

IN THE SUPREME COURT OF OHIO

Duke Energy Ohio, Inc. : No. 08-0367
: :
Appellant, : Appeal from the Public
: Utilities Commission of
v. : Ohio
: :
The Public Utilities Commission of Ohio, : Public Utilities Commission
: of Ohio
Appellee. : Case Nos. 03-93-EL-ATA
: 03-2079-EL-AAM
: 03-2081-EL-AAM
: 03-2080-EL-ATA

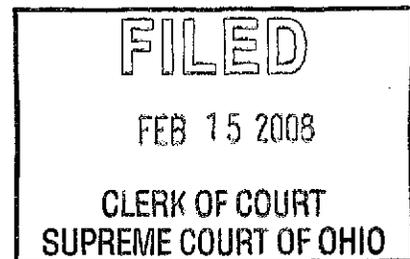
NOTICE OF APPEAL
OF
Duke Energy Ohio, Inc.

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OHIO

Notice of Appeal of Appellant Duke Energy Ohio, Inc.

Appellant, Duke Energy Ohio, Inc. (DE-Ohio), hereby gives notice of its appeal, pursuant to R.C. 4903.11 and 4903.13, to the Supreme Court of Ohio from an Entry of the Public Utilities Commission of Ohio (Commission) issued in Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA. These cases involve DE-Ohio's Application to establish its Market-Based Standard Service Offer (MBSSO) pursuant to R.C. 4928.14. The Commission's October 24, 2007, Order on Remand permits certain non-residential customers to avoid paying any charges for capacity despite the right to return to DE-Ohio to obtain competitive retail generation service.

DE-Ohio timely filed its Application for Rehearing in accordance with R.C. 4903.10 on November 23, 2007. The Commission denied DE-Ohio's Application for Rehearing in its Entry on Rehearing December 19, 2007. Thereafter, DE-Ohio timely filed this Notice of Appeal with respect to Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA, with the Clerk of the Ohio Supreme Court and the Docketing Division of the Commission.

DE-Ohio's Allegations of Error

DE-Ohio complains and alleges that the Commission's October 24, 2007, Order on Remand and December 19, 2007, Entry on Rehearing in Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-

EL-ATA are unlawful, unjust, and unreasonable for the following reasons as set forth in DE-Ohio's Application for Rehearing:

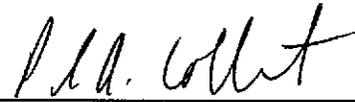
- (1) The Commission, without statutory authority, modified DE-Ohio's unavoidable MBSSO price. Specifically, DE-Ohio objects that the Order makes the Infrastructure Maintenance Fund (IMF) and System Reliability Tracker (SRT) avoidable for non-residential switched load that agrees to remain off DE-Ohio's standard MBSSO price through 2008 even though such customers may return to DE-Ohio at the monthly average hourly locational marginal price (LMP MBSSO price).¹
- (2) The Commission's Order, contrary to statute, deprives non-residential switched load that agrees to remain off DE-Ohio's standard MBSSO price through 2008 of Provider of Last Resort (POLR) reliability service.
- (3) By enabling switched load to avoid paying the IMF and SRT, the Commission's Order conflicts with statutory policy because it requires DE-Ohio to subsidize the competitive retail electric service market.

WHEREFORE, DE-Ohio respectfully requests that the Supreme Court of Ohio reverse the Commission's October 24, 2007, Order on

¹ *In re DE-Ohio's MBSSO*, Case No. 03-93-El-ATA *et al.* (Order on Rehearing at 4) (April 13, 2005).

Remand and December 19, 2007, Entry on Rehearing in Case Nos. 03-93-EL-ATA, 03-2079-EL-AAM, 03-2081-EL-AAM, 03-2080-EL-ATA because they are unlawful, unjust, and unreasonable. In order to correct the errors complained of herein the Court should remand this case to the Commission with instructions to all customers to pay the IMF and SRT to assure that DE-Ohio may offer firm generation service to all customers, POLR service, as set forth in R.C. 4928.14.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served on the following either electronically or by first class U.S. mail, postage prepaid, upon the following, this 15th day of February, 2008.



Paul A. Colbert

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