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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

2011 OCT 18 PM 5:14

In the Matter of the Application )  
of Ohio Power Company for Approval )  
of An Amendment to Its Corporate )  
Separation Plan )

Case No. 11-5333-EL-UNC PUCO

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JOINT MOTION FOR WAIVER

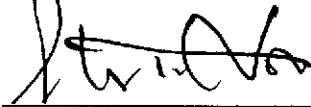
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Ohio Power Company, Exelon, City of Hilliard, City of Grove City, Association of Independent Colleges & Universities of Ohio, The Kroger Company, Paulding Wind Farm, Ohio Hospital Association, Environmental Law & Policy Center, Ohio Energy Group, Retail Energy Supply Association, Constellation Energy Commodities, Constellation NewEnergy, Inc., and EnerNOC pursuant to Ohio Admin. Code Rule 4901:1-37-02(C), jointly seek a waiver of the non-statutory hearing requirement in Ohio Admin. Code Rule 4901:1-37-09(D). As explained further in the attached Memorandum in Support, the intervenors in this case had an opportunity to — and did — conduct discovery and cross examine AEP Ohio’s witness related to corporate separation issues in Case Nos. 11-346-EL-SSO, *et al.* (Stipulation Case). As a result, there is no need to conduct another hearing on these same issues in this docket, especially in light of the fact that the substantive approval of full corporate separation and the related transfer of generation assets to an AEP Ohio affiliate outside the Commission’s jurisdiction will be determined by the Commission’s review and approval of the Stipulation and Recommendation at issue in the Stipulation Case. Thus, to avoid duplication and achieve process and administrative efficiencies, there is good cause and it is appropriate for the Commission to waive the hearing requirement in Ohio Admin. Code Rule 4901:1-37-09(D) in this instance.

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For the reasons set forth in the attached memorandum in support, the motion for waiver should be granted.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT**

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Ohio Power Company (OPCo)<sup>1</sup> filed its application in Case No. 11-5333-EL-UNC as soon as practicable after the signatory parties agreed to the Stipulation and Recommendation in Case Nos. 11-346-EL-SSO *et al.* (Stipulation). It made the filing — and the Joint Movants moved for consolidation<sup>2</sup> — so that when the Commission adopts the Stipulation there would be no confusion regarding what precisely it was approving. By adopting the Stipulation the Commission will, among other things, approve full structural corporate separation by OPCo, which, aside from being the premise upon which many of the individual provisions contained in the Stipulation rely upon, involves the transfer of OPCo's generation, fuel, and other assets outside the Commission's jurisdiction to a newly-created AEP generation affiliate (AEP GenCo). Thus, in its September 30, 2011 Corporate Separation Compliance filing in this docket, OPCo specifically asked the Commission to approve the transfer of the generation assets and contractual entitlements referenced in Exhibit PJN-1 at net book value and, to the extent necessary, grant a waiver of Ohio Admin. Code Rule 4901:1-37-09(C)(4); OPCo also requested

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<sup>1</sup> Columbus Southern Power Company and OPCo have applied for authority to merge in Case No. 10-2376-EL-UNC. As described in OPCo's application in this case, the surviving entity after the merger will be OPCo.

<sup>2</sup> On September 30, 2011, AEP Retail Energy Partners LLC, the Association of Independent Colleges and Universities of Ohio, the City of Grove City, the City of Hilliard, Columbus Southern Power Company, Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., the Distributed Wind Energy Association, Dominion Retail, Inc., Duke Energy Retail Sales, LLC, the Environmental Law and Policy Center, Exelon Generation Company, LLC, the Kroger Co., Natural Resources Defense Council, the Ohio Energy Council, the Ohio Energy Group, the Ohio Hospital Association, Ohio Power Company, the OMA Energy Group, Ormet Primary Aluminum Corporation, Paulding Wind Farm II, LLC, PJM Power Providers Group, the Retail Energy Supply Association, Sam's East, Inc., Sierra Club, and Wal-Mart Stores East, LLP, (Joint Movants) requested that the Public Utilities Commission of Ohio (Commission), pursuant to Rule 4901-1-12, Ohio Administrative Code (O.A.C.), consolidate Ohio Power Company's (AEP Ohio) Application for the Approval of modifications to its Corporate Separation Plan docketed in Case No. 11-5333-EL-UNC (Corporate Separation Compliance Filing), with Case Nos. 11-346-EL-SSO, *et al.* (Stipulation Case).

that the described amendments to OPCo's corporate separation plan to reflect full structural corporate separation and the merger of CSP into OPCo be approved.

Because the transfer of OPCo's generation assets will alter the jurisdiction of the Commission over those generation assets, a hearing would normally be required under Ohio Admin. Code Rule 4901:1-37-09(D). Joint Movants request pursuant to Ohio Admin. Code Rule 4901:1-37-02(C) a waiver of this hearing requirement, which is not required by any statute. Under Rule 4901:1-37-02(C), the Commission may waive any requirement of Chapter 37 for good cause shown. Here, good cause is present because the intervenors had full opportunity to — and did — conduct discovery and cross-examine AEP Ohio witness Philip J. Nelson regarding the asset transfers and amendments to OPCo's corporate separation plan. Specifically, parties propounded interrogatories and received answers on this subject. Further, FirstEnergy Solutions (FES) participated in Mr. Nelson's deposition on October 7, 2011 (other parties had full opportunity to participate in the deposition). Mr. Nelson also appeared and was subject to cross examination regarding the Companies' corporate separation amendments and the proposed asset transfers during the Stipulation case hearing on October 11, 2011. Some parties did ask Mr. Nelson questions regarding the asset transfers and amendments to OPCo's corporate separation plan during the Stipulation case hearing.

The fact that intervenors in this case are parties in the Stipulation case and had a full opportunity to — and did — conduct discovery and cross-examine of Mr. Nelson regarding the asset transfers is important because AEP Ohio's evidence supporting the asset transfers is the same in both dockets. Specifically, attached to AEP Ohio's application in this docket was Exhibit PJN-1 to the testimony of Philip J. Nelson in the Stipulation case. That exhibit contained an internal reference to an Exhibit WAA-1 from the testimony of William A. Allen in the

Stipulation case. Both Exhibit PJN-1 and the relevant excerpts from WAA-1 were attached to the application in this docket. Mr. Nelson's testimony in support of the asset transfers, and any questions by intervenors concerning it, would be the same no matter which docket the discussion occurred. Because the testimony in support of the asset transfers has already been subject to discovery and cross-examination at hearing, there is good cause not to repeat this process and, thus, grant Joint Movant's motion to waive a hearing in this docket.

It is also worth noting that by granting this motion to waive a hearing, the Commission is not unduly prejudicing the intervenors' ability to understand the amendments to the corporate separation plan and related asset transfers. Both FES and IEU-Ohio (the only parties that contested consolidation) are parties to the Stipulation case and the requirements of Ohio Admin. Code Chapter 4901:1-37 are not new to either. At page 4 of its memorandum contra the Joint Movants' Motion to Consolidate, FES goes as far as to boast about its extensive "first-hand experience" with corporate separation. Accordingly, any questions either intervenor had regarding Mr. Nelson's testimony and the relevant excerpt from WAA-1 supporting the asset transfers would have been made (or, at minimum, they had a full opportunity to explore these issues with Mr. Nelson during his deposition and cross examination during the hearing), and waiving a hearing in this docket, as a result, would not deprive either intervenor of the ability to better understand the asset transfers at issue.

### **Conclusion**

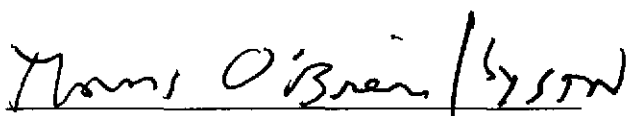
For the reasons set forth above, there is good cause to waive the requirement for a hearing under Ohio Admin. Code Rule 4901:1-37-09(D) and, accordingly, grant Joint Movant's motion pursuant to Ohio Admin. Code Rule 4901:1-37-02(C). If the Commission does not find *good cause*, Joint Movants ask in the alternative for an expedited hearing schedule that syncs

with the schedule for decision of the Stipulation case. This is necessary and appropriate if waiver of the hearing requirement is not granted because the issues in the two cases are so interrelated and, as discussed above, cross-examination of Mr. Nelson has already occurred and if such duplicative questioning were required, it should not demand much preparation or time. More importantly, the Commission needs to consider approving the substance of AEP Ohio's corporate separation proposal at the same time it considers adopting the Stipulation, in order to fully preserve the benefits of the Stipulation.

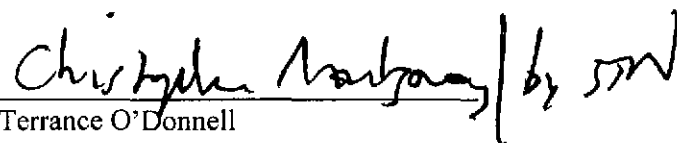
Respectfully submitted,



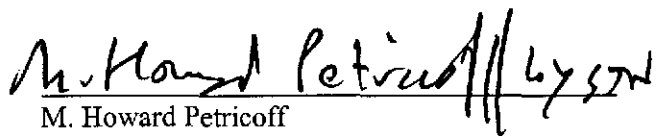
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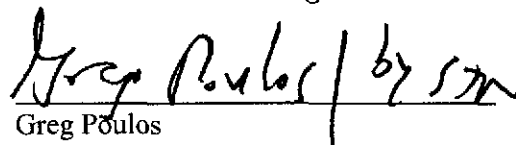
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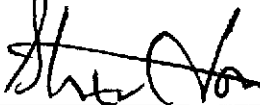
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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 18<sup>th</sup> day of October, 2011 by U.S. Mail, upon the persons listed below.



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