

**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.)

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") files these reply comments, regarding the impact of the Application on Ohio consumers. In its Entry of December 2, 2011, the Public Utilities Commission of Ohio ("Commission" or "PUCO") established deadlines for comments and reply comments on the September 30, 2011 Ohio Power Company ("OP" or "Company") Application. That Application sought approval of an amendment to OP's corporate separation plan in order to implement structural separation.

On December 8, 2011, OCC filed a Motion to Intervene. On December 15, 2011, OCC and others filed comments on the amended corporate separation plan. OCC files these reply comments to protect customers of Ohio Power from harm that may result if the Commission approves the application without further information, investigation, and proceedings.

II. COMMENTS

A. **The Comments of OCC, IEU, FES, the PUCO Staff, and others demonstrate the need for further information before the Commission can assess the Company's Application.**

A common theme in the comments filed by interested parties is that the Company's application is deficient in a number of respects. The Industrial Energy Users ("IEU") correctly point out that the PUCO's rules require detailed and specific information related to an application to sell or transfer units—information that has not been provided.¹ Duke Energy Commercial Asset Management, Inc. ("DECAM") comments that the ESP Stipulation and Recommendation,² which is repeatedly referred to by the Company, does not provide details as to how the transfer of assets will be accomplished.³

The PUCO Staff comments that there are a "host of details that will need to be addressed during the steps to the new corporate structure" and asserts that an application to transfer assets should be separately filed with the Commission.⁴ The PUCO Staff also notes that the Commission will need a market study of the value of the generating assets before deciding upon their appropriate transfer value.⁵ FirstEnergy Solutions ("FES") urges the Commission to review the details regarding the asset transfer and allow parties

¹ IEU Comments at 4.

² Case No. 11-346-EL-SSO (ESP II).

³ DECAM Comments at 3.

⁴ PUCO Staff Comments at 4.

⁵ PUCO Staff Comments at 5.

a reasonable period for discovery, followed by a hearing, before corporate separation is approved.⁶

OCC concurs with all these comments.⁷ Further information is needed before the PUCO can rule upon the application. The PUCO should order such information to be provided, and should establish a reasonable process which should include discovery, a hearing, and a full vetting of the plan.⁸

B. The process under which the corporate separation plan is to be examined should be an open process.

The PUCO Staff in its comments lists a number of additional items that the Commission will need to review under the corporate separation plan.⁹ The PUCO Staff emphasizes that the Commission will have to take an active role in monitoring the process of the application as it moves through the federal level.¹⁰ The PUCO Staff opines that the Company should collaborate with it to achieve FERC approval.¹¹ The PUCO Staff also notes that AEP has agreed under the ESP II Stipulation to conduct quarterly meetings with the “Signatory Parties to the Stipulation to discuss the status of the FERC proceeding and address progress toward completion of the milestones.” The PUCO Staff also notes the need for an audit, two years after completion of corporate separation, to assess whether the Company has complied with the PUCO’s separation rules.¹²

⁶ FES Comments at 4-5.

⁷ See OCC Initial Comments at 2-6.

⁸ That process has not occurred so far, despite Exelon’s assertions otherwise. See Exelon Comments at 2.

⁹ PUCO Staff Comments at 5-6.

¹⁰ Id at 5.

¹¹ Id.

¹² PUCO Staff comments at 7.

The spirit of the PUCO Staff's comments—that the application should be closely examined—is noteworthy. However, the review process should not be closed to non-Signatory Parties; nor should the audits of compliance with PUCO rules be a closed process. It is important for the process to be open and transparent, for the interests of all parties, including residential customers. Indeed the Commission has in the past, required certain processes for corporate separation plan such as staff reports and audits to ensure public input.¹³ Allowing interested parties to participate in the quarterly meetings and review any audits of compliance with corporate separation rules, with the opportunity to comment, will aid in ensuring that the process is public and transparent.

C. The Commission should closely examine the costs associated with Ohio Power's corporate separation.

In its original comments OCC noted its concerns with respect to the transaction costs associated with corporate separation.¹⁴ Transaction costs are costs incurred that may include, but are not limited to, legal filings and proceedings on the state and federal level to secure corporate separation. The PUCO Staff appears to be concerned as well. It notes that AEP Ohio should be prudent in its actions and not unnecessarily incur costs to achieve legal separation.¹⁵ These comments are appropriate but do not go far enough. As OCC indicated in its initial comments, the Commission should disallow such

¹³ See *In the Matter of the Application of FirstEnergy Corp. for Approval of their Transition Plans and For Authorization to Collect Transition Revenues*; Case No. 99-1212-EL-ETP (Staff investigation conducted of the corporate separation plans of FirstEnergy); *In the Matter of Columbus Southern Power Company and Ohio Power Company for Approval of Their Corporate Separation Plans*, Case No. 09-464-EL-UNC (auditor hired to evaluate the corporate separation plans and parties were invited to comment on auditor's findings).

¹⁴ OCC Comments at 11.

¹⁵ Staff Comments at 7.

transaction costs since they are not related to the provision of service by the remaining electric distribution utility.¹⁶

D. The Commission should reject Exelon’s recommendation that the existing REPAs be treated as “dedicated resources” under Paragraph IV.1.r of the Stipulation.

In its comments, Exelon suggests that the REPAs “should be treated in the same way that the “dedicated resources” are treated under Paragraph IV.1.r of the Stipulation in Case No. 11-346-EL-SSO et al (i.e., financially settled in order to ensure that customers receive the agreed upon energy, capacity, and renewable energy credits determined by the Commission).”¹⁷ OCC disagrees.

Exelon’s approach would mean that OP could collect the cost for the REPA’s through a nonbypassable charge. The REPAs, however, are not generation assets on the Company’s books (meaning OP does not have an equity interest) and therefore are not specifically provided for as a bypassable charge under Ohio Rev. Code 4928.143(B)(2). Adding unjustified non-bypassable charges could hamper electric retail competition in Ohio, in conflict with the express policy provisions of the code, including R.C. 4928.02(H) and (I), and 4928.06.

Instead, any renewable energy credit (“REC”) portion of the REPA’s Commission approved cost should be collected through the bypassable Alternative Energy Rider. Energy and any capacity costs approved by the Commission should be collected through the bypassable fuel adjustment clause rider (“FAC”) and not the Company’s generation resource rider (“Rider GRR”).

¹⁶ See OCC Comments at 11.

¹⁷ Exelon Comments at 4.

In its December 15, 2011 Comments, OCC recommended that OP retain the renewable energy purchase agreements (“REPA”)--identified in Ms. Simmons’ testimony as the 99 MW Timber Road wind REPA, the 100 MW Fowler Ridge II wind REPA, and the 10 MW Wyandot solar REPA--because of their hedge value. This hedge value would protect consumers by assuring a relatively fixed price from the REPA resources devoid of future fuel price increases or increasing fossil fuel generation costs from new EPA regulations.¹⁸

OCC, however, does agree with Exelon on a point. Exelon’s position is that the Commission should abstain from addressing the renewable energy credit procurement as part of its order and instead allow the stakeholder process to investigate the various renewable procurement mechanisms that are available.¹⁹ That approach is appropriate.

III. CONCLUSION

Under the corporate separation plan proposed by the Company, significant generation assets would be transferred to an unregulated subsidiary. The Company has failed to demonstrate how the transfer of such assets is just, reasonable, and in the public interest as required by Ohio Adm. Code 4901:1-37-09. Nor has the Company shown that the corporate separation plan as a whole satisfies the public interest or is legally sufficient under R.C. 4928.17. Consequently, the Commission should fix a time and place for an evidentiary hearing on the application. Further information, investigation, and proceedings would be appropriate to assure due process for parties. Such a finding would be consistent with the PUCO’s recent determination in the Companies’ ESP case that

¹⁸ OCC Comments at 12.

¹⁹ Id. at 3-4.

additional time is needed to determine and understand the conditions relating to the sale and/or transfer of the generation assets from OP to AEP GenCo.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments was served on the persons stated below via regular U.S. Mail, postage prepaid, this 29th day of December, 2011.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

12/29/2011 2:33:28 PM

in

Case No(s). 11-5333-EL-UNC

Summary: Comments Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.