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Jennifer H. Tribulski
Senior Counsel
PJM Interconnection, L.L.C.
955 Jefferson Ave.
Valley Forge Corporate Center
Norristown, PA 19403

Re: Early Termination of FRR Alternative Election of Duke Energy Ohio, Inc.

Dear Ms. Tribulski:

Duke Energy Ohio, Inc. ("DEO") is hereby giving notice, pursuant to Section C.3 of Schedule 8.1 to the PJM Reliability Assurance Agreement ("RAA"), that it is terminating its election of the Fixed Resource Requirement ("FRR") Alternative effective as to the 2015/2016 Delivery Year.

Section C.3 permits DEO to terminate its FRR Alternative election for the 2015/2016 Delivery Year upon notice provided at least two months prior to the 2012 Base Residual Auction ("BRA") in the event of a "State Regulatory Structural Change."¹ No FERC filing is required to make this early termination because it is preauthorized when there is a State Regulatory Structural Change.

Section 1.81 of the RAA defines "State Regulatory Structural Change" as:

State Regulatory Structural Change shall mean as to any Party, a state law, rule, or *order* that, after September 30, 2006, initiates a program that allows retail electric consumers served by such Party to choose from among alternative suppliers on a competitive basis, terminates such a program, expands such a program to include classes of customers or localities served by such Party that were not previously permitted to participate in such a program, or that modifies retail electric market structure or market design rules in a manner that materially increases the likelihood that a substantial proportion of the customers of such Party that

¹ Section C.3 reads in its entirety: "Notwithstanding subsections C.1 and C.2 of this Schedule, in the event of a State Regulatory Structural Change, a Party may elect, or terminate its election of, the FRR Alternative effective as to any Delivery Year by providing written notice of such election or termination to the Office of the Interconnection in good faith as soon as the Party becomes aware of such State Regulatory Structural Change but in any event no later than two months prior to the Base Residual Auction for such Delivery Year."

are eligible for retail choice under such a program (a) that have not exercised such choice will exercise such choice; or (b) that have exercised such choice will no longer exercise such choice, *including for example, without limitation, mandating divestiture of utility-owned generation or structural changes to such Party's default service rules that materially affect whether retail choice is economically viable.* (Emphasis added.)

A State Regulatory Structural Change within the meaning of the RAA has occurred with respect to DEO. DEO and nearly all parties to the Public Utilities Commission of Ohio ("PUCO") proceeding addressing DEO's Electric Security Plan ("ESP") (Case No. 11-3549-EL-SSO), application to amend its Certified Supplier Tariff (Case No. 11-3550-EL-ATA), and application to amend its Corporate Separation Plan (Case No. 11-3551-EL-UNC) (the "Ohio Case") submitted to the PUCO for approval on October 24, 2011, a Stipulation and Recommendation ("Retail Settlement") to resolve all issues in the Ohio Case.²

Section VIII of the Retail Settlement requires divestiture of DEO's generation. Section V.A of the Retail Settlement expressly represents the agreement of all of the parties to the Retail Settlement that DEO should "terminate its election of an FRR plan and provide written notice by March 2, 2012, to [PJM] of its intent to participate in the RPM and the BRA for the 2015/2016 planning year." Section VII.M of the Retail Settlement represents the agreement of the parties that the ESP "[c]onstitutes a State Regulatory Structural Change, within the meaning of Section 1.81 and Section C.3 of Schedule 8.1" of the RAA, which "[a]llows [DEO] to terminate its FRR plan due to such State Regulatory Structural Change, subject to any necessary governmental approvals, by providing notice of termination pursuant to Section C.3 of Schedule 8.1 of the PJM RAA at least two months prior to the May 2012 PJM [BRA]."

The PUCO issued an order approving the settlement on November 22, 2011.³ The PUCO Order approves the Retail Settlement provision requiring DEO to divest its generation.⁴ Because divestiture of utility-owned generation is an express example of a State Regulatory Structural Change provided in the RAA, this divestiture requirement, on its own, meets the definition of State Regulatory

² The parties to the settlement included: Duke Energy Ohio, Ohio Energy Group, Industrial Energy Users-Ohio, The Office of the Ohio Consumers' Counsel, Ohio Manufacturer's Association, the PUCO Staff, City of Cincinnati, Ohio Partners for Affordable Energy, Retail Energy Supply Association, The Greater Cincinnati Health Council, The Ohio Environmental Council, People Working Cooperatively, Inc., Environmental Law and Policy Center, the Kroger Company, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., FirstEnergy Solutions Corp., EnerNOC, Inc., Vectren Retail, LLC d/b/a Vectren Source, AEP Retail Energy Partners LLC, PJM Power Providers Group, Direct Energy Services, LLC, Direct Energy Business, LLC, Miami University, the University of Cincinnati, COMPETE Coalition, Duke Energy Retail Sales, LLC, American Municipal Power, Inc., Interstate Gas Supply, Inc., Exelon Generation Company, LLC, the Natural Resources Defense Council, Wal-Mart Stores East, LP, Sam's East, Inc., Cincinnati Bell Inc., and the Council of Smaller Enterprises.

³ Opinion and Order, Case Nos. 11-3549-EL-SSO, *et al.* ("PUCO Order").

⁴ PUCO Order at 45-46.

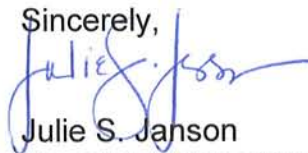
Structural Change. Nothing further is required to authorize DEO to terminate its FRR Alternative election early.

The PUCO Order also approves and adopts the Retail Settlement stipulations regarding the parties' agreement that DEO should terminate its FRR plan election and that the ESP constitutes a State Regulatory Structural Change, discussed above.⁵ As a result, the PUCO Order effectively agrees with the parties to the Retail Settlement that the ESP is a State Regulatory Structural Change within the meaning of the RAA, with the express contemplation that this finding would support early FRR termination.

Taken together, a State Regulatory Structural Change has occurred both because (a) the specific example provided in the RAA, *i.e.*, a state order mandating divestiture, has been met, and (b) the PUCO, in interpreting its own regulatory regime in the context of a comprehensive review and adjustment of DEO's obligation to provide a standard service offer to retail customers, has said that it has occurred, with full knowledge and approval of the resulting early termination of FRR.

In light of the occurrence of this State Regulatory Structural Change, DEO provides this notice as required by Section C.3 of Schedule 8.1 to the RAA, with the result that DEO will not participate in the FRR Alternative for the 2015/2016 Delivery Year, and instead will participate in the BRA for that year, to be conducted in May of 2012.

Sincerely,



Julie S. Janson
President, Duke Energy Ohio, Inc.

⁵ *Id.* at 47-48.