

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke
Energy Ohio, Inc. for a Waiver of Specific
Sections of the Ohio Administrative Code

Case No. 21-1100-EL-WVR

MOTION TO INTERVENE OF THE RETAIL ENERGY SUPPLY ASSOCIATION

Under R.C. 4903.221 and Rule 4901-1-11, Ohio Administrative Code, the Retail Energy Supply Association moves to intervene. The reasons supporting this motion are set out in the accompanying memorandum.

Respectfully submitted,

/s/ Frank P. Darr

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE OF THE RETAIL
ENERGY SUPPLY ASSOCIATION¹**

I. Introduction

Duke Energy Ohio is seeking a waiver of requirements to include nonjurisdictional charges of competitive suppliers on consolidated bills. Because approval of these terms and conditions would adversely affect the interest of RESA members, RESA's motion to intervene should be granted.

II. The Public Utilities Commission of Ohio has been directed to grant intervention liberally

R.C. 4903.221 provides for intervention in hearings before the Public Utilities Commission of Ohio ("Commission") of any person who may be adversely affected by the outcome of the proceeding.² In assessing a motion to intervene, the Commission is to consider

¹ The statements expressed in this filing represent the position of the Retail Energy Supply Association as an organization, but may not represent the view of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable, and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service to retail, residential, commercial, and industrial customers. More information on RESA can be found at www.resausa.org.

² R.C. 4903.221 provides:

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;

(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;

the nature and extent of the moving party's interest, the legal position of the moving party and its relation to the merits of the case, whether the intervention of the moving party will unduly prolong or delay the proceedings, and whether the moving party will significantly contribute to the full development and equitable resolution of the factual issues. R.C. 4903.221(B).³ The Supreme Court of Ohio further directs the Commission to liberally grant intervention so that the positions of all persons with a real and substantial interest in the proceeding can be considered by the Commission. *Consumers' Counsel v. Public Utils. Comm'n of Ohio*, 111 Ohio St. 3d 384, 388 (2006).

III. Members of RESA are actively engaged in the competitive generation service market and the provision of renewable energy products and services

RESA is a non-profit 501(c)(6) organization headquartered in Harrisburg, Pennsylvania. State-specific chapters exist in each jurisdiction that permits retail competition.

RESA's member companies supply retail electricity and natural gas to residential, commercial, industrial, and governmental customers throughout Ohio, including the service territory of Duke. Members also provide energy efficiency-related services and products.

Since its inception, RESA is and has historically been active in many electric industry proceedings at the Commission in furtherance of its members' activities in Ohio. It also has

(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.

³ Under its rules of procedure, the Commission has also directed that it will decide whether to allow intervention based on the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues, and the extent to which the person's interest is represented by existing parties. Rule 4901-1-11(B), Ohio Administrative Code.

participated in Commission proceedings to assure that electric distribution utilities comply with requirements of Ohio law that proscribe their ability to leverage their monopoly status in competitive markets. It was active in the rule making proceeding that resulted in the provision of the Administrative Code for which Duke seeks a waiver and advocated for a provision requiring an electric utility to allow a competitive electric supplier to bill nonjurisdictional charges on the utility consolidated bill.

IV. RESA should be granted intervention

The Commission has implemented rule changes that provide competitive suppliers access to consolidated bills on a nondiscriminatory basis so that the suppliers can bill nonjurisdictional services. Ohio Admin. Code Section 4901:1-10-33(A). In its application, Duke seeks to continue to discriminate in its own favor by barring competitive supplier access to consolidated bills while it continues to bill its own services in that way for another twelve months. It then seeks to remove all nonjurisdictional charges at the conclusion of the twelve month waiver, the period of which will not begin until the Commission grants its motion. In sum, Duke is seeking a waiver for a currently indeterminate time period so that it can continue to discriminate in a way expressly prohibited by the recently effective Commission rule and then ban all access. It does not explain why this attempt to ban supplier access is necessary or in the public interest.

Based on the applicable requirements, RESA should be granted intervention.

Initially, RESA members have a direct interest in the outcome of this proceeding since they will be adversely affected by the waiver. While Duke will be permitted to bill its customers for nonjurisdictional services, competitors will be barred from accessing the bills for nonjurisdictional services and products. Further, Duke is seeking to ban all future access to the

consolidated bill. The discrimination and long term consequences of the proposed waiver are obvious.

Additionally, RESA's motion to intervene is timely, and granting its intervention will not prolong or delay the proceeding.

Moreover, the expertise of RESA and its members will contribute to the full development and equitable resolution of the factual issues presented by Duke's application.

Although RESA's interests may overlap with some parties in the proceeding, the totality of RESA's interests are unique and not adequately represented by other parties because the outcome in this matter has broader ramifications for the competitive retail electric market in the Duke service territory.

V. Conclusion

For these reasons, the Commission should grant the motion of RESA to intervene.

Respectfully submitted,

/s/ Frank P. Darr

Frank Darr

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties, this 18th day of November 2021. The following parties were provided by electronic mail a copy of this document.

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Summary: Motion Motion to Intervene of the Retail Energy Supply Association
electronically filed by Frank P. Darr on behalf of Retail Energy Supply Association