

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

|  |   |                                |
|--|---|--------------------------------|
| <b>In the Matter of the Application of</b> | ) |                                |
| <b>Ohio Power Company for Approval</b>     | ) | <b>Case No. 12-1126-EL-UNC</b> |
| <b>of Full Legal Corporate Separation</b>  | ) |                                |
| <b>and Amendment to Its Corporate</b>      | ) |                                |
| <b>Separation Plan</b>                     | ) |                                |

**OHIO POWER COMPANY'S APPLICATION TO AMEND  
ITS CORPORATE SEPARATION PLAN**

On March 30, 2012, Ohio Power Company (AEP Ohio or the Company) filed an application under R.C. 4928.17(A) and Ohio Admin. Code Rules 4901:1-37-06 and 4901:1-37-09 seeking Commission authorization and approval for full legal corporate separation (also known as structural corporate separation) such that the transmission and distribution assets of AEP Ohio will continue to be held by the distribution utility and AEP Ohio's generation assets will be transferred to an affiliate. As part of its application, AEP Ohio explained that the transfer would include AEP Ohio's existing generating units and contractual entitlements. Specifically, at page 4 of the application, AEP Ohio noted that one of the contractual entitlements to be transferred to AEP Generation Resources, Inc. (AEP Genco) was certain rights to purchase power from generating resources owned by Ohio Valley Electric Corporation (OVEC), for which AEP Ohio is a joint owner. The Commission approved AEP Ohio's application in its October 17, 2012 Finding and Order, and the Company is scheduled to complete its corporate separation by December 31, 2013.

Under the September 10, 2010 Amended and Restated Inter-Company Power Agreement ("ICPA"), effective August 11, 2011, between OVEC and OVEC's owners (investor owned utilities or their affiliates) ("Sponsoring Companies"), AEP Ohio must obtain consent from all of the other Sponsoring Companies before AEP Ohio can transfer the contractual entitlements to

AEP Generation in a manner that would relieve AEP Ohio from ongoing liabilities. The OVEC Sponsoring Companies, however, have withheld their required consent. AEP Ohio engaged OVEC and the Sponsoring Companies in a series of meetings and negotiations in an attempt to obtain the required consents. As part of this effort, American Electric Power Company offered to issue a parent company guarantee in support of AEP Generation's obligations under the ICPA. On August 15, 2013 AEP Ohio received a negative response from the majority of Sponsoring Companies to AEP Ohio's formal proposal seeking the Sponsoring Companies' consent to the transfer of interest to AEP Genco in a manner that would relieve AEP Ohio from ongoing liabilities. Without consent from all of the Sponsoring Companies (and the lenders) AEP Ohio is not able to transfer the contractual entitlements to AEP Generation. Despite AEP Ohio's efforts, it has not been able to obtain the required consent in order to transfer OVEC contractual entitlement to the AEP Genco as originally planned.

Under the ICPA, it is also permissible for AEP Ohio without consent of the other owners to transfer its interests to the AEP Genco while remaining liable for obligations under the contract in the event of default by AEP Genco. AEP Ohio does not expect that the Commission would be interested in that alternative – due to the features of retaining contingent liability without any of the benefits of ownership or control – and the Company has not pursued it at this point. If the Commission does not timely approve the narrow corporate separation plan amendment being proposed out of necessity by AEP Ohio, however, the Company may be forced to pursue this alternative. Under those circumstances, transferring OVEC to the AEP Genco while retaining “backstop” liability would be encompassed by Paragraph 32(C) of the Finding and Order, which does not require Commission approval but merely involves identification of

pre-existing contractual obligations that could not be transferred as part of the corporate separation closing.

Accordingly, to help ensure that AEP Ohio can implement corporate separation as scheduled on December 31, 2013, the Company seeks prompt approval of this amendment, pursuant to Ohio Admin. Code Rule 4901:1-37-06, permitting the OVEC contractual entitlements to remain with AEP Ohio.

### **Background**

Ohio Valley Electric Corporation was organized on October 1, 1952. It was formed by investor-owned utilities furnishing electric service in the Ohio River Valley area and their parent holding companies for the purpose of providing the large electric power requirements projected for the uranium enrichment facilities then under construction by the Atomic Energy Commission<sup>1</sup> (AEC) near Portsmouth, Ohio. The contract to provide OVEC-generated power to the federal government was terminated in 2003.

OVEC and the Sponsoring Companies signed an Inter-Company Power Agreement (ICPA) on July 10, 1953, to support the Department of Energy (DOE) Power Agreement and provide for excess energy sales to the Sponsoring Companies of power not utilized by the DOE or its predecessors. The Sponsoring Companies and OVEC entered into an Amended and Restated ICPA, effective as of August 11, 2011, which extends its term to June 30, 2040. The DOE Power Agreement was terminated on April 30, 2003 and, since that time, OVEC's entire generating capacity has been available to the Sponsoring Companies under the terms of the ICPA. The Sponsoring Companies (aka OVEC owners) not only include Ohio companies such as AEP Corp., FirstEnergy Corp., Dayton Power & Light Co., Duke Energy Ohio, but also include

---

<sup>1</sup> The AEC was subsequently abolished by the Energy Reorganization Act of 1974 and succeeded by the Energy Research and Development Administration (now part of the U.S. Department of Energy) and the U.S. Nuclear Regulatory Commission.

Louisville Gas and Electric, Kentucky Utilities Co., Southern Indiana Gas and Electric, Peninsula Generation Cooperative and others. AEP Ohio's share of OVEC's output has been dedicated during the post-2003 period to supporting SSO service

**Amending the Corporate Separation Plan So That OVEC  
Contractual Entitlements Stay with AEP Ohio Is Just,  
Reasonable, And In the Public Interest**

Because AEP Ohio has been unable to obtain the required consent of the other Sponsoring Companies to permit AEP Ohio to transfer the contractual entitlements to AEP Generation, the only solution fully within AEP Ohio's control is to propose leaving the ICPA in place with AEP Ohio continuing to take generation under the contract. Aside from the less desirable option of transferring the ICPA to the AEP Genco while retaining liability under the contract, AEP Ohio's primary choice is simply to keep the OVEC asset given that the a majority of the other owners have withheld their consent (even though consent is required from all of the other owners). This outcome is also fair, given the original purpose and background of OVEC being created to collectively serve the interests of the United States. Finally, allowing AEP Ohio retain its contractual entitlement under the ICPA will help preserve Ohio jobs associated with the ongoing operation of the Kyger Creek plant in Cheshire, Ohio. Thus, the best solution under these circumstances is for the Commission to approve this narrow amendment to AEP Ohio's corporate separation plan such that the OVEC contractual entitlements will be exempt from AEP Ohio's impending corporate separation. AEP Ohio, as a result, would retain its rights and obligations under the ICPA.

None of the retail rate issues relating to OVEC are being proposed for resolution in this docket, but will be resolved in other cases. Rate matters relating to OVEC during the ESP II term were decided in Case Nos. 11-346-EL-SSO or otherwise remain pending before the

Commission in Case No. 12-3254-EL-UNC relative to establishing auction-based rates; the Company will address OVEC rate issues for the period following May 2015 in its upcoming *ESP III* filing. Regarding treatment of OVEC during the *ESP III* term, it is sufficient for now to say that AEP Ohio intends to liquidate<sup>2</sup> the power delivered under the ICPA through the PJM market – including capacity, energy and ancillary service components such that future competitive bidding process auctions would not be affected by AEP Ohio’s retention of its entitlements to the OVEC generation under the ICPA. Thus, there is no need to address rate issues in deciding this narrow amendment to the corporate separation plan that has become necessary.

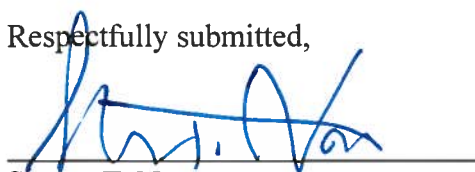
---

<sup>2</sup> Because the OVEC power supply will be liquidated in the PJM market and not used to actually serve shopping or non-shopping customers, continued development of the competitive market in Ohio will not be adversely affected by the proposed solution. Stated differently, AEP Ohio’s wholesale competitive bidding process to procure SSO supply will not be curtailed through retention of the ICPA purchases and competitive suppliers will continue to serve shopping customers.

### **REQUEST FOR EXPEDITED RELIEF**

The Company requests that the Commission approve this narrow amendment to its corporate separation plan before December 1, 2013, pursuant to Ohio Admin. Code Rule 4901:1-37-06, which will allow the OVEC contractual entitlements to remain with AEP Ohio and enable the Company to complete its corporate separation by December 31, 2013. Through this request, the Company only seeks to have this narrow amendment to its corporate separation plan adopted and it is not asking the Commission to resolve any of the associated rate issues in this docket. The approved schedule for AEP Ohio's corporate separation is December 31, 2013 and the Company is presently aggressively pursuing a detailed logistical and technical process to complete this complex set of tasks. Since there is no need to conduct an evidentiary hearing in order to address this narrow request, the Commission should establish an expedited comment cycle in order to facilitate a timely decision. If a timely decision is not forthcoming on this request, AEP Ohio reserves the right to transfer its interests to the AEP Genco, while retaining "backstop" liability for all obligations under the contract, pursuant to Paragraph 31(c) of the Finding and Order.

Respectfully submitted,

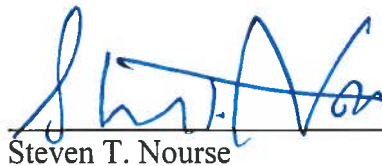


Steven T. Nourse  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 716-1608  
Fax: (614) 716-2014  
Email: stnourse@aep.com

Counsel for Ohio Power Company

## CERTIFICATE OF SERVICE

I certify that Ohio Power Company's Application to Amend Its Corporate Separation Plan was served by electronic mail upon the Director of the Utilities Department and the Parties of Record this \_\_\_ day of October, 2013.



Steven T. Nourse

[aehaedt@jonesday.com](mailto:aehaedt@jonesday.com)  
[amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)  
[ann.zalocco@thompsonhine.com](mailto:ann.zalocco@thompsonhine.com)  
[bmcMahon@emh-law.com](mailto:bmcMahon@emh-law.com)  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)  
[dboehm@bkllawfirm.com](mailto:dboehm@bkllawfirm.com)  
[dstahl@eimerstahl.com](mailto:dstahl@eimerstahl.com)  
[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[grady@occ.state.oh.us](mailto:grady@occ.state.oh.us)  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
[jccrespo@aep.com](mailto:jccrespo@aep.com)  
[Jeanne.Kingery@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)  
[jkylercohn@bkllawfirm.com](mailto:jkylercohn@bkllawfirm.com)  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[John.Jones@puc.state.oh.us](mailto:John.Jones@puc.state.oh.us)  
[joliker@mwncmh.com](mailto:joliker@mwncmh.com)  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)  
[kurt.helfrich@thompsonhine.com](mailto:kurt.helfrich@thompsonhine.com)  
[lkalepsclark@vorys.com](mailto:lkalepsclark@vorys.com)  
[mcbride@calfee.com](mailto:mcbride@calfee.com)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[mkurtz@bkllawfirm.com](mailto:mkurtz@bkllawfirm.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)

[ricks@ohnet.org](mailto:ricks@ohnet.org)  
[Rocco.d'ascenzo@duke-energy.com](mailto:Rocco.d'ascenzo@duke-energy.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[Sarah.Parrot@puc.state.oh.us](mailto:Sarah.Parrot@puc.state.oh.us)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[tsiwo@bricker.com](mailto:tsiwo@bricker.com)  
[William.wright@puc.state.oh.us](mailto:William.wright@puc.state.oh.us)  
[zkavitz@taftlaw.com](mailto:zkavitz@taftlaw.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/4/2013 2:57:33 PM**

**in**

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

Summary: Application to Amend its Corporate Separation Plan electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company