

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

- (1) Duke Energy Ohio, Inc., (Duke) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) By opinion and order issued on October 24, 2007, in *In the Matter of the Application of The Cincinnati Gas & Electric Company to Modify Its Nonresidential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish an Alternative Competitive-Bid Service Rate Option Subsequent to the Market Development Period*, Case Nos. 03-93-EL-ATA, et al., the Commission ordered The Cincinnati Gas & Electric Company, now known as Duke, to establish both a fuel and economy purchased power component (FPP) and a system reliability tracker component (SRT) of its market-based standard service offer.
- (3) The Commission approved the creation of Riders price-to-compare (PTC)-FPP and system resource adequacy (SRA)-SRT as a continuation of its FPP and SRT in *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case Nos. 08-920-EL-SSO, et al. (08-920). Both Rider PTC-FPP and Rider SRA-SRT are subject to audit by the Commission.
- (4) In accordance with the entry issued on January 19, 2011, in the above-captioned cases, Schumaker and Company, the company

selected by the Commission to perform the audit of Riders PTC-FPP and SRA-SRT, filed its final audit report, for calendar year 2011, on May 10, 2012.

- (5) On November 28, 2012, the Commission issued its Opinion and Order regarding the audit for calendar year 2011, adopting and approving a stipulation, which was submitted by Duke and Staff and was intended to resolve all outstanding issues in these proceedings. The stipulation, as approved, provided, *inter alia*, that the issues pertaining to Duke's proposal to recover two cost items via Rider RECON¹ that relate to AEP Ohio's operation of the Conesville Unit 4 (Conesville costs) would not be resolved in the stipulation. Specifically, those issues relate to the recoverability and allocations, between ratepayers and shareholders, of costs billed to Duke by AEP Ohio for liquidated damages paid by AEP Ohio in respect of under-deliveries of coal and wash plant closure costs that occurred in 2011. The stipulation, further, provided that the issues related to the Conesville costs shall be bifurcated for future resolution through a process to be established by the Commission. The Commission, in its order, determined 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 (AEP Ohio Fuel Case). Accordingly, the Commission stated that a procedure to address these issues would be established in the *AEP Ohio Fuel Case*, and such procedure would provide Duke and any other entity that is not yet a party to the *AEP Ohio Fuel Case* an opportunity to intervene for the purpose of addressing the Conesville costs.
- (6) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission. Further, Section 4903.10,

¹ Rider RECON was approved by the Commission in *In the Matter of Application of Duke Energy Ohio, Inc. 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, Opinion and Order (November 22, 2011) (11-3549), for the purpose of conducting the final audit of and true-up of any costs associated with Riders PTC-FPP and SRA-SRT, as part of the transition from the ESP approved in 08-920 to the new ESP approved in 11-3549

Revised Code, provides that leave to file an application for rehearing shall not be granted to any person who did not enter an appearance in the proceeding, unless the Commission finds that: (1) the applicant's failure to enter an appearance prior to the Commission's order complained of was due to just cause; and (2) the interests of the applicant were not adequately considered in the proceeding.

- (7) On December 28, 2012, Ohio Power Company (AEP Ohio) filed a motion for leave to file an application for rehearing in these proceedings. AEP Ohio asserts that it has a real and substantial interest in these proceedings that is not adequately represented by the existing parties and the disposition of these proceedings may impair or impede AEP Ohio's ability to protect its interests. AEP Ohio explains that, among the costs Duke seeks to recover through its Rider RECON, referred to in the stipulation approved in these proceedings, is Duke's portion of the liquidated damages for coal deliveries not taken during 2011. AEP Ohio, further, explains that it co-owns Conesville Unit 4 with Duke and Dayton Power and Light Company, and AEP Ohio operates the plant on behalf of the co-owners. As the operator of the plant, AEP Ohio, among other things, provides the materials, fuels, equipment, and service necessary for the operation of the unit, is responsible for keeping accurate books containing the costs of operating the unit, and submits statements to the co-owners for their respective portions of the plant's expenses. AEP Ohio notes that the order in these cases directed that the issues pertaining to the Conesville costs be addressed in the *AEP Ohio Fuel Case*. Therefore, because AEP Ohio was not given notice that its interests could be affected by these proceedings until the order was issued, AEP Ohio asserts that its failure to enter an appearance prior to the Commission's order was due to just cause. Furthermore, AEP Ohio states that the order, without reason or justification, creates new issues in the *AEP Ohio Fuel Case* that are not appropriate for that case. Therefore, AEP Ohio requests the Commission grant it leave to file an application for rehearing of the November 28, 2012, order. No one filed a memorandum contra AEP Ohio's motion for leave to file an application for rehearing.
- (8) Upon consideration of AEP Ohio's motion for leave to file an application for rehearing, the Commission finds that it satisfies

the criterion set forth in Section 4903.10, Revised Code, is reasonable, and should be granted.

- (9) On December 28, 2012, AEP Ohio filed an application for rehearing of the Commission's November 28, 2012, order citing two assignments of error.
- (10) On January 11, 2013, Duke filed a response to AEP Ohio's application for rehearing.
- (11) In its first assignment of error, AEP Ohio asserts that the order's disposition of the issues pertaining to the Conesville costs is ambiguous and should be clarified and/or modified on rehearing. Specifically, AEP Ohio states that the order should be clarified to confirm that the only issues directed to be addressed in the *AEP Ohio Fuel Case* pertain to the timing and allocation of Duke's recovery of its share of the Conesville costs through Duke's Rider RECON. According to AEP Ohio, this clarification is consistent with both the stipulation in these cases and the testimony of Duke's witness in support of the stipulation. AEP Ohio believes that it is reasonable to infer from the stipulation that the recovery and allocation issues relating to the Conesville costs were to be bifurcated and addressed in a separate phase of Duke's fuel proceeding, and it makes no sense to punt the issue into the *AEP Ohio Fuel Case*. Furthermore, AEP Ohio argues that it is unreasonable to expand the issue involving Duke's fuel costs to also include an issue involving AEP Ohio's fuel costs. AEP Ohio recommends that, once it is clarified that this issue only relates to Duke's fuel costs, the Commission should modify the directive in the order that punted the issue to the *AEP Ohio Fuel Case* and, instead, conduct a separate phase of Duke's fuel case. AEP Ohio also contends that the order violates Section 4903.09, Revised Code, because the Commission failed to set forth the reasons prompting its decision to address the issues in the *AEP Ohio Fuel Case*. In AEP Ohio's view, the order unreasonably places the burden on AEP Ohio for an issue that was not properly or timely raised in the *AEP Ohio Fuel Case*.
- (12) In its response, Duke states that it does not oppose AEP Ohio's request for the Commission to clarify the scope of the issues to be addressed regarding 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 Duke's case, rather than the *AEP Ohio Fuel Case*. Duke explains that, because of the breadth of the issues pertaining to the Conesville costs, the parties that are ultimately involved in any proceeding to determine the recovery of those costs will likely benefit from a Commission-designated scope by which they can shape their arguments. Duke also notes that a defined scope will benefit the Commission and encourage administrative economy. Duke, further, offers that, given that Conesville Unit 4 is jointly owned by AEP Ohio and Duke, 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 does not oppose resolution of such issues in the context of the *AEP Ohio Fuel Case*, as long as the Commission formally grants Duke's motion to intervene in that case and the review proceeds expeditiously. However, Duke does not believe it is appropriate to resolve the issues related to Duke's recovery of the Conesville costs in the *AEP Ohio Fuel Case*; such issues should be resolved either in Duke's fuel case or in a separate proceeding. Duke offers that, in an effort to avoid unnecessary commingling of 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's ability to recover such costs.

- (13) In its second assignment of error, AEP Ohio advocates that the order is unlawful and unreasonable, because it violates AEP Ohio's due process rights to the extent that it: expands the scope of the issues in the *AEP Ohio Fuel Case* to include issues related to Duke's recovery of the Conesville costs and any related disagreement Duke may have with AEP Ohio's accounting of those costs; and decides issues pending in the *AEP Ohio Fuel Case* regarding AEP Ohio's recovery of fuel costs without first providing AEP Ohio advance notice and a meaningful opportunity to be heard. AEP Ohio notes that the audit report in the *AEP Ohio Fuel Case* contains no assertion that AEP Ohio's accounting treatment of the Conesville costs was improper or a recommendation that the costs be disallowed in any manner. According to AEP Ohio, by expanding the scope of its case to include issues related to Duke, the Commission is unreasonably placing an additional burden on AEP Ohio to defend what has already been determined by the Commission-

appointed auditor to be prudent actions. Moreover, AEP Ohio submits that, even assuming Duke's recovery of the Conesville costs is a proper issue to be addressed in the *AEP Ohio Fuel Case* because Duke attributes its timing discrepancy to AEP Ohio's accounting, the resolution of any such disagreements between the co-owners should be resolved by the terms of the Conesville Unit 4 operating agreement, which is an agreement approved by the Federal Energy Regulatory Commission, not the Commission. AEP Ohio states that Duke's attempt to shift the blame to AEP Ohio for their timing discrepancy is meritless and does not change the fact that the only issue related to the Conesville costs is one of recovery for Duke.

AEP Ohio also notes that Duke filed a motion to intervene in the *AEP Ohio Fuel Case* and AEP Ohio submits that it is unlawful and unreasonable for the Commission to decide the pending issue of Duke's intervention in that case without addressing Duke's motion and AEP Ohio's memorandum contra that motion in that case. Therefore, AEP Ohio advocates that the order be modified to provide that any decision related to intervention in the *AEP Ohio Fuel Case* should be addressed in that case.

- (14) In its response to AEP Ohio's second assignment of error, Duke contends that, despite AEP Ohio's complaint of various due process and notice violations associated with the Commission's decision to resolve the Conesville costs issues in the *AEP Ohio Fuel Case*, AEP Ohio had the opportunity to intervene in Duke's case, but did not do so. In addition, Duke points out that, effectively, the Commission's decision to address the Conesville issues in the *AEP Ohio Fuel Case* provides AEP Ohio the opportunity to participate in the determination of the Conesville costs for which it complains it was not afforded proper notice and due process. Therefore, Duke asserts that AEP Ohio's notice and due process arguments are meritless. Furthermore, Duke states that AEP Ohio mischaracterizes the Commission's order as granting Duke's motion to intervene in the *AEP Ohio Fuel Case*. Duke notes that, while the Commission implies in the order that intervention would likely be granted, the Commission does not formally grant Duke intervention in the *AEP Ohio Fuel Case*.

- (15) Upon consideration of AEP Ohio's application for rehearing and Duke's response, the Commission finds that AEP Ohio's application should be granted. Our order in these proceedings approved a stipulation which provided that Duke's proposal to recover two cost items through Rider RECON relating to the Conesville costs would not be resolved in the stipulation and recommended that the Commission establish a process to resolve those issues. As noted by both Duke and AEP Ohio, there are other avenues that could be utilized for reviewing the Conesville costs. Upon further consideration, the Commission agrees that it would not be appropriate to resolve some of the Conesville cost issues within the context of a single utility's fuel adjustment case. With this in mind, the Commission will determine, at a later date, what course to take for consideration of those costs. Accordingly, AEP Ohio's application for rehearing should be granted and the Conesville costs should not be reviewed in the *AEP Ohio Fuel Case*.

It is, therefore,


ORDERED, That AEP Ohio's motion for leave to file an application for rehearing be granted. It is, further,

ORDERED, That AEP Ohio's application for rehearing granted to the extent set forth in this entry on rehearing. It is, further,

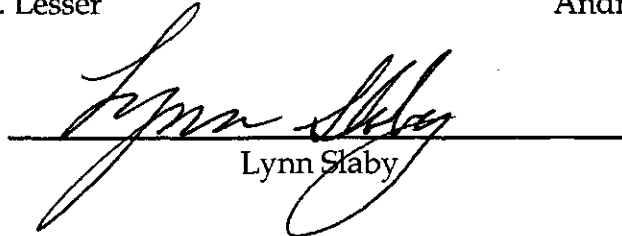
ORDERED, That, a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser



Andre T. Porter


Lynn Slaby

CMTP/KLS/vrm

Entered in the Journal

JAN 23 2013


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Secretary