

**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)	
)	

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

Samuel C. Randazzo (Counsel of Record)
Frank P. Darr
Joseph E. Olikar
Matthew R. Pritchard
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritichard@mwncmh.com

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Attorneys for Industrial Energy Users-Ohio

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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, 2012.¹ 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, 2013.²

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.³ Therefore, AEP-Ohio proposes to leave the ICPA in place “with AEP Ohio continuing to take generation under the contract.”⁴ 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.”⁵ AEP-Ohio claims that no further Commission approval is required to

¹ *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).

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

³ OVEC Application at 2.

⁴ *Id.* at 4.

⁵ *Id.* at 2.

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

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").⁷

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."⁸

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

⁶ *Id* at 2.

⁷ OVEC Application at 5.

⁸ 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.”⁹ 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.¹⁰ 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.”**¹¹ 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

⁹ OVEC Application at 5.

¹⁰ OVEC Application at 2, 5.

¹¹ 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.¹²

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.”¹³ 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.¹⁴ 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

¹² *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).

¹³ OVEC Application at 2.

¹⁴ 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,

/s/ Joseph E. Olikier

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Olikier

Matthew R. Pritchard

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

mpritchard@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

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.

/s/ Joseph E. Olikier

Joseph E. Olikier

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

COUNSEL FOR OHIO POWER COMPANY

Maureen R. Grady, Counsel of Record
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
grady@occ.state.oh.us

COUNSEL FOR OFFICE OF THE OHIO CONSUMERS' COUNSEL

Amy B. Spiller, Counsel of Record
Deputy General Counsel
Jeanne W. Kingery
Associate General Counsel
139 E. Fourth Street, 1303-Main
PO Box 961
Cincinnati, OH 45201-0960
Amy.Spiller@duker-energy.com
Jeanne.Kingery@duke-energy.com

COUNSEL FOR DUKE ENERGY RETAIL SALES, LLC AND DUKE ENERGY COMMERCIAL ASSET MANAGEMENT, INC.

Mark A. Hayden
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308
haydenm@firstenergycorp.com

James F. Lang
N. Trevor Alexander
Calfee, Halter & Griswold, LLP
1400 KeyBank Center
800 Superior Ave.
Cleveland, OH 44114
jlang@calfee.com
talexander@calfee.com

David A. Kutik
Allison E. Haedt
Jones Day
901 Lakeside Avenue
Cleveland, OH 44114
dakutik@jonesday.com
aehaedt@jonesday.com

COUNSEL FOR FIRSTENERGY SOLUTIONS CORP.

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

COUNSEL FOR DUKE ENERGY OHIO, INC.

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

COUNSEL FOR OHIO ENERGY GROUP

Joseph M. Clark
Direct Energy
21 East State Street, Suite 1900
Columbus, OH 43215
Joseph.Clark@directenergy.com

**COUNSEL FOR DIRECT ENERGY SERVICES,
LLC AND DIRECT ENERGY BUSINESS, LLC**

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

COUNSEL FOR BUCKEYE POWER, INC.

Kimberly W. Bojko
Rebecca L. Hussey
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, OH 43215
Bojko@carpenterlipps.com
hussey@carpenterlipps.com

COUNSEL FOR THE OMA ENERGY GROUP

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

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

**COUNSEL FOR THE OHIO HOSPITAL
ASSOCIATION**

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

Stephen Bennett
Retail Policy Manager
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348
Stephen.bennett@exeloncorp.com

David M. Stahl
Eimer Stahl Klevorn & Solberg LLP
224 S. Michigan Avenue, Suite 1100
Chicago, IL 60604
dstahl@eimerstahl.com

David I. Fein
Vice President, State Government Affairs-
East
Exelon Corporation
550 West Washington, Blvd., Suite 300
Chicago, IL 60661
david.fein@constellation.com

Cynthia Brady
Senior Counsel
Constellation Energy Resources, LLC
550 West Washington, Blvd., Suite 300
Chicago, IL 60661
cynthia.brady@constellation.com

**COUNSEL FOR EXELON GENERATION
COMPANY, LLC AND CONSTELLATION
NEWENERGY, INC.**

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

COUNSEL FOR THE KROGER CO.

John H. Jones
Assistant Attorney General
Assistant Section Chief, Public Utilities
Section
180 E. Broad Street, 6th Floor
Columbus, OH 43215-3793
john.jones@puc.state.oh.us

**COUNSEL FOR THE STAFF OF THE PUBLIC
UTILITIES COMMISSION OF OHIO**

Sarah Parrot
Greta See
Attorney Examiners
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215
Sarah.Parrot@puc.state.oh.us
Greta.See@puc.state.oh.us

ATTORNEY EXAMINERS

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