

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

Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention in the above-styled proceeding as a full party of record.

Rule 4901-1-11 of the Ohio Administrative Code states in part:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

* * *

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the factors that the Public Utilities Commission of Ohio (the "Commission") considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. (See also R.C. 4903.221(B) upon which the above rule is authorized). A review of these factors in light of following facts supports granting RESA's intervention.

RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. Several RESA members are certificated as competitive retail electric service providers and active in the Ohio retail market. Specifically, some of RESA's members currently provide CRES service to both residential and commercial retail customers in

Duke Energy Ohio's service area. Any testimony filed in this matter may represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

In its first application filed in Case No. 08-920-EL-SSO pursuant to S.B. 221, Duke Energy Ohio, Inc. ("Duke") sought – and received – approval from the Public Utilities Commission of Ohio ("the Commission") to implement an electric security plan ("ESP"). The term of that ESP expires on December 31, 2011, and Duke now seeks approval of its next standard service offer (SSO), which will take the form of a market rate offer (MRO). Specifically, pursuant to Sections 4928.141 and 4928.142, Revised Code and Chapter 4901:1-35 of the Ohio Administrative Code, Duke is requesting that the Commission approve its proposed MRO. Duke asks that its application should be approved on or before February 14, 2011.

RESA's members have existing and potential business interests in the State that will be affected by the outcome of the proceeding. The Commission's decision in this matter will affect the viability of the competitive retail electric market in Duke Energy Ohio's service territory, in which some of the RESA members provide electric power and other products and services to retail service customers.

This motion to intervene meets the deadline established by the Attorney Examiner's Entry of November 16, 2010.

WHEREFORE, the Retail Energy Supply Association respectfully requests that the Commission grant this motion for leave to intervene and that RESA be made a full party of record.

Respectfully Submitted,

Stephen M. Howard

M. Howard Petricoff (0008287)

Stephen M. Howard (0022421)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P. O. Box 1008

Columbus, Ohio 43216-1008

Tel. (614) 464-5414

Fax (614) 464-6350

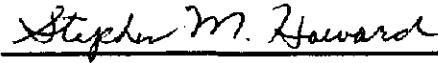
mhpetricoff@vorys.com

smhoward@vorys.com

Attorneys for the Retail Energy Supply Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 7th day of December, 2010 by regular U.S. mail, postage prepaid, or by electronic mail, upon the persons listed below.



Stephen M. Howard

Samuel C. Randazzo
Joseph Olier
McNees, Wallace & Nurick
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com
joliker@mwncmh.com

Amy B. Spiller
Elizabeth H. Watts
Rocco D'Ascenzo
Duke Energy, Inc.
2500 Atrium II
P.O. Box 961
Cincinnati, OH 45201-0960
Amy.spiller@duke-energy.com
Elizabeth.watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

David A. Kutik
Jones Day Northpoint
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Grant W. Garber
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017
gwwgarber@jonesday.com

William T. Reisinger
Nolan Moser
Trent A. Dougherty
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449
will@theoec.org
Nolan@theoec.org
trent@theoec.org

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 W. Lima Street
Findlay, OH 45839
drinebolt@ohiopartners.org
cmooney2@columbus.rr.com

John W. Bentine
Matthew S. White
Mark Yurick
Chester Willcox & Saxbe, LLP
65 E. State St., Suite 1000
Columbus, OH 43215
jbentine@cwsllaw.com
mwhite@cwsllaw.com
myurick@cwsllaw.com

Ann M. Hotz
Kyle L. Verett
Jody M. Kyler
Assistant Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, OH 43215-3485
hotz@occ.state.oh.us
veret@occ.state.oh.us
kyler@occ.state.oh.us

Michael D. Dortch
Kravitz, Brown & Dortch, LLC
65 E. State St., Suite 200
Columbus, OH 43215-4277
mdortch@kravitzllc.com

Douglas E. Hart
441 Vine St., Suite 4192
Cincinnati, OH 45202
dhart@douglasshart.com

Cynthia Fonner Brady
Constellation Energy Resources, LLC
550 W. Washington St., Suite 300
Chicago, IL 60661
cynthia.brady@constellation.com