

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy )	
Ohio, Inc., for the Establishment of a Charge )	Case No. 12-2400-EL-UNC
Pursuant to Revised Code Section 4909.18. )	

In the Matter of the Application of Duke Energy )	
Ohio, Inc., for Approval to Change Accounting )	Case No. 12-2401-EL-AAM
Methods. )	

In the Matter of the Application of Duke Energy )	
Ohio, Inc., for the Approval of a Tariff for a )	Case No. 12-2402-EL-ATA
New Service. )	

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**DUKE ENERGY OHIO, INC.'S MEMORANDUM  
CONTRA THE MOTION TO INTERVENE  
OF DPL ENERGY RESOURCES, INC.**

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On August 29, 2012, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) filed an application (Application) with this honorable Public Utilities Commission of Ohio (Commission), seeking determination of a charge for capacity services pursuant to the newly adopted state compensation mechanism, authority for a deferral of the difference between such charge and the market prices for capacity services currently being received by Duke Energy Ohio, and approval of a tariff pursuant to which such deferral could subsequently be recovered.

On October 15, 2012, DPL Resources, Inc., (DPLER) moved to intervene in these proceedings. As DPLER correctly indicates in its motion, interventions in Commission proceedings are governed by R.C. 4903.221 and O.A.C. 4901-1-11. However, DPLER errs in applying the relevant legal parameters to the issues relevant to these proceedings, as set forth in the Company's Application. Consequently, as demonstrated herein, DPLER's motion should be denied.

### **Nature of the Prospective Intervenor's Interest**

The first element to be considered by the Commission, pursuant to R.C. 4903.221, is the nature and extent of the prospective intervenor's interest. Here, DPLER does not articulate a real and substantial interest unique to it that is implicated by, or relevant to, Duke Energy Ohio's Application. Rather, DPLER summarily states that the "change in capacity pricing proposed by Duke Energy Ohio...may have a negative impact to the viability and health of the competitive market within Duke Energy Ohio's territory."<sup>1</sup> DPLER further alleges, albeit erroneously, that the outcome of these proceedings could threaten the competitive market within the state as a whole.<sup>2</sup> But these allegations do not demonstrate an interest warranting intervention.

Although Duke Energy Ohio recognizes that DPLER operates in its territory as a competitive retail electric service (CRES) provider, it fails to explain any way in which the Application in these proceedings could possibly impact such business. The proposal, designed to mirror that which was recently set in place by the Commission for another, similarly situated utility, will not impact suppliers. It does not change any of a retail supplier's costs of doing business. It does not impose any additional charges, or raise any current charges, due from a retail supplier. Indeed, in the Application, Duke Energy Ohio concedes that suppliers will continue to be charged the final zonal capacity price, which is a market-based price.<sup>3</sup> Thus, the proposal has no impact on DPLER, its business plans, or its future viability as a CRES provider, whether in Duke Energy Ohio's territory or within the state. And, as such, DPLER's claim that it has a real and substantial interest in these proceedings is misplaced.

Although DPLER admits that Duke Energy Ohio is not proposing, in these proceedings, to alter the capacity charges applicable to retail suppliers, it suggests that its intervention is

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<sup>1</sup> DPLER Memorandum in Support of Motion to Intervene, at pg. 3 (October 15, 2012).

<sup>2</sup> Id.

<sup>3</sup> Duke Energy Ohio Application, at paragraph 7 (August 29, 2012).

warranted because future capacity prices are at issue here.<sup>4</sup> To the extent DPLER is referring to capacity charges applicable to CRES providers, which it should given that its status as such, DPLER's contention is false. Again, Duke Energy Ohio is not proposing to alter or adjust the market-based prices that CRES providers will be charged for capacity and DPLER's concern that such pricing could be changed is unfounded. And to the extent DPLER is concerned with adjustments to capacity charges to which it will not be subject, it cannot demonstrate a real and substantial interest in these proceedings.

DPLER has failed to identify an interest sufficient to warrant intervention in these proceedings.

#### **Legal Position and Probable Relation to Merits of the Case**

The second element to be considered by the Commission, pursuant to R.C. 4903.221, is the prospective intervenor's legal position and its probable relation to the merits of the case. Again, however, DPLER fails to identify any position that it might take that is related to the actual merits of the case. The proceedings will have no impact on DPLER's business or its ability to engage in the competitive retail market. Indeed, as discussed above, the capacity charges applicable to suppliers are unchanged by the Company's Application. DPLER should not be granted intervention, as it is undeniably unaffected by this Application.

#### **Undue Delay and Significant Contribution**

The third and fourth elements to be considered by the Commission, pursuant to R.C. 4903.221, are whether the requested intervention will unduly prolong or delay the proceeding and whether the prospective intervenor will provide a significant contribution to full development and equitable resolution of the factual issues. Neither of these elements is satisfied in the instant request for intervention.

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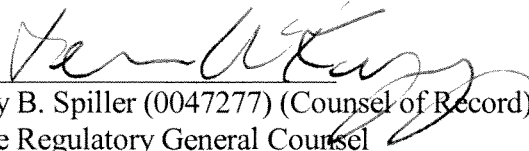
<sup>4</sup> DPLER Memorandum in Support of Motion to Intervene, at pg. 4 (October 15, 2012).

As Duke Energy Ohio fully explained in the Application, these proceedings seek approval of a tariff to collect for services not previously covered by a tariff and do not seek any increase; thus, no hearing is required under R.C. 4909.18 unless the Application may be unjust or unreasonable. As the Commission has just adopted the state compensation mechanism and approved the determination of a charge pursuant thereto, with a deferral and subsequent recovery over time for a comparable entity, the Application here cannot be deemed unjust or unreasonable. The Application merely seeks arithmetic calculations and the application of an outcome that has already been found to be just and reasonable. It is indisputable that the Application does not require a hearing. Thus, DPLER's effort to intervene in these proceedings can have no other impact than to delay the resolution. As there is no factual inquiry to be made, since the state mechanism relies on existing federal filings, DPLER's input will not provide a significant contribution to development or resolution of factual issues.

The elements to be considered for intervention in Commission proceedings have not been met by DPLER.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the motion by DPL Resources, Inc., for intervention in the above-referenced proceedings.

Respectfully submitted,  
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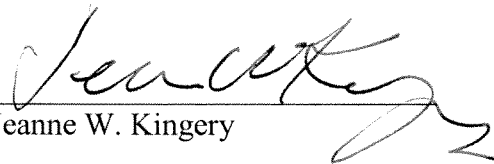
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 16<sup>th</sup> day of October 2012, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.

  
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Summary: Memorandum Duke Energy Ohio, Inc.'s Memorandum Contra the Motion to Intervene of DPL Energy Resources, Inc. electronically filed by Miss Kristen Cocanougher on behalf of Duke Energy Ohio and Spiller, Amy B. Mrs. and D'Ascenzo, Rocco Mr. and Kingery, Jeanne W. Mrs. and Watts, Elizabeth Mrs.