

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio	)	
Power Company for Approval of Full Legal	)	Case No. 12-1126-EL-UNC
Corporate Separation and Amendment to its	)	
Corporate Separation Plan.	)	

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**FIRSTENERGY SOLUTIONS CORP.'S REPLY COMMENTS**

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Pursuant to the Attorney Examiner's July 9, 2012 Entry, FirstEnergy Solutions Corp. ("FES") hereby submits its reply comments on the Application of Ohio Power Company ("AEP Ohio") to amend its existing corporate separation plan. FES continues to support AEP Ohio's overdue structural corporate separation of its generation services from its distribution services.

**1. Functional Separation Is Not A Permanent Solution.**

FES agrees in part with certain recommendations made by OMA. FES agrees with OMA that AEP Ohio is required to corporately separate by R.C. § 4928.17.<sup>1</sup> FES also agrees that "complying with the mandates of Ohio law is a good thing."<sup>2</sup> AEP Ohio agrees with this position, acknowledging in 2009 that "functional separation can only be permitted for an *interim* period."<sup>3</sup> These areas of agreement are why FES supports (with modifications) AEP Ohio's request to structurally separate.

Where FES and OMA disagree is OMA's claim that the lack of perfect information regarding the effect of corporate separation on the public interest constitutes grounds for rejecting AEP Ohio's application indefinitely since the current functional separation plan appears

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<sup>1</sup> OMA Initial Comments, p. 3.

<sup>2</sup> OMA Initial Comments, p. 3.

<sup>3</sup> See Application, Case No. 09-464-EL-UNC (emphasis added),

to be working.<sup>4</sup> While it is certainly possible to question how well functional separation is working when AEP Ohio seeks to impose millions of dollars in above-market capacity charges to CRES providers while simply forwarding generation revenue to AEP Generation after corporate separation,<sup>5</sup> this misses the point. There is no requirement under Ohio law that the Commission have perfect knowledge of how corporate separation will affect the public interest. AEP Ohio has put forth a plan which, with certain modifications, will at long last achieve structural separation and truly separate the company. This should be applauded, as functional separation under R.C. § 4928.17(C) was intended to be “interim” only. The statute does not anticipate that functional separation would last forever, and OMA’s request to continue functional separation indefinitely should be rejected.

**2. There Is No Justification For Providing RSR Revenue To AEP Generation After Corporate Separation Through An Improper Above-Market Contract.**

As discussed in detail in FES’ initial comments,<sup>6</sup> AEP Ohio has requested that the RSR continue even after corporate separation. FES has previously explained in detail why the RSR is not necessary or appropriate.<sup>7</sup> However, if the Commission approves an RSR in some form, as pointed out by both FES and OCC<sup>8</sup> there is no justification for providing AEP Generation with RSR revenues post corporate separation. The justification for the RSR relates to (invalid) claims of potential financial harm that might occur prior to corporate separation.<sup>9</sup> As correctly pointed

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<sup>4</sup> OMA Initial Comments, p. 4.

<sup>5</sup> See Application, p. 15; Case No. 11-346-EL-SSO, Tr. Vol. II, p. 517.

<sup>6</sup> FES Initial Comments, pp. 3-5.

<sup>7</sup> See FES Initial Comments, pp. 3-4.

<sup>8</sup> OCC Initial Comments, pp. 10-12.

<sup>9</sup> AEP Ohio’s testimony in the Modified ESP proceeding argued only that it might incur financial harm, absent the RSR, in 2013, prior to corporate separation on January 1, 2014. AEP Ohio’s testimony showed that it would not incur any financial harm in 2014 or 2015. See Case No. 11-346-EL-SSO, Direct

out by both FES and OCC, there is no justification for providing an anti-competitive subsidy to *AEP Generation* after corporate separation to resolve issues relating to financial harm to *AEP Ohio*. FES agrees with OCC that there is no valid justification for this proposed cross-subsidy, and the Commission must ensure that any RSR revenues terminate on the date of corporate separation.

**3. The Proposed Above-Market Wholesale Contract With AEP Generation After Corporate Separation Violates FERC Standards And Will Impose Higher Costs On Customers.**

FES agrees with IEU<sup>10</sup> that the proposed above-market wholesale contract with AEP Generation after corporate separation should be rejected. AEP Ohio has proposed a corporate separation plan which anticipates a “wholesale power purchase by OPCo from AEP Generation from the closing of corporate separation until the date that power begins to be delivered under the auction of SSO service.”<sup>11</sup> In essence, this would provide AEP Generation with above-market SSO generation pricing after it has corporately separated from AEP Ohio, thereby giving AEP Generation an improper cross-subsidy. This proposed contract is improper because: (1) the contract is subject to the prudence requirements of R.C. § 4928.143(B)(2)(a) and the proposed pricing is not prudent; and (2) the proposed agreement between AEP Ohio and AEP Generation would violate the FERC *Edgar* standards, which prevent the misuse of market power.<sup>12</sup> As discussed by both FES and IEU, there is no justification for an above-market contract to subsidize AEP Ohio’s competitive affiliate, and the Commission should make clear that it is reserving judgment on the proposed wholesale contract for a later proceeding.

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Testimony of Oliver J. Sever, Jr. filed March 30, 2012, Ex. OJS-2, p. 1 (showing AEP Ohio return on common equity of 10.5% for years 2014 and 2015).

<sup>10</sup> IEU Initial Comments, p 11.

<sup>11</sup> Application, p. 15.

#### **4. Conclusion**

FES supports AEP Ohio's request to corporately separate, and with the modifications provided in its initial comments requests that AEP Ohio's application be approved.

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<sup>12</sup> See Case No. 11-346-EL-SSO, FES Post-Hearing Brief dated June 29, 2012, pp. 102-05.

Respectfully submitted,

Dated: August 3, 2012

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *FirstEnergy Solutions Corp.'s Reply Comments* was served this 3rd day of August, 2012, via e-mail upon the parties below.

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