

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Ohio Edison )  
Company, The Cleveland Electric Illuminating )  
Company and The Toledo Edison Company for )  
Authority To Establish A Standard Service Offer )  
Pursuant to R.C. §4928.143 In the Form Of An )  
Electric Security Plan )

Case No. 08-0935-EL-SSO

**NORTHEAST OHIO PUBLIC ENERGY COUNCIL  
MOTION FOR LEAVE TO INTERVENE**

Pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code § 4901-1-11, the  
Northeast Ohio Public Energy Council ("NOPEC") respectfully requests that the Public Utilities  
Commission of Ohio grant NOPEC's motion to intervene in this proceeding. The reasons  
supporting NOPEC's intervention are contained in the accompanying Memorandum in Support.

Respectfully submitted,

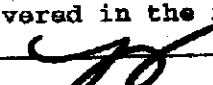


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**MEMORANDUM IN SUPPORT OF  
NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S  
MOTION FOR LEAVE TO INTERVENE**

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Pursuant to Ohio Rev. Code § 4903.221 and Ohio Admin. Code § 4901-1-11, the Public Utilities Commission of Ohio ("Commission") should grant the Northeast Ohio Public Energy Council's ("NOPEC") Motion for Leave to Intervene in this proceeding for the following reasons.

The Northeast Ohio Public Energy Council ("NOPEC") is a regional council of governments established under Chapter 167 of the Ohio Revised Code. NOPEC is comprised of 126 member counties, municipalities and townships in nine counties in Northeastern Ohio. NOPEC is a political subdivision of the State of Ohio, and a governmental aggregator certified by this Commission to provide 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 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 31, 2008, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI") and Toledo Edison Company ("TE"; collectively the "Operating Companies") filed Applications to establish an electric security plan or market rate offer as provided for in Amended Substitute Senate Bill 221 ("SB 221").

CEI and OE currently provide utility service to NOPEC's aggregated customers. As such, the outcome of this proceeding will have a real and substantial impact on NOPEC, a "person who may be adversely affected" by the proceeding. O.R.C. 4903.221. NOPEC may be adversely affected for reasons that include, but are not limited to, the following.

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. NOPEC's ability to again provide meaningful savings to its customers is dependent upon obtaining a satisfactory outcome in this proceeding for large scale governmental aggregators. Without an appropriate competitive framework for large scale governmental aggregation, NOPEC is deeply concerned that its customers will not be able to obtain generation service in Northeast Ohio after January 1, 2009 from any competitive supplier and will have no choice other than proposed SSO service. NOPEC wants to ensure that its large scale governmental aggregation electricity customers in Northern Ohio will have the benefits intended by the General Assembly in SB 221.<sup>1</sup>

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<sup>1</sup> See O.R.C. 4928.20(K) (mandating that the Commission encourage and promote large-scale governmental aggregation).

After an initial review of the Application, NOPEC is concerned with new charges proposed by the Operating Companies, whether such charges are lawful, and whether they should be bypassable by NOPEC customers shopping in a NOPEC large scale governmental aggregation program. In Senate Bill 221, the General Assembly mandated that the Commission consider the effect on large-scale governmental aggregation of any nonbypassable generation charges proposed within an ESP plan, however they are proposed to be collected.<sup>2</sup> 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 particularly concerned, among others, with the Operating Companies’ proposals related to their proposed non-bypassable 1 cent per kwh “minimum default service rider” contained in the proposed base generation charge, the calculation of their proposed standby charge and the amount of the proposed phased-in deferral that the Operating Companies’ propose, as well as the manner of handling the allocation of deferrals as related to the customers of a large scale governmental aggregation such as NOPEC.

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.<sup>3</sup> NOPEC is a political subdivision of the State of Ohio and the largest governmental energy aggregator in the State.

The second statutory standard is the prospective intervener’s “legal position” and “its probable relation to the merits of the case.”<sup>4</sup> As noted above, NOPEC’s legal position is as a large scale governmental aggregator whose customers will be affected by the Operating Companies’ proposals contained within its Application. NOPEC’s positions are related, *inter*

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<sup>2</sup> See O.R.C. 4928.20(K)

<sup>3</sup> O.R.C. 4903.221(B)(1).

<sup>4</sup> O.R.C. 4903.221(B)(2).

*alia*, to the potential that certain of the Operating Companies' proposals may be contrary to SB 221 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."<sup>5</sup> 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's 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."<sup>6</sup> NOPEC's intervention and involvement in the case will contribute to the development of a more complete understanding of the meaning and impacts of the Operating Companies electric security plan on Ohio electricity consumers, specifically those who would take service from a large scale governmental aggregation, which is appropriate and necessary for Commission adjudication. Additionally, NOPEC was granted intervention and participated actively in the Operating Companies' prior rate stabilization plan case, PUCO Case Nos. 03-2144-EL-ATA et al.

NOPEC also meets the standards for intervention under the PUCO's rules of practice and procedure.<sup>7</sup> 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 customers in OE and CEI

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<sup>5</sup> O.R.C. 4903.221(B)(3).

<sup>6</sup> O.R.C. 4903.221(B)(4).

<sup>7</sup> See O.A.C. 4901-1-11.

service territories.<sup>8</sup> NOPEC's interest is not adequately represented by existing parties. While the Northwest Ohio Aggregation Coalition, a coalition of political subdivisions, also has requested intervention in this case, its interests may be unique to its specific member communities, which may be different from those represented by NOPEC as a regional Council of Governments. In addition, NOPEC is a consumer representative for those consumers within its boundaries as well.

NOPEC has explained the "nature" of its interest.<sup>9</sup> No parties that represent NOPEC's interests are interveners in the case.<sup>10</sup>

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.<sup>11</sup>

Finally, NOPEC's interventions would not unduly delay or unjustly prejudice any party.<sup>12</sup> 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 also timely. O.R.C. 4903.221(A)(2); *see also* O.A.C. 4901-1-11(E)(1). Accordingly, the Commission should grant NOPEC's intervention in this proceeding. The Operating Companies' proposals will set the competitive landscape that may exist in northern

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<sup>8</sup> O.A.C. 4901-1-11(A)(2).

<sup>9</sup> O.A.C. 4901-1-119B)(1).

<sup>10</sup> O.A.C. 4901-1-11(B)(2).

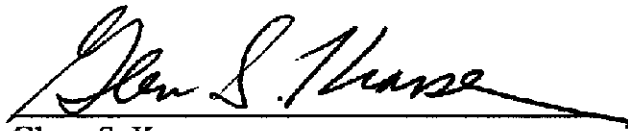
<sup>11</sup> O.A.C. 4901-1-119(B)(4).

<sup>12</sup> O.A.C. 4901-1-11(B)(2).

Ohio for the next two to three years at a minimum, and likely for much longer. NOPEC - and the over 450,000 customers and 126 communities it represents - may be adversely affected by such a result. NOPEC needs the status of a party to the proceeding to fully evaluate the Application and make appropriate recommendations to the Commission.

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

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Glenn S. Krassen", with a long horizontal flourish extending to the right.

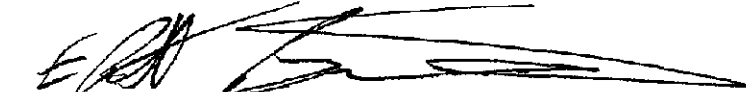
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## CERTIFICATE OF SERVICE

I hereby certify that this pleading is being served by fax, first class mail or personal delivery, as shown below, this 3rd day of September 2008.

  
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