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 Full Legal Corporate Separation )

and Amendment to its Corporate )

Separation Plan )

# JOINT MOTION TO EXTEND COMMENT DEADLINE AND REQUEST FOR EXPEDITED RULING AND MEMORANDUM IN SUPPORT OF

# INDUSTRIAL ENERGY USERS-OHIO AND

# THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL

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# INDUSTRIAL ENERGY USERS-OHIO AND

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On March 30, 2012, Ohio Power Company (“OP”) filed an Application for Approval of Full Legal Corporate Separation and Amendment to Its Corporate Separation Plan (“Application”). The Application requested a waiver of the hearing requirement and the requirement to state the market value and book value of all property to be transferred.[[1]](#footnote-1) Industrial Energy Users-Ohio (“IEU-Ohio”) and others opposed the waiver request.[[2]](#footnote-2) On July 9, 2012, the Attorney Examiner issued an Entry setting a procedural schedule for Intervenor Comments and Reply Comments, stating, “After comments and reply comments are received and the issues raised therein considered, a decision will be made whether a hearing is warranted.”[[3]](#footnote-3)

The Commission has not ruled on OP’s waiver request, and OP has not filed the information required by the Public Utilities Commission of Ohio’s (“Commission”) rules—particularly, the market value and book value of all property to be transferred.[[4]](#footnote-4) As a result, IEU-Ohio, Office of the Ohio Consumers’ Counsel (“OCC”), Intervenors, and the Commission Staff cannot effectively and efficiently review the Application and file Comments. Accordingly, IEU-Ohio and OCC (“Joint Movants”) respectfully moves the Commission to extend the deadline for Comments until after the Commission issues a ruling on OP’s waiver request. For the reasons set forth in the Memorandum in Support attached hereto, Joint Movants request that the Commission direct that Comments be filed two weeks after OP provides the net book value and market value of all property to be transferred, and, Reply Comments to be filed two weeks thereafter. Joint Movants request an expedited ruling, as Comments are currently due on July 27, 2012.

Respectfully submitted,

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# MEMORANDUM IN SUPPORT

On March 30, 2012, OP filed an Application for Approval of Full Legal Corporate Separation and Amendment to Its Corporate Separation Plan (“Application”). In its Application, OP requested a waiver of the requirement to provide the net book value and market value of all property to be transferred, as well as authorization to transfer its generating assets at net book value.[[5]](#footnote-5) IEU-Ohio and FirstEnergy Solutions Corp., filed a Memorandum Contra the waiver request,[[6]](#footnote-6) as did OCC.[[7]](#footnote-7) The Commission has yet to rule on the waiver request.

On July 9, 2012, the Attorney Examiner issued an Entry setting a procedural schedule for Intervenor Comments and Reply Comments, stating, “After comments and reply comments are received and the issues raised therein considered, a decision will be made whether a hearing is warranted.”[[8]](#footnote-8) Comments are currently due on July 27, 2012, with Reply Comments due on August 3, 2012.

The Application, however, is not ripe for Comments. OP’s waiver request was based on the fact that OP did not receive generation transition revenue.[[9]](#footnote-9) But, on July 2, 2012,[[10]](#footnote-10) just a few weeks before the Comment deadline, OP was authorized to begin collecting generation transition revenue.[[11]](#footnote-11) While Joint Movants contest the legality of the Commission’s decision, if the Commission’s decision stands, the generation transition revenue must be considered along with OP’s Application.

One of the key issues before the Commission in this proceeding is whether the transfer of OP’s generating assets—at net book value—is just, reasonable, and in the public interest. Since OP has been authorized to collect generation transition revenue, the value of OP’s generating assets has taken on new significance.[[12]](#footnote-12) Moreover, OP’s internal documents indicate that OP’s generating assets may be worth more than their book value.[[13]](#footnote-13) Until OP provides the market value and book value of its generating assets, parties will not be able to articulate a position on whether or not the transfer is just, reasonable, and in the public interest.

The need for the information for which OP seeks a waiver is greater now than when OP filed its Application. Therefore, Joint Movants request that the Commission deny OP’s waiver request and extend the deadline for Comments and Reply Comments until OP provides the required information and parties have an opportunity to review that information. Because Comments are due on July 27, 2012, Joint Movants request an expedited ruling.

Respectfully submitted,

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#### Certificate of Service

I hereby certify that a copy of the foregoing *Joint Motion to Extend Comment Deadline and Request for Expedited Ruling and Memorandum In Support of Industrial Energy Users-Ohio and the Office of the Ohio Consumers’ Counsel,* was served upon the following parties of record this 19th day of July, 2012, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

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1. Application at 6. [↑](#footnote-ref-1)
2. Memorandum Contra Ohio Power Company's Request for Waiver of Industrial Energy Users-Ohio and FirstEnergy Solutions Corp. (Apr. 26, 2012); Memorandum Contra Motion for Waiver By the Office of the Ohio Consumers’ Counsel (Apr. 16, 2012). [↑](#footnote-ref-2)
3. Entry at 1. [↑](#footnote-ref-3)
4. Rule 4901:1-37-09(C)(4), Ohio Administrative Code. [↑](#footnote-ref-4)
5. Application at 6. [↑](#footnote-ref-5)
6. Memorandum Contra Ohio Power Company's Request for Waiver of Industrial Energy Users-Ohio and FirstEnergy Solutions Corp. (Apr. 26, 2012). The Commission should deny OP’s waiver request. *See In the Matter of the Application of Aqua Ohio, Inc. for Authority to Increase its Rates and Charges in its Lake Erie Division*, Case No. 09-1044-WW-AIR, Entry at 2 (Jan. 20, 2010) (holding that waiver requests must be evaluated on a case-by-case basis); *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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case Nos. 11-346-EL-SSO, *et al.*, Entry at 3 (Apr. 25, 2012) (holding that “inclusion of projected Turning Point solar project costs were an important consideration in the statutory test under Section 4928.143, Revised Code” and that it is “not only necessary for our consideration of the modified application, but is also in the public interest.”) (hereinafter “*ESP II*”); *see also In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No.12-1230-EL-SSO, Entry at 6 (Apr. 25, 2012) (holding that the waiver request should be denied because the information is necessary for consideration of the type of application before the Commission). [↑](#footnote-ref-6)
7. Memorandum Contra Motion for Waiver By the Office of the Ohio Consumers’ Counsel (Apr. 16, 2012). [↑](#footnote-ref-7)
8. Entry at 1. [↑](#footnote-ref-8)
9. More specifically, OP stated:

Under SB 3, all of these generation assets were subjected to market and EDUs therefore were given a temporary opportunity to recover stranded generation investments during a transition period. That transition period is over. EDUs can no longer recover stranded generation investments, and transferring the generation assets based on an arbitrary determination of their current fair market value rather than net book value would be inappropriate.

Application at 7. [↑](#footnote-ref-9)
10. *See In the Matter of the Commission Review of the Capacity Charges of Ohio Power Case Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Opinion and Order (Jul. 2, 2012). [↑](#footnote-ref-10)
11. Transition revenue charges permits a utility to recover the difference between its cost and what the utility can obtain in the market. OP, moreover, has requested three different transition revenue charges: OP has requested above-market capacity revenues, a retail stability rider to ensure that OP has at least a 10.5% return on equity, and pool termination revenue if the Application in this proceeding is not approved as filed. *ESP II*, Direct Testimony of Robert Powers at 13-19 (Mar. 30, 2012); *ESP II*, Modified Application at 10 (Mar. 30, 2012); *ESP II*, Direct Testimony of Philip Nelson at 21-23 (Mar. 30, 2012). [↑](#footnote-ref-11)
12. The Commission has already determined that the market value of generating assets “could be helpful in determining whether the transfer is in the public interest.” *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, Entry on Rehearing at ¶36 (Feb. 11, 2009). [↑](#footnote-ref-12)
13. OP performed a recoverability test with respect to its generating assets “to determine if gross cash flows from the asset group are sufficient to recover the book value.” *ESP II*, OCC Exhibit 104 at 2. The recoverability test indicated that “the estimated generation function cash flows are sufficient to recover the companies’ generating assets” for the next thirty years. *Id.* at 4.

 [↑](#footnote-ref-13)