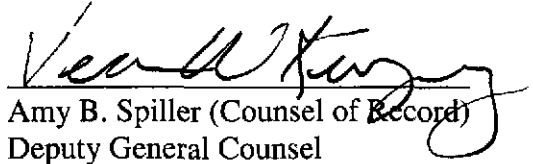




Respectfully submitted,



Amy B. Spiller (Counsel of Record)  
Deputy General Counsel  
Elizabeth H. Watts  
Associate General Counsel  
Rocco O. D'Ascenzo  
Associate General Counsel  
Jeanne W. Kingery  
Associate General Counsel  
139 E. Fourth Street, 1303-Main  
P.O. Box 961  
Cincinnati, Ohio 45201-0960  
(513) 287-4359 (telephone)  
(513) 287-4385 (facsimile)  
[Amy.Spiller@duke-energy.com](mailto:Amy.Spiller@duke-energy.com)

## MEMORANDUM IN SUPPORT

On June 20, 2011, Duke Energy Ohio, Inc., (Duke Energy Ohio) submitted an Application for an Electric Security Plan (ESP) in this proceeding. An unprecedented thirty-two parties intervened and participated in the case. The case was resolved through a stipulated settlement (Stipulation), with no intervening party opposing. The Stipulation was submitted to the Public Utilities Commission of Ohio (Commission) for its consideration on October 24, 2011.

The Commission adopted and approved the Stipulation by Opinion and Order issued on November 22, 2011. On December 14, 2011, Duke Energy Ohio conducted an auction consistent with the Stipulation, the results of which were approved by the Commission on December 15, 2011, in Case No. 11-6000-EL-UNC. Columbus Southern Power Company and Ohio Power Company (collectively, AEP Ohio) intervened in the above-captioned proceedings and took no position for or against the Stipulation. However, AEP Ohio now seeks rehearing of the Commission's Opinion and Order on the ground that the Commission has applied the applicable statute and its own rules inconsistently.

Regardless of the substance of AEP Ohio's application for rehearing, such filing should be stricken from the record and not considered by the Commission. The supposed application for rehearing of the order in Duke Energy Ohio's ESP proceedings actually seeks a changed outcome in AEP Ohio's proceedings. Thus, it is entirely irrelevant and inapposite in this case. Further, the entire justification for AEP Ohio's position is based on a comparison between the Commission decision in these proceedings and the Commission decision in a subsequent, unrelated decision in a case to which Duke Energy Ohio was not even a party. AEP Ohio attempts to compare and analogize the factual situations in the two cases, even though no fact

related to the AEP Ohio proceeding was of record in this case. It is procedurally improper – and would be unprecedented – to raise new factual evidence at this stage in this proceeding. Indeed, AEP Ohio has not even sought leave of the Commission to do so. Its effort in this regard should be rejected and the pleading based on that effort should be immediately stricken, without further need for the expenditure of time and effort by the parties in this case.

**I. AEP Ohio Does Not Seek a Remedy in this Proceeding.**

The goal of an application for rehearing of a Commission order is, by definition, to change the outcome of that order. R.C. 4903.10 clearly states that such a pleading may be filed “in respect to any matters determined in the proceeding.” Further, division (B) of such statute requires the applicant to “set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” Nevertheless, AEP Ohio blatantly admits in its Application that it “does not necessarily desire to alter the overall outcome of the November 22 Opinion and Order” in this proceeding.

Rather, AEP Ohio seeks rehearing in this case to ensure that it receives equal treatment, as compared with the treatment received by Duke Energy Ohio.<sup>1</sup> What specific changes does it seek? It specifies several desired outcomes, none of which is the appropriate subject for a rehearing in Duke Energy Ohio’s ESP proceeding. First, it states, in general terms, that the Commission must either modify AEP’s ESP order or Duke Energy Ohio’s ESP order, with the former being the preferred course, explaining that the only rationale for its application for rehearing here being the preservation of its right to appeal the Duke Energy Ohio ESP order. It does not explain what right it would have to appeal the Duke Energy Ohio ESP order when it actually approves of the outcome that was reached.<sup>2</sup> Second, AEP Ohio asks the Commission to

---

<sup>1</sup> Application for Rehearing at 5.

<sup>2</sup> Application for Rehearing at 6.

correct the perceived unequal treatment “by permitting AEP Ohio to transfer its generation assets at book value and grant AEP Ohio’s...waiver request.”<sup>3</sup> Third, AEP Ohio asks the Commission to provide final approval for the transfer of its generation assets, as it did for Duke Energy Ohio.<sup>4</sup> Fourth, AEP Ohio asks, in Duke Energy Ohio’s ESP case, that the Commission grant full approval of AEP Ohio’s structural corporate separation proposal, as it is the same relief afforded to Duke Energy Ohio.<sup>5</sup>

AEP Ohio’s Application for Rehearing does not actually seek relief in these proceedings. Rather, in reality AEP Ohio is asking the Commission to alter the outcome in other, AEP Ohio-related proceedings. Thus, the Application for Rehearing is procedurally inappropriate and should be simply stricken on procedural grounds.

## **II. AEP Ohio’s Application for Rehearing is Not Supported by the Record in these Proceedings.**

AEP Ohio’s Application for Rehearing refers, for the primary basis of its single ground for rehearing, to the Opinion and Order issued in Case No. 11-0346-EL-SSO, *et al.*, relating to AEP Ohio’s application for an electric security plan. That order was issued by the Commission on December 4, 2011, after the order relating to Duke Energy Ohio’s ESP and many weeks after the conclusion of the hearing in such proceeding. Thus, based on the time of its mere existence, it is clear that the fact of the Commission’s decision in the AEP Ohio ESP order was not of record in Duke Energy Ohio’s ESP proceedings. Such proceedings were complete prior to the issuance of the AEP Ohio order. AEP Ohio cannot argue that the order in the present proceeding was wrong on the basis of a fact that was neither in existence nor admitted into the record of the case.

---

<sup>3</sup> Application for Rehearing at 11.

<sup>4</sup> Application for Rehearing at 12-13.

<sup>5</sup> Application for Rehearing at 13.

Further, AEP Ohio has sought to gloss over the lack of possible record evidence for its argument by not even moving to add such information to the record. Regardless of the merit or lack thereof of such a motion, it was not made. AEP Ohio cannot cause the order in its ESP proceedings to exist in the record in this case by simply attaching a copy of the order to its Application for Rehearing. There is no legal basis for such a procedure. Thus, the record in these proceedings includes no reference to the Commission's order in the AEP Ohio ESP case. Rehearing on the basis of such order is therefore procedurally impossible.

AEP Ohio's Application for Rehearing is procedurally inappropriate and should be simply stricken on procedural grounds.

### **III. Request for Expedited Treatment.**

The Company requests expedited treatment of the within motion, pursuant to O.A.C. Rule 4901-1-12(C). In order to ensure that the approved ESP will go into effect on a timely basis and in an orderly fashion, without the negative consequences that might be engendered by a pending but needless and inappropriate application for rehearing, Duke Energy Ohio desires to have its motion addressed as soon as the Commission's business may allow. Without a speedy response from the Commission, customers may not be sure what rates they will be charged, competitive suppliers may not be able to respond appropriately to market pressures, auction winners may not know whether to continue toward filling contracts and placing needed hedges, among other unintended outcomes.

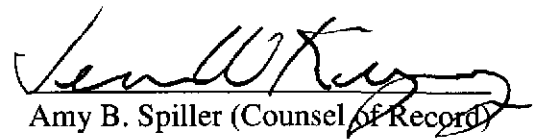
Due to the December holidays and tight deadlines, Duke Energy Ohio has not contacted all parties to seek their consent to this request. Rather, Duke Energy Ohio recognizes that the above-cited rule will allow those parties a response to this motion. However, in light of the need for a ruling on this motion prior to January 1, 2012, when the new ESP will go into effect, Duke

Energy Ohio respectfully requests that the attorney examiner shorten the time allowed for any such responses, as is allowed by the rule.

**IV. Conclusion.**

AEP Ohio's Application for Rehearing is, in reality, a demand for a different outcome in proceedings other than those above-captioned. It is therefore not in compliance with applicable law. Further, AEP Ohio seeks to justify such Application for Rehearing on the basis of facts not of record in the above-captioned proceeding. For both of these reasons, the purported Application for Rehearing should be immediately stricken on procedural grounds.

Respectfully submitted,



Amy B. Spiller (Counsel of Record)  
Deputy General Counsel  
Elizabeth H. Watts  
Associate General Counsel  
Rocco O. D'Ascenzo  
Associate General Counsel  
Jeanne W. Kingery  
Associate General Counsel  
139 E. Fourth Street, 1303-Main  
P.O. Box 961  
Cincinnati, Ohio 45201-0960  
(513) 287-4359 (telephone)  
(513) 287-4385 (facsimile)  
[Amy.Spiller@duke-energy.com](mailto:Amy.Spiller@duke-energy.com)

## 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 23rd day of December, 2011, to the following parties.

  
Jeanne W. Kingery

Steven Beeler  
John Jones  
Assistant Attorney Generals  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215  
Steven.beeler@puc.state.oh.us  
John.jones@puc.state.oh.us

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

Thomas J. O'Brien  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
tobrien@bricker.com

**Counsel for the City of Cincinnati**

Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Oliker  
McNees Wallace & Nurick LLC  
21 E. State Street, 17th Floor  
Columbus, Ohio 43215  
sam@mwncmh.com  
fdarr@mwncmh.com  
joliker@mwncmh.com

**Counsel for Industrial Energy Users-Ohio**

Jody Kyler  
David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
dboehm@bkllawfirm.com  
mkurtz@bkllawfirm.com  
jkyler@bkllawfirm.com

**Counsel for Ohio Energy Group**



Colleen L. Mooney  
Ohio Partners for Affordable Energy  
231 West Lima Street  
Findlay, OH 45839-1793  
cmooney2@columbus.rr.com

**Counsel for Ohio Partners for  
Affordable Energy**

Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, Ohio 45202  
dhart@douglaheart.com

**Counsel for The Greater Cincinnati  
Health Council**

Trent A. Dougherty  
Nolan Moser  
Ohio Environmental Council  
1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212-3449  
trent@theoec.org  
nolan@theoec.org

**Counsel for the Ohio Environmental  
Council**

Mary Christensen  
Christensen & Christensen, LLP  
8760 Orion Place, Suite 300  
Columbus, OH 43240  
mchristensen@columbuslaw.org

**Counsel for People Working  
Cooperatively, Inc.**

M. Howard Petricoff  
Stephen Howard  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
mhpetricoff@vorys.com

**Counsel for the Retail Energy Supply Association**

Jeffrey L. Small  
Joseph P. Serio  
Melissa R. Yost  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
small@occ.state.oh.us  
serio@occ.state.oh.us  
yost@occ.state.oh.us

**Counsel for the Office of the Ohio Consumers'  
Counsel**

Lisa G. McAlister  
Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
lmcaster@bricker.com  
mwarnock@bricker.com

**Counsel for Ohio Manufacturers Association**

Mark S. Yurick, Esq.  
Zachary D. Kravitz, Esq.  
Chester, Wilcox & Saxbe, LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215-4213  
myurick@cwslaw.com  
zkravitz@cwslaw.com

**Counsel for the Kroger Company**

Tara C. Santarelli  
Environmental Law & Policy Center  
1207 Grandview Ave., Suite 201  
Columbus, Ohio 43212  
tsantarelli@elpc.org

**Counsel for the Environmental Law & Policy Center**

David I. Fein  
Vice President, Energy Policy- Midwest  
Constellation Energy Group, Inc.  
550 West Washington Blvd, Ste 300  
Chicago, IL 60661  
David.fein@constellation.com

**For Constellation Energy Group, Inc.**

Matthew Satterwhite  
Erin Miller  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus OH 43215  
mjsatterwhite@aep.com  
ecmiller1@aep.com

**Counsel for Columbus Southern Power Company and Ohio Power Company**

Mark A. Hayden  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
haydenm@firstenergycorp.com

**Counsel for FirstEnergy Solutions Corporation**

M. Howard Petricoff  
Michael J. Settineri  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O.Box 1008  
Columbus, Ohio 43216-1008  
mhpetricoff@vorys.com  
misettineri@vorys.com

**Counsel for Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.**

Cynthia Fonner Brady  
Constellation Energy Resources, LLC  
550 West Washington Blvd, Ste 300  
Chicago, IL 60661  
Cynthia.brady@constellation.com

**For Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.**

Allison Haedt  
Jones Day  
325 John H McConnell Blvd, Ste 600  
Columbus OH 43215-2673  
aehaedt@jonesday.com

**Counsel for FirstEnergy Solutions Corporation**

David A. Kutik  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
dakutik@jonesday.com

**Counsel for FirstEnergy Solutions Corporation**

James F. Lang  
Laura C. McBride  
N. Trevor Alexander  
Calfee, Halter & Griswold LLP  
1400 KeyBank Center  
800 Superior Ave.  
Cleveland, OH 44114  
jlang@calfee.com  
lmcbride@calfee.com  
talexander@calfee.com

**Counsel for FirstEnergy Solutions Corporation**

Gregory Poulos  
EnerNOC, Inc.  
101 Federal Street, Suite 1100  
Boston, MA 02110  
gpoulos@enernoc.com

**Counsel for EnerNOC, Inc.**

Joseph M. Clark  
Vectren Retail, LLC d/b/a Vectren Source  
6641 North High Street, Suite 200  
Worthington, OH 43085  
jmclark@vectren.com

**Counsel for Vectren Retail, LLC d/b/a Vectren Source**

Glen Thomas  
GT Power Group  
1060 First Ave, Ste 400  
King of Prussia, PA 19406  
gthomas@gtpowergroup.com

**For PJM Power Providers Group**

Ann M. Vogel  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus OH 43215  
amvogel@aep.com

**Counsel for AEP Retail Energy Partners LLC**

Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, Ohio 45202  
dhart@douglasshart.com

**Counsel for Eagle Energy, LLC**

M. Howard Petricoff  
Stephen Howard  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
mhpetricoff@vorys.com

**Counsel for PJM Power Providers Group**

Laura Chappelle  
Chappelle Consulting  
4218 Jacob Meadow  
Okemos, MI 48864  
laurac@chappelleconsulting.net

**For PJM Power Providers Group**

Dane Stinson  
Bailey Cavaliere LLC  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215  
Dane.Stinson@BaileyCavaliere.com

**Counsel for Direct Energy**

M. Howard Petricoff  
Special Assistant Attorney General  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
mhpetricoff@vorys.com

**Counsel for Miami University and the  
University of Cincinnati**

William L. Massey  
Covington & Burling, LLP  
1201 Pennsylvania Ave., NW  
Washington, DC. 20004  
wmassey@cov.com

**Counsel for COMPETE Coalition**

Andrew J. Sonderman  
Margeaux Kimbrough  
Kegler Brown Hill & Ritter LPA  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215  
asonderman@keglerbrown.com  
mkimbrough@keglerbrown.com

**Counsel for Duke Energy Retail Sales,  
LLC**

Teresa Ringenbach  
Senior Manager - Government and Regulatory Affairs  
(Midwest)  
Direct Energy, LLC  
9605 El Camino Lane  
Plain City, OH 43064  
teresa.ringenbach@directenergy.com

**For Direct Energy**

M. Howard Petricoff  
Michael Settineri  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
mhpetricoff@vorys.com

**Counsel for COMPETE Coalition**

Joel Malina  
Executive Director  
COMPETE Coalition  
1317 F Street, NW, Suite 600  
Washington, DC 20004  
malina@wexlerwalker.com

**Counsel for COMPETE Coalition**

John W. Bentine  
Chester Wilcox and Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215  
jwbentine@cwslaw.com

**Counsel for  
American Municipal Power, Inc.**

Vincent Parisi  
Matthew White  
Interstate Gas Supply, Inc  
6100 Emerald Parkway  
Dublin OH 43016  
vparisi@igsenergy.com  
mswhite@igsenergy.com

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

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

**Counsel for Exelon Generation Company, LLC**

David Stahl  
Scott Solberg  
Arin Aragona  
Eimer Stahl Klevorn & Solberg LLP  
224 S Michigan Ave, Ste 1100  
Chicago, IL 60604  
dstahl@eimerstahl.com  
ssolberg@eimerstahl.com  
aaragona@eimerstahl.com

**Counsel for Exelon Generation Company, LLC**

Anastasia O'Brien  
Vice President and Deputy General Counsel  
10 South Dearborn St, 49<sup>th</sup> Floor  
Chicago, IL 60603  
Anastasia.obrien@exeloncorp.com

**Counsel for Exelon Generation Company, LLC**

Christopher Allwein  
Williams, Allwein and Moser, LLC  
1373 Grandview Ave., Suite 212  
Columbus, Ohio 43212  
callwein@williamsandmoser.com

**Counsel for the Natural Resources Defense Council**

Jesse Rodriguez  
Public Policy & Affairs Manager  
Exelon Generation Company, LLC  
300 Exelon Way  
Kennett Square, PA 19348  
Jesse.rodriguez@exeloncorp.com

**For Exelon Generation Company, LLC**

Sandy I-ru Grace  
Exelon Business Services Company  
101 Constitution Ave NW  
Washington DC 20001  
Sandy.grace@exeloncorp.com

**Counsel for Exelon Generation Company, LLC**

Kevin Osterkamp  
Roetzel & Andress LPA  
155 East Broad Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43215  
kosterkamp@ralaw.com

**Counsel for Wal-Mart Stores East, LP and Sam's East, Inc.**

Rick D. Chamberlain  
Behrens, Wheeler, & Chamberlain  
6 N.E. 63rd Street, Suite 400  
Oklahoma City, OK 73105  
Rdc\_law@swbell.net

**Counsel for Wal-Mart Stores East, LP  
and Sam's East, Inc.**

Gary A. Jeffries  
Dominion Resources Services, Inc.  
501 Martindale St, Suite 400  
Pittsburgh, PA 15212-5817  
Gary.A.Jeffries@dom.com

**Counsel for Dominion Retail, Inc.**

Jouette Brenzel  
221 E Fourth St, 103-1280  
Cincinnati, OH 45202  
jouett.brenzel@cinbell.com

**Counsel for Cincinnati Bell Inc.**

Sharon M. Hillman  
Executive Vice President  
10 South Riverside Plaza  
Suite 1800  
Chicago, IL 60606  
sharonhillman@mc2energyservices.com

**Counsel for RESA**

Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, Ohio 43215-3927  
BarthRoyer@aol.com

**Counsel for Dominion Retail, Inc.**

Douglas Hart  
441 Vine St, Suite 4192  
Cincinnati, OH 45202  
dhart@douglasshart.com

**Counsel for Cincinnati Bell Inc.**

Tammy Turkenton  
Public Utilities Commission of Ohio  
Accounting & Electricity Div., Utilities Dept.  
180 East Broad Street  
Columbus, Ohio 43215  
[Tammy.turkenton@puc.state.oh.us](mailto:Tammy.turkenton@puc.state.oh.us)

Matthew R. Cox  
McDonald Hopkins of Counsel  
41 South High Street  
Suite 3550  
Columbus, OH 43215  
[mcox@mcdonaldhopkins.com](mailto:mcox@mcdonaldhopkins.com)

**Counsel for Small Enterprises**