

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of its Energy)	Case No. 13-431-EL-POR
Efficiency and Peak Demand Reduction)	
Portfolio of Programs.)	

**OBJECTIONS TO THE APPLICATION
FILED BY EMC DEVELOPMENT COMPANY, INC.**

On April 15, 2013, Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) filed an application for approval of its proposed portfolio of energy efficiency and demand reduction plans (Application), which is required to assure that the Company is in compliance with the state's energy efficiency benchmarks. On June 27, 2013, EMC Development Company, Inc. (EMC) filed a motion to intervene and a memorandum in support of its motion. Pursuant to the attorney examiner's June 13, 2013 Entry, EMC hereby submits its objections to the Company's Application and testimony submitted in support thereof.

I. Background on EMC

EMC is a privately-owned small business which develops and invests in clean energy projects. Over the past three years, EMC has specifically focused on the energy efficiency (EE) sector. During that time, EMC has partnered with building owners and EE contractors across Ohio to qualify EE projects as resources in the PJM capacity market.

EMC is a member of PJM Interconnection, LLC (PJM) and, as a member of PJM, has qualified approximately 6,000 EE projects completed by its contactor partners as EE resources in the PJM capacity market (Capacity Auctions). The ability to bid capacity in the market is generally only available to large-scale projects; however, working with local Ohio partners,

EMC aggregates smaller projects in order to qualify them for participation in PJM Capacity Auctions. EMC has, in the past, bid these projects into PJM Capacity Auctions, and provides a significant portion of the proceeds from the auctions to participating building owners and EE contractor partners. EMC provides a cost-effective means for Ohio ratepayers who have completed energy efficiency projects to derive value from those projects in PJM's market. A number of the projects EMC seeks to aggregate for purposes of the PJM Capacity Auctions are located in Duke Energy Ohio's service territory.

II. Objections to Application

Given the nature of its business, EMC's objections center around Duke Energy Ohio's plan regarding the bidding of EE resources into PJM Capacity Auctions, for both base residual auctions and incremental auctions. For purposes of context, EMC notes that Duke Energy Ohio has voiced concerns "related to the speculative nature of some auction activities and the potential business risks associated with these activities."¹ The Company has also expressed a concern that "[w]hile there appears to be the opportunity to realize benefits from auction participation, there is also the potential for losses."²

A. EMC Objects to Lack of Clarity Regarding Ownership of and Right to EE Projects in the Company's Service Territory.

Duke Energy Ohio is unclear in its Application and supporting testimony about the manner in which it intends to obtain rights to EE projects in its territory during the applicable period of time for use in meeting its portfolio standards. As such, EMC seeks clarification that ownership of and right to offer EE resources within its service territory do not automatically belong to Duke Energy Ohio pursuant to Ohio laws and regulations, and such rights should remain with the facility owner where the EE measures were implemented. Each facility owner

¹ See Direct Testimony of Timothy J. Duff (April 15, 2013) at 16, ln 11-13.

² Id. at 16, ln 13-15.

should retain its right to convey EE resources it has implemented to the electric distribution utility (EDU) or aggregator of its choice. Whether an EE aggregator, EDU, or any other entity wants to offer an EE resource into a PJM Capacity Auction, that entity should explicitly obtain the right to offer the resource from the owner of the facility where the EE measure was implemented. A blanket right to offer capacity by Duke without obtaining the ownership right from the facility owner is impractical, unjust, and a violation of market rules.

B. EMC Objects that the Application has not Addressed the Extent to which Duke Energy Ohio is Bidding its EE Resources into Capacity Auctions, and further that its Participation in Capacity Auctions May Create Significant Risks for Ratepayers, May Not Be Cost-Effective, and May Disrupt a Market That Is Presently Operated in a Transparent, Competitive Manner.

In its Opinion and Order in Case No. 11-4393-EL-RDR, the Commission directed Duke Energy Ohio, in its April 2013 filing, “to address to what extent it is bidding its energy efficiency resources into the PJM capacity auction.”³ To this point, the Company has not clearly responded to the Commission’s request. EMC posits that bidding EE resources into Capacity Auctions requires a clear, thoughtful, and well-examined approach. The expenses associated with acquiring, qualifying, measuring and verifying, bidding, and clearing EE resources into PJM Capacity Auctions are very significant. EMC generally does not support EDUs bidding EE resources into PJM Capacity Auctions. Speculation by the Company in offering EE resources into Capacity Auctions can create undue risks for Ohio ratepayers and may also create costly penalties for the Company. The forward nature of Capacity Auctions requires bidders to take risks on EE resources which may not be completed at the time of auction. Any failure by a bidder to deliver these resources by the applicable delivery year could lead to

³ See *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR, Opinion and Order at 19 (Aug. 15, 2012).

substantial, costly penalties. In light of these circumstances, EMC and other qualified PJM members are better positioned than Duke Energy Ohio and other EDUs to take on these risks, as EMC can only look to itself to address the costs of such risks, in stark contrast to an EDU, such as Duke Energy Ohio, which may potentially look to ratepayers to absorb penalties in the event that the risks materialize. Moreover, in its current form and circumstances, the PJM capacity market functions as a transparent, competitive market. There is no reason to disrupt this effective market construct. Presently, a number of small businesses, such as EMC, are thriving as qualified, knowledgeable administrators in the PJM Capacity Auctions. Involving large EDUs in bidding EE resources into Capacity Auctions may frustrate the smooth execution of these auctions while simultaneously squeezing out small business concerns and interests that have heretofore thrived under the auction model. These policy decisions are unfavorable and unnecessary.

C. EMC Objects to the Lack of Specificity Regarding the Pilot Program and its Parameters, Proposed in Connection with the Company's Capacity Auction Participation.

In response to concerns about the speculative nature of certain auction activities and their attenuated business risks, Duke Energy Ohio has indicated its intent to file for Commission approval of a new pilot program that will create a mechanism to capture “all the costs and benefits of PJM auction participation.”⁴ The Company proposes that the pilot program will effectively consider the auction proceeds to be the avoided cost benefit of the program, and the incremental evaluation, measurement, and verification expenses and administrative costs as the program costs, which will allow the program to fall under Rider EE-PDR.⁵ While the Company represents that it has sketched a rough outline of the proposed pilot program in the context of

⁴ Id. at 16, ln 15-18.

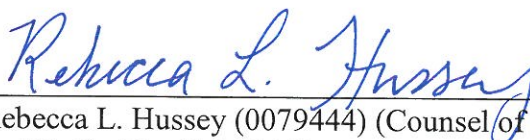
⁵ Id. at 16, ln 18-23; Id. at 17, ln 1.

communications with its Collaborative, not all parties to this proceeding are privy to that information. Details about the proposed program that are set forth in conjunction with its Application are very scarce, despite the fact that the program appears to be designed to facilitate Company participation in future PJM Capacity Auctions using EE resources. Given the significant lack of details supplied with Duke Energy Ohio's announcement of its intent to seek Commission approval for such a program and cost recovery of the same, EMC cannot presently support the Company's proposal.

III. Conclusion

For the reasons outlined above, including a lack of information in the Company's Application and testimony regarding the source and degree of EE projects to be bid into Capacity Auctions, the significant risks to the Company and ratepayers that are involved in bidding EE resources into Capacity Auctions, and the lack of detail surrounding its proposed pilot program for auction participation, EMC objects to Duke Energy Ohio's Application.

Respectfully submitted,



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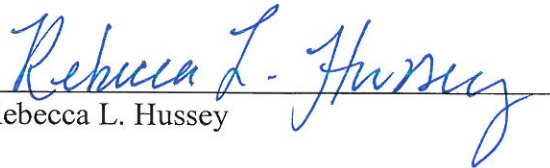
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served this 1st day of July, 2013, by electronic mail if available or by regular U.S. mail, postage prepaid, upon the persons listed below.


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Summary: Objection Objections filed by EMC Development Company, Inc. electronically filed by Ms. Rebecca L Hussey on behalf of EMC Development Co