

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Establish its Fuel and ) Case No. 11-974-EL-FAC  
Economy Purchased Power Component of its )  
Market-Based Standard Service Offer for )  
2011. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc. to Establish its System ) Case No. 11-975-EL-RDR  
Reliability Tracker of its Market-Based )  
Standard Service Offer for 2011. )

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**RESPONSE OF DUKE ENERGY OHIO, INC., TO APPLICATION FOR REHEARING  
FILED BY OHIO POWER COMPANY**

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On December 28, 2012, Ohio Power Company (AEP Ohio) filed a Motion for Leave to file an Application for Rehearing and an Application for Rehearing of the Public Utilities Commission of Ohio's (Commission) November 28, 2012, Opinion and Order (Opinion and Order) in the above-styled cases. In its Application for Rehearing, AEP Ohio contends that the Opinion and Order is unlawful and unreasonable in the following respects: (1) the disposition of issues pertaining to the Conesville costs in the Opinion and Order was ambiguous and should be clarified and/or modified; and (2) the Opinion and Order violates AEP Ohio's due process rights to the extent that it extends the scope of issues in Case No. 11-281-EL-FAC (AEP Ohio fuel case) and decides pending issues in that case regarding AEP Ohio's recovery of fuel costs, without providing AEP Ohio notice and a meaningful opportunity to be heard. While Duke Energy Ohio does not oppose AEP Ohio's request for the Commission to clarify the scope of the issues to be addressed on the Conesville costs in the AEP Ohio fuel case, or AEP Ohio's contention that those issues should be addressed in a separate phase of this case, rather than the AEP Ohio fuel case, Duke Energy Ohio takes issue with several arguments and characterizations

that AEP Ohio makes in its Application for Rehearing. Further, Duke Energy Ohio seeks to preserve its ability to participate actively in any proceeding relating to the Conesville costs.

**I. Clarification of Language Pertaining to Conesville Costs in Opinion and Order**

Duke Energy Ohio does not oppose AEP Ohio's request for the Commission to clarify the scope of the issues pertaining to the Conesville costs to be addressed in any subsequent proceeding on the same. In its Opinion and Order, the Commission states, "[a]s a final matter, the Commission finds that the *issues pertaining to the Conesville costs* should be addressed in *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company and Related Matters*, Case No. 11-281-EL-FAC." (Opinion and Order at 8, emphasis added.) The emphasized language is extremely broad. As the Commission is aware, Duke Energy Ohio witnesses William Don Wathen Jr. and Salil Pradhan explain and opine upon a number of issues pertaining to the Conesville costs in their testimony in this proceeding. Because of the breadth of these issues, the parties that are ultimately involved in any proceeding to determine the recovery of the Conesville costs will likely benefit from a Commission-designated scope by which they can shape their arguments. A defined scope will also benefit the Commission, as it will encourage precise arguments from parties, specifically tailored to issues within the scope of the proceeding, and will encourage administrative economy.

**II. Proper Proceeding for Determining Recovery of Conesville Costs**

AEP Ohio contends that the AEP Ohio fuel case is an improper proceeding for determining the issues related to the Conesville costs. Given that Conesville Unit 4 is jointly owned by AEP Ohio and Duke Energy Ohio, the AEP Ohio fuel case does not appear to be an improper proceeding in which to determine issues associated with the legitimacy or accuracy of the Conesville costs. Duke Energy Ohio thus does not oppose resolution of such issues in the context of the AEP Ohio fuel case, so long as the Commission formally grants its motion to

intervene in that case and the review proceeds expeditiously. However, Duke Energy Ohio does not believe it is appropriate to resolve the issues related to its recovery of Conesville costs in the AEP Ohio fuel case. The issue of Duke Energy Ohio's recovery of costs is unrelated to any determination of legitimacy or accuracy of the underlying charges and therefore should be resolved either in Duke Energy Ohio's fuel case or in a separate proceeding. Such an approach would allow the most expeditious resolution of the recovery question.

In its Application for Rehearing, AEP Ohio mischaracterizes the Commission's language in the Opinion and Order as granting Duke Energy Ohio's motion to intervene in its fuel case. The language of the Opinion and Order states, "a procedure to address [the issues pertaining to the Conesville costs] will be established in 11-281, and such procedure will provide Duke and any other entity that is not yet a party to 11-281 an opportunity to intervene for the purpose of addressing the Conesville costs." (Opinion and Order at 8.) While the Commission implies that Duke Energy Ohio's intervention in the AEP fuel case may likely be granted, it does not formally grant the pending motion.

In an effort to avoid unnecessarily commingling the Conesville cost issues with AEP Ohio's broader fuel case, the Commission might consider a separate proceeding for the limited issue of reviewing the Conesville costs and Duke Energy Ohio's ability to recover such costs. This proceeding could take the form of a new case or a specific, limited extension of Duke Energy Ohio's fuel case in which AEP Ohio may intervene or be made a party by the Commission. Regardless, Duke Energy Ohio reiterates that its main concern, no matter what form the proceeding takes, is that it will have an opportunity to meaningfully participate in the expeditious resolution of the recovery of the Conesville costs allocated to it by AEP Ohio. It is in the interest of all stakeholders, Duke Energy Ohio, AEP Ohio, the Commission and customers to resolve this issue as fairly and expeditiously as possible.

### **III. Notice and Due Process Concerns**

In its Application for Rehearing, AEP Ohio complains of various due process and notice violations associated with the Commission's decision to resolve the issues surrounding the Conesville costs in the AEP fuel case. Despite its complaints, AEP Ohio had the opportunity to intervene in this case and did not do so. AEP Ohio argues that, historically, there has never been a need for utilities that co-own facilities to intervene or participate in each other's fuel cases. Although this may be the case, the opportunity remained available to AEP Ohio to file a motion to intervene when it became apparent that the Conesville costs were a part of the Duke Energy Ohio fuel case.<sup>1</sup> AEP Ohio chose not to intervene.<sup>2</sup> It should not now complain about the lack of a meaningful opportunity to be heard regarding the issues at stake in that case.

Arguably, the Commission's decision to address the Conesville costs in the AEP fuel case provides AEP Ohio with an opportunity to participate, in its fuel case, in the determination of the issues of the Conesville costs for which it complains it was not afforded proper notice and due process rights. Effectively, AEP Ohio is getting a second bite at the apple by means of the Commission's decision hear the issue in the context of the AEP Ohio fuel case. Thus, its due process and notice arguments are meritless.

### **IV. Conclusion**

Duke Energy Ohio does not oppose AEP Ohio's request in its Application for Rehearing for the Commission to clarify the scope of issues pertaining to the Conesville costs to be

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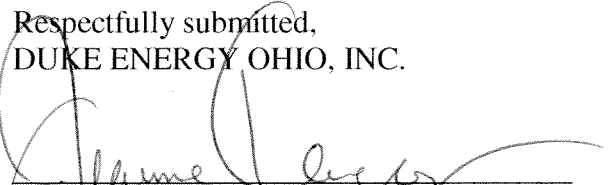
<sup>1</sup> AEP Ohio closely monitors Duke Energy Ohio's proceedings and, as such, its argument in this regard is disingenuous given its recently filed interventions in Duke Energy Ohio Case No. 12-2400-EL-UNC, *et al.*, and its previously filed Application for Rehearing in Duke Energy Ohio's ESP proceeding, Case No. 11-3549-EL-SSO, *et al.*

<sup>2</sup> Duke Energy Ohio filed a Motion to Intervene in AEP Ohio's fuel case, Case No. 11-281-EL-FAC, on July 13, 2012, and a Reply to AEP Ohio's Memorandum Contra Duke Energy Ohio's Motion to Intervene on August 1, 2012. These two filings described Duke Energy Ohio's status as a Joint Owner of generating stations with AEP Ohio and the need for Duke Energy Ohio to protect its interests as justifications for intervening. Further, Duke Energy Ohio served AEP Ohio with discovery regarding the Conesville costs issue in the 11-281 proceeding. As such, AEP had direct knowledge that the Conesville costs were an issue for Duke Energy Ohio.

addressed in the AEP Ohio fuel case. Further, Duke Energy Ohio believes that resolution of the issues surrounding the Conesville costs may, for the sake of clarity, be better suited for its own audit and proceeding, as permitted by the October 9, 2012, Stipulation filed in this case.

Despite these positions, Duke Energy Ohio contends that AEP Ohio mischaracterized the Commission's actions through its claims that the Commission deprived it of notice and an opportunity to be heard regarding the Conesville costs and the expansion of issues in the AEP fuel case. Further, Duke Energy Ohio contends that AEP Ohio has misconstrued the Commission's decision to resolve the issues related to the Conesville costs in its fuel case as an informal decision to grant Duke Energy Ohio's motion to intervene in the AEP fuel case. Regardless of the Commission's decision on the issues raised in AEP Ohio's Application for Rehearing, Duke Energy Ohio stresses the importance of ensuring that it has a meaningful and expeditious opportunity to be heard on the issue of recovery of the Conesville costs, whether in the AEP Ohio fuel case or any other proceeding.

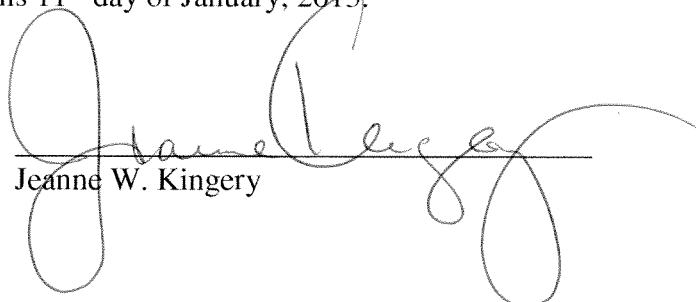
Respectfully submitted,  
DUKE ENERGY OHIO, INC.



Amy B. Spiller  
State Regulatory General Counsel  
Rocco O. D'Ascenzo (Counsel of Record)  
Associate General Counsel  
Jeanne W. Kingery  
Associate General Counsel  
Elizabeth H. Watts  
Associate General Counsel  
139 East Fourth Street  
1303-Main  
Cincinnati, Ohio 45202  
Telephone: (513) 287-4320  
Email: rocco.d'ascenzo@duke-energy.com

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via electronic mail upon the below-listed counsel this 11<sup>th</sup> day of January, 2013.



Jeanne W. Kingery

Steven T. Nourse  
Matthew J. Satterwhite  
Yazen Alami  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
stnourse@aep.com  
mjsatterwhite@aep.com  
yalami@aep.com

Thomas McNamee  
Steven Reilly  
Office of the Ohio Attorney General  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215  
thomas.mcnamee@puc.state.oh.us  
stephen.reilly@puc.state.oh.us

Joseph Serio  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215  
serio@occ.state.oh.us