

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Ohio Power)	
Company For Approval Of Full Legal Corporate)	
Separation And Amendment To Its Corporate)	Case No. 12-1126-EL-UNC
Separation Plan.)	

INITIAL COMMENTS OF THE OMA ENERGY GROUP

I. INTRODUCTION

On March 30, 2012, Ohio Power Company ("OP") and American Electric Power Company, Inc. ("AEP") filed an application seeking full legal corporate separation for the purpose of amending OP's existing corporate separation plan. OP proposes to separate its generation function from its transmission and distribution functions. Additionally, OP seeks waivers from the Public Utilities Commission of Ohio ("Commission") of Rule 4901:1-37-09(C)(4), Ohio Administrative Code ("O.A.C."), requiring that its application state the fair market value and book value of any generating assets that it plans to transfer to an affiliate, and Rule 4901:1-37-09(D), O.A.C., which requires a hearing in this proceeding.

Consistent with the Attorney Examiner Entries from July 9, and July 24, 2012, the OMA Energy Group ("OMAEG") provides its initial comments on OP's application for the Commission's consideration.

II. COMMENTS

Once the Commission authorizes full legal corporate separation, OP will not own generating assets to serve its Ohio customers. The result is that OP and Ohio customers will be subject to market prices without recourse or an ability to "put the

genie back into the bottle.” Thus, the Commission should make a serious inquiry based upon full and public disclosure of as much information regarding the transaction that will effectuate full corporate separation as possible to make sure customers are protected and are not harmed by the transaction itself. As the Commission and intervenors in AEP-Ohio’s cases have learned, full and public disclosure of AEP-Ohio’s plans is critical to protecting customer interests.

OP may not sell or transfer any generating assets without prior Commission approval. Section 4928.17, Revised Code. Pursuant to Rule 4901:1-37-09(A), OAC, an application to sell or transfer generating assets must, *at a minimum*:

(1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.

(2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code.

(3) Demonstrate how the proposed sale or transfer will affect the public interest.

(4) 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.

The Commission may only approve an application to sell or transfer generating assets once it is satisfied that the sale or transfer is just, reasonable, and in the public interest. Rule 4901:1-37-09(E), OAC. Rule 4901:1-37-02, OAC, sets forth the purpose of the Commission’s rules on corporate separation. Among other things, the Commission’s rules are intended to protect customers by creating uniform standards so a competitive advantage is not gained solely because of corporate affiliation. Specifically, the rules are 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.

OP has the burden of proof to demonstrate compliance with the Commission's rules and Section 4928.17, Revised Code. OP has not provided sufficient information, or even the minimum information required by Rule 4901:1-37-09(C)(4), OAC, to demonstrate that its transfer of generation assets is just, reasonable and in the public interest. Rather, OP has requested a waiver to avoid providing critical information to determine whether the transfer is just, reasonable and in the public interest – namely, what the assets are worth and the value at which they are being transferred.

OP states that full legal corporate separation will achieve important objectives for the Company and its customers. However, OP makes only two arguments in support of its application. First, OP argues that the proposed generating asset transfer will fulfill the mandate of Section 4928.17, Revised Code, and terminate the "interim" plan of functional separation for OP. Second, OP argues that full corporate separation is a fundamental element of OP's currently pending Electric Security Plan ("ESP") in Case No. 11-346-EL-SSO. Neither of these arguments demonstrates how the transfer of OP's generating assets is just, reasonable and in the public interest.

First, while the OMAEG agrees that complying with the mandates of Ohio law is a good thing, OP's argument that the transfer will fulfill the mandates of Section 4928.17, Revised Code, does not provide any evidence for how the transfer will result in benefits to the public interest. Moreover, Section 4928.17(C), Revised Code, permits the Commission to approve a corporate separation plan only upon finding that the plan complies with the statutory requirements *and* will provide for ongoing compliance with

the policy set forth in Section 4928.02, Revised Code. Section 4928.02, Revised Code, declares that it is the policy of the State, among other things, to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service; ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; and, ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates. Thus, transitioning from an interim business model of functional separation to a permanent business model of full legal separation, without any demonstration for how the transition meets the policy of the State, results in a deficient application that the Commission is unable to approve.

Additionally, OP's current functional separation plan also complies with the mandates of Section 4928.17(C), Revised Code. In fact, OP has argued numerous times that during the currently effective interim period with functional separation in place, OP has provided its customers below market rates.¹

Thus, functional or full legal corporate separation may comply with the mandates of Section 4928.17, Revised Code, so long as the utility can demonstrate that its

¹ See, for example, *In the Matter of the Application of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Ohio Power Company's Reply Post-Hearing Brief at 1 (May 30, 2012).

corporate separation plan is just, reasonable, in the public interest and complies with Section 4928.02, Revised Code. OP has not demonstrated that its corporate separation application and the transfer of its generating assets meet the hurdles necessary to make the transition from interim to full legal corporate separation. The transition itself is not enough.

Second, OP states that the impact of structural corporate separation on the ESP is that it will ultimately lead to full market-based pricing of generation service for retail customers and will promote retail shopping in Ohio. Further, OP states that transformation of OP's business model through corporate separation is critical to facilitating an auction-based Standard Service Offer ("SSO") starting on January 1, 2015. In spite of OP's argument that full legal separation is a fundamental element of its ESP, in the very next breath, OP states that it will pursue corporate separation independent of any outcome in the ESP case. OP has attempted to tie this case to its ESP by including a provision in its ESP that allows OP to recover, through a nonbypassable charge, an unknown and unlimited amount to compensate OP for any loss of earnings associated with termination of the AEP Interconnection Agreement (aka, the AEP Pool) if the Commission even *modifies* its corporate separation application. However, these cases are now moving forward independently of each other and the Commission should review the corporate separation based upon the criteria set forth in Ohio law and the evidence presented in this case (or the lack thereof). Again, while the OMAEG understands the impact on the ESP of corporate separation, OP has provided no evidence or basis for demonstrating that its proposed

transfer of generating assets in this case is just, reasonable, in the public interest, or complies with Section 4928.02, Revised Code.

OP requested a waiver of the Commission's rules requiring that OP provide the book and market value of the assets. OP also requested waiver of the mandatory hearing pursuant to Rule 4901:1-37, OAC. Several parties filed memoranda contra OP's waiver request and demonstrated that OP did not demonstrate good cause for the requests. Although the Commission has not yet ruled on the requests for waiver, the time for memoranda contra the waiver requests has passed. Accordingly, the OMAEG will not argue on the waiver requests. However, OP has not provided the required information to date. Thus, other than pointing out that both the information provided and the arguments supporting its application are deficient, meaningful comments on the merits of OP's application are rendered impossible. The OMAEG respectfully requests that the Commission require OP to provide the minimum information required by the Commission's rules.

Additionally, the Commission **must** hold a hearing with respect to any application that proposes to alter the jurisdiction of the Commission over a generating asset. Rule 4901:137-09(D), OAC. As OP notes, once full corporate separation is complete, AEP Generation will receive the legacy generating assets and can engage in sales for resale as regulated by the Federal Energy Regulatory Commission ("FERC"). Accordingly, the Commission should schedule a hearing on this matter a reasonable time after OP provides the net book and market value of the generating assets.

III. CONCLUSION

For the reasons set forth herein, the Commission should direct OP to provide the net book and market value of the generating assets and schedule a hearing on this matter.

Respectfully submitted on behalf of
THE OMA ENERGY GROUP



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Initial Comments of the OMA Energy Group was served upon the parties of record listed below this 27th day of July 2012 *via* email transmission or first class mail.



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Summary: Comments Initial Comments of the OMA Energy Group electronically filed by Ms. Andrea P. Govan on behalf of McAlister, Lisa G. Mrs. and OMA Energy Group and Siwo, J. Thomas Mr.