

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc. for Authority to)	
Establish a Standard Service Offer)	
Pursuant to R.C. 4928.143 in the Form of)	Case No. 14-841-EL-SSO
an Electric Security Plan, Accounting)	
Modifications, and Tariffs for Generation)	
Service.)	

In the Matter of Application of Duke)	
Energy Ohio, Inc. for Authority to Amend)	Case No. 14-842-EL-ATA
its Certified Supplier Tariff, P.U.C.O. No.)	
20.)	

**OHIO DEVELOPMNT SERVICES AGENCY’S
MOTION TO INTERVENE AND
REQUEST FOR EXPEDITED RULING**

Pursuant to Ohio Revised Code Section (“R.C.”) 4903.221 and Ohio Administrative Code (“OAC”) Rule 4901-1-11, the Ohio Development Services Agency (“ODSA”) respectfully requests that the Public Utilities Commission of Ohio (“Commission”) grant ODSA’s motion to intervene in this proceeding. ODSA is aware that its motion is being filed past the Attorney Examiner’s deadline for intervening, but submits that invention should be permitted due to extraordinary circumstances that have occurred since the deadline.

Considering that hearing is scheduled to commence on October 22, 2014, ODSA requests that the Commission issue an expedited ruling on its request pursuant to OAC 4901-1-12(C) or (F). The reasons supporting ODSA’s intervention, and its request for expedited ruling, are contained in the accompanying Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Subsequent to the Attorney Examiner's deadline for seeking intervention, Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct Energy") injected a new proposal into this proceeding for the Commission's consideration: that Duke Energy Ohio, Inc.'s ("Duke") entitlement to Ohio Valley Electric ("OVEC") power be used to serve percentage of income payment plan ("PIPP") customers. The Ohio Development Services Agency ("ODSA") is charged with administering the PIPP program. R.C. 4928.53. ODSA seeks to intervene in this proceeding because Direct Energy's proposal directly affects: (1) ODSA's ability to aggregate PIPP load pursuant R.C. 4928.54, (2) the statutory directive that energy services be provided to PIPP customers at affordable prices pursuant to R.C. 4928.58, and (3) the provision of PIPP service consistent with the state policies set forth in R.C. 4928.02.

On May 29, 2014, Duke filed an application for approval of an electric security plan ("ESP") pursuant to R.C. 4928.143. As a part of its ESP, Duke seeks approval of the non-bypassable Price Stabilization Rider ("Rider PSR"), under which Duke proposes to recover the fixed and variable cost of its entitlement to OVEC power after crediting the revenues from the sale of its OVEC entitlement into the PJM market. By its application, Duke did not propose that its entitlement to OVEC power be used to serve PIPP customers; rather, Duke proposed that PIPP load be combined with other standard service offer ("SSO") load and supplied through the SSO auction process. Pre-filed Direct Testimony of James E. Ziolkowski, at 7 (May 29, 2014).

By entry issued June 6, 2014, the Attorney Examiner established a procedural schedule which required that motions to intervene be filed in this proceeding by July 8, 2014, and that intervenor testimony be filed by August 26, 2014, which testimony due-date subsequently was extended to September 26, 2014, by entry issued August 5, 2014.

On September 26, 2014, Direct Energy , through the pre-filed direct testimony of Teresa L. Ringenbach, opposed Rider PSR on the basis that it would cause customers to “pay twice for generation service,” paying once for their generation provided by the default supplier or their competitive retail electric service provider, and again for Duke’s entitlement to OVEC’s power. *See* Pre-filed Direct Testimony of Teresa L. Ringenbach, at 6 (September 26, 2014). Thus, Direct Energy assumes that the cost of the OVEC power will be greater than the wholesale price. Although Direct Energy’s primary recommendation is that Rider PSR should be rejected, its alternative recommendation, offered for the first time in this proceeding in the direct testimony filed September 26, 2014, is that Duke’s entitlement to OVEC power be applied to service for PIPP customers, acknowledging that its proposal may increase PIPP customers costs for electric service. *Id.* at 9-12.

Pursuant to R.C. 4928.53, ODSA is charged with administering low-income customer assistance programs, including the PIPP program, with the statutory directive that “energy services be provided to low-income consumers in this state in an affordable manner consistent with the policy specified in section 4928.02 of the Revised Code.” R.C. 4928.58.

R.C. 4903.221(B) and OAC Rule 4901-1-11(A)(2) govern intervention in Commission proceedings. Substantially similar in substance, these provisions explain that the Commission may consider the following in determining whether to grant intervention:

- (1) The nature and extent of the person’s interest;¹
- (2) The legal position of the person seeking intervention and its relation to the merits of the case;²
- (3) Whether intervention would unduly delay the proceeding or

¹ RC 4903.221(B)(1) and OAC Rule 4901-1-11(B)(1).

² RC 4903.221(B)(2) and OAC Rule 4901-1-11(B)(2).

unjustly prejudice any existing party;³

- (4) The person's potential contribution to full development and equitable resolution of the issues involved in the proceeding;⁴
and
- (5) The extent to which the person's interest is represented by existing parties.⁵

In addition, OAC Rule 4901-1-11(F) permits intervention past an established due date under “extraordinary circumstances” such as those presented by Direct Energy’s proposal.

ODSA has a real and substantial interest in this proceeding and the legal issues it intends to raise directly relate to the merits of this case. Direct Energy’s alternative recommendation would affect ODSA’s ability to aggregate PIPP load pursuant R.C. 4928.54. Moreover, pursuant to its statutory directive, ODSA has an interest that energy services are provided to PIPP customers at affordable prices and consistent with the state policies set forth in R.C. 4928.02. Direct Energy’s alternative proposal, by its own admission, could result in increased costs for electric services to PIPP customers under OAC Rule 122:5-3-04(B), and could violate various provisions of R.C. 4928.02 including, without limitation, divisions (A) and (L). Disposition of this proceeding without ODSA’s participation will impair or impede its ability to protect these interests.

ODSA’s intervention will not unduly delay or unjustly prejudice an existing party. ODSA does not request to extend the deadlines for discovery or the filing of direct testimony. Rather, ODSA wishes to reserve the right to cross examine witnesses and brief the issue relevant to Direct Energy’s alternative recommendation.

³ RC 4903.221(B)(3) and OAC Rule 4901-1-11(B)(3).

⁴ RC 4903.221(B)(4) and OAC Rule 4901-1-11(B)(4).

⁵ OAC Rule 4901-1-11(B)(5).

ODSA's intervention and involvement in this case will contribute to the development and equitable resolution of this issue. Because it is charged with the administration of the PIPP program, ODSA will provide its expertise and knowledge of how Direct Energy's alternative recommendation would affect PIPP customers and the administration of the PIPP program. ODSA's unique position is not represented by any other party.

Although ODSA's motion is filed past the deadline for intervention, the delay cannot be attributable to any fault on ODSA's part. As stated previously, Direct Energy's proposed alternative recommendation – that Duke's entitlement to OVEC power first be applied to service for PIPP customers – was first proposed in Direct Energy's testimony filed September 26, 2014, well after the deadline for intervention had passed. ODSA submits that these events constitute the extraordinary circumstances contemplated by OAC Rule 4901-1-11(F) and warrant intervention in this proceeding.

Finally, considering the limited scope of its intervention in this proceeding, ODSA's intervention will not adversely affect the substantial right of any party to this proceeding and requests that the Attorney Examiner issue an expedited ruling on this motion to intervene without the filing of memoranda, pursuant to OAC Rule 4901-1-12(E). Alternatively, ODSA requests that the Attorney Examiner issue an expedited ruling pursuant to OAC Rule 4901-1-12(C), after providing other parties a maximum of three days to file a memorandum contra this motion.

WHEREFORE, and for the reasons set forth above, ODSA respectfully requests that the

Commission grant its motion to intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties of record by e-mail and/or regular U.S. mail, this 16th day of October 2014.



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Summary: Motion to Intervene electronically filed by Dane Stinson on behalf of Ohio Development Services Agency