

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) Ohio Power Company (OP, Company) is a public utility as defined in Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of this Commission.
- (2) On January 27, 2011, in Case No. 11-346-EL-SSO, *et al.* (ESP 2), OP and Columbus Southern Power Company (CSP) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code.¹ The application was for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.
- (3) On September 7, 2011, a stipulation and recommendation (ESP 2 stipulation) was filed by OP, Staff, and other parties to resolve the issues raised in 11-346 and several other cases pending before the Commission.²
- (4) On December 14, 2011, the Commission issued an opinion and order in the ESP 2 and other pending cases, modifying

¹ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case Nos. 11-349-EL-AAM and 11-350-EL-AAM.

² *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-343-EL-ATA; *In the Matter of the Application of Ohio Power Company to Amend its Emergency Curtailment Service Riders*, Case No. 10-344-EL-ATA; *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC; *In the Matter of the Application of Columbus Southern Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4920-EL-RDR; *In the Matter of the Application of Ohio Power Company for Approval of a Mechanism to Recover Deferred Fuel Costs Pursuant to Section 4928.144, Revised Code*, Case No. 11-4921-EL-RDR.

and adopting the ESP stipulation (ESP 2 Order) which included approval of the request to merge CSP with and into OP to be effective December 31, 2011. Several applications for rehearing of the Commission's December 14, 2011, Order in the ESP 2 and consolidated cases were filed. On February 23, 2012, the Commission issued its Entry on Rehearing finding that the Stipulation, as a package, did not benefit ratepayers and was not in the public interest and, thus, did not satisfy the three-part test for the consideration of stipulations.

- (5) On March 30, 2012, in Case No. 11-346-EL-SSO, *et al.* (modified ESP 2), OP filed a modified application for a SSO pursuant to Section 4928.141, Revised Code.³ The modified application was also for an ESP in accordance with Section 4928.143, Revised Code.
- (6) On March 30, 2012, in the above captioned case, OP also filed an application for approval to amend its corporate separation plan in accordance with Rule 4901:1-37-06(A) and 4901:1-37-09, Ohio Administrative Code (O.A.C.) and pursuant to the requirements of Section 4928.17, Revised Code. As a part of its application, OP seeks a waiver of Rules 4901:1-37-09(C)(4), and 4901:1-37-09(D), O.A.C. Rule 4901:1-37-09(C)(4), O.A.C., requires that an application to sell or transfer generating assets state the fair market value and the book value of the property to be transferred. Rule 4901:1-37-09(D), directs that a hearing be scheduled, if at the Commission's discretion, the application appears to be unjust, unreasonable or not in the public interest. If the application alters the jurisdiction of the Commission as to generation assets, the Commission shall fix a time and place for hearing, unless for good cause shown the hearing is waived.
- (7) Pursuant to Rule 4901:1-37-06(B), O.A.C., a filing to revise or amend an electric utility's corporate separation plan shall be

³ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO and 11-348-EL-SSO; *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Certain Accounting Authority*, Case Nos. 11-349-EL-AAM and 11-350-EL-AAM.

deemed approved if not acted on by the Commission within 60 days after it is filed. By entry issued May 29, 2012, OP's application to revise its corporate separation plan was suspended, until the Commission specifically orders otherwise, to allow additional time to fully evaluate the proposed amendments.

- (8) By entry issued July 9, 2012, a procedural schedule was established such that motions to intervene were due July 20, 2012, comments or objections were due July 27, 2012, and reply comments were due August 3, 2012.
- (9) Motions to intervene were timely filed by the following parties: Industrial Energy Users-Ohio (IEU), Ohio Consumers' Counsel (OCC), Duke Energy Retail Sales, LLC (DER), Duke Energy Commercial Asset Management (DECAM), FirstEnergy Solutions Corporation (FES), Duke Energy Ohio, Inc. (Duke), Ohio Energy Group (OEG), Direct Energy Services, LLC and Direct Energy Business, LLC (jointly Direct Energy); Buckeye Power Inc. (Buckeye), OMA Energy Group (OMAEG), Ohio Hospital Association (OHA), the Kroger Company (Kroger), and Exelon Generation Company, LLC and Constellation NewEnergy, Inc. (jointly Exelon).
- (10) Each movant for intervention states that it has a direct, real, and substantial interest in the issues raised by OP's revised corporate separation application. Further, each movant states that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. No memoranda contra any motion to intervene was filed. The Commission finds that the motions to intervene are reasonable and should be granted.
- (11) In support of its application, OP states, among other things, that:
 - (a) The Commission granted OP and CSP authority to legally separate each company's distribution, transmission, and generation

functions in their electric transition plan cases.⁴ Subsequently, the Commission authorized OP and CSP to continue to operate on a functional separation basis in their rate stabilization plan case.⁵ Accordingly, AEP-Ohio has been operating pursuant to an interim functional corporate separation plan since 2001.⁶

- (b) Corporate separation will be accomplished in several steps. OP formed a subsidiary, AEP Generation Resources Inc. (AEPGenCo) for the purposes of planning, constructing, owning, and operating the generating assets of OP. OP states that the new subsidiary is necessary in order to implement full structural corporate separation, as proposed in the Company's modified ESP 2 application and to facilitate its transition to a competitive market-based standard service offer. OP thus seeks approval to modify its existing corporate separation plan to reflect the new structure that would result from the transfer of certain generating assets and contractual entitlements.
- (c) OP seeks Commission approval to transfer title of its generation assets, fuel and other generation-related assets at net book value to implement full legal corporate separation of its generation function. OP will transfer its generation assets, fuel and other generation-related assets to AEPGenCo to plan, construct, own and operate the generation assets.
- (d) Corporate separation requires approval by the Federal Energy Regulatory Commission (FERC) and corporate separation will be implemented as soon as reasonably possible

⁴ *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case No. 99-1729-EL-ETP, et al.

⁵ *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of a Post-Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC.

⁶ *Id.*

after such approvals are received but not earlier than the effective date of the termination of the Interconnection Agreement among OP and other American Electric Power Company Inc. (AEP) system affiliates.⁷

- (e) AEPGenCo will receive OP's existing generation assets, fuel and contractual entitlements⁸ assets and can engage in sales for resale as regulated by the FERC. AEPGenCo will assume all liabilities associated with the generating assets to be transferred except as specifically provided.
- (f) Subsequent to the transfer of the generation assets and liabilities from OP to AEPGenCo, AEPGenCo would transfer to Appalachian Power Company (APC) the interest in Unit 3 of the Amos generating plant and 80 percent of the Mitchell generating plant and transfer to Kentucky Power Company (KPC) 20 percent of the Mitchell generating plant.
- (g) OP will retain all renewable energy purchase agreements (REPAs), as OP does not consider them "generation assets" as set forth in Section 4928.17, Revised Code or Chapter 4901:1-37, Ohio Administrative Code (O.A.C.). Specifically, OP would retain the Timber Road wind REPA, the Fowler Ridge II wind REPA, and the Wyandot solar REPA, since each was acquired to facilitate compliance with Section 4928.64, Revised Code.
- (h) OP would also retain pollution control revenue bonds (PCRB) with tender dates after the closing of corporate separation. OP reasons that the PCRBs are a low cost component of

⁷ AEP is the parent company of OP, AEPGenCo and American Electric Power Service Corporation (AEPSC).

⁸ The contractual entitlements include purchase power agreements for the out put at the Lawrenceburg facility, Mone facility, the Cardinal Plant and the Ohio Valley Electric Corporation agreements.

OP's long-term debt portfolio which are not secured by generation assets, or any other asset. Furthermore, OP reasons that the PCRBS provide some financial flexibility and are tax exempt.

- (i) OP contends that full structural corporate separation of OP's generating assets from its transmission and distribution functions is a fundamental component of the Company's transition to full market-based pricing of its generation service for retail customers and will promote retail shopping in Ohio. Further, OP states the change in its business model through corporate separation is critical to facilitating an auction-based SSO.
- (j) OP will transfer its generation-related assets to AEPGenCo in exchange for all of the outstanding capital stock of AEPGenCo. OP will distribute its shares of AEPGenCo to AEP and AEP will then contribute all the stock of AEPGenCo to a sub-holding company that is not a subsidiary of OP that will survive corporate separation and isolates the utility from AEPGenCo.
- (k) By Finding and Order issued June 2, 2010, in Case No. 09-464-EL-UNC (09-464), the Commission approved CSP's and OP's corporate separation plan wherein CSP and OP filed the necessary information to comply with the requirements of Rule 4901:1-37-05, O.A.C. Based on the Commission's approval in 09-464, OP submits amendments to its corporate separation plan to reflect the merger of CSP into OP and the full structural corporate separation of the generation business from its distribution and transmission business. As proposed, once FERC approves corporate separation pursuant to the plan, OP would update the list of affiliates and corporate structure and the cost allocation manual to

include AEPGenCo and to reflect the merger of CSP into OP.

- (l) Upon corporate separation, until OP's SSO customers are served pursuant to auction, OP would purchase wholesale power from AEPGenCo pursuant to a full requirements contract. As proposed by OP, AEPGenCo would provide OP's SSO customers capacity from January 1, 2015 through May 31, 2015, but not energy under the wholesale power contract. As of June 1, 2015, energy and capacity for the Company's SSO customers would be procured through an SSO auction and the SSO contract between AEPGenCo and OP would terminate. OP states that the amendments to the corporate separation plan are the same amendments previously approved by the Commission in the Company's most recent corporate separation case which was subsequently withdrawn by the Company.⁹
- (m) Addressing the filing requirements for an application to sell or transfer generating assets, as set forth in Rule 4901:1-37-09(C), O.A.C., OP states that the object and purpose of the proposed transfer of generating assets is to fulfill the mandate of Section 4928.17, Revised Code, and terminate the interim functional separation. AEPGenCo would receive OP's existing generation units and contractual entitlements and assume all liabilities associated with the transferred generation assets, including retired plants and the associated liabilities. Post corporate separation, AEPGenCo would be able to provide competitive retail generation service, as well as engage in sales for resale as regulated by FERC.

⁹ Case No. 11-5333-EL-UNC, *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to its Corporate Separation Plan*, Finding and Order (January 23, 2012).

- (n) As full corporate separation requires approval by the FERC, OP states that corporate separation will be completed as soon as reasonable after the necessary approvals are received but not before the termination of the Pool Agreement, effective December 31, 2013, or such other date ordered by FERC. AEP-Ohio reasons that full structural corporate separation will facilitate an auction-based SSO. Further, OP believes that structural corporate separation advances the public interest by achieving the statutory mandate of Section 4928.17, Revised Code. Finally, OP proposes to transfer the generating assets at net book value and, accordingly, seeks a waiver of Rule 4901:1-37-09(C)(4), O.A.C., to the extent necessary.
 - (o) OP submits that there is no statutory requirement to provide the net book value and, therefore, the Commission may waive the requirement for good cause. OP offers that waiver of Rule 4901:1-37-09(C)(4), O.A.C., is reasonable in this case as OP seeks to transfer its generation assets to an affiliate within the same parent corporation. Further, OP states that transferring the generation assets based on an arbitrary determination of their fair market value is inappropriate.
 - (p) The sections of OP's existing corporate separation plan that are not affected by the proposed merger and structural corporate separation would continue to remain in effect.
- (12) On August 22, 2012, OP filed a supplemental statement to update, as represented in its application, the list of affiliates, as of August 3, 2012, and to update the corporate organizational chart included within the Cost Allocation Manual to include AEPGenCo and, as a result of the merger, eliminate CSP. In response to a request of the Staff, OP also agrees to update the Cost Allocation Manual, and notify

Staff of the update, once the FERC approval is received and contemporaneous with the closing for corporate separation.

- (13) On August 8, 2012, the Commission issued its Opinion and Order in OP's modified ESP proceeding (modified ESP 2 Order). As modified and approved, the Company's ESP 2 became effective with September 2012 billing and the modified ESP will continue through May 31, 2015. As a part of the modified ESP 2 proceeding, the Commission approved, with certain modifications, OP's request to transfer its generation assets, contracts and other assets and liabilities related to the generation business to AEPGenCo. Further, the August 8, 2012 Order deferred the terms and conditions of corporate separation to this proceeding.
- (14) In accordance with the procedural schedule established, timely comments were filed by Staff, OCC, FES, Exelon, OMAEG, Kroger and IEU on July 27, 2012. Reply comments were filed by OP, FES, and IEU on August 3, 2012.

Applicable Law

- (15) Section 4928.17, Revised Code, provides that an electric utility that, either directly or through an affiliate, engages in the business of supplying a noncompetitive retail electric service and a competitive retail electric service (CRES) or a product or service other than retail electric service must operate under a corporate separation plan. Pursuant to the statute, the corporate separation plan must be consistent with the policies of the state set forth in Section 4928.02, Revised Code, and achieve all of the following:
 - (a) provide, at minimum, for the provision of the CRES or the nonelectric product or service through a fully separated affiliate of the utility, and include separate accounting requirements, the code of conduct, and such other measures as are necessary to effectuate the state policy;
 - (b) satisfy the public interest in preventing unfair competitive advantage and preventing the abuse of market power; and

- (c) be sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the CRES or nonelectric product or service, without compensation based upon fully loaded embedded costs charged to the affiliate; and ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in the business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference.

Section 4928.17, Revised Code, further provides that no electric distribution utility shall sell or transfer any generating asset that it wholly or partly owns at any time without obtaining prior Commission approval.

- (16) Chapter 4901:1-37, O.A.C., sets forth the requirements pertaining to corporate separation for electric utilities. Specifically, the chapter is applicable to the activities of the utility and its transactions or other arrangements with its affiliates, any shared services of the utility with any affiliates, and the sale or transfer of generating assets. Rule 4901:1-37-09(B) through (D), O.A.C., set forth the filing requirements and the procedures to be followed for an application requesting approval of the sale or transfer of generating assets. Pursuant to Rule 4901:1-37-09(C), O.A.C., an application to sell or transfer generating assets must, at a minimum:
 - (a) clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same;
 - (b) demonstrate how the sale or transfer will affect the current and future SSO;
 - (c) demonstrate how the proposed sale or transfer will affect the public interest; and

- (d) 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.

Rule 4901:1-37-09(D), O.A.C., provides that the Commission may fix a time and place for a hearing if the application to sell or transfer generating assets appears to be unjust, unreasonable, or not in the public interest. The rule further provides that the Commission shall fix a time and place for a hearing with respect to any application that proposes to alter the jurisdiction of the Commission over a generating asset. Finally, pursuant to Rule 4901:1-37-02(C), O.A.C., the Commission may waive any requirement in Chapter 4901:1-37, O.A.C., other than a requirement mandated by statute, for good cause shown.

Comments and Company Replies

Procedural Issues

- (17) OMAEG contends that the Commission must hold a hearing on the application since it alters the jurisdiction of the Commission over generating assets in accordance with Rule 4901:1-37-09(D), O.A.C.
- (18) OP submits that there is no statutory requirement that a hearing be held, and, therefore, the Commission may waive the hearing for good cause.
- (19) Pursuant to Rule 4901:1-37-02(C), O.A.C., the Commission finds good cause exist to waive any requirement to hold a hearing on the corporate separation application. Given the fact that we have already approved the divestiture of OP's generating assets as a component of the modified ESP 2 cases, subject to approval of the amended corporate separation plan, and that such decision was reached following an extensive hearing, which included testimony in support of the divestiture of the generating assets, we find that the requirements of Rule 4901:1-37-09(D), O.A.C., do not apply to this proceeding.
- (20) IEU filed a motion to dismiss and objections to OP's corporate separation application. In the motion to dismiss,

IEU argues that OP's application is inadequate such that the Commission cannot determine details necessary to assert the Commission's jurisdiction and to protect the public interest, including accounting details, balance sheets, and income statements to be assigned each business segment. IEU submits that the application fails to disclose information necessary for an audit or to verify compliance with the appropriate assignment of long-term debt, administrative and general expense between OP and AEPGenCo.

- (21) In its reply to the various comments/objections, OP responds to IEU's motion to dismiss. First, OP offers that the motion to dismiss is improper pursuant to Rule 4901:1-12, O.A.C. Next, OP contends that IEU's claims that the application does not comply with Rule 4901:1-37-09(C), O.A.C., are incorrect. OP acknowledges, as does IEU, that the company has requested a waiver of Rule 4901:1-37-09(C)(4), O.A.C., which requires that the application state the fair market value and book value of the property to be transferred.
- (22) Upon review of the application, the Company's supplemental statement, reply comments and taking into account the Commission decision in the Company's modified ESP 2 Order, the Commission concludes that OP's corporate separation application includes the necessary information required by Rule 4901:1-37-09(C)(1) through (3), O.A.C., and, therefore, the motion to dismiss the application is denied.

With respect to OP's request for a waiver of Rule 4901:1-37-09(C)(4), O.A.C., the Commission finds that such request is reasonable and should be granted pursuant to Rule 4901:1-37-02(C), O.A.C. Because OP seeks only to transfer its generating assets to an affiliate within the same parent corporation, in compliance with the mandate of Section 4928.17, Revised Code, we agree that it is appropriate for OP to transfer the assets at net book value and note that this approach is consistent with our recent decision in the Duke Energy Ohio Inc. case, Case No. 11-3549-EL-SSO et al., and the Commission's decision in OP's prior corporate separation case in Case No. 11-5333-EL-UNC, Finding and Order (January 23, 2012), although the request was

subsequently withdrawn. Accordingly, we deny IEU's request to dismiss this application.

- (23) Along with its comments, on July 27, 2012, IEU also filed a motion for protective order in accordance with Rule 4901-1-24(D), O.A.C. IEU states that in its request to dismiss and objections, it refers to an exhibit marked as confidential by OP. While IEU takes no position on whether the information is a confidential trade secret under Ohio law, IEU states that it is filing this motion pursuant to a protective agreement with OP. OP did not file a motion for protective treatment of the exhibit nor did any party to the proceeding file a memorandum contra IEU's motion for protective order.
- (24) After reviewing the information for which IEU seeks a protective order, the Commission notes that the information was provided during the hearing in OP's modified ESP 2. During the course of the hearing, the attorney examiner determined that the document marked IEU Ex. 121 was confidential (Tr. at 2172, 2197). The Commission confirms the ruling of the attorney examiner and finds that the document should likewise be afforded confidential treatment in this proceeding as well. Accordingly, the motion for protective treatment shall be granted.
- (25) Further, we note that the Company, IEU and OCC have referred to evidence admitted into the record of the modified ESP 2 cases and that several issues raised are discussed in both proceedings. In light of the overlapping issues raised, the Commission, *sua sponte*, takes administrative notice of the specific exhibits presented in the modified ESP 2 cases which were admitted into evidence that are cited by the Company, Staff and other commenters in this matter.

Public Benefit

- (26) OMAEG contends that OP makes two arguments in an attempt to demonstrate that its application for full corporate separation is just, reasonable, and in the public interest. First, OMAEG disputes that AEP-Ohio's claim that the transfer of its generation assets to AEPGenCo meets the mandates of Section 4928.17, Revised Code, is evidence of how the transfer of assets will benefit the public interest.

OMAEG insists that the application is deficient to support a Commission finding that OP's corporate separation plan complies with the statute and supports the policies set forth in Section 4928.02, Revised Code. Second, OMAEG reasons that OP's claims that structural corporate separation will advance market-based pricing for generation service, promote retail shopping in Ohio, and is critical to facilitating the Company's auction-based SSO, as a component of its modified ESP, is not supported by the information presented in this proceeding, independent from the Company's modified ESP 2 case.

- (27) OP replies that approving the current application for full legal corporate separation fulfills the long-overdue statutory mandates, from its present "interim" functional separation to full legal separation. Further, OP reasons that full legal corporate separation promotes the public interest and existing state policy by facilitating AEP-Ohio's restructuring to facilitate competitively bid SSO and more competitive choices for electric service. Corporate separation will lead to full market-based pricing of generation service for retail customers and is a critical component of an auction-based SSO.
- (28) The Commission believes that structural corporate separation facilitates the Company's transition to establishing SSO prices based on energy and capacity auctions in less than three years and, therefore, is beneficial to providing customers with options to secure lower cost retail electric service.

Conditions of Corporate Separation

- (29) Although FES supports AEP-Ohio's immediate move to structural corporate separation, FES requests that the Commission make any approval of AEP-Ohio's corporate separation subject to the same conditions imposed by the Commission in Case No. 11-5333-EL-UNC, Finding and Order (January 23, 2012), the Company's previously approved corporate separation plan. FES also comments that AEPGenCo be required to operate independently and without subsidies from AEP-Ohio.

- (30) IEU proposes more specific conditions be imposed on AEP-Ohio's request for full corporate separation:
- (a) OP and its affiliates irrevocably consent to the Commission's exercise of its full authority as delegated by Section 4928.18, Revised Code.
 - (b) OP retain an independent auditor, at the expense of OP shareholders, to evaluate the corporate separation from the perspective of the public interest and make recommendations to the Commission.
- (31) In its application, OP agreed to abide by conditions substantially similar to the conditions offered in the Duke Energy Ohio Inc., in Case No. 11-3549-EL-SSO, et al., (See Duke Stipulation at 25-27 filed October 24, 2011).
- (32) Upon review of the application, the Company's supplemental statement, comments and reply comments, and taking into account the Commission decision in the Company's modified ESP 2 Order, the Commission concludes that OP's corporate separation application should be subject to the following conditions:¹⁰
- (a) Staff, or an independent auditor at the Commission's discretion, shall audit the terms and conditions of the transfer of the generating assets to ensure compliance with Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C., and any successors to the rules in that chapter, to ensure that no subsidiary or affiliate of OP that owns competitive generating assets has any competitive advantage due to its affiliation with OP. OP may file an application with the Commission to seek approval of the recovery of the costs associated with an independent audit.

¹⁰ The Commission notes that these conditions are comparable to the conditions that we recently approved for Duke. *In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 11-3549-EL-SSO, et al., Opinion and Order (November 22, 2011) and OP's prior corporate separation proceeding.

- (b) Staff shall be provided with access to all books, accounts, and records in compliance with Rule 4901:1-37-09(F), O.A.C.
- (c) Following the transfer of the generating assets, OP shall not, without prior Commission approval, provide or loan funds to, provide any parental guarantee or other security for any financing for, and/or assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generating assets; provided, however, that contractual obligations arising before the date of this finding and order shall be permitted to remain with OP, without prior Commission approval, for the remaining period of the contract, but only to the extent that assuming or transferring such obligations is prohibited, and can not be effectively negotiated by the terms of the contract or would result in substantially increased liabilities for OP if OP were to transfer such obligations to its subsidiary or affiliate and to the extent that AEPGenCo be made contractually responsible to OP for all costs resulting from such generation related liabilities. In order to facilitate verification of these obligations, OP shall identify such by October 31, 2013.
- (d) OP shall ensure that all new contractual obligations have a successor-in-interest clause that transfers all of OP's responsibilities and obligations under such contracts and relieves OP from any performance or liability under the contracts upon the transfer of the generating assets to its subsidiary or affiliate.
- (e) The above provisions do not restrict OP's ability to receive and pass through to the subsidiary or affiliate that owns the generating assets equity contributions from its parent that are in support of the generating assets, nor do they restrict OP's ability to receive dividends

from the subsidiary or affiliate that owns the generating assets and pass through such dividends to its parent.

- (f) Generation-related costs associated with implementing corporate separation shall not be recoverable from OP customers.
- (g) Any subsidiary or affiliate of OP to which generating assets are transferred shall not use or rely upon the ratings from credit rating agencies for OP. If such subsidiary or affiliate currently does not maintain separate ratings from the credit rating agencies, then upon transfer of any of the generating assets, it shall either seek to establish such ratings or shall tie its credit ratings to AEP as soon as practicable but no later than six months following such transfer.
- (h) Further, in the modified ESP 2 Opinion and Order the Commission found:

Despite the Staff's recommendation, the Commission approves AEP-Ohio's requests to retain the pollution control bonds contingent upon a filing with the Commission demonstrating that AEP-Ohio ratepayers have not and will not incur any costs associated with the cost of servicing the associated debt. More specifically, AEP-Ohio ratepayers shall be held harmless for the cost of the pollution control bonds, as well as any other generation or generation related debt or inter-company notes retained by AEP-Ohio.

Consistent with the Commission directives in the modified ESP 2 Order, and as OP recognizes in its application for rehearing of the modified ESP 2 Order, the Commission

believes the Company could achieve the Commission's directive by utilizing an intercompany note between OP and AEPGenCo wherein OP could retain the PCRB as OP requests and yet require AEPGenCo to provide to OP amounts sufficient to pay principal and interest on the PCRB.

The Commission is also aware that in the pending securitization application filed in Case No. 12-1969-EL-ATS, OP has reiterated its original request to either permanently retain the PCRB maturing after corporate separation or to transfer those bonds only when there is no defeasance costs.¹¹ The Commission reiterates its directive in the modified ESP 2 Order that PCRB maturing post corporate separation shall not be a cost recoverable, directly or indirectly, from OP distribution ratepayers. Therefore, the Commission will not permit OP to fund the defeasance costs of the PCRB with proceeds from the securitized bonds that are the subject of its application in Case No. 12-1969-EL-ATS. The Commission believes the Company could achieve the Commission's directive by utilizing an intercompany note between OP and AEPGenCo wherein OP could retain the PCRB as OP requests and yet require AEPGenCo to provide to OP amounts sufficient to pay principal and interest on the PCRB.

REPAs

- (33) FES asks the Commission to treat the REPAs similarly such that either all the REPAs stay with OP or they should be transferred with the generation assets.
- (34) OP responds, as the Company explained in its application, that transfer of the REPAs does not require Commission approval or need to be part of a corporate separation plan or amendment. Further, the Company emphasizes that it is not "cherry picking" the REPAs to be retained or transferred but would retain all of the existing REPAs.
- (35) The Commission recognizes and approves, to the extent that it is necessary, OP's request to retain the existing REPAs

¹¹ Ohio Power Reply Comments at 5-6.

because the REPAs were entered into as a part of OP's compliance with Section 4928.64, Revised Code, and those compliance obligations remain with OP. Further, OP may financially settle the REPAs, in whole or in part, provided that the transactions are reasonable and the revenues from such transactions are credited to the benefit of the ratepayers through the mechanisms in which the REPA costs appear.

OP and AEPGenCo Contract

- (36) FES opposes the contract between OP and AEPGenCo for the power needed after the effective date of corporate separation until energy is delivered pursuant to SSO auction. FES offers, as it argued in the modified ESP, that the contract between OP and AEPGenCo is subject to the requirements of Section 4928.143(B)(2)(a), Revised Code, and would violate the FERC Edgar standards as to the misuse of market power. FES requests that the Commission make clear that it is reserving judgment on the proposed contract between OP and AEPGenCo.
- (37) IEU objects to the Company's corporate separation plan on the basis that it includes AEP-Ohio's plan to enter into a wholesale contract with AEPGenCo for energy and capacity. IEU argues that the contract is designed to provide AEPGenCo with an undue preference and competitive advantage as a consequence of the affiliate relationship and conflicts with the policies set forth in Section 4928.02, Revised Code. IEU offers that the proposed contract between OP and AEPGenCo, to serve SSO customers, violates Sections 4928.02 and 4928.17, Revised Code, and the Code of Conduct.
- (38) In the modified ESP 2 Order, the Commission acknowledged that certain revenues paid to AEP-Ohio for generation-based services would be passed on to AEPGenCo. The Commission however, specifically did not expressly nor imply any endorsement of the terms or conditions of the AEP-Ohio contract with AEPGenCo, as it is subject to prior FERC approval. Therefore, the Commission makes no ruling, at this time on the AEPGenCo contract with OP.

Value of Generation Assets

- (39) The transfer of the generating assets at net book value is objectionable to OCC who reasons that it is inconsistent with the objectives of Section 4928.17, Revised Code, the public policy set forth in Section 4928.02(H), Revised Code, and Rule 4901:1-37-04(C), O.A.C. OCC asserts that transferring the assets to AEPGenCo at net book value denies Ohio consumers any premium value associated with the generation facilities. OCC notes that the net book value of the generating assets is estimated at approximately \$6 billion as of September 30, 2011.¹² As such, OCC reasons that the Commission should consider whether the transfer of the generating assets at net book value, rather than the market value, serves the public interest. Since the Commission has determined that Ohio consumers will be responsible for deferred capacity costs, as determined by the Commission in Case No. 10-2929-EL-UNC, equity would dictate, according to OCC, that Ohio consumers should share in the market premium associated with the generation assets.
- (40) Similarly, IEU objects to OP's proposed transfer of its generating assets to an affiliate at net book value without submission of the book value and market value of the assets. IEU objects to this aspect of the application particularly in light of OP's request for above-market rates and charges for competitive services from the Commission and FERC, including the Commission's decision in Case No. 10-2929-EL-UNC, Order (July 2, 2012) (Capacity Case Order). IEU submits that OP's internal analysis demonstrates that future cash flow from its generating plant is more than the cash flow required to support the current book value of its generating assets at PJM's reliability pricing model-based pricing.¹³ Further, IEU states that the corporate separation application fails to include the market value and book value of the property to be transferred.

¹² Modified ESP 2 cases, OCC Ex. 105, Tr. at 861.

¹³ See Modified ESP 2 cases, OCC Ex. 104, Att. 4; IEU Ex. 117, Att. 5; IEU Ex. 120, Att. 3; IEU Ex. 121 (Confidential).

- (41) First, OP argues that the commenters should be equitably estopped from opposing the transfer of the assets at the net book value given that they advocated for a transfer at net book value and the waiver of Rule 4901:1-37-09(C)(4), O.A.C., in the stipulation filed in the Duke Energy Ohio Inc. ESP and corporate separation cases.¹⁴ Next, to the comments that call for a market valuation study, OP retorts that there is no basis in Ohio law which requires a market valuation before the transfer of assets, as Section 4928.17, Revised Code, does not require a market valuation study. Further, as to OCC's claims that customers are entitled to any premium on the generation assets, OP replies that the Commission has previously concluded that customers pay for electric service and are not investors in the utility plant.¹⁵ Ratepayers have no ownership interest in the generation assets. OP further reasons that the General Assembly, as a part of Amended Substitute Senate Bill No. 3 (SB 3) required generation asset divestiture but did not provide for any gain on such assets to be flowed back to utility customers. OP concludes that the market valuation concept is a part of the Commission rules which has never been enforced against any electric utility in implementing corporate separation. The transfer of the generation asset from OP to AEPGenCo, does not create a premium or gain for AEP because it is merely the transfer of assets within the same holding company. The Company notes that commenters did not timely object to OP's request for waiver to provide the net book value, as conceded by OMAEG, and on that basis their request to deny the waiver should be rejected. OP argues that it is not in the public interest for the Commission to treat the two utilities differently, extending to Duke an undue and anticompetitive advantage, or to apply the same rule in an inconsistent manner.

¹⁴ In Case No. 11-3549-EL-SSO et al., *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service.*

¹⁵ *In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Columbus Southern Power Company and Related Matters*, Case No. 88-102-EL-EFC, Opinion and Order at 14-16 (October 28, 1988); Entry on Rehearing at 8 (December 20, 1988).

OP submits that IEU's and OCC's reliance on the 2011 AEP accounting analysis submitted in the record of the original 11-346 ESP 2 proceeding is misplaced. OP offers that the accounting memorandum was based on a 30-year long-term analysis of the entire AEP-East generation fleet to determine whether the total expected revenue stream for the life of the assets exceeded their book value, in the aggregate, as opposed to an analysis as to the shopping load of OP based on RPM pricing. OP contends that the analysis was done for an unrelated purpose and does not support the demands of OCC or IEU as to market value of generating assets.

- (42) Because OP seeks only to transfer its generating assets to an affiliate within the same parent corporation, in compliance with the mandate of Section 4928.17, Revised Code, we agree that it is appropriate for OP to transfer the assets at net book value and note that this approach is consistent with our recent decision in the Duke case, 11-3549, and the Commission's decision in the Company's prior corporate separation case in Case No. 11-5333-EL-UNC, although the request was subsequently withdrawn.

AEPGenCo Transactions with APC and KYC

- (43) IEU opposes the transfer of the Amos Unit 3 and Mitchell Units to AEPGenCo and thereafter to APC and KYC. IEU reasons that the transfer to APC and KYC cannot be just, reasonable, and in the public interest as OP has not identified how the proposed transfer will affect future SSO customer rates as required by Commission rule.
- (44) OP offers that, because the transfer of the Amos and Mitchell generating plants would occur through a separate and distinct transaction after OP's generation assets are transferred to AEPGenCo, the transfer of the Amos and Mitchell facilities to AP and KY are beyond this Commission's authority and jurisdiction under Section 4928.17, Revised Code. Further, OP offers that consideration of ownership of the generation assets after the transfer by the electric distribution utility, OP, is inconsistent with the Commission's application of its rules to other electric utilities.

- (45) OP assures that all liabilities associated with the generating assets, being transferred will be assumed by AEPGenCo, including the liabilities associated with the retired plants. In the modified ESP 2 Order, the Commission directed OP that, "subject to our approval of the corporate separation plan, the electric distribution utility should divest its generation assets from its noncompetitive electric distribution utility assets by transfer to its separate competitive retail generation subsidiary," AEPGenCo. We further conclude, consistent with the Order in the modified ESP 2 cases, that OP should be authorized to transfer title to its generating assets to AEPGenCo, as set forth in its application. Thereafter, the transfer of certain generating assets held by AEPGenCo is beyond the jurisdiction of this Commission and, therefore, we conclude no action by this Commission is necessary.

Other Issues Raised by Staff and Interveners

- (46) Staff and other commenters raise issues in regard to AEP-Ohio's implementation and the timing of a competitive bid process or energy auctions, the state compensation mechanism for capacity charges, the pool modification rider (PMR) proposed in the Company's modified ESP application, and the Company's retention of pollution control revenue bonds (PCRB) in this corporate separation proceeding. Staff requests that the corporate organization chart be updated.
- (47) Further, FES reasons that, if the Commission approves the Retail Stability Rider (RSR) presented in the Company's modified ESP, the Commission should mandate that the RSR and the cost-based state compensation mechanism determined in Case No. 10-2929-EL-UNC terminate on the effective date of corporate separation. FES argues that upon the effective date of corporate separation, AEPGenCo is not a public utility and Chapter 4909, Revised Code, is not applicable and, therefore, AEPGenCo should not receive anti-competitive cross-subsidies from AEP-Ohio or deferred capacity charges in violation of Chapter 4909, Revised Code. FES cites testimony in the modified ESP 2 case which they say supports its contention that AEP-Ohio essentially intends to continue functional separation as to all generation related revenues and AEPGenCo. OCC states that OP

cannot be permitted to remit any of the RSR revenue to AEPGenCo. To do so, according to OCC, confers an unfair advantage to and an undue preference upon AEPGenCo, the unregulated generation affiliate. The RSR is in OCC's words "a revenue guarantee" for AEPGenCo that is contrary to the public interest to ensure fair competition.

- (48) The Commission notes that the comments in this case were filed before the Commission issued the Order in the Company's modified ESP 2 cases. Each of the aforementioned issues raised in the immediately preceding finding were considered and addressed by the Commission in the modified ESP 2 Order issued August 8, 2012. Staff's request as to the corporate organization chart was addressed by the Company's supplemental filing on August 22, 2012.¹⁶ As such, the Commission finds no need to address the issues further in this corporate separation proceeding.

Commission Conclusions

- (49) The parties have been afforded an opportunity, in this proceeding, to comment on OP's amended corporate separation application and plan. Some of the concerns presented relate to the transfer of generation and generation-related assets. OP has provided sufficient details with respect to the object, purpose, and terms and conditions of the proposed transfer of generating assets, as well as demonstrated how the transfer will affect the SSO and the public interest, such that the Commission is satisfied that the transfer is just, reasonable, and in the public interest.
- (50) In the modified ESP 2 Order, the Commission directed OP that, "subject to our approval of the corporate separation plan, the electric distribution utility should divest its generation assets from its noncompetitive electric distribution utility assets by transfer to its separate competitive retail generation subsidiary," AEPGenCo. We find that the conditions set forth above provide further assurance that liabilities will be appropriately transferred or that OP consumers will not be adversely affected. The Commission finds that the amended plan substantially

¹⁶ Modified ESP 2 cases, Order at 32-40, 47-49, 57-60.

complies with the requirements of Rule 4901:1-37-05, O.A.C. As the issues raised by the intervenors and Staff have been satisfactorily addressed by OP in its reply comments, as well as through our conditions above, or as part of the modified ESP 2 proceeding, the Commission finds that there is no need to hold a hearing in this matter.

With the imposition of the above conditions, the Commission believes that the necessary safeguards are in place to ensure that the statutory mandates pertaining to OP's transfer of generating assets and structural corporate separation are followed and that the policy of the state is effectuated. We conclude that OP's proposed structural corporate separation and amended corporate separation plan are in compliance with Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C., and should be approved.

It is, therefore,

ORDERED, That the motions to intervene, as discussed in findings (9) and (10) above, be granted. It is, further,

ORDERED, That OP's request to waive the hearing is granted, as discussed in finding (19). It is, further,

ORDERED, That IEU's motion to dismiss the application is denied as discussed in finding (22). It is, further,

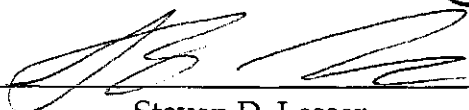
ORDERED, That the motion for protective treatment, as discussed in findings (23) and (24) above, be granted. It is, further,

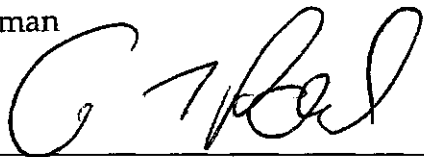
ORDERED, That OP's application for structural corporate separation, as modified herein, be approved. It is, further,

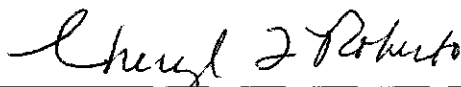
ORDERED, That a copy of this finding and order be served upon all parties and other interested persons of record in this case.

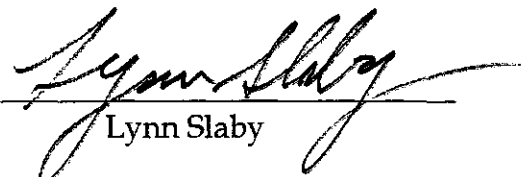
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Andre T. Porter

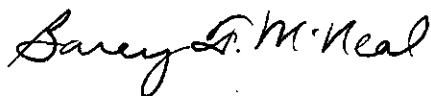

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Entered in the Journal

OCT 17 2012



Barcy F. McNeal
Secretary