

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

|   |   |                         |
|---|---|-------------------------|
| In the Matter of the Applications of Ohio   | ) |                         |
| Edison Company, The Cleveland Electric      | ) |                         |
| Illuminating Company and The Toledo Edison  | ) | Case No. 07-1003-EL-ATA |
| Company for Authority to Modify Certain     | ) | Case No. 07-1004-EL-AAM |
| Accounting Practices and Procedures and for | ) |                         |
| Tariff Approvals.                           | ) |                         |
|   | ) |                         |

**MOTION TO INTERVENE  
OF INTEGRYS ENERGY SERVICES, INC.**

Pursuant to Section 4903.221, Revised Code, Rule 4901-01-11 of the Ohio Administrative Code, Integrys Energy Services, Inc. ("Integrys") moves for intervention in these matters. Integrys is an active competitive retail electric service ("CRES") provider certificated by the Commission with offices in Ohio. The matter at bar arises from the remand by the Ohio Supreme Court in *Elyria Foundry v. Pub. Util. Comm.* 114 Ohio St. 3d 305, 2007-Ohio-4164 in which Integrys was the appellant. As such Integrys has a real and substantial interest in these cases and requests that its Motion for Intervention be granted for the reasons set forth below in its accompanying Memorandum in Support.

WHEREFORE, Integrys Energy Services, Inc. respectfully requests that its Motion to Intervene be granted.

Respectfully submitted,

/s/

---

M. Howard Petricoff

Stephen M. Howard

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

Tel: (614) 464-5414

Fax: (614) 719-4904

E-mail: [mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)

Attorneys for Integrys Energy Services, Inc.

## MEMORANDUM IN SUPPORT

On September 10, 2007, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison ("the Companies") filed an Application on Remand requesting authority to implement a recovery mechanism proposed to recover fuel costs deferred during the 2006-2008 time period. A fuel recovery mechanism was previously approved by the Commission in Case Nos. 03-2144-EL-ATA, et seq. and 05-1125-EL-ATA, et seq. The Ohio Supreme Court, however, on an appeal brought by Integrys held that the Commission violated Section 4928.02(G), Revised Code, when it authorized the Companies to collect deferred fuel costs through a future distribution rate case. *Elyria Foundry Co. v. Pub. Util. Com.*, 114 Ohio St. 3d 305, 2007-Ohio-4164. The Court reversed the Commission's Order on this issue and remanded the case to the Commission to modify the Rate Certainty Plan ("RCP") to comply with the Court's decision. In response to the Court's decision, the Companies have filed this Application requesting authority to establish a recovery mechanism.

The Companies propose two generation-related fuel costs recovery riders (collectively "Riders") applicable to retail customers of the Companies to collect actual fuel costs in 2006, 2007 and 2008 above the 2002 baseline and in excess of the Fuel Recovery Mechanism ("FRM") revenues. The Companies request that these new Riders be implemented on a bills-rendered basis commencing with the first October 2007 billing cycle and continuing through the December 2008 billing cycles, with a reconciliation component in each rider continuing through the first quarter of 2009 or until all deferred fuel costs and carrying charges are recovered. The first Rider provides recovery of fuel costs deferred from the inception of the fuel deferral under the RCP through September 30, 2007, plus Commission-approved carrying costs on the

unrecovered deferred cost balance. The second Rider provides recovery of ongoing fuel costs (those incurred after September 30, 2007 through December 31, 2008). Both Riders contain a reconciliation component, the purpose of which is to insure that the Companies recover no more or less than eligible costs under their Riders. The reconciliation component may be positive or negative depending upon actual costs and recovery.

The standards for intervention in proceedings before this Commission are set forth in Section 4903.221, Revised Code, and Rule 4901-1-11 of the Ohio Administrative Code. Section 4903.221, Revised Code, provides that the Commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

- (1) The nature and legal extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

Rule 4901-1-11 of the Ohio Administrative Code provides that upon timely motion, any person may be permitted to intervene in a proceeding upon a showing that that person has a real and substantial interest in the proceeding and that in making such an evaluation, the Commission may consider:

- (1) The nature of the person's interest;
- (2) The extent to which the person's interest is represented by existing parties;
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceedings; and

- (4) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice any existing party.

Integrus (formerly known as WPS Energy Services, Inc.) was a member of the Ohio Marketers Group for purposes of the transmission and ancillary service and intervened in Case No. 03-1366-EL-ATA, et al. It also intervened individually in Case No. 03-2144-EL-ATA and, was in fact, one of the appellants in the Ohio Supreme Court case that was remanded to this Commission and is the subject of this Application on remand. Integrus is a certificated CRES provider conducting business and serving consumers in Ohio. It is a competitor to FirstEnergy's standard offer service. The Riders and the reconciliation component will have significant impacts on the FirstEnergy market place. The proposals will affect the dynamics of competition and customer choices on FirstEnergy's system. Any material change to FirstEnergy's rate offer as a result of this Application will have consequences on Integrus' operations and business interests. Therefore, Integrus has a real and substantial interest in these matters.

Integrus is an experienced power provider and CRES supplier on FirstEnergy's system, as well as an experienced operator in several other states. Integrus' experience and knowledge will assist the Commission in considering the issues in these cases, and therefore, Integrus' participation will contribute to the full development and equitable resolution of the issues. No other party can adequately represent Integrus' interests. Integrus' participation will not unduly delay or unjustly prejudice any existing party.

Finally, as the appellant in the Supreme Court appeal that gave rise to the application in the matter at bar, Integrus has a unique interest and perspective to bring to the proceeding.

For the above-discussed reasons, Integrus has a direct, real, and substantial interest in the issues in these matters, which can only be protected by its participation.

WHEREFORE, for the reasons explained above, Integrys Energy Services, Inc. respectfully requests that the Commission permit it to intervene in the above-captioned proceedings and be made a party for all purposes.

Respectfully submitted,

/s/ \_\_\_\_\_  
M. Howard Petricoff  
Stephen M. Howard  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel: (614) 464-5414  
Fax: (614) 719-4904  
E-mail: mhpeticoff@vorys.com

Attorneys for Integrys Energy Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene was served upon the following persons, by first-class, U.S. mail, postage prepaid, and, where applicable, by e-mail this 8<sup>th</sup> day of November, 2007.

|  |   |
|--|---|
| Samuel C. Randazzo<br>Lisa G. McAlister<br>Daniel J. Neilsen<br>Joseph M. Clark<br>McNees Wallace & Nurick<br>Fifth Third Center<br>21 East State St., 17 <sup>th</sup> Floor<br>Columbus, OH 43215<br>sam@mwncmh.com<br>lmcaster@mwncmh.com<br>dneilsen@mwncmh.com<br>jclark@mwnchm.com | Ann M. Hotz<br>Gregory J. Poulos<br>Ohio Consumers' Counsel<br>10 West Broad Street<br>18 <sup>th</sup> Floor<br>Columbus, OH 43215-3485<br>hotz@occ.state.oh.us<br>poulos@occ.state.oh.us        |
| Michael L. Kurtz<br>Kurt J. Boehm<br>Boehm, Kurtz & Lowry<br>36 East Seventh Street, Suite 1510<br>Cincinnati, OH 45202<br>mkurtz@BKLawfirm.com<br>kboehm@BKLawfirm.com  | Brian J. Ballenger<br>Ballenger & Moore Co., L.P.A.<br>3401 Woodville Road<br>Suite C<br>Northwood, OH 43619<br>ballengerlawbib@sbcglobal.net   |
| David Boehm<br>Michael L. Kurtz<br>Boehm, Kurtz & Lowry<br>36 East Seventh Street, Suite 1510<br>Cincinnati, OH 45202<br>dboehm@BKLawfirm.com<br>mkurtz@BKLawfirm.com  | James W. Burk<br>Mark A. Hayden<br>FirstEnergy Corp.<br>76 S. Main Street<br>Akron, OH 44308<br>burkj@firstenergycorp.com<br>haydenm@firstenergycorp.com  |
| Duane Luckey<br>Attorney General's Office<br>180 East Broad Street, Ninth Floor<br>Columbus, OH 43215-3793<br>Duane.luckey@puc.state.oh.us   | David C. Rinebolt<br>Colleen L. Mooney<br>Ohio Partners for Affordable Energy<br>231 West Lima Street<br>P.O. Box 1793<br>Findlay, OH 45839-1793<br>drinebolt@aol.com<br>cmooney2@columbus.rr.com |

|   |   |
|---|---|
| <p>Sheilah H. McAdams<br/>City of Maumee<br/>204 W. Wayne Street<br/>Maumee, OH 43537<br/>sheilahmca@aol.com</p>  | <p>Peter D. Gwyn<br/>Law Director<br/>201 W. Indiana St.<br/>Perrysburg, OH 43551<br/>pgwyn@ci.perrysburg.oh.us</p>   |
| <p>Paul Goldberg<br/>Counsel for City of Oregon<br/>5330 Seaman Road<br/>Oregon, OH 43616<br/>pgoldberg@ci.oregon.oh.us</p>   | <p>James E. Moan<br/>Lydy &amp; Moan<br/>4930 Holland-Sylvania Road<br/>Sylvania, OH 43560-2149<br/>jimmoan@hotmail.com</p>   |
| <p>Garret A. Stone<br/>Michael K. Lavanga<br/>Brickfield, Burchette, Ritts &amp; Stone, P.C.<br/>1025 Thomas Jefferson Street, N.W.<br/>Eighth Floor, West Tower<br/>Washington, D.C. 20007<br/>gas@bbrslaw.com<br/>mkl@bbrslaw.com</p> | <p>Leslie A. Kovacik<br/>Kerry Bruce<br/>Department of Public Utilities<br/>420 Madison Avenue, Suite 100<br/>Toledo, OH 43604<br/>leslie.kovacik@ci.toledo.oh.us<br/>kerry.bruce@ci.toledo.oh.us</p> |
| <p>Lance M. Keiffer<br/>Assistant Prosecuting Attorney<br/>711 Adams Street, Second Floor<br/>Toledo, OH 43604<br/>lkeiffer@co.lucas.oh.us</p>  | <p>Paul A. Skaff<br/>Assistant Village Solicitor<br/>353 Elm Street<br/>Perrysburg, OH 43551<br/>paulskaff@perrysburglaw.com</p>  |
| <p>Thomas R. Hays<br/>Township Solicitor<br/>3315 Centennial Road, Suite A-2<br/>Sylvania, OH 43560<br/>hayslaw@buckeye-express.com</p>   | <p>John W. Bentine<br/>Chester Willcox &amp; Saxbe LLP<br/>65 East State Street, Suite 1000<br/>Columbus, OH 43215-4213<br/>jbentine@cwslaw.com</p>   |

\_\_\_\_\_  
/s/  
M. Howard Petricoff



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**11/9/2007 2:24:35 PM**

**in**

**Case No(s). 07-1003-EL-ATA, 07-1004-EL-AAM**

Summary: Motion Motion to Intervene of Integrys Energy Services, Inc. electronically filed by Howard Petricoff on behalf of Integrys Energy Services, LLC