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BY HAND DELIVERY

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Ms. Ingrid Ferrell
Executive Secretary
West Virginia Public Service Commission
201 Brooks Street
Charleston, WV 25301

Re: *Appalachian Power Company and
Wheeling Power Company
Case No. 14-0546-E-PC*

Dear Ms. Ferrell:

I enclose herewith for filing on behalf of Appalachian Power Company and Wheeling Power Company in the above-referenced proceeding the original and twelve (12) copies of the **RESPONSE OF APPALACHIAN POWER COMPANY AND WHEELING POWER COMPANY TO WEST VIRGINIA CITIZEN ACTION GROUP'S MOTION TO STAY PROCEEDING.**

Very truly yours,

William C. Porth (W.Va. State Bar #2943)

Counsel for
Appalachian Power Company
and Wheeling Power Company

WCP:ss

Enclosures

cc: Service List (w enc.)

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 14-0546-E-PC

**APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY,
public utilities.**

Petition for acquisition of Mitchell plant by
Wheeling Power Company.

**RESPONSE OF APPALACHIAN POWER COMPANY AND
WHEELING POWER COMPANY TO WEST VIRGINIA CITIZEN
ACTION GROUP'S MOTION TO STAY PROCEEDING**

On June 9, 2014, West Virginia Citizen Action Group ("WVCAG") filed a Motion to Stay Proceeding ("Motion") in this docket. Appalachian Power Company and Wheeling Power Company ("WPCo") (together, the "Companies") submit this Response to WVCAG's Motion.¹

WVCAG has identified possible evidentiary issues, but instead of allowing for the orderly development of a full evidentiary record on them, it insists that the procedural process (embodying a procedural schedule to which WVCAG expressly agreed) must be disrupted and that the Companies must be required to undertake investigations and negotiations on the basis of

¹ On June 13, 2014, the Consumer Advocate Division (the "CAD") filed a Response to WVCAG's Motion. While the CAD's Response made a number of observations, it did not appear to support or oppose the Motion. Consequently, the Companies see no need to comment on any of the CAD's observations. On June 17, 2014, the Staff made a filing that combined a Response to WVCAG's Motion with the Staff's own motion that the Companies be required to file additional testimony related to the proposed guidelines for establishing greenhouse gas standards for existing power plants announced by the Environmental Protection Agency on June 2, 2014. Since the Staff's Response supports WVCAG's Motion, but adds nothing new to WVCAG's argument, the Companies will respond to that portion of the Staff's filing in their instant Response. Since the Staff's own motion raises wholly new issues, the Companies will not address it here, but will file a separate response to it within the time frame prescribed by the Commission's Rules of Practice and Procedure.

vagrant ideas and erroneous assumptions entertained by WVCAG. The Companies respectfully submit that this would be a bizarre way to proceed with this case.

The Companies were directed by the Commission to submit an updated plan for ensuring adequate electric power resources to meet the needs of WPCo to serve its customer base. The Companies submitted such a plan and sought approval for the transfer to WPCo from an affiliated company of one-half of the Mitchell Plant and associated facilities (the "Mitchell Asset"). The Companies will have the burden of proving that the proposed transfer of the Mitchell Asset should be approved by the Commission. WVCAG has every right to pursue discovery concerning the Companies' proposal (as it has already done), to offer evidence in opposition to that proposal, to test by cross-examination the strength and soundness of the Companies' evidence, and to argue in briefs whatever position it chooses to argue. Unless the Companies are able to meet their evidentiary burden and persuade the Commission that their proposal should be approved, presumably the Commission will not approve it. That orderly development of this case is what due process requires and it will fully protect the interests of all concerned.

What WVCAG does not have the right to do is jump to conclusions and ask the Commission to jump along with it and take hasty action on the basis of assumptions founded on newspaper articles and other hearsay. If there are other attractive options for serving WPCo's load apart from the plan proposed by the Companies, every party will have an opportunity to offer evidence pointing that out and the evidentiary record will determine whose position is adequately supported by reliable evidence and whose is not. It makes no sense to short-circuit that process or to delay the timely adjudication of an important proceeding as WVCAG wishes to do.

As Exhibit 1 to WVCAG's Motion (a discovery response of the Companies) indicates, the Companies learned early in the process from Duke Energy's financial advisor that Duke was not inclined to sell individual assets from its Midwest portfolio of power plants. WVCAG relies on a "press report" (attached as Exhibit 2 to its Motion) to assert that, according to a spokesman for Duke, "the assets could be split up" and "[i]f a buyer is interested, there could be many different combinations." WVCAG assumes, therefore, that Duke would entertain offers for individual assets.² Based upon the information of which the Companies are aware, that is not the case. The Companies' believe that Duke is prepared to entertain, in addition to bids for its entire Midwest portfolio, separate bids for its entire coal-fired portfolio and its entire gas-fired portfolio, and that Duke has received in the first round of bidding just such bids – for its overall portfolio, its coal-fired portfolio, and its gas-fired portfolio. Each of those combinations of assets exceeds the amount of capacity suitable to meet WPCo' s needs.

Logic would dictate that, to the extent that Duke entertains bids for its coal-fired and gas-fired assets, it must reject bids for its comprehensive asset package. The same logic compels the conclusion that, to the extent that Duke were to entertain a bid for a single asset, it would have to reject all of the bids for aggregations that included that asset. Such a practical consideration could well account for Duke's evident lack of interest in piecemeal offers for individual assets.

WVCAG and the Staff do not appear to understand either the realities or the technicalities of the Duke (or, for that matter, the Dayton Power) asset sale process. The process begins with the prospective seller sending basic information to entities that the seller's financial advisors view as potential buyers. As the Companies informed the parties in their responses to Questions 3 and 4 of WVCAG's first set of discovery requests, the Companies were not invited to

² The Staff makes the same erroneous assumption. At page 3 of its Response, the Staff twice asserts that Duke must have "changed its position" and become willing to sell individual assets.

participate in the sale processes and were not sent by anyone acting on the sellers' behalf the initial information about the sales opportunities, referred to as the "teasers." As the Companies also indicated in response to the aforesaid Question 4, the Companies did obtain copies of the teasers through other channels. From the teasers and from the financial advisors who spoke about the kinds of offers in which the sellers would be interested, the Companies concluded that the portfolios of assets at issue were not potential options for meeting WPCo's needs. The most likely prospective buyers for the Duke or Dayton assets, in the Companies' estimation, would be independent power producers or private equity firms seeking a portfolio acquisition to earn acceptable returns by building scale and capturing synergies and, possibly, to create a combined portfolio that could ultimately be offered to investors in an initial public offering. Such entities could act without the delays and contingencies of seeking approvals of their decisions from state regulatory bodies such as this Commission. Regulated utilities such as the Companies would be unlikely to have an appetite for such large acquisitions and, even if they did, would pose undesirable delay and uncertainty for the sellers because any deal proposed would have to be contingent on regulatory approval, obtainable only at the end of a regulatory review process, of perhaps significant duration. The due diligence process, whereby sellers would share confidential information about their assets and operations, is structured in stages in which the sellers' financial advisors rigorously assess prospective buyers and permit to advance in the process only parties that the advisors regard as likely and acceptable potential purchasers and that do not raise concerns about sensitive information coming into the possession of actual or prospective competitors.

The Companies are confident that the development of the evidentiary record in this case will enable the Commission to render a decision based upon solid evidence instead of

speculation about imponderables. It is neither necessary nor proper to send the Companies off upon a quest that may or may not be practical, or even possible, simply because it strikes the fancy of WVCAG or the Staff. Contrary to WVCAG's assertion, both the Companies and their customers stand to be adversely affected by the stay that WVCAG has requested. The Companies may well be put to needless and possibly uncompensated expense; the resolution which they seek for the benefit of their customers would necessarily be delayed, perhaps beyond the point at which significant power expenses may be incurred next winter; and, as the Companies have previously cautioned, the Mitchell Asset may not remain available indefinitely. Conversely, there is no serious danger that the adverse outcome feared by WVCAG will come to pass:

Conversely, the public interest will be adversely affected if AEP [WVCAG's defined term for the Companies] purchases a plant that is more expensively-priced than other comparable plants, contrary to AEP's assertions, and in violation of West Virginia Code Section 24-2-12.

WVCAG Motion at 3. The entire point of this proceeding is to seek the Commission's prior approval before consummating the transfer of the Mitchell Asset. The required statutory showing should ensure that the Commission will not grant its approval unless the Companies can make that showing to the Commission's satisfaction. To achieve that determination it is imperative that the evidentiary process go forward. It would be counterproductive for that process to be stayed, especially on the speculative basis offered by the WVCAG.

WHEREFORE, the Companies respectfully request that the Commission deny WVCAG's Motion to Stay Proceedings and continue in accordance with the procedural schedule agreed to by WVCAG and adopted by the Commission.

Respectfully submitted,

**APPALACHIAN POWER COMPANY
WHEELING POWER COMPANY**

By Counsel



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Dated: June 19, 2014

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 14-0546-E-PC

**APPALACHIAN POWER COMPANY and
WHEELING POWER COMPANY both dba
AMERICAN ELECTRIC POWER,**
Petition for acquisition of Mitchell plant
by Wheeling Power Company.

CERTIFICATE OF SERVICE

I, William C. Porth, counsel for Appalachian Power Company and Wheeling Power Company, do hereby certify that true copies of the foregoing **RESPONSE OF APPALACHIAN POWER COMPANY AND WHEELING POWER COMPANY TO WEST VIRGINIA CITIZEN ACTION GROUP'S MOTION TO STAY PROCEEDING** were served by hand delivery or first-class U.S. Mail on this 19th day of June, 2014, addressed to the following:

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