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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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**DUKE ENERGY OHIO'S MEMORANDUM CONTRA SIERRA CLUB'S MOTION TO INTERVENE AND REQUEST FOR LEAVE TO FILE MOTION OUT OF TIME**

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By entry dated June 21, 2011, the attorney examiner established July 6, 2011 as the date by which parties were required to file motions to intervene in the above-styled proceedings. On September 20, 2011, the Sierra Club ("Sierra Club") filed a motion to intervene and request for leave to file its motion out of time, detailed below, pursuant to R.C. 4903.221 and O.A.C. 4901-1-11. R.C. 4903.221 provides, in pertinent part:

Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided:

(A) That such other person files a motion to intervene with the commission no later than:

(1) Any specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established;

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(2) Five days prior to the scheduled date of hearing. The public utilities commission may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.

(B) That the commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

- (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.

The extent to which Sierra Club's interest is represented by existing parties may also be considered by the attorney examiner when deciding to permit intervention under O.A.C. 4901-1-11.

#### **Timing of Sierra Club's Motion**

In the proceedings hereunder, Sierra Club filed its motion to intervene 76 days after the intervention deadline set by the attorney examiner. Sierra Club claims that the size and complexity of its organization and attending administrative delays were "part of the reason for [its] failure" to obtain the necessary approval from the organization's headquarters in San Francisco in order to timely intervene in these matters. As the Commission likely recognizes, however, there are several large organizations involved in these proceedings that were able to intervene in a timely manner. The administrative delays that Sierra Club alleges resulted from the complexity of its organization are not detailed and do not comprise sufficient cause such that the Commission should grant its out-of-time motion to intervene. Further, although Sierra Club

asserts that the size and complexity of its organization were *part* of the reason for its failure to timely intervene, it presents no additional reasons for the delay. Sierra Club's failure to specify the other reasons for its delay undoubtedly fail to support a finding of good cause.

### **Sierra Club's Interest in These Proceedings**

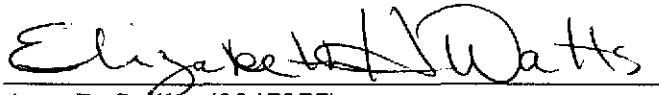
Sierra Club offers its position as a proponent of the energy efficiency measures approved pursuant to Ohio Sub. S.B. 221 and its interest in Duke Energy Ohio's proposed "recovery process" for energy efficiency programs in support of its intervention in these proceedings. Sierra Club's proclaimed interest in the cases hereunder is misplaced, however, as these matters do not address Duke Energy Ohio's proposed cost recovery process for energy efficiency programs. In fact, Sierra Club has already sought to intervene, and the attorney examiner has granted its request for leave to file its motion to intervene out of time and its intervention, in Case No. 11-4393-EL-RDR. The Commission will consider Duke Energy Ohio's application for an energy efficiency cost recovery mechanism in Case No. 11-4393-EL-RDR. Sierra Club will have the opportunity to fully and appropriately voice its concerns over Duke Energy Ohio's proposed energy efficiency cost recovery mechanism in that case. Because the proceedings in which Sierra Club presently attempts to intervene <sup>do not address</sup> its alleged specific interest, energy efficiency cost recovery mechanisms, the Commission should deny its motion to intervene.

### **Conclusion**

Sierra Club's motion to intervene in these proceedings and its request for leave to file its motion out of time are not supported by good cause. Further, the specific interest in these proceedings to which Sierra Club cites in support of its intervention will not be addressed by the Commission herein, but in another proceeding, in which Sierra Club has already been granted

intervention. Accordingly, the Commission should deny Sierra Club's motion to intervene and request for leave to file its motion out of time.

Respectfully submitted,

A handwritten signature in black ink that reads "Elizabeth H. Watts". The signature is written in a cursive style and is positioned above a horizontal line.

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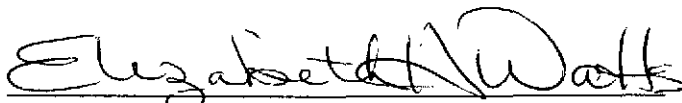
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum Contra Sierra Club's Motion to Intervene and Request for Leave to file Motion Out of Time has been served upon the following listed parties by ordinary first class mail, postage prepaid or by electronic service this 26th day of September, 2011:

  
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