BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Approval of Full Legal Corporate Separation and Amendment to Its Corporate Separation Plan	)))))	**Case No. 12-1126-EL-UNC**

OHIO POWER COMPANY'S REPLY TO IEU/FES's MEMORANDUM CONTRA

As part of Ohio Power Company's (OPCo) March 30, 2012 Application in this docket, OPCo proposes to transfer certain generating assets at net book value and, to the extent necessary, seeks a waiver of Ohio Admin. Code Rule 4901:1-37-09(C)(4). OPCo also seeks a waiver of any hearing required in this matter under Ohio Admin. Code Rule 4901:1-37-09(D). OPCo requests, pursuant to Ohio Admin. Code Rule 4901:1-37-02(C), a waiver of both these requirements, as neither are required by any statute and there is good cause to grant the waivers. Under Rule 4901:1-37-02(C), the Commission may waive any requirement of Chapter 37 for good cause shown. Industrial Energy Users-Ohio (IEU) and FirstEnergy Solutions Corp. (FES) (jointly "IEU/FES") filed a joint memorandum contra on April 26, 2012 objecting to both waiver requests. For the following reasons, the Commission should reject IEU/FES's arguments and grant both requests for waiver.

IEU/FES's filing is untimely

OPCo made its waiver requests in its March 30, 2012 Application in this docket. Under Ohio Admin. Code Rule 4901-1-12(B)(1), "Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires." Here, IEU/FES's memorandum contra was not filed within 15 days after the service of the motion, which, as noted above, was part of OPCo's March 30, 2012 Application. OCC understood the applicable deadline for responding and filed a timely opposition (though it lacked merit, as outlined in OPCo's response). Thus, IEU/FES's memorandum contra is untimely and should be rejected.

Transfer at net book value

OPCo argues that there is good cause to waive Admin. Code Rule 4901:1-37-09(C)(4) because OPCo seeks to transfer its generating assets to an affiliate within the same parent corporation, in compliance with the mandate of R.C. 4928.17. Specifically, OPCo maintains that under SB 3 all of these generation assets were subjected to market and EDUs therefore were given a temporary opportunity to recover stranded generation investments during a transition period.[1] Transferring the generation assets based on an arbitrary determination of their current market value rather than net book value would be inappropriate, as further discussed below.

[1] SB 3 permitted recovery from retail customers of transition revenues during the market development period (MDP) for transition revenues associated with generation investments not recoverable in the long-term forward view of the energy market. As provided in RC 4928.38, an electric utility that receives transition revenues "shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period." The *quid pro quo* for stranded costs recovery was that market-based rates would be charged for generation service following the MDP, based on SB 3's presumption that

OPCo further notes that the Commission recently determined in Case No. 11-3549, based on information similar to what OPCo provides in its application, that it was in the public interest to waive Rule 4901:1-37-09(C)(4) and allow Duke Energy Ohio to transfer its generation assets at net book value. OPCo maintains that it is persuasive that if waiver was in the public interest for Duke Energy Ohio, it is also in the public interest to grant OPCo's similar request. Finally, OPCo explains that as a result of that recent decision, there is good cause to apply the same rule to similar facts in a consistent manner so as not to create an unfair and unlevel playing field for competition.

IEU/FES objects to this waiver request in dramatic fashion. The first 9 pages of its 11 page memoranda contra spin a story of how OPCo is allegedly scheming to manipulate RPM capacity prices by keeping the Amos and Mitchell plants out of the BRA, thus, deceiving the Commission and raising the price of capacity in PJM. What's more, IEU/FES alleges that OPCo is advancing inconsistent arguments in different PUCO dockets to, on the one hand, transfer its generation assets at net book value and, on the other hand, recover stranded capacity costs.

Contrary to IEU/FES's portrayal, OPCo's plans are set forth in sufficient detail in the Application and supporting testimony. Specifically, page 9 of the Application states OPCo's

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market-based rates would be lower than cost-based rates after the MDP. At the end of the MDP, however, market-based rates were higher than cost-based rates and the Commission influenced EDUs to offer rate stabilization plans (RSPs) rather than collecting higher market-based rates; the RSPs also reflected rate adjustment that were based on cost. SB 221 was passed during the term of the RSPs and fully reinstituted the option of adopting SSO rate plans that include cost-based rate adjustments. Thus, saying that OPCo's generating assets were subjected to market is short-hand for the de-regulatory process described above. The Commission's treatment of OPCo's generating assets after the advent of SB 221 (disallowance of Darby/Waterford carrying charge, disallowance of Sporn 5 closure costs, etc.) also confirms that OPCo continues to be subjected to market risks for its generating assets and that there continues to be uncertainty for cost recovery under any traditional regulatory compact. Nonetheless, cost-based rate adjustments are permitted for generation service under the current regulatory regime for SSO pricing.

intentions regarding the Amos and Michell plants, which cites the testimony of Robert Powers and Philip Nelson in the modified ESP II case (Case No. 11-346-EL-SSO, *et. al.*). Mr. Nelson's testimony, at page 12, states, "In order to equitably terminate the AEP Pool, AEP is planning to transfer AEP Ohio's share of Amos 3 and the AEP Ohio Mitchell units to APCo and KPCo, which are affiliates and members of the AEP Pool. These units comprise approximately 2,500 MW of capacity." As both Messrs. Powers and Nelson explain, OPCo is transferring its share of these plants in a manner that is equitable and will not affect its ability to meet its FRR commitment. IEU/FES have not uncovered anything that isn't already set forth in the Application and its supporting materials, and their conspiracy theory description of these facts is not helpful to the thoughtful resolution of this matter.

Moreover, there is nothing "disingenuous" about OPCo's argument for waiver and its positions in the modified ESP II and capacity charge cases (Case No. 10-2929-EL-UNC). In both cases, OPCo is advocating for a cost-based approach (*i.e.*, cost-based capacity charge and transfer based on net book value on the books). Moreover, the issue of whether OPCo could recover stranded asset value from retail customers under SB 3 is a totally different exercise from establishing a wholesale price that permit our competitors to use that same capacity. In short, there are major differences between the three situations involved with IEU/FES's argument – stranded cost recovery under SB 3, establishment of an appropriate wholesale capacity charge today and transferring generation assets to fully implement the requirements of SB 221. The following table illustrates some of the basic differences that IEU/FES's argument ignores:

	Generation Transfer for Corp. Separation	Stranded Cost Determination under SB 3	Wholesale Capacity Charge Determination
Legal Standard	RC 4928.17	SB 3 provisions	• Federal Law • Reliability Assurance Agreement (RAA) • SB 221 provisions
Context	Legal corp.sep. required as part of transition to fully competitive SSO environment	One-time historical inquiry for transition revenue during 5-year market development period (MDP); predates major regulatory regime change adopted in SB 221 wherein cost-based rate adjustments are permitted	Ongoing dispute involving AEP's exercise of rights under the RAA based on its status as a Fixed Resource Requirements entity through May 2015
Parties Involved	Intended to facilitate retail competition for generation services – an affiliate transaction	Restricted recovery of stranded generation costs from retail customers during the MDP, in exchange for charging market-based rates after MDP (which never happened)	Involves wholesale charges for CRES to use OPCo's capacity resources
Valuation Issues	2012 net book value versus current market value	Long-term forward view of projected energy prices compared to then-present projected revenue stream under cost-based regulation, using 2000 vintage data and permitting recovery during the MDP	Embedded 2010 cost versus the short-term auction price under the Reliability Pricing Model created after the MDP
PUCO Precedent	EDUs permitted to transfer at net book value without conducting a market valuation study	• AEP Ohio agreed to forego recovery of transition revenues during MDP relating to stranded generation investment • FirstEnergy authorized to collect nearly $7 billion from retail customers	Case of first impression that remains pending

OPCo's argument is that wavier is appropriate because these assets have already been put to market and, thus, there is good cause not to attempt to assign an arbitrary market value to

these plants. This is an affiliate transaction required by Ohio law, and it should not be used to artificially impute a hypothetical profit or loss. As referenced above in the table, OPCo's positions in the modified ESP II and capacity charge cases to address potential significant financial harm if the Commission requires OPCo to flash cut to RPM pricing, which will soon be close to zero, are based on a different regulatory construct than which governed capacity cost recovery (there was no wholesale capacity pricing) when the generation assets were initially put to market. In any case, there is nothing inconsistent with OPCo proposing an asset transfer in this proceeding based on cost and asking for a cost-based capacity charge in the 10-2929 proceeding.

Next, IEU/FES contend that the Commission should not grant the waiver request because the rule requires that both market value and book value be provided. Aside from being a circular argument, the point defies the logic of their argument above. Ratepayers have no claim for recovery of stranded benefits (if it exists) and OPCo is not making a claim for stranded investment (if it exists). There is no purpose served in litigating the market value of OPCo's generating assets, and the Commission has never enforced the rule that requires a market valuation against any other EDU. A fruitless exercise is good cause to waive.

IEU/FES also maintain that the Commission should not grant the waiver request because OPCo allegedly is in the process of determining the market value of these assets. This is not an accurate statement. The transcript section IEU/FES cites to support this statement is the cross examination of AEP Ohio witness Philip Nelson, and it does not support this statement. In any case, whatever internal analysis is or has been done by OPCo should have no bearing on the purpose and enforcement of Ohio law.

Lastly, IEU/FES attempt to distinguish the Commission's recent determination that it was in the public interest to waive Rule 4901:1-37-09(C)(4) and allow Duke Energy Ohio to transfer its generation assets at net book value. Rather than rehash the same point-counter-point (see OPCo's January 20, 2012 memorandum contra in that docket), OPCo will cut to paragraph 32 of the Commission's January 23, 2012 Finding and Order, which rejects the same point IEU/FES are advancing here (emphasis added):

> We recognize that individual components of the Duke ESP stipulation should not be binding on the signatory parties in other proceedings, given that the signatory parties have agreed to the stipulation, bargaining and compromising on the various provisions. However, Exelon's comments and the remainder of OP's reply comments shall not be stricken. <u>While the signatory parties agreed not to be bond by the provision of the Duke ESP stipulation in any subsequent proceeding, that limitation does not extend to the Commission. To the extent that the Commission finds the provisions of the Duke ESP stipulation applicable, reasonable, and just, we are not prohibited from imposing similar provisions in this matter.</u>

As in Case No. 11-5333, the point OPCo is making, which IEU/FES objects to, is that it is persuasive that the Commission recently determined a similar waiver request to be in the public interest for Duke Energy Ohio, and there is good cause to apply the same rule to similar facts in a consistent manner so as not to create an unfair and unlevel playing field for competition. OPCo is not trying to bind IEU/FES, or any other party, to any provision of the Duke Energy Ohio ESP stipulation in this proceeding. But if the Commission finds those provisions of the Duke ESP stipulation applicable, reasonable, and just, as applied to OPCo in this proceeding, it is not prohibited from imposing similar provisions – including granting similar waiver requests.

No hearing is necessary

In its Application, OPCo voluntarily commits to the same conditions Duke Energy Ohio agreed to in Case No. 11-3549, for which the Commission concluded "provided the necessary safeguards to ensure that the statutory mandates pertaining to Duke's sale of generation assets and corporate separation are adhered to and the policy of the state is carried out." (Opinion and Order at p. 46). Specifically, OPCo agrees to the following:

1. Staff, or an independent auditor at the Commission's discretion, shall audit the terms and conditions of the transfer of the Generation Assets to ensure compliance with this the order approving this Application and shall also audit OPCo's compliance with R.C. 4928.17 and the Commission's Corporate Separation Rule, O.A.C. 4901:1-37 and any successors to that rule, to ensure that no subsidiary or affiliate of OPCo that owns competitive generation assets has any competitive advantage due to its affiliation with OPCo. OPCo may file an application with the Commission to seek approval of the recovery of the costs associated with an independent audit. (Duke Stipulation at 25-26)

2. Further, the Commission Staff shall have access to books and records in compliance with rule 4901:1-37-09(F). (Duke Stipulation at 26)

3. Following the transfer of the Generation Assets, OPCo shall not without prior Commission approval: 1) provide or loan funds to; 2) provide any parental guarantee or other security for any financing for; and/or 3) assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generating assets, provided however, that contractual obligations arising before the Commission's approval of this Application ("Commission Approval Date") shall be permitted to remain with OPCo without Commission approval for the remaining period of the contract but only to the extent that assuming or transferring such obligations is prohibited by the terms of the contract or would result in substantially increased liabilities for OPCo if OPCo were to transfer such obligations to its subsidiary or affiliate. (Duke Stipulation at 26-27)

4. On and after the Commission Approval Date, OPCo shall ensure that all new contractual obligations have a successor-in-interest clause that transfers all OPCo responsibilities and obligations under such contracts and relieves OPCo from any performance or liability under the contracts upon the transfer of the Generation Assets to its subsidiaries.

5. This provision [3 and 4, above] does not restrict OPCo's ability to receive and pass through to the subsidiary(ies) that own the Generation Assets equity contributions from its parent that are in support of the Generation Assets, nor does it restrict OPCo's ability to receive dividends from the subsidiary(ies) that own the Generation Assets and pass through such dividend(s) to its parent. (Duke Stipulation at 27)

6. Generation-related costs associated with implementing corporate separation shall not be recoverable from customers. (Duke Stipulation at 27)

7. Any subsidiary of OPCo to which Generation Assets are transferred shall not use or rely upon the rating(s) from credit rating agency(ies) for OPCo. If such subsidiary currently does not maintain separate rating(s) from the credit rating agency(ies), then upon transfer of any of the Generation Assets, it shall either seek to establish such rating(s) or shall tie its credit rating to American Electric Power Company, Inc. as soon as practicable but no later than six months following such transfer. (Duke Stipulation at 27)

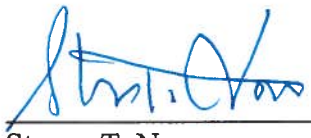
With these commitments, OPCo contends there is good cause for the Commission to grant waiver of the hearing requirement under Rule 4901:1-37-09(D), as it recently did for Duke Energy Ohio.

IEU/FES's basis for objecting to this waiver request is that the rule requires a hearing, so a hearing should take place to promote transparency. They characterize OPCo's voluntary commitments to be an effort to impose a "one size fits all" approach, which is not contemplated by the rule. Memo Contra at 11. For the reasons stated above, IEU/FES's argument is misplaced. If the Commission finds provisions of the Duke ESP stipulation applicable, reasonable, and just, and that similar prospective commitments support waiving a hearing in this proceeding, it is not prohibited from imposing similar provisions and granting a similar waiver. And contrary to IEU/FES's claim that a hearing is necessary so that the Commission can create a record to assure the public interest is being served, no "evidence" is needed for OPCo to voluntarily make prospective commitments. Conducting a hearing on this basis would be a waste of Commission's and parties' resources.

Conclusion

For the reasons discussed above, the Commission should reject IEU/FES's arguments, and it should grant OPCo's request for waiver of Ohio Admin. Code Rule 4901:1-37-09(C)(4) and (D).

Respectfully submitted,



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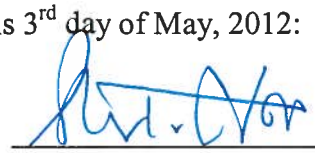
CERTIFICATE OF SERVICE

I certify that Ohio Power Company's Reply to IEU/FES's memorandum contra was served by electronic mail upon the following this 3rd day of May, 2012:



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Summary: Reply of OPC to IEU/FES's Memorandum Contra electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company