

FILE

14

RECEIVED-DOCKETING DIV.
2011 OCT -4 PM 5:09
PUCO

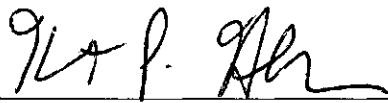
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Power Company for Approval of an) Case No. 11-5333-EL-UNC
Amendment to its Corporate Separation)
Plan.)

MOTION TO INTERVENE AND COMMENTS OF BUCKEYE POWER, INC.

Pursuant to Ohio Revised Code § 4903.221 and Ohio Administrative Code § 4901-1-11, Buckeye Power, Inc. ("Buckeye") respectfully moves to intervene in this proceeding. Buckeye has real and substantial interests in this proceeding, and those interests may be adversely affected by its outcome. No other party to the proceeding can adequately represent Buckeye's interests. The Commission should grant Buckeye's Motion to Intervene for the reasons more fully set forth in the attached Memorandum in Support.

Respectfully submitted,



Kurt P. Helfrich (0068017)
Ann B. Zallocco (0081435)
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215-6101
Tel.: (614) 469-3200
Fax: (614) 469-3361

Attorneys for Buckeye Power, Inc.

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.
Technician SM Date Processed OCT 05 2011

MEMORANDUM IN SUPPORT

I. Background.

On September 7, 2011, Ohio Power Company and Columbus Southern Power Company (collectively, “AEP Ohio”), and various other parties, filed a Stipulation and Recommendation (“Stipulation”) relating to AEP Ohio’s second Electric Security Plan, in Case Nos. 11-346-EL-SSO, *et al.* (the “Stipulation Case”). Among other things, the Stipulation contemplates the Commission’s approval of full legal corporate separation as a precondition to AEP Ohio’s transition to an auction-based SSO. On September 21, 2011, in response to the Commission’s request for additional information regarding the corporate separation plan set forth in the Stipulation, AEP Ohio filed revised testimony in the Stipulation Case (“Revised Testimony”), stating that corporate separation would be accomplished by the transfer of AEP Ohio’s generation assets to a new, wholly-owned subsidiary of American Electric Power Company, Inc. (“AEP”), and that AEP Ohio would file an application with the Commission in a separate proceeding to address details regarding the implementation of its corporate separation plan.

On September 30, 2011, as contemplated by the Revised Testimony, Ohio Power Company filed in Case No. 11-5333-EL-UNC an amendment to its proposed corporate separation plan (“Corporate Separation Compliance Application”) and, with various other parties to the Stipulation, a Joint Motion to Consolidate and Request for Expedited Treatment (“Motion to Consolidate”) requesting the consolidation of AEP’s Corporate Separation Compliance Application with the Stipulation Case. On October 3, 2011, FirstEnergy Solutions Corp. filed a Motion in Opposition to Joint Movants’ Motion to Consolidate and Industrial Energy Users-Ohio filed a Motion to Intervene in Ohio Power Company’s Corporate Separation Compliance Application and a Memorandum Contra the Motion to Consolidate.

Buckeye is an Ohio nonprofit corporation and the provider of wholesale electric power and energy and transmission services to the 25 electric distribution cooperatives providing retail electric service to approximately 380,000 member/consumers in 77 out of Ohio's 88 counties.¹ The load of these electric distribution cooperatives represents approximately 5% of the electric load in the State of Ohio. Buckeye and its members operate their electric utilities on a non-profit cooperative basis for the mutual benefit of their member/consumers.

Buckeye's power and energy is generated at (a) its two coal-fired baseload electric generating units located at the Cardinal Station in Jefferson County, Ohio (another unit at the Cardinal Station is owned by AEP Ohio, a portion of the Cardinal Station is jointly-owned by AEP Ohio and Buckeye, and AEP Ohio backs-up Buckeye's Cardinal Station entitlement); (b) Buckeye's Greenville Electric Generating Station, a natural gas-fired peaking plant located near Greenville, Ohio (an AEP affiliate operates and maintains the Greenville Station); (c) its affiliate National Power Cooperative, Inc.'s ("National's") Robert P. Mone Station, a natural gas-fired peaking power plant located near Van Wert, Ohio (AEP Ohio backs-up National's Mone Station entitlement, and AEP affiliates operate and maintain the Mone Station and provide fuel for the Station); and (d) the coal-fired baseload electric generating plants owned by the Ohio Valley Electric Corporation ("OVEC," in which Buckeye's affiliate, Buckeye Power Generating, LLC, holds an 18% ownership interest) and OVEC's subsidiary in Cheshire, Ohio and Madison, Indiana (AEP Ohio owns a substantial interest in OVEC, and AEP affiliates operate and maintain

¹ The 25 distribution cooperative members of Buckeye are: Adams Rural Electric Cooperative, Inc.; Buckeye Rural Electric Cooperative, Inc.; Butler Rural Electric Cooperative, Inc.; Carroll Electric Cooperative, Inc.; Consolidated Electric Cooperative, Inc.; Darke Rural Electric Cooperative, Inc.; Firelands Electric Cooperative, Inc.; The Frontier Power Company; Guernsey-Muskingum Electric Cooperative, Inc.; Hancock-Wood Electric Cooperative, Inc.; Holmes-Wayne Electric Cooperative, Inc.; Licking Rural Electrification, Inc.; Logan County Cooperative Power and Light Association, Inc.; Lorain-Medina Rural Electric Cooperative, Inc.; Mid-Ohio Energy Cooperative, Inc.; Midwest Electric, Inc.; Midwest Energy Cooperative; North Central Electric Cooperative, Inc.; North Western Electric Cooperative, Inc.; Paulding-Putnam Electric Cooperative, Inc.; Pioneer Rural Electric Cooperative, Inc.; South Central Power Company; Tricounty Rural Electric Cooperative, Inc.; Union Rural Electric Cooperative, Inc.; and Washington Electric Cooperative, Inc.

the OVEC plants). A small portion of Buckeye's power and energy is also supplied from a hydropower entitlement from the New York Power Authority ("NYPA"), from an interest in the output of an Iowa wind farm, and from several member owned biomass digester electric generating facilities and a landfill gas to electric generating facility in Ohio. This power and energy is transmitted to more than 330 delivery points located throughout the service areas of the Ohio electric distribution cooperatives.

Buckeye requests intervention, as described herein, to protect its interests in various ownership and contractual arrangements with AEP Ohio and other AEP affiliates. The corporate separation plan was, from Buckeye's perspective, an unexpected outcome of AEP Ohio's most recent Electric Security Plan (ESP) Standard Service Offer (SSO) application. Buckeye did not intervene in the Stipulation Case because Buckeye did not anticipate that AEP Ohio's original ESP application would result in any direct impacts upon Buckeye. However, after reviewing the Stipulation and the proposed corporate separation plan, in particular, including the Revised Testimony, Buckeye now recognizes the magnitude of the potential impact of the Stipulation's corporate separation plan on Buckeye and its arrangements with AEP Ohio, and the need for intervention in this case.

Although Buckeye seeks to intervene in this proceeding for the reasons described herein, Buckeye does not oppose the Stipulation nor the proposed corporate separation, provided that Buckeye's concerns (as set forth in this Motion to Intervene or any subsequent filings, testimony or other participation by Buckeye in this proceeding, whether consolidated with the Stipulation Case or not) are addressed in any Commission Order approving the corporate separation. Neither does Buckeye necessarily oppose the Motion to Consolidate, provided that Buckeye's concerns are addressed in any Commission Order approving the corporate separation; however, Buckeye

notes that FirstEnergy Solutions Corp.'s Motion in Opposition raises important concerns regarding the due process rights of parties, such as Buckeye, potentially affected by the corporate separation (but who are not parties to the Stipulation Case because they could not have anticipated that a corporate separation would result from AEP's original ESP application) that the Commission should carefully consider before granting AEP's Motion to Consolidate.

II. Legal Standards for Intervention.

Pursuant to Rev. Code § 4903.221, any person who may be adversely affected by a Commission proceeding may intervene in such proceeding. For the reasons discussed below, Buckeye could clearly be adversely affected by AEP's corporate separation, if such separation does not appropriately address the complex ownership and contractual relationships between AEP Ohio and Buckeye, as described in further detail in Part III below.

Pursuant to Ohio Adm.Code 4901-1-11, in deciding whether to permit intervention, the Commission shall consider:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues; and
- (5) The extent to which the person's interest is represented by existing parties.

III. Buckeye's Unique and Complex Relationship with AEP.

Through the joint ownership of major electric generating assets at the Cardinal Station and the Ohio Valley Electric Corporation, and a variety of contracts, agreements and

memorandums of understanding integral to Buckeye's operations, Buckeye and its affiliates, and AEP Ohio and other AEP affiliates, have a unique and complex, interconnected business relationship. Several of these arrangements involve AEP Ohio directly, while others involve other AEP affiliates, but all of these arrangements could be significantly affected by AEP Ohio's proposed transfer of generation assets to a new generating affiliate.

Buckeye and Ohio Power Company co-own the Cardinal Station. Buckeye owns Unit Nos. 2 and 3 at the Cardinal Station, and Ohio Power Company owns Unit No. 1. Portions of the Cardinal Station are jointly owned by Buckeye and Ohio Power Company. The Cardinal Station is managed and operated as a single facility by the Cardinal Operating Company (the stock of which is owned in equal parts by Buckeye and Ohio Power Company) as agent for Buckeye and Ohio Power Company. American Electric Power Service Corporation provides services to Cardinal Operating Company relating to the operation and maintenance and supply of fuel to the Cardinal Station. As co-owners of the Cardinal Station, Buckeye, Ohio Power Company, Cardinal Operating Company and other AEP affiliates are parties to various agreements relating to the joint ownership and the operation of the Cardinal Station, including a Station Agreement, Facilities Agreement and Services Agreement, and agreements relating to the Cardinal Station's production of gypsum filter cake, the supply of coal to the Cardinal Station, and the parties' rights and responsibilities relating to the accrual and surrender of NOx emission allowances. AEP Ohio and Cardinal Operating Company are parties to a Consent Decree, relating to alleged violations of the Clean Air Act's New Source Review provisions by Cardinal Unit Nos. 1 and 2, among other named coal fired electric generating units, and Buckeye and AEP Ohio are parties to a Memorandum of Understanding relating to such Consent Decree. Buckeye and AEP have also negotiated a settlement agreement with the construction contractor of the Cardinal Station's

flue gas desulphurization (“FGD”) systems for replacement of the jet bubbling reactor internals and certain other FGD system components, and there are numerous construction contracts in place relating to ongoing construction projects at the Cardinal Station for the installation of FGD equipment at Cardinal Station Unit No. 3, among other things.

Buckeye Power Generating, LLC (an affiliate of Buckeye) and AEP Ohio, as well as various other utilities, co-own OVEC and, through the OVEC Inter-Company Power Agreement, share the rights and obligations relating to the output of OVEC’s baseload generating units. Buckeye Power Generating, from time to time, makes short-term assignments to AEP Ohio of its rights and obligations relating to portions or all of Buckeye Power Generating’s OVEC entitlement.

AEP affiliates operate and maintain the Cardinal Station, the Greenville Electric Generating Station, the Robert P. Mone Station, and the Kyger Creek Plant and Clifty Creek Plant owned by OVEC and its subsidiary.

Ohio Power Company and other AEP affiliates and National are parties to a Station Agreement, Fuel Supply Agreement, Operation and Maintenance Agreement, and various other agreements relating to the Robert P. Mone Station. Pursuant to such agreements, Ohio Power Company is entitled to all of the capacity and energy and is responsible for all operating expenses of the Mone Station through May 31, 2012, after which date, National will receive 80% of the capacity and energy of the Mone Station, and Ohio Power Company will receive 20% of the Station’s capacity and energy in exchange for its obligation to back-up National’s entitlement.

AEP and Buckeye are parties to various other agreements, including a PJM Services and Cost Allocation Agreement, pursuant to which AEP Ohio, through May 31, 2012, has agreed to

serve Buckeye's native load power and energy requirements above its entitlements from its Cardinal Station, Mone Station and NYPA interests, and to provide transmission scheduling services and locational marginal pricing congestion charge mitigation.

As Buckeye and all of its member distribution cooperatives are transmission-dependent electric utilities, Buckeye owns no transmission facilities and depends, for transmission service, entirely upon open access transmission service from Ohio's investor-owned electric utilities, including Columbus Southern Power Company and Ohio Power Company. Buckeye and AEP Ohio are parties to an Interconnection and Local Delivery Service Agreement, filed with the Federal Energy Regulatory Commission, relating to such transmission service from AEP Ohio.

Several of the above agreements will remain with AEP Ohio following corporate separation as they relate to electric transmission and distribution service, while others must be assigned to AEP Ohio's new generating affiliate because they relate to the electric generating facilities owned by AEP Ohio that will presumably be transferred to the new generating affiliate. Many of the agreements to be assigned to the new generating affiliate contain terms and conditions relating to contractual assignment that will need to be reviewed and complied with. Some agreements that will not require assignment contain terms and conditions relating to or affected by Ohio Power Company's ownership of generation assets, and will require modification in order to preserve the parties' relative economic benefits and burdens under such agreements.

The agreements and arrangements listed above are not intended to be an exhaustive account of all such arrangements that will require transfer or modification as a result of AEP's proposed corporate separation. The purpose of this summary is to illustrate the magnitude of the effects of AEP's proposed corporate separation on Buckeye and its affiliates, and the need for

careful and appropriate consideration of such effects in implementing AEP's corporate separation.

As discussed herein, Buckeye does not necessarily oppose the Stipulation nor the corporate separation. However, due to the issues discussed herein, the Commission's approval of the corporate separation must be contingent upon AEP's cooperation and agreement with Buckeye in arranging for (1) a complete inventory of the various properties and assets jointly owned by AEP Ohio and Buckeye or owned by Buckeye and affected by the proposed corporate separation (as well as the licenses, approvals, permits, contracts and agreements relating to such assets), and the various contracts and agreements to which AEP Ohio or AEP affiliates and Buckeye or its affiliates are parties and which are implicated by the proposed corporate separation, (2) the proper and timely transfer and retitling of AEP Ohio's interests in such property and assets (including the licenses, permits, approvals, contracts and agreements relating to such property and assets) to the new AEP generating affiliate to the extent such assets relate to AEP Ohio's electric generating facilities, and the retention of such property and assets (including the licenses, permits, approvals, contracts and agreements relating to such property and assets) to the extent such property and assets relate to AEP Ohio's electric transmission and distribution assets, (3) the proper and timely assignment of such contracts and agreements to the new AEP generation entity to the extent such contracts and agreement relate to AEP Ohio's electric generating facilities, and the retention of such contracts and agreements by AEP Ohio to the extent such contracts and agreements relate to AEP Ohio's transmission and distribution assets, (4) compliance with all terms and conditions of such contracts and agreements, including any required consents by Buckeye or its affiliates to such assignments or the transfer of such property or assets (including all related permits, approvals, licenses, contracts and agreements),

(5) the modification of such contracts and agreements, if necessary, to preserve the relative economic benefits and burdens of the parties under such contracts and agreements, and (6) in the event that the corporate separation negatively affects the creditworthiness of AEP Ohio and/or the new generation entity is less creditworthy than AEP Ohio, implementation of appropriate credit support for the benefit of Buckeye and its affiliates, such as a parent or AEP affiliate guaranty, in order to preserve the creditworthiness of the counterparties to Buckeye's and its affiliates' contracts with AEP Ohio and any other AEP affiliates affected by the proposed corporate separation.

Buckeye hereby requests that any Order by the Commission approving the Stipulation and corporate separation plan address Buckeye's concerns outlined herein (or in any subsequent filings, testimony or other participation by Buckeye in this proceeding). Buckeye assumes that AEP will not take issue with this request, as it is also in AEP's interest to ensure that such arrangements are transferred seamlessly and/or modified as necessary to ensure the parties' continued enjoyment of their relative economic benefits and burdens under such arrangements.

IV. Buckeye Clearly Meets All Criteria for Intervention.

Buckeye should be granted intervention because it has a real and substantial interest in this proceeding, due to the complex and interconnected relationship between Buckeye (and its affiliates) and AEP Ohio (and its affiliates), including their joint ownership of the Cardinal Station and OVEC, Buckeye's dependence on AEP Ohio for transmission and local delivery service functions, AEP's operation of Buckeye's and its affiliates' major power generating facilities, and various other agreements and business arrangements between Buckeye and AEP which, collectively, are integral to Buckeye's operations. Buckeye's legal position is that such interests should not be adversely affected by AEP's proposed corporate separation.

Buckeye's participation will not unduly prolong or delay the proceeding. The Commission has not established a procedural schedule in this matter nor issued any ruling. Buckeye's Motion will not cause any further delay in the proceeding.

Buckeye's interests are not represented by existing parties. To date, the only other intervenors are FirstEnergy Solutions Corp., a competitor of AEP's, and Industrial Energy Users-Ohio, an organization representing the interests of large industrial consumers. Buckeye is a non-profit member owned electric cooperative, seeking to protect its ownership interest in assets and property jointly owned with AEP, and the benefits associated with its various agreements and arrangements with AEP Ohio, which are unique and integral to Buckeye's operations. No other party can represent Buckeye's interests in this proceeding.

Buckeye's intervention in this proceeding will contribute to the Commission's understanding of the various issues raised by AEP's proposed corporation separation plan that should be considered in connection with its approval of the Stipulation and the corporate separation plan. It is Buckeye's understanding that the purpose of the Corporate Separation Compliance Application is to address the details of implementing the separation, including the effects of the separation on third parties, such as Buckeye.

V. Conclusion.

For the aforementioned reasons, Buckeye satisfies the criteria set forth in both Rev. Code 4903.221 and Ohio Adm.Code 4901-1-11. Therefore, Buckeye's Motion to Intervene should be granted. Buckeye does not oppose Commission approval of the Stipulation nor the corporate separation provided for therein, as long as any Commission Order approving the corporate separation takes into account Buckeye's concerns as set forth in this Motion to Intervene (or in any further filings, testimony or other participation by Buckeye in this proceeding, whether

consolidated with the Stipulation Case or not). Assuming Buckeye's Motion to Intervene is granted, then, whether or not the Motion to Consolidate is granted, Buckeye reserves the right to file testimony, participate in a hearing, and otherwise exercise all of the rights of a party in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kurt P. Helfrich', written over a horizontal line.

Kurt P. Helfrich (0068017)
Ann B. Zallocco (0081435)
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215-6101
Tel.: (614) 469-3200
Fax: (614) 469-3361

Attorneys for Buckeye Power, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, Motion to Intervene of Buckeye Power, Inc., has been served by regular U.S. mail upon the counsel for the following parties listed on the attached service list on this 4th day of October, 2011.



Ann B. Zallocco

Matthew J. Satterwhite
Steven T. Nourse
Anne M. Vogel
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com
amvogel@aep.com

ON BEHALF OF COLUMBUS
SOUTHERN POWER COMPANY
AND OHIO POWER COMPANY

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang
Laura C. McBride
N. Trevor Alexander
Calfee, Halter & Griswold LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com

Allison E. Haedt
Jones Day
P.O. Box 165017
Columbus, OH 43216-5017
aehaedt@jonesday.com

John N. Estes III
Paul F. Wight
Skadden, Arps, Slate, Meagher &
Flom LLP
1440 New York Ave., N.W.
Washington, DC 20005
jestes@skadden.com
paul.wight@skadden.com

ON BEHALF OF FIRSTENERGY
SOLUTIONS CORP.

Samuel C. Randazzo (Counsel of
Record)
Frank P. Darr
Joseph E. Olikier
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com

ON BEHALF OF INDUSTRIAL ENERGY
USERS-OHIO