendation thereby also approving Duke Energy Ohio's corporate separation plan.⁴ As a result, Duke Energy Ohio has continued to operate – and provide a standard service offer – pursuant to an approved corporate separation plan.

But Duke Energy Ohio now seeks leave to file a corporate separation plan consistent with the Commission's request that such plans be filed, in a separate docket, within 60 days of the effective date of the rules. In so doing, Duke Energy Ohio acknowledges that its proposed corporate separation plan reflects modification to the content of its approved plan. This modification is necessary to address certain new requirements, including, but not limited to, an identification of affiliates and the products or services that they provide. Additionally, this modification serves to consolidate into one document specific, approved procedures pursuant to which Duke Energy Ohio continues to operate (*e.g.*, corporate separation and code of conduct).

Duke Energy Ohio has complied with the rules on corporate separation as contemplated under SB 221 from December 17, 2008 to the present. And it now respectfully requests leave to file an application, *instanter*, for approval of a corporate separation plan so that it may continue to comply with both the procedural and substantive components of these rules. Duke Energy Ohio thus asks that this Commission accept its application for the approval of a corporate separation plan for filing forthwith.

⁴ *Id.*, at Opinion and Order (December 17, 2009).

Respectfully submitted,

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