Before

**The Public Utilities Commission Of Ohio**

In the Matter of the Application of )

Ohio Power Company for Approval of ) Case No. 11-5333-EL-UNC

An Amendment to Its Corporate )

Separation Plan )

#### REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Oliker

McNees Wallace & Nurick

Fifth Third Center

21 East State Street, Suite 1700

Columbus, OH 43215

Telephone: 614-469-8000

Telecopier: 614-469-4653

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

**December 29, 2011 On Behalf of Industrial Energy Users-Ohio**

Before

**The Public Utilities Commission Of Ohio**

In the Matter of the Application of )

Ohio Power Company for Approval of ) Case No. 11-5333-EL-UNC

An Amendment to Its Corporate )

Separation Plan )

#### REPLY COMMENTS OF INDUSTRIAL ENERGY USERS-OHIO

1. **INTRODUCTION**

On September 30, 2011, Ohio Power Company (“AEP-Ohio”) filed an Application for Approval of an Amendment to its Corporate Separation Plan and requested approval to transfer generating assets to an unregulated affiliate (hereinafter, “Application”). The Public Utilities Commission of Ohio (“Commission”) issued an Entry on December 2, 2011, requesting that interested parties file comments regarding the Application. The Industrial Energy Users-Ohio (“IEU-Ohio”), Commission Staff (“Staff”), Duke Energy Commercial Asset Management (“Duke”), FirstEnergy Solutions (“FES”), Office of the Ohio Consumers’ Counsel (“OCC”), Buckeye Power, Inc. (“Buckeye”), and Exelon[[1]](#footnote-1) Generation Company, Inc. (“Exelon”) filed Comments.

IEU-Ohio agrees with the Comments submitted by FES, Duke, and OCC, that the Application is deficient as filed. IEU-Ohio is submitting Reply Comments to address issues raised by Staff.

1. **REPLY COMMENTS**
2. **Staff’s Comments**

Staff has identified that permitting AEP-Ohio to structurally separate its generation assets may affect competitive conditions in the electricity market.[[2]](#footnote-2) Staff has also identified that AEP-Ohio’s Application fails to provide the information required by statute and rule and that there are “a host of details that will need to be addressed during the steps to the new corporate structure.”[[3]](#footnote-3) Without a more complete record, the Commission cannot determine whether the Application complies with Sections 4928.17 or 4928.02, Revised Code, or Rule 4901:1-37, Ohio Administrative Code, with respect to transfers of generation and corporate separation plans.

While Staff recognizes that the Application does not contain the required information, Staff recommends approving the Application.[[4]](#footnote-4) Because the Application does not contain the necessary information, the Commission cannot determine that the Application is just, reasonable and in the public interest. Thus, the Commission must direct AEP-Ohio to supplement the Application and set the matter for hearing.

As Staff noted, there will be future proceedings at the Federal Energy Regulatory Commission (“FERC”).[[5]](#footnote-5) Given that those proceedings will impact AEP-Ohio’s corporate separation plan and generation assets transfer, the Commission must not approve the Application until it is clear how those proceedings will be resolved. Moreover, the Commission will be in a better position to influence proceedings at FERC if it does not approve the Application and lock itself into a position.

IEU-Ohio also agrees with Staff’s recommendation that AEP-Ohio file a separate application to transfer its generation assets because the Application does not contain the market value of AEP-Ohio’s generation or terms and conditions regarding the transfer. But the Commission must not approve the present Application without first reviewing the details surrounding the transfer of the generation; otherwise, the Commission will not be able to determine whether the resulting corporate separation plan is just, reasonable, and in the public interest.

1. **CONCLUSION**

AEP-Ohio has not provided the information that is necessary for the Commission to properly review the Application. As a result, it is premature for the Commission to approve the Application at this time. The Commission should direct AEP-Ohio to fill in the holes in the Application identified by IEU-Ohio, FES, OCC, Duke, and Staff and set the matter for hearing.

Respectfully submitted:

/s/ Joseph E. Oliker

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Oliker

McNees Wallace & Nurick

Fifth Third Center

21 East State Street, Suite 1700

Columbus, OH 43215

Telephone: 614-469-8000

Telecopier: 614-469-4653

sam@mwncmh.com

fdarr@mwncmh.com

joliker@mwncmh.com

**On Behalf of Industrial Energy Users-Ohio**

#### Certificate of Service

I hereby certify that a copy of the foregoing *Reply Comments of Industrial Energy Users-Ohio* was served upon the following parties of record this 29th day of December 2011, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

/s/ Joseph E. Oliker

Matthew J. Satterwhite

Steven T. Nourse

Anne M. Vogel

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, OH 43215

mjsatterwhite@aep.com

stnourse@aep.com

amvogel@aep.com

Daniel R. Conway

Porter Wright Morris & Arthur

Huntington Center

41 S. High Street

Columbus, OH 43215

dconway@porterwright.com

**On Behalf of Columbus Southern Power Company and Ohio Power Company**

Philip B. Sineneng

Terrance A. Mebane

THOMPSON HINE LLP

41 S. High St., Suite 1700

Columbus, OH 43215

Philip.Sineneng@ThompsonHine.com

Terrance.Mebane@ThompsonHine.com

**On Behalf of Duke Energy Retail Sales, LLC**

Joseph E. Oliker

Bruce J. Weston

Terry L. Etter

Maureen R. Grady

Jeffrey L. Small

Office of the Ohio Consumers’ Counsel

10 W. Broad Street, 18th Floor

Columbus, OH 43215-3485

etter@occ.state.oh.us

grady@occ.state.oh.us

small@occ.state.oh.us

**On Behalf of the Office of the Ohio**

**Consumers’ Counsel**

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

**Oh Behalf of Ohio Hospital Association**

Mark A. Hayden

FirstEnergy Service Company

76 South Main Street

Akron, OH 44308

haydenm@firstenergycorp.com

James F Lang

Laura C. McBride

N. Trevor Alexander

Calfee, Halter & Griswold LLP

1400 KeyBank Center

800 Superior Ave.

Cleveland, OH 44114

jlang@calfee.com

lmcbride@calfee.com

talexander@calfee.com

David A. Kutik

Jones Day

North Point

901 Lakeside Avenue

Cleveland, OH 44114

dakutik@jonesday.com

Allison E. Haedt

Jones Day

P.O. Box 165017

Columbus, OH 43216-5017

aehaedt@jonesday.com

John N. Estes III

Paul F. Wight

Skadden, Arps, Slate, Meagher & Flom LLP

1440 New York Ave., N.W.

Washington, DC 20005

jestes@skadden.com

paul.wight@skadden.com

**On Behalf of FirstEnergy Solutions Corp.**

Lisa G. McAlister

Matthew W. Warnock

Thomas O’Brien

BRICKER & ECKLER LLP

100 South Third Street

Columbus, OH 43215-4291

lmcalister@bricker.com

mwarnock@bricker.com

tobrien@bricker.com

**On Behalf of OMA Energy Group**

Sandy I-ru Grace

Assistant General Counsel

Exelon Business Services Company

101 Constitution Ave., NW

Suite 400 East

Washington, DC 20001

sandy.grace@exeloncorp.com

Jesse A. Rodriguez, Esq.

Public Policy & Affairs Manager

Exelon Generation Company, LLC

300 Exelon Way

Kennett Square, PA 19348

jesse.rodriquez@exeloncorp.com

M. Howard Petricoff

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

P.O. Box 1008

Columbus, OH 43216-1008

mhpetricoff@vorys.com

David M. Stahl

Arin C. Aragona

Scott C. Solberg

Eimer Stahl Klevorn & Solberg LLP

224 South Michigan Avenue, Suite 1100

Chicago, IL 60604

dstahl@eimerstahl.com

aaragona@eimerstahl.com

ssolberg@eimerstahl.com

Anastasia Polek-O’Brien

Exelon Generation Company, LLC

10 S. Dearborn Street, 49th Floor

Chicago, IL 60603

**On Behalf of Exelon Generation Company, 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

**On Behalf of Buckeye Power, Inc.**

William Wright

Werner Margard

Thomas Lindgren

John H. Jones

Stephen A. Reilly

Assistant Attorneys’ General

Public Utilities Section

180 East Broad Street, 6th Floor

Columbus, OH 43215

john.jones@puc.state.oh.us

werner.margard@puc.state.oh.us

thomas.lindgren@puc.state.oh.us

william.wright@puc.state.oh.us

stephen.reilly@puc.state.oh.us

**On Behalf of the Public Utilities Commission of Ohio**

Greta See

Jon Tauber

Attorney Examiner

Public Utilities Commission of Ohio

180 East Broad Street, 12th Floor

Columbus, OH 43215

**Attorney Examiners**

1. Exelon’s Comments merely reiterate arguments that it made in the Joint Motion to Consolidate and Joint Motion for Waiver, filed on September 30, 2011 and October 18, 2011, respectively. [↑](#footnote-ref-1)
2. Staff Comments at 4.

   [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. Staff Comments at 8. [↑](#footnote-ref-4)
5. Staff Comments at 5-6, 8. [↑](#footnote-ref-5)