

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation     )  
of Ohio's Retail Electric Service Market             )

Case No. 12-3151-EL-COI

---

COMMENTS OF  
UTILITY WORKERS UNION OF AMERICA

---

The Commission's Entry dated December 12, 2012, seeks comments from interested parties on a number of questions concerning the future of Ohio's retail electricity market. The Utility Workers Union of America ("UWUA") represents thousands of workers in the electric industry in the State of Ohio, including workers at numerous generating stations as well as those who work for electric distribution utilities. UWUA's members work for various operating companies in Ohio that are owned by American Electric Power, AES Corp. (DPL), Duke Energy, FirstEnergy, NRG Energy (Reliant), and Ohio Valley Electric Corp. In addition, UWUA has additional members throughout Ohio who do not work directly in the electricity industry, but obviously are electricity consumers. UWUA and its members therefore have a strong interest in the future of Ohio's electricity market, as both consumers of electricity and as workers whose livelihoods depend on the economic well-being of the industry.

**CORPORATE SEPARATION COMMENTS**

(a) Capacity-related disclosures

Utilities clearly should be required to disclose to the Commission decisions about plant retirements, capacity auctions, and transmission projects, particularly where such decisions may involve unregulated affiliates. UWUA would add to this list the decisions of utilities and their affiliates about the method of operating generation resources.

Not only should utilities and their affiliates be required to disclose such information, but the Commission should exercise its statutory authority to compel production of this information in appropriate cases.

In our view, FirstEnergy's announcement last year that it would retire several power plants just prior to the commencement of the PJM base residual auction is a prime example of the need for thorough regulatory review of the corporate decision-making process.

As the Commission knows, FirstEnergy announced in late January 2012 – only three months before the PJM auction – that it would close four power plants in northern Ohio and two other competitive generation facilities in Pennsylvania and Maryland. One week later, the company also announced that it would close three regulated plants in West Virginia.

We believe that FirstEnergy's stated reason for these closures – the adoption of EPA's Mercury and Air Toxics Standards (MATS) – was dubious at best, especially since at that time the MATS emission limits would not take effect for at least three and probably four more years. The imprudence of the company's decision was underscored by the fact that PJM subsequently barred FirstEnergy from deactivating three of the Ohio plants due to reliability concerns, until the company can successfully complete significant transmission upgrades.<sup>1</sup>

FirstEnergy's announcement of the closures, however, had a demonstrable effect on the price spike in the PJM base residual auction in May 2012. Indeed, as the Commission noted in its Order, these and other recently-announced generation retirements led to a constraint for the first time in Ohio, causing a significant increase in the price for capacity in northeast Ohio.<sup>2</sup>

According to PJM, the cost of reserve capacity following the auction will be over 2 ½ times higher in FirstEnergy's territory than in most other places. At the time, one Wall Street

---

<sup>1</sup> "Ohio utility ordered to keep three coal-fired power plants online," *Coal Age*, May 2012.

<sup>2</sup> Commission Entry, ¶ 4, p. 2 (Dec. 12, 2012).

analyst estimated that FirstEnergy might earn an additional \$550 million in 2015-16 because of the auction.<sup>3</sup>

Given the potential impacts on markets and consumer prices, UWUA urges not only that electric utilities and their affiliates should be required to disclose information regarding the corporation's analysis and decision-making process involving plant retirements, capacity auctions, and similar decisions, but also that the Commission should exercise its existing statutory authority to compel disclosure in appropriate cases.

Under Ohio law, the Commission has broad authority – upon complaint or on its own initiative – to investigate whether an electric utility or its affiliate has violated corporate separation requirements, including the authority to “examine such books, accounts, or other records kept by an electric utility or its affiliate as may relate to the business for which corporate separation is required. . . .” The Commission may also “investigate such utility or affiliate operations as may relate to those businesses and investigate the interrelationship of those operations.”<sup>4</sup>

In appropriate cases, the UWUA would urge the Commission to investigate practices by utilities or their affiliates that may unfairly impact electricity prices or that are inconsistent with a properly functioning electricity market – possibly in conjunction with other market regulators such as the state Attorney General – and to compel the production of relevant information.

#### (b) Role of transmission affiliates

A utility's transmission affiliate should be permitted to participate in transmission projects intended to alleviate distribution constraints, but any such participation should occur

---

<sup>3</sup> “Electricity rate increases predicted as FirstEnergy plans to shut 4 plants,” *Plain Dealer*, May 22, 2012. *See also* “Record new generation, demand response offset effects of coal retirements in PJM capacity auction,” *SNL Generation Markets Week*, May 29, 2012.

<sup>4</sup> O.R.C. § 4928.18(B).

through an open and transparent process with oversight by the Commission or another independent regulator. As the Commission knows, a transmission project may be a cost-effective way to avoid more costly distribution or generation investments. This is one reason the UWUA has consistently opposed the deregulation of electricity generation and the separation of the generation function from the transmission and distribution functions. Nevertheless, where generation has been deregulated or otherwise separated from the other components of the electricity network, care must be taken to ensure that decisions are made in a manner that does not promote self-dealing within a corporate holding company.

(g) Complete structural separation

UWUA opposes any proposal for the complete separation of generation from transmission and distribution at this time. The current uncertainties in generation markets make stand-alone generation companies very risky, which could lead to a potentially toxic combination of higher consumer prices, reduced employment levels, reduced reliability, and considerable increase in financial risk. UWUA would point to the recent bankruptcy filings by Edison Mission Energy and some of its affiliates as an indicator that now is not the appropriate time to impose strict structural separation of generation.

That is not to say, however, that additional protections are not warranted. UWUA would note that the Pennsylvania Public Utility Commission has initiated a proceeding that might result in additional restrictions on affiliate relationships, without completely eliminating affiliated generation, transmission, and distribution companies. See Pa. Public Utility Commission, Proposed Rulemaking: Code of Conduct, 42 Pa. Bulletin 796 (Feb. 11, 2012). Given the prevalence of FirstEnergy affiliates in both Pennsylvania and Ohio, the Commission may wish to review the Pennsylvania proposals and determine whether similar protections would be appropriate in Ohio.

## CONCLUSION

In summary, UWUA respectfully urges the Commission to:

- (1) Require enhanced disclosures by utilities and their corporate affiliates, particularly as it relates to capacity decisions, auction participation, plant closures, and plant operations that may not be consistent with the public interest, and to fully investigate the conduct of generation owners in the Ohio market in appropriate cases; and
- (2) Decline to require complete structural separation of generation, transmission, and distribution affiliates at this time, while considering enhanced code of conduct provisions governing the relationship among affiliated participants in Ohio's electricity markets.

Respectfully submitted,



Mark Brooks

Special Counsel to the President  
Utility Workers Union of America, AFL-CIO

/s/ Carl Wood

Carl Wood

Regulatory Affairs & Policy Director  
Utility Workers Union of America, AFL-CIO

815 16<sup>th</sup> Street, N.W.  
Washington, DC 20006

(202) 974-8200 (voice)  
(202) 974-8201 (fax)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/1/2013 2:45:05 PM**

**in**

**Case No(s). 12-3151-EL-COI**

Summary: Comments electronically filed by Mr. Mark Brooks on behalf of Utility Workers Union of America