

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.)

FIRSTENERGY SOLUTIONS CORP.’S REPLY COMMENTS

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. § 4928.17.¹ FES also agrees that “complying with the mandates of Ohio law is a good thing.”² AEP Ohio agrees with this position, acknowledging in 2009 that “functional separation can only be permitted for an *interim* period.”³ 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

¹ OMA Initial Comments, p. 3.

² OMA Initial Comments, p. 3.

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

to be working.⁴ 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,⁵ 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,⁶ 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.⁷ However, if the Commission approves an RSR in some form, as pointed out by both FES and OCC⁸ 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.⁹ As correctly pointed

⁴ OMA Initial Comments, p. 4.

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

⁶ FES Initial Comments, pp. 3-5.

⁷ See FES Initial Comments, pp. 3-4.

⁸ OCC Initial Comments, pp. 10-12.

⁹ 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 IEU¹⁰ 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.”¹¹ 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.¹² 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.

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).

¹⁰ IEU Initial Comments, p 11.

¹¹ 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.

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

Respectfully submitted,

Dated: August 3, 2012

/s/ Mark A. Hayden

Mark A. Hayden (0081077)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
(330) 761-7735
(330) 384-3875 (fax)
haydenm@firstenergycorp.com

James F. Lang (0059668)
Laura C. McBride (0080059)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
(216) 622-8200
(216) 241-0816 (fax)
jlang@calfee.com
lmcbride@calfee.com
talexander@calfee.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
(216) 586-3939
(216) 579-0212 (fax)
dakutik@jonesday.com

Allison E. Haedt (0082243)
JONES DAY
P.O. Box 165017
Columbus, OH 43216-5017
(614) 469-3939
(614) 461-4198 (fax)
aehaedt@jonesday.com

Attorneys for FirstEnergy Solutions Corp.

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.

/s/ N. Trevor Alexander

One of the Attorneys for FirstEnergy Solutions Corp.

Steven T. Nourse
Matthew J. Satterwhite
American Electric Power Corp.
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
stnourse@aep.com
mjsatterwhite@aep.com

Maureen R. Grady, Counsel of Record
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, Ohio 43215
grady@occ.state.oh.us

Samuel C. Randazzo
Joseph E. Olikier
Frank P. Darr
Matthew R. Pritchard
McNees Wallace & Nurick
21 East State St., 17th Floor
Columbus, OH 43215
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com
mpritichard@mwncmh.com

Amy B. Spiller
Jeanne W. Kingery
Duke Energy Retail Sales
139 East Fourth St.
1303-Main
Cincinnati, OH 45202
jeanne.kingery@duke-energy.com
amy.spiller@duke-energy.com

Robert A. McMahon, Counsel of Record
Eberly McMahon LLC
2321 Kemper Lane, Suite 100
Cincinnati, OH 45206
BMcMahon@emh-law.com

Michael L. Kurtz
David F. Boehm
Jody M. Kyler
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jklyer@BKLawfirm.com

Rocco D'Ascenzo
Associate General Counsel
Elizabeth Watts
Associate General Counsel
139 E. Fourth Street, 1303-Main
Cincinnati, OH 45202
Elizabeth.Watts@duke-energy.com
Rocco.D'Ascenzo@duke-energy.com

Joseph M. Clark, Counsel of Record
6641 North High Street, Suite 200
Worthington, OH 43085
jmclark@vectren.com

Kurt P. Helfrich
Ann B. Zallocco
Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, OH 43215-6101
Kurt.Helfrich@ThompsonHine.com
Ann.Zallocco@ThompsonHine.com

Richard L. Sites
General Counsel & Senior Director of Health
Policy
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620
ricks@ohanet.org

Mark S. Yurick
Zachary D. Kravitz
Taft Stettinius & Hollister, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com
zkravitz@taftlaw.com

William Wright
Assistant Attorney General
Chief, Public Utilities Section
180 E. Broad Street, 6th Floor
Columbus, OH 43215-3793
william.wright@puc.state.oh.us

Lisa G. McAlister, Counsel of Record
Matthew W. Warnock
J. Thomas Siwo
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
lmcaster@bricker.com
mwarnock@bricker.com
tsiwo@bricker.com

Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
mhpeticoff@vorys.com
smhoward@vorys.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/3/2012 2:36:43 PM

in

Case No(s). 12-1126-EL-UNC

Summary: Reply Comments of FirstEnergy Solutions Corp. electronically filed by Mr. Nathaniel Trevor Alexander on behalf of FirstEnergy Solutions Corp.