

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. )

ENTRY ON REHEARING

The Commission finds:

- (1) Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is a public utility as defined in R.C. 4905.02 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 Ohio Adm.Code 4901:1-37-06, and a request for expedited relief. In its application, AEP Ohio explained that it has been unable to obtain the consent necessary to transfer the OVEC contractual entitlements to AEP Genco. AEP Ohio, therefore, requested 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.

- (5) By Finding and Order issued on December 4, 2013, the Commission found that AEP Ohio's application should be approved, subject to certain conditions to apply during the Company's current electric security plan (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 (OVEC Order). With respect to the retail rate impact of AEP Ohio's retention of the OVEC contractual entitlements, the Commission approved the Company's request to address the retail rate issues related to OVEC in the next ESP proceeding.
- (6) R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.
- (7) On January 3, 2014, the Ohio Consumers' Counsel (OCC) filed an application for rehearing of the OVEC Order. AEP Ohio filed a memorandum contra OCC's application for rehearing on January 13, 2014.
- (8) By Entry on Rehearing issued on January 29, 2014, the Commission granted the application for rehearing filed by OCC for further consideration of the matters specified in the application for rehearing.
- (9) In its first ground for rehearing, OCC argues that the Commission erred by unlawfully deferring the OVEC retail rate issues for resolution in AEP Ohio's pending ESP proceedings. *In re Ohio Power Company*, Case No. 13-2385-EL-SSO, et al. (*ESP Case*). OCC contends that the OVEC retail rate issues should be resolved under R.C. 4928.17 in the present case, rather than under R.C. 4928.143, which OCC believes is less protective of customers, in the *ESP Case*. In deferring the issues to the *ESP Case*, OCC asserts that the Commission has changed the standard of review and burden of proof, in contravention of the applicable law. OCC notes that, under R.C. 4928.17(A), the Commission must determine, inter alia, whether AEP Ohio's corporate separation plan

satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power. OCC further notes that, with respect to AEP Ohio's proposed ESP, R.C. 4928.143(C) merely requires the Company to prove that the ESP, in its entirety, is more favorable than a market rate alternative. OCC adds that, under R.C. 4928.143(C)(2), AEP Ohio may reject the Commission's modification of an ESP. OCC concludes that the Commission has unlawfully weakened the standard of review and burden of proof, which, according to OCC, will ease AEP Ohio's attempt to collect OVEC-related costs from customers.

- (10) AEP Ohio replies that the Commission correctly applied R.C. 4928.17 to the narrow corporate separation plan amendment at issue in this proceeding and properly found that OVEC rate issues should be addressed in the *ESP Case*. AEP Ohio notes that its retention of the OVEC contract does not, in and of itself, impact rates or harm customers. Initially, AEP Ohio points out that its application only requested approval of the proposed corporate separation plan amendment and explicitly did not seek the Commission's resolution of the associated rate issues in this docket. AEP Ohio also contends that OCC essentially seeks to prematurely address and summarily dispose of the OVEC retail rate issues with prejudice to the Company. AEP Ohio believes that the proper course is to address the OVEC rate issues in the *ESP Case*. Additionally, AEP Ohio disagrees with OCC's assertion that R.C. 4928.143 is less protective of customers. In any event, AEP Ohio argues that the Commission properly relied upon R.C. 4928.17 in its resolution of this case.
- (11) In its second ground for rehearing, OCC maintains that the Commission unreasonably and unlawfully failed to find that customers should be held harmless with respect to retail rate issues associated with AEP Ohio's OVEC contractual entitlements. OCC contends that the Commission failed to address how AEP Ohio's retention of the OVEC contractual entitlements and resolution of the OVEC rate issues in the *ESP Case* meets the public interest standard of R.C. 4928.17(A)(2). OCC argues that, if AEP Ohio retains the OVEC asset and is permitted to collect

OVEC-related costs from customers, the Company will have an unfair competitive advantage.

- (12) AEP Ohio responds that the Commission already considered and rejected OCC's premature attempt to mandate a hold harmless requirement and, thereby, summarily reject the Company's OVEC rate proposal in the *ESP Case*. AEP Ohio argues that OCC's concerns are premature and speculative, given that they are contingent on the Commission's adoption of the Company's OVEC rate proposal in the *ESP Case*. Noting that no competitive retail electric service provider has raised comparable concerns, AEP Ohio points out that the Commission's requirement that the energy from the OVEC contract be liquidated in the PJM Interconnection (PJM) market eliminates any potential unfair competitive advantage. AEP Ohio adds that OCC did not explain or demonstrate how the Company's OVEC rate proposal is anticompetitive and, in any event, the impact of the proposal on the competitive market will be addressed in the *ESP Case*.
- (13) In its third ground for rehearing, OCC contends that the Commission unreasonably and unlawfully allowed AEP Ohio to retain the OVEC contractual entitlements, without a hold harmless condition to protect customers, which may result in customers subsidizing the Company for OVEC expenses that exceed OVEC revenues for power sold in the PJM market. OCC further contends that the OVEC Order violates R.C. 4928.38, which requires AEP Ohio to be fully on its own in the competitive market following the market development period. OCC asserts that customers should not bear the risk of losses on sales of OVEC generation in the PJM market. According to OCC, the OVEC Order enabled AEP Ohio to seek transition revenues through its OVEC rate proposal in the *ESP Case*.
- (14) AEP Ohio disputes OCC's claim that the Company's OVEC rate proposal in the *ESP Case* constitutes an untimely request for stranded investment cost recovery. According to AEP Ohio, OCC's arguments are premature, speculative, and without merit. AEP Ohio believes that its OVEC rate proposal is a balanced approach that is

permitted under R.C. 4928.143 and that the merits of the proposal should be reserved for the *ESP Case*.

- (15) In its fourth ground for rehearing, OCC asserts that the Commission unreasonably and unlawfully found that AEP Ohio's corporate separation plan complies with R.C. 4928.17. Specifically, OCC claims that AEP Ohio's retention of the OVEC contractual entitlements does not satisfy the public interest, because it may result in an unfair competitive advantage for the Company, in violation of R.C. 4928.17(A)(2). OCC also claims that AEP Ohio's retention of the OVEC contractual entitlements does not effectuate state policy, because it may impede competition by facilitating an anticompetitive subsidy for AEP Ohio and allow the Company the opportunity to collect generation-related costs through distribution rates, in violation of R.C. 4928.17(A)(1) and 4928.02(H). OCC contends that the OVEC Order enabled AEP Ohio, in its OVEC rate proposal in the *ESP Case*, to request a charge that would require customers to pay for any OVEC-related losses that the Company incurs.
- (16) In its memorandum contra, AEP Ohio points out that OCC's fourth ground for rehearing repeats the same arguments made with respect to its second ground for rehearing. AEP Ohio reiterates that its retention of the OVEC contract does not create an anticompetitive subsidy or convey an unfair competitive advantage.
- (17) In its fifth ground for rehearing, OCC argues that the Commission unreasonably and unlawfully found that AEP Ohio's corporate separation plan effectuates state policy, given that the Commission enabled the Company to seek to collect generation-related costs through distribution rates, in violation of R.C. 4928.02(H). OCC claims that the OVEC Order afforded AEP Ohio the opportunity, through its OVEC rate proposal in the *ESP Case*, to seek an anticompetitive subsidy to be paid by customers.
- (18) AEP Ohio responds that OCC's arguments are premature, speculative, and mischaracterize the Company's OVEC rate proposal in the *ESP Case* as improperly seeking to

recover generation costs through distribution rates. AEP Ohio urges the Commission to correct OCC's flawed premise and affirm the decision to resolve the OVEC rate proposal in the *ESP Case*.

- (19) Upon review of OCC's application for rehearing and AEP Ohio's memorandum contra, the Commission finds that OCC's application for rehearing should be denied in its entirety. In the OVEC Order, we approved, with certain conditions, AEP Ohio's application for an amendment to its corporate separation plan, which sought only to exempt the OVEC contractual entitlements from the Company's then pending corporate separation and nothing more. The Commission found that the retail rate issues associated with AEP Ohio's retention of the OVEC contract should be addressed in the *ESP Case*, as proposed by the Company. In approving AEP Ohio's application, the Commission applied the governing statute, R.C. 4928.17, and determined that the proposed corporate separation plan amendment was consistent with the requirements of the statute, as well as Ohio Adm.Code 4901:1-37. The Commission found that AEP Ohio's proposal to retain the OVEC contractual entitlements, while liquidating the power through the PJM market, would ensure that the Company's corporate separation was completed by December 31, 2013, as scheduled, in full accord with the objectives of R.C. 4928.17 and the state policy specified in R.C. 4928.02. (OVEC Order at 8-9.)
- (20) We, therefore, find no merit in OCC's claim that the OVEC retail rate issues were unlawfully deferred to the *ESP Case*, or that the Commission weakened the standard of review and burden of proof. No statute, including R.C. 4928.17, requires consideration of the OVEC rate impact in this docket, which solely concerns the amendment of AEP Ohio's corporate separation plan. The Commission reasonably exercised its discretion to manage its dockets, in finding that the rate impact of AEP Ohio's retention of the OVEC contract should be addressed in the *ESP Case*. The merits of AEP Ohio's OVEC rate proposal will be fully considered in the *ESP Case*, and intervenors in those proceedings will have ample opportunity to raise their concerns with respect to the Company's proposed ESP,

including the OVEC rate proposal. Additionally, in requiring that AEP Ohio liquidate the energy from the OVEC contract in the PJM market, the Commission fully considered the requirements of R.C. 4928.17(A)(2), relieving any concern regarding potential unfair competitive advantage and abuse of market power. OCC's first ground for rehearing, as well as arguments regarding the Commission's alleged violation of R.C. 4928.17(A)(2) raised elsewhere in the application, should, thus, be denied.

- (21) We likewise find no merit in OCC's contention that the OVEC Order is unlawful and unreasonable in that it enabled AEP Ohio, in its OVEC rate proposal in the *ESP Case*, to request a charge that would require customers to pay for the Company's OVEC-related losses. In its application in the present case, AEP Ohio noted its intention to address the OVEC rate impact in the *ESP Case*, which the Commission agreed was a reasonable course of action. Nothing in the OVEC Order, however, conferred approval or authority for any OVEC-related cost recovery by AEP Ohio, or otherwise predetermined the outcome of the OVEC rate proposal in the *ESP Case*. As noted above, the Commission will fully evaluate AEP Ohio's OVEC rate proposal, in the *ESP Case*, and determine, at that time, whether the proposal is reasonable, consistent with all applicable law, and supported by the record. The Commission emphasizes that we have not approved cost recovery of any OVEC-related items in the present proceeding. We reiterate that OCC may raise its concerns regarding the impact of AEP Ohio's OVEC rate proposal on ratepayers in the *ESP Case* (OVEC Order at 9). The Commission, therefore, finds that OCC's second, third, fourth, and fifth grounds for rehearing, which all pertain to the rate impact of AEP Ohio's OVEC rate proposal, as filed in the *ESP Case*, are premature and speculative at this point, and should, accordingly, be denied.

It is, therefore,

ORDERED, That OCC's application for rehearing be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Todd A. Snitchler, Chairman

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Steven D. Lesser

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Entered in the Journal

**FEB 13 2014**

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Barcy F. McNeal

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Secretary