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

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Oliker

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

Bruce J. Weston

Ohio Consumers’ Counsel

Maureen R. Grady, Counsel of Record

Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-9567

grady@occ.state.oh.us

**Attorney for the Office of the Ohio Consumers’ Counsel**

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 OF

# INDUSTRIAL ENERGY USERS-OHIO AND

# THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL

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,

/s/ Joseph E. Oliker

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Oliker

Matthew R. Pritchard

McNees Wallace & Nurick LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Attorneys for Industrial Energy Users-Ohio

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record

Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

**Attorney for the Office of the Ohio Consumers’ Counsel**

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 )

# 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,

/s/ Joseph E. Oliker

Samuel C. Randazzo (Counsel of Record)

Frank P. Darr

Joseph E. Oliker

Matthew R. Pritchard

McNees Wallace & Nurick LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Attorneys for Industrial Energy Users-Ohio

Respectfully submitted,

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record

Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Attorney for the Office of the Ohio Consumers’ Counsel

#### 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.

/s/ Joseph E. Oliker

Joseph E. Oliker

Steven T. Nourse

Matthew J. Satterwhite

American Electric Power Service Corporation

1 Riverside Plaza, 29th Floor

Columbus, OH 43215

[stnourse@aep.com](mailto:stnourse@aep.com)

[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)

**Counsel for Ohio Power Company**

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](mailto:Amy.Spiller@duker-energy.com)

[Jeanne.Kingery@duke-energy.com](mailto: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](mailto:haydenm@firstenergycorp.com)

James F. Lang

Laura C. McBride

N. Trevor Alexander (0080713)

Calfee, Halter & Griswold, LLP

1400 KeyBank Center

800 Superior Ave.

Cleveland, OH 44114

[jlang@calfee.com](mailto:jlang@calfee.com)

[lmcbride@calfee.com](mailto:lmcbride@calfee.com)

[talexander@calfee.com](mailto:talexander@calfee.com)

David A. Kutik

Allison E. Haedt

Jones Day

901 Lakeside Avenue

Cleveland, OH 44114

[dakutik@jonesday.com](mailto:dakutik@jonesday.com)

[aehaedt@jonesday.com](mailto: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](mailto: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](mailto:Amy.Spiller@duker-energy.com)

[Rocco.D’Ascenzo@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)

**Counsel for Duke Energy Ohio, Inc.**

Michael L. Kurtz

David F. Boehm

Jody M. Kyler

Boehm, Kurtz & Lowry

36 East Seventh Street, Suite 1510

Cincinnati, OH 45202

[dboehm@BKLlawfirm.com](mailto:dboehm@BKLlawfirm.com)

[mkurtz@BKLlawfirm.com](mailto:mkurtz@BKLlawfirm.com)

jklyer@BKLlawfirm.com

**Counsel for Ohio Energy Group**

Joseph M. Clark, Counsel of Record

6641 North High Street, Suite 200

Worthington, OH 43085

[jmclark@vectren.com](mailto:jmclark@vectren.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](mailto:jmclark@vectren.com)

**Counsel for Buckeye Power, Inc.**

Lisa G. McAlister, Counsel of Record

Matthew W. Warnock

J. Thomas Siwo

Bricker & Eckler LLP

100 South Third Street

Columbus, OH 43215-4291

lmcalister@bricker.com

mwarnock@bricker.com

tsiwo@bricker.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**

William Wright

Assistant Attorney General

Chief, Public Utilities Section

180 E. Broad Street, 6th Floor

Columbus, OH 43215-3793

[william.wright@puc.state.oh.us](mailto:william.wright@puc.state.oh.us)

**Counsel for the Staff of the Public Utilities Commission of Ohio**

Sarah Parrot

Attorney Examiner

Public Utilities Commission of Ohio

180 East Broad Street, 12th Floor

Columbus, OH 43215

[Sarah.Parrot@puc.state.oh.us](mailto:Sarah.Parrot@puc.state.oh.us)

**Attorney Examiner**

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)