

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**INDUSTRIAL ENERGY USERS-OHIO'S OBJECTIONS TO OHIO POWER  
COMPANY'S APPLICATION TO AMEND ITS CORPORATE SEPARATION PLAN**

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**I.     INTRODUCTION**

The Public Utilities Commission of Ohio (“Commission”) should deny Ohio Power Company's (“AEP-Ohio’s”) request to residually encumber AEP-Ohio with undisclosed liabilities and obligations associated with its purchase power agreement with the Ohio Valley Electric Company (“OVEC”). Without assurances that AEP-Ohio will not seek to recover from customers the cost associated with its OVEC obligations and liabilities, the Commission cannot approve AEP-Ohio’s request.

**II.    BACKGROUND**

On March 30, 2012, AEP-Ohio filed an Application for Approval of Full Legal Corporate Separation and Amendment to its Corporate Separation Plan (hereinafter “Application for Full Structural Separation”). The Application for Full Structural Separation requested authority to transfer AEP-Ohio’s generating assets and purchase power contract entitlements. The Commission approved AEP-Ohio’s Application for Full

Structural Separation on October 17, 2012.<sup>1</sup> The currently approved corporate separation plan indicates that AEP-Ohio is scheduled to transfer its generating assets and purchase power contracts to a non-regulated affiliate (AEP Generation Resources or “Genco”) by December 31, 2013.<sup>2</sup>

Over one year later, and approximately two months before AEP-Ohio was scheduled to transfer all of its generating assets and any purchase power contracts, AEP-Ohio filed an application seeking Commission approval to materially modify its approved corporate separation plan (hereinafter “OVEC Application”). The modifications AEP-Ohio seeks would allow AEP-Ohio to remain a party to a power contract, the Amended and Restated Inter-Company Power Agreement (hereinafter the “ICPA”), with OVEC. AEP-Ohio claims that it is unable to transfer its contractual entitlement to the ICPA to Genco because the owners of OVEC have not provided their required consent.<sup>3</sup> Therefore, AEP-Ohio proposes to leave the ICPA in place “with AEP Ohio continuing to take generation under the contract.”<sup>4</sup> Alternatively, and in the event the Commission does not agree with AEP-Ohio’s requested modification to its corporate separation plan, AEP-Ohio asserts that it will “transfer its [ICPA] interests to the AEP Genco while remaining liable for obligations under the contract in the event of default by AEP Genco.”<sup>5</sup> AEP-Ohio claims that no further Commission approval is required to

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<sup>1</sup> *In the Matter of the Application of Ohio Power Company for Approval of an Amendment to its Corporate Separation Plan*, Case No. 12-1126-EL-UNC, Finding and Order (hereinafter “Corporate Separation Order”) (Oct. 17, 2012).

<sup>2</sup> Corporate Separation Order at 8 (Oct. 17, 2012). See OVEC Application at 1 (Oct. 4, 2013).

<sup>3</sup> OVEC Application at 2.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 2.

transfer the contractual entitlement to Genco while encumbering AEP-Ohio with liability for any obligations.<sup>6</sup>

AEP-Ohio states that it currently plans to liquidate the power obtained under the ICPA into the PJM Interconnection LLC market. Therefore, AEP-Ohio suggests that the rate related issues associated with retention of the ICPA be deferred and addressed when the Commission considers AEP-Ohio's next electric security plan ("ESP").<sup>7</sup>

### **III. OBJECTIONS**

Industrial Energy Users-Ohio ("IEU-Ohio") objects to AEP-Ohio's request to residually encumber AEP-Ohio with obligations and liabilities associated with the ICPA. AEP-Ohio's request is not just, reasonable, and in the public interest because AEP-Ohio has failed to demonstrate that retention of the ICPA entitlement will not negatively impact Ohio customers.

The Corporate Separation Order requires AEP-Ohio to transfer its owned generation assets and any power purchase contract entitlements to a non-regulated affiliate. The Corporate Separation Order also requires that "[g]eneration-related costs associated with implementing corporate separation shall not be recoverable from [Ohio Power] customers."<sup>8</sup>

AEP-Ohio's requested modification to its corporate separation plan would create the possibility that AEP-Ohio may seek to recover from its customers the cost associated with the ICPA obligations and liabilities. AEP-Ohio has indicated that it may

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<sup>6</sup> *Id* at 2.

<sup>7</sup> OVEC Application at 5.

<sup>8</sup> Corporate Separation Order at ¶32(f).

seek such cost recovery from customers in its next ESP filing—“the Company will address OVEC rate issues for the period following May 2015 in its upcoming *ESP III* filing.”<sup>9</sup> The Commission should avoid this outcome as it is not just, reasonable, or in the public interest.

If the Commission approves AEP-Ohio’s requested modification to its corporate separation plan and allows AEP-Ohio to retain its ICPA contractual entitlement, IEU-Ohio recommends the Commission condition its approval upon a commitment by AEP-Ohio that it will not seek recovery of any ICPA-related costs from customers.

AEP-Ohio also claims that paragraph 32(c) of the Corporate Separation Order authorizes it to transfer the ICPA to Genco but leave the obligations and liabilities with AEP-Ohio.<sup>10</sup> It mischaracterizes paragraph 32(c). The Corporate Separation Order provides that contractual obligations that cannot be transferred to an affiliate may be retained by AEP-Ohio, but only “**to the extent that [Genco] be made contractually responsible to OP for all costs resulting from such generation related liabilities.**”<sup>11</sup> Thus, under the Corporate Separation Order, Genco is responsible for any generation-related costs that remain with AEP-Ohio.

The Commission dealt with a similar issue when it directed AEP-Ohio and Genco to enter into an intercompany note to hold AEP-Ohio customers harmless from costs associated with Pollution Control Revenue Bonds, stating:

[T]he Commission approves AEP-Ohio's requests to retain the pollution control bonds contingent upon a filing with the Commission demonstrating

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<sup>9</sup> OVEC Application at 5.

<sup>10</sup> OVEC Application at 2, 5.

<sup>11</sup> Corporate Separation Order at ¶32(c) (emphasis added).

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.<sup>12</sup>

Additionally, AEP-Ohio indicated that its parent company, American Electric Power Company (“AEP”), has “offered to issue a parent company guarantee in support of [Genco’s] obligations under the ICPA.”<sup>13</sup> AEP-Ohio’s parent company, AEP, could easily provide a parental guarantee to absorb any liability that would otherwise attach to AEP-Ohio in the event that Genco defaults on its obligations under the ICPA.

Moreover, AEP-Ohio is currently in the process of restructuring the Interconnection Agreement (AEP East Pool) that exists between the AEP operating companies.<sup>14</sup> The Commission should urge AEP-Ohio to pursue other options such as transfer of the OVEC contractual entitlement and obligations to another operating company.

#### **IV. CONCLUSION**

For the reasons stated herein, IEU-Ohio objects to the OVEC Application’s proposal to residually encumber AEP-Ohio with undisclosed obligations and liabilities associated with the ICPA. If the Commission approves the OVEC Application, it must condition such approval upon AEP-Ohio’s commitment that it will not seek recovery of

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<sup>12</sup> *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 4928.143, Ohio Rev. Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Opinion and Order at 59 (Aug. 8, 2012); see also Corporate Separation Order at 17-18 (Oct. 17, 2012).

<sup>13</sup> OVEC Application at 2.

<sup>14</sup> See *generally* Application for Authorization to Transfer Jurisdictional Assets Under Section 203 of the Federal Power Act of American Electric Power Service Corporation, FERC Docket Nos. EC 13-26, *et al.*

any ICPA-related liability or obligation from customers during the term of the current or a future standard service offer.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Industrial Energy Users-Ohio's Objections to Ohio Power Company's Application to Amend its Corporate Separation Plan* was served upon the following parties of record this 29th day of October 2013, via electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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