

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus )  
Southern Power Company and Ohio Power )  
Company for Authority to Establish a ) Case No. 11-346-EL-SSO  
Standard Service Offer Pursuant to Section ) Case No. 11-348-EL-SSO  
4928.143, Revised Code, in the Form of an )  
Electric Security Plan. )

In the Matter of the Application of Columbus )  
Southern Power Company and Ohio Power ) Case No. 11-349-EL-AAM  
Company for Approval of Certain ) Case No. 11-350-EL-AAM  
Accounting Authority. )

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**DUKE ENERGY RETAIL SALES  
AND  
DUKE ENERGY COMMERCIAL ASSET MANAGEMENT  
JOINT MOTION TO STRIKE  
AND  
MEMORANDUM IN SUPPORT**

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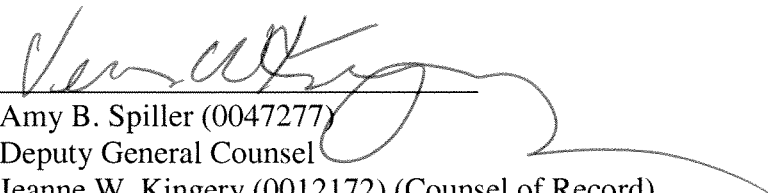
Come now Duke Energy Retail Sales, LCC (DER), and Duke Energy Commercial Asset Management, Inc. (DECAM), by and through counsel, and hereby jointly move, pursuant to the Entry dated April 26, 2012, to strike the testimony of Ohio Power Company (AEP Ohio) witness Frank Graves, in its entirety. Said testimony is irrelevant or otherwise reflects impermissible, duplicative evidence.

DER and DECAM offer the following memorandum in support of their joint request.

Respectfully submitted,  
DUKE ENERGY COMMERCIAL ASSET  
MANAGEMENT, INC.

and

DUKE ENERGY RETAIL SALES, LLC



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## **Memorandum in Support of Joint Motion to Strike**

Mr. Graves identifies his purpose in this proceeding as providing to the Public Utilities Commission of Ohio (Commission) an explanation of the adequacy of the power supply at the time when AEP Ohio switches from being a fixed resource requirement (FRR) supplier to relying on capacity supplied through the reliability pricing model (RPM) auctions of PJM Interconnection, LLC (PJM).<sup>1</sup> AEP Ohio's status as an FRR entity will terminate at end of the 2014/2015 PJM planning year, or May 31, 2015.<sup>2</sup> Indeed, AEP Ohio has already provided notice to PJM of its intention to participate in the Base Residual Auction (BRA) for the 2015/2016 planning year.<sup>3</sup> Importantly, however, AEP Ohio's proposed, modified electric security plan (ESP) will also expire on May 31, 2015.<sup>4</sup> Consequently, Mr. Graves' opinions as to the adequacy of supply beginning June 1, 2015, are entirely irrelevant to this proceeding. Such opinions have no relationship to the ESP that will terminate prior to the period Mr. Graves discusses.

The irrelevancy of Mr. Graves' testimony is further illuminated by the elements of AEP Ohio's modified ESP. This ESP makes no provision for meaningful competitive procurements during the term of the plan and, instead, AEP Ohio intends to use its currently owned generation to supply capacity to all customers in its footprint, regardless of their shopping status. AEP Ohio further intends to rely upon these same generation sources after the generation assets are transferred to an unregulated affiliate and subsidized through a non-bypassable retail stability rider. The fully functioning and competitive PJM capacity market, which undeniably maintains an adequate supply, is immaterial to AEP Ohio's plan.

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<sup>1</sup> Graves Testimony, pg. 1, l. 6-11.

<sup>2</sup> Powers Testimony, pg. 14, l. 16-18; Nelson Testimony, pg. 9, l. 11-14.

<sup>3</sup> Nelson Testimony, pg. 9, l. 16-18.

<sup>4</sup> Application, pg. 2.

Only relevant evidence is admissible.<sup>5</sup> Indeed, the Commission’s administrative rules provide hearing officers with the power to “[t]ake such actions as are necessary to ... [p]revent the presentation of irrelevant or cumulative evidence.”<sup>6</sup> And relevant evidence is that evidence “having any tendency to make the existence of a fact *that is of consequence to the determination of the action* more probable or less probable than it would have been without the evidence.”<sup>7</sup> As discussed above, Mr. Graves’ testimony is not relevant and, thus, should be stricken.

Assuming, *arguendo*, that the Commission does not strike the testimony in its entirety, DER and DECAM submit that the following portions of said testimony are still inadmissible.

Page 15, line 12 through Page 16, line 8

This testimony is duplicative of the testimony of AEP Ohio witness Powers and thus reflects the needless presentation of cumulative evidence.<sup>8</sup>

Page 16, line 9 through Page 17, line 2

AEP Ohio’s embedded cost of capacity is not an issue in this proceeding. Rather, that issue is currently before the Commission in Case No. 10-2929-EL-UNC, a case in which Mr. Graves provided testimony on behalf of AEP Ohio. Mr. Graves’ opinions as to the effect of above-market pricing were better reserved for that docket. And, as only relevant evidence is admissible evidence, the testimony should be stricken.

WHEREFORE, for the reasons stated herein, Duke Energy Retail Sales, LCC, and Duke Energy Commercial Management, Inc., respectfully request that the Commission strike the testimony of AEP Ohio witness Frank C. Graves.

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<sup>5</sup> Evid. R. 402.

<sup>6</sup> O.A.C. 4901-1-27(B)(7).

<sup>7</sup> Evid. R. 401 (emphasis added).

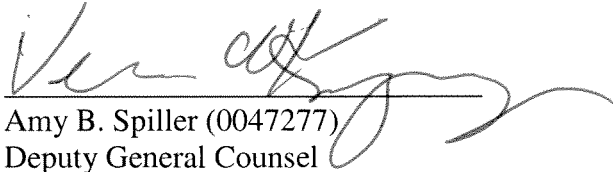
<sup>8</sup> O.A.C. 4901-1-27(B)(7). See also, Evid. R. 403.

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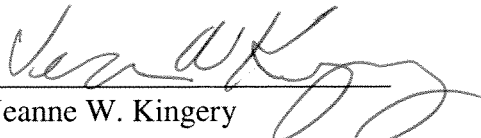
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