**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| **In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Modify Rider FBS, Rider EFBS, Rider FRAS, and Rider GTS.** | ) ) ) ) | **Case No. 15-50-GA-RDR** |

**MOTION TO INTERVENE, COMMENTS AND REQUEST TO ADJUST PROCEDURAL SCHEDULE OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

Now comes the Retail Energy Supply Association ("RESA")[1], who, pursuant to Section 4903.221, Revised Code, Rule 4901-1-11 of the Ohio Administrative Code and the January 22, 2015 Attorney Examiner's Entry in this matter, moves for intervention in the above-styled proceeding as a full party of record, submits comments, and respectfully requests that the Commission adjust the procedural schedule set forth in the January 22, 2015 Entry. The reasons supporting the motion, comments and request to adjust the procedural schedule are set forth in the accompanying Memorandum in Support.

WHEREFORE, RESA respectfully requests that the Commission grant this motion to intervene, make RESA a full party of record, accept its comments, and adjust the procedural schedule.

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[1] RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Dynegy Energy Services; GDF SUEZ Energy Resources NA, Inc.; IDT Energy, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; Nordic Energy Services, LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Respectfully Submitted,

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## MEMORANDUM IN SUPPORT

Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code, establish the standard for intervention in the above-styled proceeding as a full party of record.

Rule 4901-1-11 of the Ohio Administrative Code states in part:

> Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:
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> * * *
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> (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 or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the factors that the Public Utilities Commission of Ohio ("Commission") considers in implementing the above rule are the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. (See also R.C. 4903.221(B) upon which the above rule is authorized). A review of these factors in light of following facts supports granting RESA's intervention.

RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. Several RESA members are certificated as competitive retail natural gas ("CRNG") service providers and active in the Ohio retail natural gas markets providing service to residential, commercial, industrial and governmental customers. In addition, some of RESA's members currently provide CRNG service to retail customers in Duke Energy Ohio, Inc.'s service area.

On March 21, 2007, in Case Nos. 05-732-EL-MER, et al., the Commission approved a Stipulation, which *inter alia* set the rate of Duke's Firm Balancing Service Rider ("Rider FBS"). *In Re Cinergy Corp.,* Case No. 05-732-EL-MER, et al. (*Merger Case*), Entry, March 21, 2007. Rider FBS is a mechanism that enables Duke to recover the estimated portion of storage costs associated with daily balancing from Choice suppliers and aggregators, and the charges collected by Duke are then applied as a credit to the gas cost recovery mechanism. As a result of the Stipulation in the *Merger Case,* Duke participated in a collaborative that resulted in the proposal of Duke's Enhanced Firm Balancing Service Rider ("Rider EFBS"). RESA participated in the *Merger Case,* signed the Stipulation and participated in the collaborative. The current rates of Rider FBS and Rider EFBS were approved in *In Re Duke Energy Ohio, Inc.,* Case No. 12-1685-GA-AIR, et al., Opinion and Order, November 13, 2013.

On January 15, 2015, Duke filed an application in this case to adjust Rider FBS and Rider EFBS. Duke proposes to modify the terms under which gas suppliers and aggregators choose either Firm Balancing Service or Enhanced Firm Balancing Service. Duke also seeks to modify certain terms under its Full Requirements Aggregation Service and Gas Trading Service Tariffs to coincide with the changes requested for Rider FBS and Rider EFBS.

Duke noted in its application the number of gas suppliers and aggregators electing Enhanced Firm Balancing Service has declined, which has resulted in difficulty for Duke in managing storage balances within interstate pipeline tariff requirements. Duke proposes to make Enhanced Firm Balancing Service mandatory for gas suppliers and aggregators that have a maximum daily quantity ("MDQ") greater than or equal to 20,000 dekatherms ("DTH") per day, while gas suppliers and aggregators within MDQ over 1,000 DTH/Day and under 20,000 DTH/Day would continue to elect either type of balancing service. Duke has requested a

Commission decision by February 27 and requested that the proposed tariff revisions take effect on April 1, 2015.

RESA's members have existing and potential business interests in the State that will be affected by the outcome of this proceeding. RESA's members consist of CRNG suppliers who will be adversely affected by the proposed changes to Rider FBS and Rider EFBS. The Commission's decision in this matter will affect the viability of the CRNG market in Duke's service territory, in which some of the RESA members provide retail natural gas service and other products and services to retail service customers. Other RESA members contemplate entering the Duke service area and the Commission's decision in this matter will affect them as well. RESA seeks to intervene in this case to protect the prospects for the development of natural gas retail competition in the Duke service territory and to protect the interests of its CRNG supplier-members. This motion to intervene meets the February 12, 2015 deadline established by the Attorney Examiner's Entry of January 22, 2015.

**COMMENTS AND REQUEST TO ADJUST PROCEDURAL SCHEDULE**

RESA and its members have a real and substantial interest in Duke's proposal. Duke's proposal adversely affects RESA and its members. RESA was a party in Case Nos. 05-732-EL-MER et al. and was a signatory to the Stipulation adopted in that case. By its proposal in Case No. 15-50-GA-RDR, Duke is proposing to change the terms of that Stipulation. It seeks to make Rider EFBS mandatory for the suppliers/aggregators that have an MDQ of greater than 20,000 DTH. This is a change from the Stipulation in the *Merger Case.* RESA, and other signatories to the Stipulation in the *Merger Case,* have not agreed to any such modification.

Also, when rate increases are proposed, the Ohio General Assembly has provided for a specific review process. However, Duke has not proposed that such process be followed; rather,

Duke is asking for a "rush" approval (seeking approval in just 43 days). Additionally, the Ohio General Assembly determined that, when an application may be unjust or unreasonable, the Commission is required set the matter for a hearing. *See*, Section 4909.18, Revised Code. RESA contends, as argued below, that Duke's application appears to be unjust and unreasonable. A hearing should be held to determine whether or not the proposed modifications to the riders are just and reasonable.

Duke also proposes that its proposed tariff revisions take effect on April 1, 2015. Under the existing riders, the time has already passed for Duke to modify the terms and conditions for Rider FBS and Rider EFBS and have them take effect on April 1, 2015. At the earliest, Duke's proposed changes should only take effect on April 1, 2016. What Duke is proposing constitutes retroactive ratemaking.

Further, Duke's proposal completely ignores the practical impacts and market effects its proposal would have on CRNG suppliers. First, Duke's proposal would punish larger suppliers (and by extension their customers) as compared to suppliers serving smaller loads in the Duke territory. This change would put larger CRNG suppliers at a competitive disadvantage to the smaller CRNG suppliers. Second, Duke's proposal lacks a mechanism for a CRNG supplier to return to FBS if its MDQ goes lower than the 20,000 DTH/day threshold. A CRNG supplier would be stuck with EFBS even though its load decreased. Third, EFBS is more expensive than FBS service and these costs may not have been factored into CRNG supplier offers to customers when those offers were made to customers. Any changes should be forward looking so that CRNG supplier customer offers accurately reflect supplier costs. Fourth and finally, the changes requested by Duke open up a larger debate about how balancing service is paid for and by whom (e.g. CRNG suppliers or directly by customers) and a process with only a comment period does

not provide the appropriate forum for such market effecting decisions. Duke is proposing a Commission decision by February 27, 2015. Additional time is needed for parties to conduct discovery and to schedule informal conferences for the purposes of exploring a settlement. The Attorney Examiner's Entry of January 22, 2015 set forth a procedural schedule whereby motions to intervene and initial comments by the Staff and intervenors were due to be filed on February 12, 2015. Reply comments were required to be filed by February 19, 2015. This schedule does not provide an adequate opportunity for conducting discovery and for informal settlement discussions, let alone a hearing. Duke is proposing a Commission decision by February 27, 2015. Additional time is needed for parties to conduct discovery and to schedule informal conferences for the purposes of exploring a settlement. The Attorney Examiner's Entry of January 22, 2015 set forth a procedural schedule whereby motions to intervene and initial comments by the Staff and intervenors were due to be filed on February 12, 2015. Reply comments were required to be filed by February 19, 2015. This schedule does not provide an adequate opportunity for conducting discovery and for informal settlement discussions, let alone a hearing.

RESA proposes that, after the filing of initial comments, the Attorney Examiner issue an Entry revising the procedural schedule to allow for (a) thirty days of discovery with responses due in ten days and (b) a prehearing conference at the conclusion of the thirty-day period so that the possibility of a settlement can be explored. More specifically, RESA suggests that a discovery period be held open until March 15 with discovery due ten days after service of the discovery requests. RESA also recommends that a prehearing/settlement conference be convened subsequent to March 16 to determine if a settlement can be reached. If a settlement is not possible, then RESA recommends that the Commission schedule a hearing, direct the filing of

a Staff report, require testimony to be filed by the applicant, and thereafter the filing of direct testimony by intervenors and the Staff.

WHEREFORE, RESA respectfully requests that the Commission grant this motion to intervene, that RESA be made a full party of record, that the current procedural schedule be modified to allow for discovery, the filing of a Staff report, a prehearing/settlement conference and, if needed, testimony and a hearing.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served (via electronic mail) on the 5th day of February 2015 upon the persons listed below.

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Summary: Motion Motion to Intervene, Comments and Request to Adjust Procedural Schedule electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association