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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Application of Duke	:	
Energy Ohio, Inc. for Authority to	:	
Establish a Standard Service Offer	:	
Pursuant to Section 4928.143, Revised	:	Case No. 11-3549-EL-SSO
Code, in the Form of an Electric Security	:	
Plan, Accounting Modifications and	:	
Tariffs for Generation Service.	:	
In the Matter of Application of Duke	:	
Energy Ohio, Inc. for Authority to	:	Case No. 11-3550-EL-ATA
Amend its Certified Supplier Tariff,	:	
P.U.C.O. No. 20.	:	
In the Matter of Application of Duke	:	
Energy Ohio, Inc. for Authority to	:	Case No. 11-3551-EL-UNC
Amend its Corporate Separation Plan.	:	

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MOTION TO INTERVENE
AND
REQUEST FOR LEAVE TO FILE MOTION TO INTERVENE OUT OF TIME
OF
DOMINION RETAIL, INC.

By the above-styled applications, Duke Energy Ohio ("Duke") seeks approval of a standard service offer ("SSO") in the form of an electric security plan, authority to amend its certified supplier tariff, and authority to amend its corporate separation plan. As more fully discussed in the accompanying memorandum, Dominion Retail, Inc. ("Dominion Retail") has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Further, Dominion Retail's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the

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issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party. Accordingly, Dominion Retail hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

Dominion Retail recognizes that the procedural schedule set forth in the entry issued in this proceeding on June 21, 2011 provided that motions to intervene should be filed by July 6, 2011. Although Dominion Retail has intervened in all prior Duke SSO cases brought before the Commission (including Duke's most recent SSO case, Case No. 10-2586-EL-SSO), undersigned counsel was heretofore unaware of the July 6, 2011 due date for motions to intervene in these dockets. Thus, Dominion Retail respectfully requests that the Commission entertain its motion to intervene, notwithstanding that it is being filed three business days after the specified due date. Granting Dominion Retail leave to file its motion to intervene out of time would be consistent with the Commission's policy of encouraging the broadest possible participation in its proceedings,¹ and would also be consistent with the disposition of similar requests to file motions to intervene out of time in other SSO proceedings.² Further, in view of the procedural posture of the case,³ no party will be prejudiced by granting Dominion Retail's request. If its motion to intervene is granted, Dominion Retail will, of course, accept the record as it finds it. In addition, Dominion Retail has contacted counsel for the applicant, and has been authorized to represent that Duke has no objection to Dominion Retail's request for leave to file out of time and does not oppose the motion to intervene.


¹ See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (Entry dated January 14, 1986, at 2).

² See, e.g., *Duke Energy Ohio*, Case Nos. 08-920-EL-SSO, *et al.* (Entry dated September 17, 2008, at 4) and *The Dayton Power and Light Company*, Case Nos. 08-1094-EL-SSO, *et al.* (Entry dated February 5, 2009, at 2).

³ Pursuant to the June 21, 2011 procedural entry, the cut-off date for written discovery is September 9, 2011, and the hearing will not commence until September 20, 2011.

WHEREFORE, Dominion Retail respectfully requests that the Commission grant its request for leave to file out of time and grant its motion to intervene.

Respectfully submitted,



Barth E. Royer (Counsel of Record)
BELL &, ROYER CO., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Gary A. Jeffries
Assistant General Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
(412) 237-4729 – Phone
(412) 237-4782 – Fax
Gary.A.Jeffries@dom.com

Attorneys for Dominion Retail, Inc.

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MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
DOMINION RETAIL, INC.

By the above-styled applications filed herein on June 20, 2011, Duke seeks approval of an ESP-based SSO pursuant to Sections 4928.143, Revised Code, and Chapter 4901:1-35, Ohio Administrative Code (“OAC”), authority to amend its certified supplier tariff, and authority to amend its corporate separation plan. Section 4903.221, Revised Code, provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” Dominion Retail is a Commission-certified CRES provider authorized to offer competitive retail electric service to customers within Duke’s service territory. As such, Dominion Retail must compete against the Duke SSO to attract and retain customers. In

addition, Dominion Retail is subject to Duke's certified supplier tariff, and has an obvious interest in any proposal to amend the provisions of this tariff. Thus, there can be no question that Dominion Retail may be adversely affected by this proceeding. Further, not only does Dominion Retail satisfy the underlying statutory test for intervention in Commission proceedings, but it also satisfies the standards governing intervention set forth in the Commission's rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

(A) 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 ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As a CRES supplier, Dominion Retail plainly has a real and substantial interest in a proceeding in which the Commission is being asked to determine how the price against which it must compete will be established, as well as in the terms and conditions of the Duke certified supplier tariff to which it is subject. As a potential wholesale supplier, Dominion Retail clearly has a real and substantial interest in a proceeding in which the Commission is being asked to determine how the competitive bidding process to secure generation supply for the SSO will be conducted. At this juncture, none of the pending motions to intervene in this proceeding have been granted. Thus, by definition, no existing parties adequately represent Dominion Retail's interest.

Although Dominion Retail does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard, also fully support granting Dominion Retail's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

- (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.

First, as previously explained, Dominion Retail's interest in connection with these proposals is obviously direct and substantial. Second, although Dominion Retail must necessarily await further developments before determining the specific positions it will adopt with respect to the issues in these proceedings, Dominion Retail will certainly advocate that any process or supplier tariff amendments adopted as a result of the applications be fair, reasonable, non-discriminatory, and designed to promote competition. Third, although Dominion Retail's motion is filed pursuant to a request for leave to file out of time, only three business have elapsed since the otherwise applicable July 6, 2011 deadline for intervention. In view of the procedural posture of this case and Dominion Retail's representation that it will take the record as it finds it, granting Dominion Retail's motion to intervene will not unduly delay or prolong the proceeding. Fourth, Dominion Retail has been a frequent participant in cases involving the establishment of competitive electric and gas markets in Ohio and the numerous other states in which it does business, and was a party to both Case No. 08-920-EL-SSO in which Duke's current SSO was established, and Case No. 10-2586-EL-SSO, Duke's most recent SSO proceeding. In addition,

Dominion Retail is an intervenor in Case No. 09-1026-EL-ATA, which addresses the provisions of Duke's supplier tariff governing the purchase of accounts receivable of CRES suppliers operating on its system, a matter also at issue here. As a result, Dominion Retail will bring substantial experience to bear on the issues raised in this proceeding. Finally, not only are there no existing parties that represent Dominion Retail's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (see, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2) to deny Dominion Retail's motion to intervene. Thus, granting Dominion Retail intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, Dominion Retail respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,



Barth E. Royer (Counsel of Record)
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Gary A. Jeffries
Senior Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
412-237-4729 – Phone
412-237-4782 -- Fax
Gary.A.Jeffries@dom.com

Attorneys for Dominion Retail, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 11th day of July 2011.


Barth E. Royer

Amy Spiller
Rocco D'Ascenzo
Elizabeth H. Watts
Duke Energy Ohio
139 Fourth Street, 1303-Main
Cincinnati, Ohio 45202

Samuel C. Randazzo
Frank Darr
Joseph C. Olikar
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, Ohio 43215

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45839-1793

John W. Bentine
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

Mark S. Yurick
Zachary D. Kravitz
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

Vince Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016

Trent A. Dougherty
Nolan Moser
E. Camille Yancey
Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, Ohio 45202

M. Howard Petricoff
Michael J. Settineri
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008

William L. Massey
Covington & Burling, LLP
1201 Pennsylvania Ave., NW
Washington, DC. 20004

Janine L. Migden-Ostrander
Jeffrey L. Small
Joseph P. Serio
Melissa R. Yost
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291

Lisa McAlister
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291

Mary W. Christensen
Christensen & Christensen LLP
8760 Orion Place, Suite 300
Columbus OH 43240

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212

Kevin J. Osterkamp
Roetzel & Andress, LPA
155 E. Broad Street, 12th Floor
Columbus, Ohio 43215

Rick D. Chamberlain
Behrens, Wheeler & Chamberlain
6 N.E. 63rd Street, Suite 400
Oklahoma City, Oklahoma 73105

Anne M. Vogel
American Electric Power Service
Corporation
1 Riverside Plaza, 29th' Floor
Columbus, Ohio 43215

Matthew J. Satterwhite
Erin C. Miller
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215

Joseph M. Clark
Vectren Source
6641 North High Street, Suite 200
Worthington, Ohio 43085

Dane Stinson
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215

Andrew J. Sonderman
Margeaux Kimbrough
Kegler Brown Hill & Ritter LPA
Capitol Square, Suite 1800
65 East State Street
Columbus, Ohio 43215

Gregory J. Poulos
EnerNOC, Inc.
101 Federal Street, Suite 1100
Boston, MA 02110

Tara C. Santarelli
Environmental Law & Policy Center
1207 Grandview Ave., Suite 201
Columbus, Ohio 43212