

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbus Southern Power Company and)
Ohio Power Company for Approval of) Case No. 09-464-EL-UNC
Their Corporate Separation Plans.)

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COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

On June 1, 2009, Columbus Southern Power Company and Ohio Power Company (collectively, "AEP Ohio" or "Companies") filed an Application for Approval of its Corporate Separation Plan in accordance with the newly-enacted provisions of Ohio Adm. Code 4901:1-37.¹ Corporate separation is an important issue for utility consumers because, among other things, it provides protection against paying cross-subsidies and for protecting fair competition that can benefit consumers. OCC filed a Motion to Intervene on June 26, 2009. On March 19, 2010, an evaluation was filed in the case which reviewed AEP Ohio's compliance with the Commission's new corporate separation rules.² OCC files these comments regarding AEP Ohio's Corporate Separation Plan on behalf of all the approximately 1.3 million residential utility customers of AEP Ohio.

Columbus Southern Power ("CSP") and Ohio Power ("OP") were authorized to legally separate their respective distribution, transmission and generation functions as

¹ This chapter contains the Commission's corporate separation rules.

² Baker Tilly Virchow Krause, LLP, ("Baker Tilly") performed the independent evaluation of AEP Ohio's compliance with R.C. 4928.17 and Ohio Adm. Code 4901:1-37. The focus of the evaluations was to review policies in place in 2009 and test transactions executed from June - November 2009.

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part of their Electric Transition Plan proceeding.³ In AEP Ohio's Rate Stabilization Plan ("RSP") proceeding, however, the Commission modified the corporate separation plan and authorized the company to operate on a functional separation basis.⁴ In the recent Electric Security Plan ("ESP") proceeding, the Companies proposed that the Commission authorize each individual operation company to remain functionally separate and authorize a plan to retain the distribution and transmission assets and to eventually move their generating assets to a to-be-formed affiliate company.⁵

In making that request, the Companies were aware that functional separation can only be permitted for an interim period, by Commission Order, as functional separation is legally required.⁶ In the Commission's March 18, 2009 Opinion and Order in the Companies' ESP proceeding, the Commission approved the proposal to continue functional separation for the three-year duration of the ESP, and directed the companies to file for approval of their corporate separation plan within 60 days after its revised Corporate Separation rules (i.e., OAC 4901:1-37) become effective.

³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power company for Approval of Their Electric Transition Plans and for Receipts of Transition Revenues*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP.

⁴ *In the Matter of the Application of Columbus Southern Company and Ohio Power Company for Approval of a Post Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC, Opinion and Order (January 26, 2005) at 35.

⁵ *In re the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*. Case No. 08-917-EL-SSO et al.

⁶ R.C. 4928.17(C).

II. COMMENTS

A. Scope of the Review

OCC's analysis of this interim arrangement is based on a comparison between the filed Corporate Separation ("CS") Plan and the standards set by Ohio Adm. Code 4901:1-37 and relies heavily on the "evaluation" of AEP Ohio's CS conducted by Baker Tilly. More specifically, the filed plan will be measured against the general provisions stated in Ohio Adm. Code 4901:1-37-04 and 05, respectively.

The filed CS plan was designed to strictly adhere to the 14 points encompassed in Ohio Adm. Code 4901:1-37-05 (titled "Application"). The rule states the utility shall file an application with the Commission that includes narratives describing how the plan ensures: a) competitive equality, b) prevents unfair competitive advantage, c) prohibits the abuse of market power, and d) effectuates the policy of the state of Ohio in R.C. 4928.02.⁷

B. OCC's Review of the Analysis Conducted by Baker Tilly

OCC agrees with the Findings and Recommendations of Baker Tilly's based on its analysis of AEP Ohio's compliance with Ohio law and the Commission's corporate separation rules. Baker Tilly provided a thorough accounting of the procedures it undertook to reach each of its conclusions presented in its analysis. Baker Tilly made the following recommendations concerning the compliance of AEP Ohio with R.C. 4928.17 and Ohio Adm. Code 4901:1-37:

Recommendation 1 – Baker Tilly recommends that AEP Ohio strengthen the controls around the monitoring and tracking of the code of conduct training participation to enforce the code of conduct training requirement.

⁷ R.C. 4928.02. State policy commencing with start of competitive retail electric service.

Recommendation 2: Baker Tilly recommends that AEP Ohio require out-of-state employees that provide services to AEP Ohio to complete the Ohio Corporate Separation Code of Conduct training.

Recommendation 3 – To the extent that the separate AEP Companies (e.g., AEP T&D Services, LLC) rely on the services of AEP Ohio employees other than emergency purposes, Baker Tilly recommends that the listing of these employees be maintained as “shared employees” per §4901:1-37-08(D)(4).

Recommendation 4 – To the extent a consultant or independent contractor contracted by AEP Ohio is also contracted by the separate AEP Ohio Companies, Baker Tilly recommends that a listing be maintained per §4901:1-37-08(D)(5). Baker Tilly views that determining whether job duties are “incidental” can be subjective. There could be many pertinent questions other than the number of projects performed: the number of work hours, the nature of the project, how essential the service is to the benefiting entity, etc.

Recommendation 5 – Changes to the allocation methodology included in affiliate transaction agreements should be reviewed and approved by management of affiliate companies.

Recommendation 6 – The use of total assets as a main allocation factor for certain corporate charges should be reviewed during a future regulatory proceeding.

Recommendation 7 – Baker Tilly recommends that the AEPSC Audit Services Department perform more periodic internal monitoring of compliance with Ohio corporate separation plan and the CAM including the follow-up of the recommendations made in this audit.

Recommendation 8 – The affiliate listing in the CAM should be updated and accurately maintained per §4901:1-37-08(D)(1), O.A.C. Baker Tilly recommends that AEP implement a process to confirm any changes with subsidiaries especially for Variable Interest Entities on a quarterly basis.

Recommendation 9 – To the extent that employees of CSP and OP also provides services to AEP T&D Services, LLC, Baker Tilly recommends that AEP evaluate whether it is fair and equitable to charge AEP T&D Services, LLC a certain portion of AEPSC costs currently allocated on the number of employees. Baker Tilly recommends that AEP conduct a detail review to confirm whether the work orders allocated on the number of employees are included in the A&G overhead loading.

OCC supports and agrees with the recommendations set forth by Baker Tilly and recommends that the Commission order AEP Ohio to implement each of the recommendations in their entirety. While OCC supports the recommendations made by

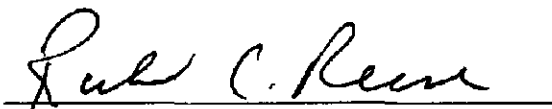
Baker Tilly, OCC does not concede that AEP Ohio, in practice, is in complete compliance with Commission rules and Ohio law regarding corporate separation.

III. CONCLUSION

On behalf of AEP Ohio's 1.3 million residential electric customers, OCC recommends that the Commission order AEP Ohio to implement the recommendations of Baker Tilly and adopt the comments provided by OCC. The recommendations should be implemented within 6 months from the Commission's final order in this proceeding to ensure that AEP Ohio's customers are fully protected by the Commission's corporate separation rules.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Richard C. Reese", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Comments* was served on the persons stated below *via* regular U.S. Mail Service, postage prepaid, this 28th day of April 2010.



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