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BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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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

PUCO

OHIO POWER COMPANY'S REPLY TO OCC'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. Under Rule 4901:1-37-02(C), the Commission may waive any requirement of Chapter 37 for good cause shown. The Ohio Consumers' Counsel (OCC) filed a memorandum contra on April 16, 2012 objecting to both waiver requests. For the following reasons, the Commission should reject OCC's arguments and grant both requests for waiver.

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. Because that transition period is over, OPCo reasons that EDUs can no longer recover

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stranded generation investments, and transferring the generation assets based on an arbitrary determination of their current fair market value rather than net book value would be inappropriate.

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.

OCC objects to this waiver request for two reasons. First, OCC contends that anytime an asset is transferred at anything other than fair market value it is “likely” that the affiliate paid less than fair market value for a public utility asset and, thus, gains a competitive advantage, receives an undue preference, and the asset transfer equates to a market abuse contrary to the relevant statute, rules, and public policies underlying corporate separation. Aside from being an argument that is premised on its conclusion, OCC ignores the key fact that *these assets were already subjected to market*, and the EDUs recovered stranded generation investments during a Commission-approved transition period. Because that transition period is over, transferring the same generation assets based on an arbitrary determination of their current fair market value rather than net book value is inappropriate.

Second, OCC argues that OPCo “misuses” 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. OCC makes the same misguided arguments as it did in its January 13, 2011 motion to strike portions of Exelon Generation Company, LLC's and OPCo's comments in Case No. 11-5333. 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 OCC is 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. While the signatory parties agreed not to be bound 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.

As in Case No. 11-5333, the point OPCo is making, which OCC 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 OCC, 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)

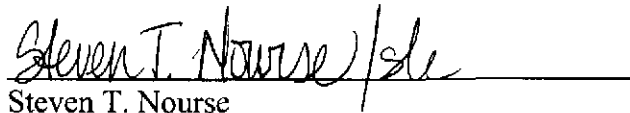
With these commitments, OPCo contends there is good cause for the Commission to grant waiver of the hearing requirement under Rule 4901:1-37-09(D), as it recently did for Duke Energy Ohio.

OCC's basis for objecting to this waiver request is that "this is an attempt by the Company to misuse an isolated provision in the Duke Stipulation to allow it to forego an evidentiary hearing on its application." Memo Contra at 7. For the reasons stated above, OCC's "misuse" 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 OCC's claim that a hearing is necessary so that the Commission can support its decision with evidence in the record – "not on evidence produced in some other proceeding, under different circumstances" – 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 OCC'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,

A handwritten signature in black ink, appearing to read "Steven T. Nourse", is written over a horizontal line.

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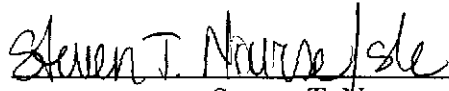
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CERTIFICATE OF SERVICE

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