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**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. :

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**COMMENTS**  
**AND**  
**RECOMMENDATIONS**  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**Michael DeWine**  
Ohio Attorney General

**William L. Wright**  
Section Chief

**Devin D. Parram**  
**Thomas W. McNamee**  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215-3793  
614.466.4395 (telephone)  
614.644.8764 (fax)  
[devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)  
[thomas.mcnamee@puc.state.oh.us](mailto:thomas.mcnamee@puc.state.oh.us)

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**INTRODUCTION**

Ohio Power Company (OPCo or the Company) is an electric utility operating within the American Electric Power system. American Electric Power Company, Inc. (AEP), through its electric utility operating companies, provides generation, transmission and distribution services in eleven states. In order to implement structural corporate separation, which is a result of the Public Utilities Commission of Ohio (Commission) adopting the Stipulation and Recommendation in Case Nos. 11-346-EL-SSO, *et al.* (Stipulation), AEP plans to create a new wholly-owned subsidiary that will be organized for the purposes of planning, constructing, owning, and operating the generating assets of AEP Ohio (AEP GenCo). Consequently, as a result of their common ownership by AEP,

OPCo and AEP GenCo will be affiliates.<sup>1</sup> OPCo will be the surviving entity after the merger between OPCo and Columbus Southern Power (CSP) is completed. The Stipulation recommends that the Commission approve the merger and states that closing will occur after Commission approval of the Stipulation.

It should be noted that CSP and OPCo were granted authority by the Commission to legally separate each company's distribution, transmission, and generation functions in their Electric Transition Cases.<sup>2</sup>

The rules of the Commission that address corporate separation are set forth in Section 4901:1-37, O.A.C. The stated purpose and scope of this section is:

- (A) The purpose of this chapter is to require all of the state's electric utilities to meet the same standards so a competitive advantage is not gained solely because of corporate affiliation.
- (B) This chapter is intended to create competitive equality, prevent unfair competitive advantage, prohibit the abuse of market power and effectuate the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.

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<sup>1</sup> *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to Its Corporate Separation Plan*, Case No. 11-5333-EL-UNC (Application at 1) (September 30, 2011).

<sup>2</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Their Transition Plans and for Receipt of Transition Revenues*, Case No. 99-1729-EL-ETP, *et al.* (Opinion and Order) (September 28, 2000); *Id.* (Entry on Rehearing) (November 21, 2000).

- (C) The Commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (D) To ensure compliance with this chapter, examination of the books and records of affiliates may be necessary.
- (E) Violations of this chapter shall be subject to Section 4928.18 of the Revised Code. The electric utility has the burden of proof to demonstrate compliance with this chapter.<sup>3</sup>

## **BACKGROUND**

Per the Stipulation, AEP Ohio's transmission and distribution related assets would remain in the electric distribution utility. AEP Ohio's generation, fuel and other assets would be transferred to a newly-created AEP generation affiliate (AEP GenCo). Full legal corporate separation will occur after the Commission and Federal Energy Regulatory Commission (FERC) approve all the cases related to achieving corporate separation.

Corporate separation of AEP Ohio's generating assets will be accomplished in several steps.<sup>4</sup> First, OPCo will form a new subsidiary, the AEP GenCo, and contribute its generation-related assets to that subsidiary in exchange for all of the outstanding capital

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<sup>3</sup> Ohio Administrative Code § 4901:1-37-02 (West 2011).

<sup>4</sup> These steps are set forth in OPCo's application. *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to Its Corporate Separation Plan*, Case No. 11-5333-EL-UNC (Application at 9) (September 30, 2011).

stock of that subsidiary. Next, OPCo will distribute its shares of the AEP GenCo to AEP, the parent company. Finally, AEP would contribute all of the stock of the AEP GenCo to a sub-holding company. The sub-holding company will not be a subsidiary of the regulated AEP Ohio transmission and distribution company that survives corporate separation, thereby isolating the utility from the AEP GenCo in AEP's corporate structure.

### **STAFF COMMENTS**

Pursuant to the Commission's Order in Case No. 11-346-EL-SSO, CSP and OPCo were granted authority by the Commission to legally separate each company's distribution and transmission functions from the generation functions. In addition, Staff has reviewed OPCo's Application filed in Case No. 11-533-EL-UNC, and finds it to be in conformance with the approval granted by the Commission. However, there are a host of details that will need to be addressed during the steps to the new corporate structure. Staff believes that in granting approval of the concept, additional review of the cases associated with the progression towards corporate separation will be required. For example, when OPCo files an Application to Issue Securities (AIS) case to rebalance the debt, Staff will need to be mindful of how it affects corporate separation and ensure the balance of competition is not unfairly altered. In addition, Staff contends that when the generation related assets are transferred from OPCo to AEP GenCo, an application to transfer those assets should be filed with the Commission. This application should set out the assets that are going to be transferred, the financial terms of the transfer and any

additional liabilities that may not be transferred with the underlying assets, among other things.

The companies requested a waiver of Ohio Administrative Code Section 4901:1-37-09(C)(4), which requires that a company that is transferring assets, state the fair market value and book value of all property to be transferred from the electric utility, and state how the fair market value was determined. In this case, OPCo and CSP requested a waiver of the market determination and asked for approval of the transfer of the generating assets at net book value. At this time, AEP has not provided supporting rationale as to why a waiver of this rule is necessary. In addition, a determination of the particular value that the assets should be transferred at is premature at this time. There is no evidence in the record reflecting what the net book value of the generating assets are and there is no market study of the generating assets that the Commission can evaluate to determine the reasonableness of the transfer value of the assets. Staff recommends, without more supporting justification, that the waiver not be granted and that the Commission reserve the decision regarding the transfer value of the generating assets when a market study is provided.

As AEP Ohio's Application moves through the FERC process, the Commission will need to take an active role in those proceedings. To aid in the monitoring, AEP Ohio should collaborate with Staff in its effort to achieve FERC approval of corporate separation and power pool dissolution and other amendments that will be required to achieve full legal corporate separation. This should aid in the completion of full corporate

separation prior to the first scheduled auction (before September of 2013).<sup>5</sup> Specifically, in order to achieve this, AEP Ohio agreed to fulfill the milestones and timelines for such filings as set forth in the Stipulation. AEP Ohio also agreed to conduct quarterly meetings with the Signatory Parties to the Stipulation to discuss the status of the FERC proceedings and address progress toward completion of the milestones. Staff believes this is a very positive collaborative process and should aid in the review of other cases that will be filed with the Commission during the progression toward AEP Ohio's new corporate structure.

To meaningfully assist the Commission in processing the related cases that involve corporate separation, AEP Ohio should provide pro-forma financial information and other related documents to the Staff as they are developed.

Some additional items that the Commission will need to review include but are not limited to: 1) Codes of Conduct Enhancements that are necessary after the process is complete; 2) agreements that are updated based on the completed process and other changes that were necessary; and 3) an updated Cost Allocation Manual. During the process of corporate separation AEP Ohio must continue to abide by the corporate separation rules. If, during the process, AEP believes a temporary suspension of a rule or rules is necessary, it must file for a waiver to the relevant rule prior to committing any violation to the rules.

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<sup>5</sup> *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC (Opinion and Order) (December 14, 2011).



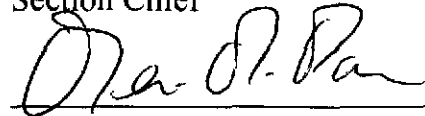
Furthermore, Staff believes AEP Ohio should be prudent in its actions and not unnecessarily incur cost to achieve legal separation. Finally, within two years after the completion of the corporate separation process, an audit will be conducted to assess compliance with the Commission's corporation separation rules. The Commission should have the discretion to conduct the audit itself or via an independent auditor chosen by and under the direction of the Staff and paid for by the Company.

## SUMMARY

Staff believes the Application filed in Case No. 11-533-EL-UNC is in compliance with the intent of the Commission's December 14, 2011 Opinion and Order in Case No. 11-346-EL-SSO and, therefore, recommends its approval. However, the progression towards AEP Ohio's new corporate structure will have several state level proceedings which will require active Commission approval and will require active participation by the Commission at the federal level to ensure that corporate separation occurs in a manner that is in the public interest and in conformance with the intent of the Commission's Opinion and Order in Case 11-346-EL-SSO.

**Michael DeWine**  
Ohio Attorney General

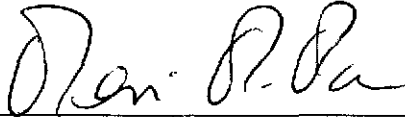
**William L. Wright**  
Section Chief



**Devin D. Parram**  
**Thomas W. McNamee**  
Assistant Attorneys General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215-3793  
614.466.4395 (telephone)  
614.644.8764 (fax)  
[devin.parram@puc.state.oh.us](mailto:devin.parram@puc.state.oh.us)  
[thomas.mcnamee@puc.state.oh.us](mailto:thomas.mcnamee@puc.state.oh.us)

## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Comments and Recommendations** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via e-mail upon the following Parties of Record, this 15<sup>th</sup> day of December, 2011.



**Devin D. Parram**  
Assistant Attorney General

### Parties of Record:

Steve T. Nourse  
Matthew J. Satterwhite  
American Electric Power Service Corp.  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, OH 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

Maureen R. Grady  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, OH 43215  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)

Kurt P. Helfrich  
Ann B. Zallocco  
Thompson Hine  
41 South High Street, Suite 1700  
Columbus, OH 43215-6101  
[kurt.helfrich@thompsonhine.com](mailto:kurt.helfrich@thompsonhine.com)  
[ann.zallocco@thompsonhine.com](mailto:ann.zallocco@thompsonhine.com)

Samuel C. Randazzo  
Frank P. Darr  
Joseph E. Olikier  
McNees, Wallace & Nurick  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
[sam@mwncmh.cmo](mailto:sam@mwncmh.cmo)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)

Mark A. Hayden  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Terrance O'Donnell  
Christopher Montgomery  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215-4291  
[todonnell@bricker.com](mailto:todonnell@bricker.com)  
[cmontgomery@bricker.com](mailto:cmontgomery@bricker.com)

M. Howard Petricoff  
Michael J. Settineri  
Lija Kaleps-Clark  
Vorys, Sater, Seymour & Pease  
52 East Gay Street  
P.O. Box 1008  
Columbus, OH 43216-1008  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[lkalepsclark@vorys.com](mailto:lkalepsclark@vorys.com)

Thomas J. O'Brien  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215  
[tobrien@bricker.com](mailto:tobrien@bricker.com)

Greg Poulos  
EnerNOC, Inc.  
101 Federal Street, Suite 1100  
Boston, MA 02110  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)

David F. Boehm  
Michael Kurtz  
Boehm, Kurtz & Lowery  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)

Christopher L. Miller  
Gregory H. Dunn  
Asim Z. Haque  
Schottenstein Zox & Dunn  
240 West Street  
Columbus, OH 43215-  
[cmiller@szd.com](mailto:cmiller@szd.com)  
[gdunn@szd.com](mailto:gdunn@szd.com)  
[ahaque@szd.com](mailto:ahaque@szd.com)

James F. Lange  
Laura c. McBride  
N. Trevor Alexander  
Calfee, halter & Griswold  
1400 KeyBank Center  
800 Superior Avenue  
Cleveland, OH 44114  
[jlange@clafee.com](mailto:jlange@clafee.com)  
[lmcbride@calfee.com](mailto:lmcbride@calfee.com)  
[tallexander@calfee.cmo](mailto:tallexander@calfee.cmo)

Lisa G. McAlister  
Matthew W. Warnock  
Bricker & Eckler  
100 South Third Street  
Columbus, OH 43215  
[lmcalister@bricker.com](mailto:lmcalister@bricker.com)  
[mwarnock@bricker.com](mailto:mwarnock@bricker.com)

Tara C. Santarelli  
Environmental Law & Policy Center  
1207 Grandview Avenue, Suite 201  
Columbus, OH 43212  
[tsantarelli@elpc.org](mailto:tsantarelli@elpc.org)

John Bentine  
Mark Yurick  
Zachary Kravitz  
Chester Willcox & Saxbe  
65 East State Street, Suite 1000  
Columbus, OH 43215  
[jbentine@cswslaw.com](mailto:jbentine@cswslaw.com)  
[myurick@cswslaw.com](mailto:myurick@cswslaw.com)  
[zkravitz@cswslaw.com](mailto:zkravitz@cswslaw.com)

Allison E. Haedt  
Jones Day  
P.O. Box 165017  
Columbus, OH 43216-5017  
[aehaedt@jonesday.com](mailto:aehaedt@jonesday.com)

John N. Estes III  
Paul F. Wight  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005  
[jestes@skadden.com](mailto:jestes@skadden.com)  
[paul.wight@skadden.com](mailto:paul.wight@skadden.com)

David A. Kutik  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)

Sandy Grace  
Exelon Generation Company  
101 Constitution Avenue, N.W.  
Suite 400 East  
Washington, DC 20001  
[sandy.grace@exeloncorp.com](mailto:sandy.grace@exeloncorp.com)