

FILE

**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 Authority)
To Modify Certain Accounting Practices)
And for Tariff Approvals.)

Case No. 07-1003-EL-ATA
Case No. 07-1004-EL-AAM

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**MOTION OF
OHIO PARTNERS FOR AFFORDABLE ENERGY
TO INTERVENE, MEMORANDUM IN SUPPORT
AND MOTION TO PRACTICE PRO HAC VICE BEFORE THE
COMMISSION**

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September 25, 2007

**Counsel for Ohio Partners for
Affordable Energy**

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MOTION TO INTERVENE

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission") for leave to intervene in the above-captioned matters pursuant to R.C. §4903.221 and Section 4901-1-11 of the Commission's Code of Rules and Regulations, with full powers and rights granted by the Commission specifically, by statute or by the provisions of the Commission's Code of Rules and Regulations to intervening parties. The reasons for granting this motion are contained in the memorandum attached hereto and incorporated herein.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Ohio Partners for Affordable Energy ("OPAE") should be permitted to intervene in these matters pursuant to Section 4903.22.1, Revised Code, and the Commission's Rules and Regulation contained in Rule 4901-01-11 of the Ohio Administrative Code. The above-referenced applications made by Ohio Edison Company, The Cleveland Electric Illuminating Company and Toledo Edison Company ("FirstEnergy") request authority to modify certain accounting practices and for tariff approvals. The applications arise from a decision by the Ohio Supreme Court, which has held that the Public Utilities Commission of Ohio ("Commission") violated Revised Code §4928.02(G) when it permitted FirstEnergy to collect deferred increased fuel costs through future distribution rate cases. *Elyria Foundry Company, et al., v. Pub. Util. Comm.*, 114 Ohio St.3d 305 (2007). On September 10, 2007, FirstEnergy filed these applications to address recovery of increased fuel costs during the 2006-2008 time period in light of the Court's decision.

In determining whether to permit intervention, the following criteria are to be considered: the nature of the person's interest; the extent to which that interest is represented by existing parties; the person's potential contribution to just and expeditious resolution of the proceeding; and, whether granting the

intervention will unduly delay or unjustly prejudice any existing party. OPAE meets all four criteria for intervention in these proceedings.

OPAE is an Ohio corporation with a stated purpose of advocating for affordable energy policies for low and moderate income Ohioans; as such, OPAE has a real and substantial interest in these proceedings. Additionally, OPAE includes as members non-profit organizations located in the service territories that will be affected by the applications.¹ Moreover, many of OPAE's members are community action agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, community action is charged with advocating for low-income residents of their communities.²

¹ A list of OPAE members can be found on the website: www.ohiopartners.org.

² See 42 U.S.C. 672:

The purposes of this subtitle are--

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through--

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this subtitle to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for--

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

OPAE also provides essential services in the form of bill payment assistance programs and weatherization and energy efficiency services to low income customers of FirstEnergy. OPAE members are also ratepayers of FirstEnergy.

OPAE's *primary interest* in these cases is to protect the interests of low and moderate income Ohioans and OPAE members whose provision of electric service may be affected by these applications. OPAE also seeks to ensure that the applications do not shift costs to residential and small commercial customers from other customer groups, and to address any other such issues as may arise during consideration of these matters. Further, OPAE has been recognized by the Commission in the past as an advocate for consumers and particularly low-income consumers, all of whom will be affected by the outcome of these cases.

For the above reasons, OPAE has a direct, real and substantial interest in these proceedings. The disposition of these proceedings may impair or impede the ability of OPAE to protect its interests. No other party to these proceedings will adequately represent the interests of OPAE. OPAE is a rare organization that serves as an advocate, service provider and nonprofit customer group. No other party represents this group of interests.

OPAE's participation in these proceedings will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and expeditious resolution of the issues and concerns raised in these proceedings.

Therefore, OPAE is entitled to intervene in these proceedings with the full powers and rights granted by statute and by the provisions of the Commission's Codes of Rules and Regulations to intervening parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Rinebolt", written over a horizontal line.

David C. Rinebolt (0073178)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum of Support and the attached Motion to Admit *Pro Hac Vice* was served by regular U.S. Mail upon the parties of record identified below in this case on this 25th day of September, 2007.



David C. Rinebolt, Esq.

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Affordable Energy**

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**MOTION TO ADMIT DAVID C. RINEBOLT TO PRACTICE
PRO HAC VICE BEFORE THE COMMISSION**

Pursuant to Rule 4901-1-08(B) of the Ohio Administrative Code, Colleen L. Mooney (0015668), an attorney licensed to practice in the State of Ohio, respectfully petitions the Public Utilities Commission of Ohio ("Commission") to permit David C. Rinebolt to practice *pro hac vice* before the Commission in the above-referenced proceeding. Mr. Rinebolt represents Ohio Partners for Affordable Energy, which is an Ohio corporation engaged in advocating for affordable energy policies.

Mr. Rinebolt graduated from the Columbus School of Law of the Catholic University of America in May 1981. As an active member of the District of Columbia Bar, Bar No. 367210, Mr. Rinebolt is licensed to practice before the federal courts of the District of Columbia. Furthermore, Mr. Rinebolt has practiced law continuously since being admitted to the District of Columbia Bar in October 1982. He is also registered with the Supreme Court of the State of Ohio in corporate status (Ohio Bar No. 0073178).

WHEREFORE, Colleen L. Mooney respectfully requests that David C. Rinebolt be permitted to practice before the Commission in the aforementioned proceedings.

Respectfully submitted,

 

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