

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the 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 March 30, 2012, AEP Ohio filed an application for approval of full legal corporate separation and amendment to its corporate separation plan. In its application, AEP Ohio requested to transfer its existing generating units and contractual entitlements to AEP Generation Resources, Inc. (AEP Genco). The contractual entitlements included the right to purchase power from generating resources owned by Ohio Valley Electric Corporation (OVEC), which AEP Ohio jointly owns.
- (3) On October 17, 2012, the Commission issued a finding and order, modifying and approving AEP Ohio's application for structural corporate separation, and permitting the transfer of the Company's contractual entitlements to AEP Genco.
- (4) On October 4, 2013, AEP Ohio filed an application to amend its corporate separation plan pursuant to Rule 4901:1-37-06, Ohio Administrative Code (O.A.C.), and a request for expedited relief. In its application, AEP Ohio explains that it has been unable to obtain the consent necessary to transfer the OVEC contractual entitlements to AEP Genco. AEP Ohio further explains that it engaged the OVEC sponsoring companies in a series of meetings and negotiations in an attempt to obtain the required consent and that its parent company offered to issue a guarantee in support of AEP Genco's obligations under the inter-company power

agreement (ICPA). Despite these considerable efforts, AEP Ohio states that it was unable to obtain consent from all of the OVEC sponsoring companies. AEP Ohio notes that another option would be to transfer its OVEC interests to AEP Genco, without the consent of the OVEC sponsoring companies, and remain liable for obligations under the ICPA in the event of a default by AEP Genco. Because this option would require AEP Ohio to retain contingent liability without any of the benefits of ownership or control, the Company proposes to maintain the OVEC contractual entitlements and obligations under the ICPA. AEP Ohio, therefore, requests that the Commission approve an amendment to the Company's corporate separation plan, exempting the OVEC contractual entitlements from the Company's impending corporate separation. AEP Ohio seeks expedited relief in order to effectively complete its corporate separation by December 31, 2013. If approval of the application is not granted by December 1, 2013, AEP Ohio reserves the right to transfer its OVEC interests to AEP Genco, while retaining contingent liability, pursuant to the Commission's October 17, 2012, finding and order, which, according to the Company, would require only that OVEC be identified as a pre-existing contractual obligation that could not be transferred as part of the corporate separation closing.

- (5) In support of its application, AEP Ohio asserts that an amendment to its corporate separation plan enabling the Company to retain the OVEC contractual entitlements is just, reasonable, and in the public interest. AEP Ohio explains that, although OVEC's purpose was originally to generate power to serve the federal government, OVEC's generating capacity is now used to serve the sponsoring companies, including the Company's standard service offer (SSO) load. AEP Ohio contends that its proposed retention of the OVEC contractual entitlements is a fair outcome, given that OVEC was created as a collective means to serve federal interests. AEP Ohio adds that its proposed outcome would help to preserve the Ohio jobs associated with the ongoing operation of the Kyger Creek plant in Cheshire, Ohio. Finally, AEP Ohio asserts that the retail rate issues related to the OVEC contractual entitlements have been addressed in other proceedings and, going forward, should

be considered in the Company's next electric security plan (ESP) case. In any event, AEP Ohio states that, following the end of the current ESP, the Company intends to liquidate the power delivered under the ICPA through the PJM Interconnection (PJM) market, rather than use it to serve shopping or non-shopping customers, such that future competitive bidding process auctions would not be affected by the Company's retention of the OVEC contractual entitlements.

- (6) By entry issued on October 9, 2013, a procedural schedule was established in order to assist the Commission in reviewing AEP Ohio's amendment application. In accordance with the procedural schedule, comments were filed on October 29, 2013, by Direct Energy Services, LLC and Direct Energy Business, LLC (jointly, Direct Energy); FirstEnergy Solutions Corp. (FES); Ohio Consumers' Counsel (OCC); Industrial Energy Users-Ohio (IEU-Ohio); and OMA Energy Group (OMAEG). Reply comments were filed on November 8, 2013, by AEP Ohio.

#### Comments

- (7) Direct Energy urges the Commission, if it approves the application, to ensure that AEP Ohio sells the power from the OVEC contractual entitlements into the PJM market in the next ESP period and beyond. Direct Energy recommends that AEP Ohio be directed that any future ESP proposals must include provisions that require the Company to sell the power from OVEC into the PJM market. Direct Energy further recommends that any deviation from selling the OVEC power into the PJM market require Commission approval. Direct Energy contends that its recommendations would provide assurances that the OVEC power will be sold at a market-based price and that customers receive the benefit of such pricing.
- (8) FES does not oppose the requested amendment to AEP Ohio's corporate separation plan, if reasonable restrictions comparable to those imposed on Duke Energy Ohio, Inc. (Duke) are also imposed on the Company until the OVEC contractual entitlements can be transferred to AEP Genco or sold to a third party. Specifically, FES notes that the Commission imposed the following conditions on Duke:

Duke shall cause the energy from all of its generation assets to be sold into the day-ahead or real-time PJM energy markets, or on a forward basis through a bilateral arrangement. Any forward bilateral sales must be done at a liquid trading hub (*i.e.*, Western Hub, AD-Hub, Cinergy Hub) at the then-current market wholesale equivalent price. Intercontinental-Exchange (ICE) or a similar publicly available document shall be used as a form of measure of the then-current market wholesale equivalent pricing. Staff, or, at the Commission's discretion, an independent auditor, shall semi-annually audit Duke's records to ensure compliance with this provision.<sup>1</sup>

FES also notes that Duke "agreed that its generation assets will only participate in the wholesale PJM day-ahead and real-time energy markets for the first three calendar years of the ESP."<sup>2</sup> FES contends that these conditions ensure that the electric distribution utility (EDU) does not provide improper benefits to its competitive affiliate, while also preventing any controversy regarding the appropriate transfer pricing between the EDU and its affiliate or the appropriate areas in which the EDU sells its power. FES argues that imposing similar conditions on AEP Ohio is consistent with the Commission's prior reliance on the Duke Order in this proceeding.

- (9) If reasonable restrictions similar to those imposed on Duke are not adopted, FES does not oppose AEP Ohio's transfer of the OVEC contractual entitlements, without the consent of the sponsoring companies, while retaining contingent liability. FES notes that this option, while less attractive, does move AEP Ohio as close to complete corporate separation as is possible under the circumstances.

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<sup>1</sup> *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, at 13-14 (November 22, 2011) (Duke Order).

<sup>2</sup> Duke Order at 17.

- (10) In its reply comments, AEP Ohio states that it has no objections to the conditions recommended by FES and Direct Energy, which are consistent with the Company's intentions. AEP Ohio notes, however, that the conditions should not prejudice the retail ratemaking treatment associated with the OVEC contractual entitlements, which the Company contends should be deferred to its next ESP case. Noting that Duke's conditions were limited to Duke's ESP term, AEP Ohio argues that the conditions should apply to the Company only for the remainder of its current ESP term, especially given that the Company's next ESP application will include an OVEC proposal for June 2015 and beyond.
- (11) IEU-Ohio maintains that AEP Ohio's application is not just, reasonable, or in the public interest, because the Company has failed to demonstrate that retention of the OVEC contractual entitlements will not harm customers. IEU-Ohio asserts that AEP Ohio may seek to recover from customers the costs associated with the OVEC obligations and liabilities in its next ESP filing. If the Commission grants AEP Ohio's request, IEU-Ohio recommends that approval be conditioned on the Company's commitment to forgo recovery of OVEC-related costs from customers during the current and subsequent ESP periods. Additionally, IEU-Ohio points out that AEP Ohio mischaracterizes the October 17, 2012, finding and order, which, according to IEU-Ohio, requires that AEP Genco be responsible for any generation-related costs that remain with the Company. IEU-Ohio also notes that AEP Ohio's parent company should provide a guarantee to absorb any liability that would otherwise attach to the Company in the event of a default by AEP Genco. Noting that AEP Ohio is in the process of restructuring its power pool agreement, IEU-Ohio recommends that the Commission urge AEP Ohio to pursue other options such as a transfer of the OVEC contractual entitlements to another operating company.
- (12) OCC argues that AEP Ohio should be required to refile its application with the information required by Rule 4901:1-37-09(C), O.A.C., followed by ample discovery and a hearing to assess pricing and rate implications. OCC asserts that the Commission should assess the reasons for the OVEC sponsoring companies' rejection of AEP Ohio's proposed

transfer of its contractual entitlements and liabilities to AEP Genco, as well as the risks to the Company from transferring its OVEC interests without also transferring the liabilities.

- (13) In support of its position, OCC contends that AEP Ohio's application lacks the detail required to determine whether it is just, reasonable, and in the public interest. OCC further contends that AEP Ohio's proposal to delay addressing the retail rate issues related to OVEC, while seeking the necessary amendment to the corporate separation plan, should be rejected, as SSO customers must be held harmless from any rate impacts associated with retention of the OVEC contractual entitlements and liabilities. OCC points out that AEP Ohio's application leaves open the possibility that, as a result of the Company's sale of the OVEC power in the PJM market, customers will be required to pay the Company for any losses on the sale.
- (14) If the application is approved, OCC maintains that the Commission should ensure that SSO customers are not harmed. Specifically, OCC recommends a requirement that the modification to the corporate separation plan not increase future SSO rates or harm customers in any way. OCC adds that the Commission should not allow the OVEC liabilities to remain with AEP Ohio unless its parent company issues a guarantee to the OVEC owners' creditors. Finally, OCC argues that, even if AEP Ohio is not required to refile a substantially adequate plan, ample discovery and a hearing are necessary to determine whether the application is just, reasonable, and in the public interest.
- (15) In its reply comments, AEP Ohio argues that Rule 4901:1-37-09, O.A.C., does not apply under the circumstances, contrary to OCC's position, and that no additional process is needed. AEP Ohio points out that the rule governs a proposed sale or transfer of generating assets and is, thus, inapplicable in a situation where the Company seeks to maintain its ownership of the OVEC contractual entitlements. AEP Ohio adds that OCC's unreasonable and unjustified request for discovery and a hearing should be denied.
- (16) With respect to the impact of its proposal on retail rates, AEP Ohio contends that the rate issues should be deferred to

the Company's forthcoming ESP proceeding. AEP Ohio argues that OCC's and IEU-Ohio's recommendations that customers not be harmed by the proposal and that a parent guarantee be required should be rejected, in order to avoid presently addressing and disposing of the retail rate issues with prejudice to the Company. AEP Ohio maintains that it would be unreasonable to address the rate impact, which will depend on how the OVEC contractual rates compare to SSO auction rates over time, by summarily providing that ratepayers be held harmless. AEP Ohio also points out that its retention of the OVEC power can serve as an advantageous hedge against more volatile market prices, while having no effect on the SSO auction process.

- (17) OMAEG asserts that AEP Ohio acknowledges, in its application, that the rate impact of its proposal is unsettled and unknown and, consequently, OMAEG does not support the Company's request. OMAEG recommends that the Commission seek further information from AEP Ohio regarding the impact of its application. OMAEG also questions whether AEP Ohio's proposal to retain the OVEC contractual entitlements complies with Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C., in that the Company has not indicated what it intends to do with the proceeds from its liquidation of the OVEC power in the PJM market if complete corporate separation is not achieved. With respect to AEP Ohio's option of transferring the OVEC contractual entitlements, while maintaining contingent liability, OMAEG states that interested parties should be permitted to evaluate and comment on the option and its potential impact on ratepayers.
- (18) AEP Ohio responds that OMAEG is wrong in claiming that there is a compliance issue. AEP Ohio points out that OMAEG refers to hypothetical situations that have no relevance under the present circumstances. Noting that an EDU can continue to own generation assets through functional corporate separation, AEP Ohio also disagrees with OMAEG's theory that there is an inherent problem with the Company's retention of the proceeds from liquidation of the OVEC power. AEP Ohio believes that OMAEG makes unfounded presumptions regarding how

the retail rate issues will be addressed in its next ESP proceeding.

- (19) With respect to the option to transfer the OVEC contractual entitlements to AEP Genco while retaining contingent liability, AEP Ohio notes that this option can be pursued, if needed. AEP Ohio points out that it presumed that this option would not be preferred, because it would require the Company to maintain liability without any of the benefits of the OVEC contractual entitlements. AEP Ohio also reiterates that it may need to pursue this alternative if the requested amendment to its corporate separation plan is not timely granted.

### Conclusion

- (20) Upon review of AEP Ohio's application for an amendment to its corporate separation plan, as well as the comments and reply comments, the Commission finds that the application is reasonable and complies with Section 4928.17, Revised Code, and Chapter 4901:1-37, O.A.C. We find that AEP Ohio's proposal to retain the OVEC contractual entitlements, while liquidating the power delivered under the ICPA through the PJM market, will ensure that the Company's corporate separation is completed by December 31, 2013, as scheduled. Accordingly, the Commission finds that AEP Ohio's application should be approved, subject to the following conditions:

AEP Ohio shall cause the energy from its OVEC contractual entitlements to be sold into the day-ahead or real-time PJM energy markets, or on a forward basis through a bilateral arrangement. Any forward bilateral sales must be done at a liquid trading hub at the then-current market wholesale equivalent price. Intercontinental-Exchange or a similar publicly available document shall be used as a form of measure of the then-current market wholesale equivalent pricing. Staff, or, at the Commission's discretion, an independent auditor, shall semi-annually audit AEP Ohio's



records to ensure compliance with this provision.<sup>3</sup>

These conditions should apply during AEP Ohio's current ESP period and beyond, until the OVEC contractual entitlements can be transferred to AEP Genco or otherwise divested, or until otherwise ordered by the Commission. If AEP Ohio seeks to deviate from selling the OVEC power into the PJM market, the Company must request and obtain prior Commission approval. With respect to the retail rate impact of AEP Ohio's retention of the OVEC contractual entitlements, we agree with the Company's request to defer and address the retail rate issues related to OVEC in the next ESP proceeding.

- (21) The Commission further finds that AEP Ohio has provided sufficient information in support of its request for an amendment to its corporate separation plan. Contrary to OCC's claims, Rule 4901:1-37-09, O.A.C., is inapplicable under the circumstances, as it specifically pertains to the sale or transfer of generating assets and, therefore, does not govern a situation in which the electric utility proposes to retain its generating assets. Thus, OCC's arguments regarding the perceived lack of information in AEP Ohio's application are without merit. OCC's remaining concerns, as well as those noted by IEU-Ohio and OMAEG, which pertain to the impact of AEP Ohio's proposal on ratepayers, may be raised in the Company's forthcoming ESP proceeding.
- (22) As the issues raised in the initial comments have been resolved through our conditions above, or will be addressed in AEP Ohio's next ESP 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 AEP Ohio's structural corporate separation are followed and that the policy of the state is effectuated.

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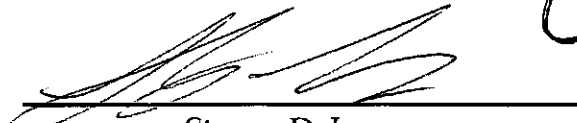
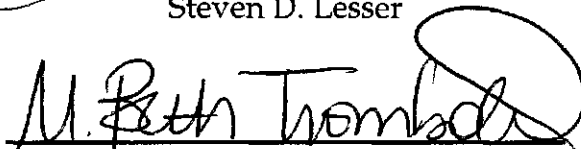

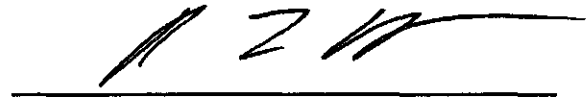
<sup>3</sup> The Commission notes that these conditions are comparable to the conditions that we approved for Duke (Duke Order at 13-14).

It is, therefore,

ORDERED, That AEP Ohio's application be approved, subject to the conditions set forth in this finding and order. It is, further,

ORDERED, That a copy of this finding and order be served upon all parties of record.

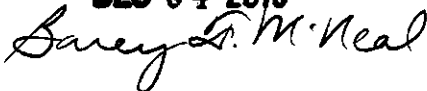
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Secretary