

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Fuel Adjustment)
Clauses for Columbus Southern Power) Case No. 11-281-EL-FAC
Company and Ohio Power Company and)
Related Matters.)

**REPLY
OF
DUKE ENERGY OHIO, INC.,
TO OHIO POWER COMPANY’S MEMORANDUM CONTRA**

Duke Energy Ohio, Inc., (Duke Energy Ohio) seeks intervention in Ohio Power Company’s (OP) fuel adjustment clause (FAC) proceeding. Regardless of Duke Energy Ohio’s undeniable interest in co-owned generating facilities, OP wants to bar Duke Energy Ohio’s involvement. The Public Utilities Commission of Ohio (Commission) should not only allow, but encourage, this participation.

Intervention is permissible where the prospective intervenor will contribute to the full development and equitable resolution of factual issues.¹ Here, however, OP seeks to preclude Duke Energy Ohio’s intervention and thus the full development of the factual issues associated with its recovery of costs via OP’s FAC and an audit implemented for the purpose of, among other things, the “prudence of decisions made” in connection with fuel, purchased power, and other expenses.² But such an attempt should fail where, as here, it is undeniable that Duke Energy Ohio co-owns a number of generating facilities with OP that are within the purview of

¹ See generally, O.A.C. 4901-1-11(B)(4). See also, *In the Matter of the Joint Application of Frontier Communications Corp., New Communications Holdings, Inc., and Verizon Communications Inc. for Consent and Approval of a Change in Control*, 2009 Ohio PUC LEXIS 657 *26 (August 24, 2009)(intervention granted to “allow the full development of a record upon which to render a complete evaluation of the application”).

² *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, Report of the Management/Performance and Financial Audits of the FAC of the Columbus Southern Power Company and the Ohio Power Company (Audit Report)(May 24, 2012).

the audit; the costs related to such generating facilities are shared with Duke Energy Ohio; and such costs are under review in this proceeding. Duke Energy Ohio's involvement in this proceeding will undoubtedly assist in the full and complete development of the record upon which OP's FAC can be properly and thoroughly evaluated.

OP argues that Duke Energy Ohio's intervention should be precluded now because joint ownership of generating assets has not previously justified intervention in an FAC proceeding. But OP's argument is misplaced. It is not the type of proceeding or whether a party has historically sought intervention in such a proceeding that determines, as a matter of course, whether intervention must be permitted. Rather, the determining factor is whether the prospective intervenor satisfies the criteria for intervention as set forth in O.A.C. 4901-1-11(B). Moreover, OP identifies no prior proceeding in which the Commission denied a joint owner's request for intervention in another entity's fuel clause proceeding and it thus inappropriate for OP to imply that such outcome did, in fact, occur.

OP also argues that Duke Energy Ohio does not have a real or substantial interest in this proceeding because it must rely solely upon the terms and conditions of a joint operating agreement to address concerns in respect of costs incurred or operational decisions made. But OP fails to identify any contractual prohibition in the joint operating agreement that prevents Duke Energy Ohio from intervening here. And as the issues in this proceeding relate to the prudence of decisions made, to the extent any costs incurred by OP are found – through this proceeding – to have been imprudently incurred, such a finding would have a direct impact on Duke Energy Ohio. Duke Energy Ohio's real and substantial interest in this proceeding and its need to protect that interest through representation herein are undeniable.

Additionally, OP argues that Duke Energy Ohio's intervention is improper because its interests are adequately represented by the Commission and its staff. But O.A.C. 4901-1-11

allows intervention where the prospective intervenor's interests are not adequately represented by existing parties.³ Neither the Commission nor its staff is a party to this proceeding.⁴ OP's argument fails as a matter of law.

OP argues, in the alternative, that Duke Energy Ohio's intervention, if permitted, should be limited "to only those specific issues related to its interests."⁵ Specifically, OP suggests that the Commission limit Duke Energy Ohio's intervention, including its participation in discovery, to issues concerning the jointly owned generating units.

Duke Energy Ohio believes that full intervention is appropriate. However, if the Commission determines that intervention in this situation must be circumscribed, then Duke Energy Ohio would not object to the limitation of its intervention to any issues that may arise with regard to any co-owned facility, provided that it has the ability to address issues that may indirectly impact it as a result of co-ownership. Certainly co-owned facilities should be treated similarly to facilities that are owned solely by AEP, and Duke Energy Ohio needs to be in a position to protect its interests against potential disadvantageous treatment. And Duke Energy Ohio absolutely does not agree with OP's suggestion that intervention be limited to costs incurred during 2011. Although this proceeding is designed to audit that time period, neither OP, the Commission, nor Duke Energy Ohio knows for sure what issues might legitimately arise.

Furthermore, such limited intervention should not be broadly applied to preclude Duke Energy Ohio from engaging in discovery that is relevant to its interests or reasonably calculated to lead to the discovery of admissible evidence concerning same. Thus, to avoid protracted motion practice, which OP invites through a prospective limitation on discovery, Duke Energy Ohio submits that it should be afforded the same rights as any other party to this proceeding to

³ O.A.C. 4901-1-11(A)(2)(emphasis added).

⁴ O.A.C. 4901-1-10.

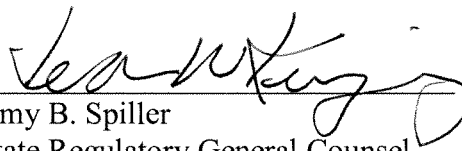
⁵ See OP memorandum contra, at page 5.

engage in discovery, should the Commission consider OP's alternate proposal. To the extent that issues relating to co-owned facilities are addressed herein, Duke Energy Ohio should be able to be involved and it should be permitted to participate in the discovery process to inquire into those matters related to such co-owned facilities.

Duke Energy Ohio respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,

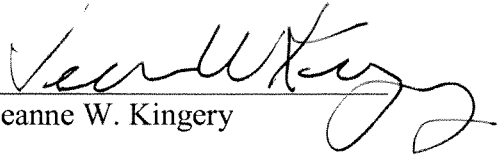
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 1st day of August, 2012, to the following parties.


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