BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for the Establishment of a Charge Pursuant to Section 4909.18, Revised Code.	)	**Case No. 12-2400-EL-UNC**
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.	)	**Case No. 12-2401-EL-AAM**
In the Matter of the Application of Duke Energy Ohio, Inc. for the Approval of a Tariff for a New Service.	)	**Case No. 12-2402-EL-ATA**

REPLY OF RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to Rule 4901-1-12(B)(2) of the Ohio Administrative Code, Retail Energy Supply Association ("RESA")[1] respectfully submits this reply to Duke Energy's October 16, 2012 Memorandum Contra. RESA submits that its motion to intervene should be granted for the reasons set forth in this reply.

INTRODUCTION

Duke Energy Ohio, Inc. ("Duke") filed an Application in these cases on August 29, 2012. Duke alleged that its Application was made pursuant to Section 4905.04, .05, .06, .13 and 4909.18, Revised Code. Duke indicated that it was seeking an order from the Commission under the authority of Sections 4905.04, .05 and .06 Revised Code establishing the amount of the costs-based charge pursuant to Ohio's newly adopted state compensation mechanism, for the provision

[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; 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.

by Duke of capacity services throughout its service territory. Duke cited a July 2, 2012 opinion and order in In Re Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company, Case No. 10-2929-El-UNC, Opinion and Order, July 2, 2012.

Duke also asked the Commission for an order under the authority of Section 4905.13, Revised Code, authorizing it to modify its accounting practices to establish a deferral as of August 29, 2012 to account for the difference between the amounts being recovered by Duke for the provision of capacity services and Duke's costs of providing capacity services as such cost is established pursuant to Ohio's newly adopted state compensation mechanism. Duke also asked for an order from the Commission, under the authority of Section 4909.18, Revised Code, approving a new tariff to allow for the future recovery of the deferred amounts as described in the Application.

Duke explained that in its Application that as a Fixed Resource Requirement ("FRR") entity in PJM Interconnection, LLC, ("PJM") and a signatory to PJM's Reliability Assurance Agreement ("RAA"), which is part of PJM's FERC tariff, the RAA requires Duke to self-supply the capacity resources for its entire load zone or service territory in an amount that will satisfy the criteria under Schedule 8.1 of that agreement, including a reserve margin. Duke explained that the RAA further provides that the state compensation mechanism, where it exists, will prevail to determine the pricing of capacity that is supplied by FRR entities.

Duke went on in its Application to cite the July 2, 2012 Opinion and Order of the Commission in Case No. 10-2929-EL-UNC at page 23 where the Commission indicated that it completed its review of capacity pricing and determined that "the state mechanism shall be based on the costs incurred by the FRR entity for its FRR capacity obligations..." Duke also cited page 22 of the July 2, 2012 Commission order where the Commission stated that it had an

obligation to ensure that a FRR entity receives just and reasonable compensation for the service it renders. Duke also cited the fact that the Commission adopted a methodology, in reliance upon traditional rate-making principles, to establish a just and reasonable cost for the provision of capacity by an FRR entity.

Duke also recited its status as an FRR entity which obligates it to ensure the existence of adequate capacity resources in its footprint for the duration of its FRR plan which terminates on May 31, 2015. Duke also cited Section 4909.18, Revised Code, which allows a public utility to file an application with the Commission to establish any charge and to amend its tariffs. Duke alleged that where the application related to a new service or is otherwise not for an increase in an existing charge, the Commission may approve such application without a hearing, unless the Commission determines that it may be unjust or unreasonable. Duke stated that it was currently receiving for the capacity it self supplies as an FRR entity, only the auction-based Final Zonal Capacity Price ("FZCP") in effect for the rest of the PJM region for the current PJM delivery year. It stated that the FZCP structure, which will persist through May 31, 2015, will apply with regard to all retail load in Duke's service territory. It also stated that the FZCP is significantly less than Duke's cost of providing capacity sufficient to meet its FRR obligations.

Duke goes on to indicate that it seeks the determination of a charge derived from the state compensation mechanism implemented by the Commission on July 2, 2012 and that this final mechanism would supplant the interim mechanisms previously in place. Specifically, Duke asked that the Commission determine that the rate for capacity services associated with its FRR obligations is $224.15/mw-Day calculated using the formula the Commission had previously determined to be reasonable in respect of another FRR entity (Ohio Power Company) under its jurisdiction in Case No. 10-2929-EL-UNC.

In addition to this requested determination, Duke sought authority pursuant to Section

4905.13, Revised Code, to defer commencing with August 29, 2012 the difference between the amount that it would have a right to collect pursuant to such state mechanism and the FZCP. Duke submitted that for the remaining term of its FRR plan, the average FZCP will proximate $66.06/mw-Day. Therefore, reducing Duke's alleged capacity cost of $224.15 by the estimated amount charged to suppliers of $66.06 would yield an incremental difference of approximately $158.08/mw-Day. Duke was seeking carrying charges on the unrecovered balance of the deferral, calculated at a long term debt rate. Subsequently, Duke would request approval to begin collection of the deferred amounts, including carrying costs.

Finally, Duke sought approval of a new tariff, designated as Rider Deferred Recovery-Capacity Obligation ("RDR-CO"), which would allow for the collection, over time, of the deferred difference between the amount collectible pursuant to Ohio's state compensation mechanism and the FZCP.

On October 15, 2012, the Retail Energy Supply Association ("RESA") filed its motion for leave to intervene in these cases. RESA stated that it is a broad and diverse group of energy retail suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. Several RESA members are certificated as competitive retail electric service ("CRES") providers and active in the Ohio retail electric and natural gas markets by providing service to residential, commercial, industrial and governmental customers. In addition, some of RESA's members currently provide CRES to retail customers in Duke Energy Ohio's service area. Further, like Duke RESA signed the Stipulation and Recommendation in Case No. 11-3549-EL-SSO and is therefore bound by its provisions.

RESA's members have existing and potential business interests in the state that will be affected by the outcome of this proceeding. RESA believes that the proposed application, if

approved, would require the payment of additional revenues to Duke which would be in violation of the Stipulation and Recommendation that was signed by many parties and approved by the Commission in Case No. 11-3549-EL-SSO. Several of the RESA members are currently offering competitive electric service to customers in the Duke service area. This application would potentially affect the economics of those services both to the retail customer and to the RESA members. This includes residential as well as commercial and industrial customers.

On October 16, 2012, Duke filed its memorandum contra opposing RESA's motion to intervene. Duke argues that the proposed application has no impact on RESA's members or their current or future business plans and, as such, RESA's claim that it has a real and substantial interest in these proceedings is misplaced. Duke states at page 4 of its memorandum contra:

> 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 is already been found to be just and reasonable. It is indisputable that the Application does not require a hearing. Thus, RESA'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, IGS's input will not provide a significant contribution to development or resolution of factual issues.

ARGUMENT

Duke has completely misgauged the significance of the Commission's decision in Case No. 10-2929-EL-UNC. First, Duke purported to make its application pursuant to Section 4905.04, 4905.05, 4905.06, 4905.13 and 4909.18, Revised Code. In its October 17, 2012 Entry on Rehearing in Case No. 10-2929-EL-UNC, the Commission granted rehearing for the limited purpose of clarifying that the July 2, 2012 Capacity order was issued in accordance with the Commission's authority found in Section 4905.26, Revised Code as well as Sections 4905.04,

4905.05, 4905.06, Revised Code. Thus, upon the initiative of the Commission, if it appears to the Commission that any rate, service or practice affecting or relating to any service furnished by a public utility is or will be in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is or will be inadequate or cannot be obtained and if it appears that reasonable grounds are stated, the Commission can fix a time for hearing and notify the public utility thereof.

Duke also has the mistaken notion that the Commission has established "the" state compensation mechanism. Duke's assumption is erroneous. At page 32 of its October 17, 2012 Entry on Rehearing in Case No. 10-2929, the Commission stated:

> The Commission initiated this proceeding solely to review AEP-Ohio's capacity costs and determine an appropriate capacity charge for its FRR obligations. We have not considered the costs of any other capacity supplier subject to our jurisdiction nor do we find it appropriate to do so in this proceeding.

Thus, the Commission did not establish "the" state compensation mechanism but simply established a state capacity mechanism for AEP Ohio.

This is also reinforced by the Commission's Finding (71) at page 28 of its October 17, 2012 Entry on Rehearing where it stated:

> The Commission concluded that we have an obligation under traditional rate regulation to ensure that the jurisdictional utilities receive just and reasonable compensation for the services that they render. However, rehearing is granted to clarify that the Commission is under no obligation with regard to the specific mechanism used to address capacity costs. Such costs may be addressed through an SCM that is specifically crafted to meet the stated need of a particular utility or through a rider or other mechanism.

Thus, Duke is wrong when it assumes that this application will be merely an arithmetic calculation with no factual inquiry. The claimed relief sought by Duke represents a potential substantial change in the economics of CRES provider service within its service territory. This

substantial change transcends a mere arithmetic calculation and, to the contrary, could impact the retail electric customers served by RESA's members as well as RESA's members themselves. Thus, while Duke has filed its application, the Commission is not limited in any way to establish a state compensation mechanism for Duke that will necessarily be similar or identical to that which was established in Case No. 10-2929 for AEP Ohio. Based on RESA's understanding of the stipulation and the Commission's Opinion and Order in Case No. 11-3549-EL-SSO, Duke's application in this case would potentially affect the economics of services provided to residential, commercial and industrial retail customers and to the RESA members. There is no certainty that the Commission will establish a similar state compensation mechanism for Duke. Thus, RESA does in fact have a real and substantial interest in this case which is not being adequately represented by any other party.

Therefore, the Retail Energy Supply Association respectfully requests that the Commission grant its motion for leave to intervene and that it be made a full party of record.

WHEREFORE, the Retail Energy Supply Association respectfully requests that the Commission grant this motion for leave to intervene and that it be made a full party of record.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 23rd day of October, 2012 by electronic mail, upon the persons listed below.

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