

**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 Revised Code ) Case No. 12-2400-EL-UNC  
Section 4909.18. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Approval to ) Case No. 12-2401-EL-AAM  
Change Accounting Methods. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for the Approval of a ) Case No. 12-2402-EL-ATA  
Tariff for a New Service. )

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**DUKE ENERGY OHIO, INC.'S  
MEMORANDUM CONTRA AEP RETAIL  
ENERGY PARTNERS LLC'S MOTION TO INTERVENE**

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On August 29, 2012, Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) filed an application (Application) with this honorable Public Utilities Commission of Ohio (Commission), seeking determination of a charge for capacity services pursuant to the newly adopted state compensation mechanism, authority for a deferral of the difference between such charge and the market prices for capacity services currently being received by Duke Energy Ohio, and approval of a tariff pursuant to which such deferral could subsequently be recovered.

On October 3, 2012, AEP Retail Energy Partners LLC d/b/a AEP Energy, on behalf of itself and its affiliated competitive retail electric service provider, AEP Energy, Inc., (collectively, AEP Energy) moved to intervene in these proceedings. As AEP Energy correctly indicated in its motion, interventions in Commission proceedings are governed by R.C. 4903.221 and O.A.C. 4901-1-11. However, AEP Energy errs in its application of the relevant legal

parameters to the facts. And as Duke Energy Ohio demonstrates herein, AEP Energy's intervention should be denied.

### **Nature of the Prospective Intervenor's Interest**

The first element to be considered by the Commission, pursuant to R.C. 4903.221, is the nature and extent of the prospective intervenor's interest. Here, AEP Energy does not articulate an interest that is implicated by, or relevant to, Duke Energy Ohio's Application.

AEP Energy submits that the "implementation, design, and structure of any cost-based capacity charge established by the Commission in these proceedings could adversely affect AEP Energy's ability to provide competitive retail electric services to customers within [Duke Energy Ohio's] service territory."<sup>1</sup> While Duke Energy Ohio recognizes that AEP Energy operates in its territory as a competitive retailer, it fails to explain any way in which the application in these proceedings could possibly impact such business. The proposal, designed to mirror that which was recently set in place by the Commission for another, similarly situated utility (ironically, AEP Energy's utility affiliate), impacts customers but not suppliers. It does not change any of a retailer's costs of doing business. It does not impose any additional charges, or raise any current charges, due from a retailer. If a cost-based state wholesale capacity mechanism that is structured such as what was most recently approved for AEP Energy's utility affiliates Columbus Southern Power and the Ohio Power Company (collectively the AEP Utilities) truly impacts competitive suppliers and more specifically AEP's Energy's ability to compete, surely AEP Energy would have raised such an issue as part of the Commission's most recent case establishing the charge for the AEP Utilities. The record shows it did not.

AEP Energy also incorrectly asserts that the application might result in an alteration of the terms of the stipulation that was approved in Duke Energy Ohio's most recent standard

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<sup>1</sup> AEP Energy Memorandum in Support of Motion to Intervene (October 3, 2012).

service offer proceedings (ESP Stipulation).<sup>2</sup> But this is not the case. The ESP Stipulation did address the amount that Duke Energy Ohio would charge wholesale and retail suppliers for capacity; it did not address the amount, if any, that customers would pay for capacity over and above what suppliers were charged. Thus, the application here has no impact on the ESP Stipulation. AEP Energy cannot base intervention on a purported modification of the ESP Stipulation.

AEP Energy has failed to identify an interest sufficient to warrant intervention in these proceedings.

### **Legal Position and Probable Relation to Merits of the Case**

The second element to be considered by the Commission, pursuant to R.C. 4903.221, is the prospective intervenor's legal position and its probable relation to the merits of the case. Again, however, AEP Energy fails to identify any position that it might take that is related to the actual merits of the case. The proceedings will have no impact on costs that AEP Energy will incur and no impact on the ESP Stipulation. AEP Energy should not be granted intervention, as it is undeniably unaffected by this Application.

### **Undue Delay and Significant Contribution**

The third and fourth elements to be considered by the Commission, pursuant to R.C. 4903.221, are whether the requested intervention will unduly prolong or delay the proceeding and whether the prospective intervenor will provide a significant contribution to full development and equitable resolution of the factual issues. Neither of these elements is satisfied in the instant request for intervention.

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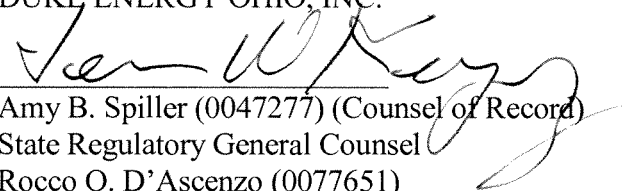
<sup>2</sup> *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service, Case No. 11-3549-EL-SSO, et al.*

AEP Energy'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, AEP Energy's input will not provide a significant contribution to development or resolution of factual issues.

The elements to be considered for intervention in Commission proceedings have not been met by AEP Energy.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission deny the motion by AEP Energy for intervention in the above-referenced proceedings.

Respectfully submitted,  
DUKE ENERGY OHIO, INC.

  
Amy B. Spiller (0047277) (Counsel of Record)  
State Regulatory General Counsel  
Rocco O. D'Ascenzo (0077651)  
Associate General Counsel  
Jeanne W. Kingery (0012172)  
Associate General Counsel  
Elizabeth H. Watts (0031092)  
Associate General Counsel  
Duke Energy Business Services LLC  
139 East Fourth Street  
1303-Main  
Cincinnati Ohio 45202  
513-287-4359 (telephone)  
513-287-4385 (facsimile)  
[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com) (e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid), personal, or electronic mail, on this 15<sup>th</sup> day of October, 2012, to the following parties.

  
Jeanne W. Kingery

William Wright  
Section Chief  
Attorney General's Office  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)

**Counsel for Staff, Public Utilities  
Commission of Ohio**

Bruce J. Weston  
Consumers' Counsel  
Maureen R. Grady  
Kyle L. Kern  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[kern@occ.state.oh.us](mailto:kern@occ.state.oh.us)

**Counsel for Residential Consumers**

Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Oliker  
Matthew R. Pritchard  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

**Counsel for Industrial Energy Users-Ohio  
and Wausau Paper Towel & Tissue, LLC**

David F. Boehm  
Michael L. Kurtz  
Jody M. Kyler  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkyler@BKLawfirm.com](mailto:jkyler@BKLawfirm.com)

**Counsel for The Ohio Energy Group**

Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, Ohio 45839  
[Cmooney2@columbus.rr.com](mailto:Cmooney2@columbus.rr.com)

**Counsel for Ohio Partners for Affordable Energy**

Kimberly W. Bojko  
Mallory M. Mohler  
Carpenter Lipps & Leland LLP  
280 North High Street, Suite 1300  
Columbus, Ohio 43215  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
[mohler@carpenterlipps.com](mailto:mohler@carpenterlipps.com)

**Counsel for Kroger Co.**

Mark A. Hayden  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

James F. Lang  
Laura C. McBride  
N. Trevor Alexander  
Calfee, Halter & Griswold LLP  
1405 East Sixth Street  
Cleveland, Ohio 44114  
[jlange@calfee.com](mailto:jlange@calfee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)

**Counsel for FirstEnergy Solutions Corp.**

Jay E. Jadwin  
Yazen Alami  
American Electric Power Service Corporation  
155 Nationwide Ave.  
Columbus, Ohio 43215  
[jejadwin@aep.com](mailto:jejadwin@aep.com)  
[yalami@aep.com](mailto:yalami@aep.com)

**Counsel for AEP Energy**

Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, Ohio 45202  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)

**Counsel for The Greater Cincinnati Health Council and for Cincinnati Bell Inc.**

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

**Counsel for City of Cincinnati**

J. Thomas Siwo  
Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
[tsiwo@bricker.com](mailto:tsiwo@bricker.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)

**Counsel for The Ohio Manufacturers' Association**

M. Howard Petricoff  
Lija Kaleps-Clark  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[lkalepsclark@vorys.com](mailto:lkalepsclark@vorys.com)

**Counsel for Constellation NewEnergy, Inc., and Exelon Generation Company, LLC**

M. Howard Petricoff  
Stephen M. Howard  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)

**Counsel for Interstate Gas Supply, Inc.**

Steven T. Nourse  
Matthew J. Satterwhite  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

**Counsel for Ohio Power Company**