

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

8
RECEIVED-DOCKETING DIV
2007 AUG -6 PM 2:30
PUCO

| | | |
|--|---|------------------------|
| In the Matter of the Application of Ohio Edison |) | |
| Company, The Cleveland Electric Illuminating |) | |
| Company and The Toledo Edison Company for |) | Case No. 07-796-EL-ATA |
| Application of a Competitive Bidding Process for |) | |
| Standard Service Offer Electric Generation Supply, |) | Case No. 07-797-EL-AAM |
| Accounting Modifications Associated With |) | |
| Reconciliation Mechanism and Phase In, and Tariffs |) | |
| for Generation Service |) | |

MOTION TO INTERVENE
AND
MOTION FOR HEARING
BY
THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL

The Northeast Ohio Public Energy Council ("NOPEC") respectfully moves the Public Utilities Commission of Ohio to grant NOPEC's motion to intervene and motion for a hearing. O.R.C. 4903.221; O.A.C. 4901-1-11. NOPEC further explains the reasons for these motions in the attached memorandum in support.

Respectfully submitted,



Glenn S. Krassen (007610)
BRICKER & ECKLER LLP
1375 East Ninth Street, Suite 1500
Cleveland, Ohio 44115
Telephone: (216) 523-5469
Fax: (216) 523-7071
E-Mail: gkrassen@bricker.com

Attorney for the Northeast Ohio Public Energy Council

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|--|---|------------------------|
| In the Matter of the Application of Ohio Edison |) | |
| Company, The Cleveland Electric Illuminating |) | |
| Company and The Toledo Edison Company for |) | Case No. 07-796-EL-ATA |
| Application of a Competitive Bidding Process for |) | |
| Standard Service Offer Electric Generation Supply, |) | Case No. 07-797-EL-AAM |
| Accounting Modifications Associated With |) | |
| Reconciliation Mechanism and Phase In, and Tariffs |) | |
| for Generation Service |) | |

**MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
AND
MOTION FOR HEARING
BY
THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL**

The Northeast Ohio Public Energy Council ("NOPEC"), a regional council of governments established under Chapter 167 of the Ohio Revised Code, is comprised of 126 member counties, municipalities and townships in eight (8) counties in Northeastern Ohio. NOPEC is a political subdivision of the State of Ohio. NOPEC is a governmental aggregator certified by this Commission for both electricity and natural gas services. NOPEC has aggregated the electricity supplies for approximately 450,000 electric customers located in The Cleveland Electric Illuminating Company ("CEI") and Ohio Edison Company ("OE") service areas of FirstEnergy Corp. NOPEC is the largest public energy aggregator in the State and the nation.

NOPEC's customers who have been burdened with high cost electricity for the past three decades. Ohio's municipal opt-out electricity aggregation law has been recognized nationally and internationally.

NOPEC meets the standards in statute and rule for intervention in these cases. O.R.C. 4903.221; O.A.C. 4901-1-11. On July 10, 2007, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and Toledo Edison Company ("TE"; collectively the "Operating Companies") filed an Application to establish a competitive bidding process to provide supply for the provision of Standard Service Offer ("SSO") electric generation service to the Operating Companies' customers after January 1, 2009. CEI and OE provide utility service to NOPEC's aggregated customers.

As such, NOPEC is a "person who may be adversely affected" by these proceedings. O.R.C. 4903.221. NOPEC may be adversely affected for reasons that include, but are not limited to, the following. First, NOPEC is the governmental aggregator to approximately 450,000 customers in the CEI and OE service territories. NOPEC has been the largest governmental aggregator in such utility territories.

NOPEC's customers are currently served with standard offer service by OE and CEI. Prior to January 1, 2006, NOPEC's customers received their generation service from a competitive retail electric supplier under a NOPEC aggregation program. Without an appropriate competitive regulatory framework, NOPEC is concerned that its customers will not be able to obtain generation service in Northeast Ohio after July 1, 2009 from a new NOPEC generation supplier and will have no choice other than proposed SSO service. NOPEC wants to ensure that electricity customers in Northern Ohio will have benefits of competition intended by the General Assembly in Senate Bill 3 over the long run.

SB3 provided that shopping incentives shall "encourage the development of effective competition in the supply of retail electric generation service." O.R.C. 4928.37(A)(1)(b). After an initial review of the Application, NOPEC is concerned about the Operating Companies' proposals for a competitive bidding process, particularly those applicable to the OE and CEI residential and commercial classes which have been a part of NOPEC's aggregation. NOPEC is concerned about the two proposed methods of bidding out the competitive supply (i.e., by customer class or slice of system). NOPEC is concerned with new charges proposed by the Operating Companies and whether such charges are or should be bypassable or not by NOPEC customers shopping in a NOPEC aggregation program. NOPEC is interested in how the "avoidable costs" for shoppers in a large scale electric governmental aggregation will be calculated and determined, as those will become the "price(s) to beat". NOPEC is concerned with the Operating Companies' proposals related to their proposed recovery of amounts relating to existing special contracts that extend beyond January 1, 2007 and the availability of reasonably priced street lighting/traffic control rates that can be made available to all communities (including NOPEC member communities) in the Operating Companies' service areas.

NOPEC is clearly affected by this proceeding. Additionally, NOPEC meets the four statutory criteria that the Commission must consider for interventions. First, the "nature and extent" of NOPEC's "interest" warrant the granting of intervention. O.R.C. 4903.221(B)(1). NOPEC is a political subdivision of the State of Ohio and the largest governmental energy aggregator in Ohio.

The second statutory standard is the prospective intervenor's "legal position" and "its probable relation to the merits of the case." O.R.C. 4903.221(B)(2). As noted above, NOPEC

has legal position as a governmental aggregator whose customers will be affected by the Operating Companies' proposals contained within its Application. NOPEC's positions are related, *inter alia*, to the potential that certain of the Operating Companies' proposals may be contrary to Senate Bill 3 and Commission rules. These positions are directly relevant and material to the merits of the case.

The third statutory standard is whether the "prospective intervenor will unduly prolong or delay the proceeding." O.R.C. 4903.221(B)(3). NOPEC is filing this motion at the very beginning of the proceeding, so there is not an issue of prolonging or delaying matters that have developed later in a case. NOPEC will pursue reasonable efforts to work cooperatively with others in the cases, to maximize case efficiency where practical but without compromising NOPEC positions reflecting unique differences between NOPEC and other parties.

The fourth statutory standard is whether the "prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues." O.R.C. 4903.221(B)(4). The Operating Companies' proposal is a set of opinions and conclusions. NOPEC's intervention will contribute to the testing of those opinions and conclusions, which is appropriate and necessary for Commission adjudication.

NOPEC has brought benefits of electric competition to about 450,000 Ohioans. NOPEC also was granted intervention by the Commission and participated in FirstEnergy's rate stabilization plan case (Case No. 03- 2144-EL-ATA). Therefore, NOPEC has the experience and expertise to significantly contribute to the resolution of the issues in these cases.

NOPEC also meets the standards for intervention under the PUCO's rules of practice and procedure. O.A.C. 4901-1-11. NOPEC satisfies the elements of O.A.C. 4901-1-11 for intervention based on the above explanation for meeting the statutory standards. As shown

above, NOPEC has a "real and substantial interest in the proceeding..." given its aggregation services to customers in OEC and CEI service territories. O.A.C. 4901-1-11(A)(2). NOPEC's interest is not adequately represented by existing parties. To date, no other aggregator has been granted intervention. *Id.* In addition, NOPEC is a consumer representative as well.

NOPEC has explained the "nature" of its interest. O.A.C. 4901-1-119(B)(1). No parties that represent NOPEC's interests are intervenors in the case. O.A.C. 4901-1-11(B)(2).

NOPEC will significantly contribute to the proceedings and not unduly prolong or delay the proceedings, and has satisfied the next criterion in the rules - that NOPEC will contribute to a just and expeditious resolution of the issues. O.A.C. 4901-1-119(B)(4).

Finally, NOPEC's interventions would not unduly delay or unjustly prejudice any party. O.A.C. 4901-1-11(B)(2). NOPEC has explained that it will not unduly delay the proceedings. Further, NOPEC has not proposed anything that would unjustly prejudice a party. NOPEC itself is among those potentially prejudiced by the Application in this proceeding.

This motion is timely. O.R.C. 4903.221(A)(2); *also* O.A.C. 4901-1-11(E)(1).

In addition, the Commission should grant NOPEC's Motion for a Hearing.

First, the competitive bidding process and the new charges proposed by the Operating Companies in the case will amount to a rate increase for customers currently receiving their generation service from the Operating Companies for periods after January 1, 2009. O.R.C. 4909.18 and 4909.19. A hearing is required for rate increases. *Id.*

Further, O.R.C. 4909.18 requires a hearing. "[I]f it appears to the Commission that the proposals in the application may be unjust or unreasonable, the Commission shall set the matter for hearing." The application also requires a hearing pursuant to this statute. NOPEC submits that the Operating Companies' proposal "may be unjust or unreasonable". These proposals, if

implemented, may have a dramatic negative impact on prospective switching by customers. The Operating Companies' proposals also may be expected to drive switching levels below twenty percent (20%). These effects would affect switching customer base in the neighborhood of half a million customers in the CEI and OE territories alone. These effects could be unreasonable and unlawful for NOPEC customers and any CRES provider that serves NOPEC.

Accordingly, the Commission should grant NOPEC's intervention and hold a hearing. The Operating Companies' proposals will set the competitive landscape that may exist in northern Ohio for the next decade. NOPEC - and the 450,000 customers and 126 communities it represents - may be adversely affected by such a result. NOPEC needs the status of a party to evaluate the Application and make appropriate recommendations to the Commission.

WHEREFORE, NOPEC's Motion to Intervene and Motion for Hearing should be granted.

Respectfully submitted,

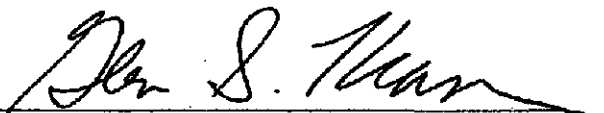


Glenn S. Krassen (007610)
BRICKER & ECKLER LLP
1375 East Ninth Street, Suite 1500
Cleveland, Ohio 44115
Telephone: (216) 523-5469
Fax: (216) 523-7071
E-Mail: gkrassen@bricker.com

Attorney for The Northeast Ohio Public Energy Council

CERTIFICATE OF SERVICE

I hereby certify that this pleading is being served by fax, first class mail or personal delivery, as shown below, this 6th day of August, 2007.


Glenn S. Krassen

James W. Burk
Senior Attorney
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308

M. Howard Petricoff, Esq.
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street
Columbus, Ohio 43215

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Rick C. Giannantonio
Senior Attorney
FirstEnergy Service Company
76 South Main Street
Akron, OH 44308

Jeffrey L. Small
Ann Hotz
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

Richard L. Sites, Esq.
General Counsel
Ohio Hospital Association
155 East Broad Street, 15th Floor
Columbus, OH 43215-3620

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793

Robert N. Fronek
Local 270, UWUA, AFL-CIO
4205 Chester Avenue
Cleveland, OH 44103

Carl Wood
Regulatory Affairs Director
Utility Workers Union of America
10103 Live Oak Avenue
Cherry Valley, CA 92223

Joseph M. Clark
Samuel C. Randazzo
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228