

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of The 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. 08-935-EL-SSO

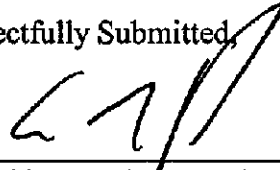
**MOTION FOR LEAVE TO FILE OUT OF TIME AND MOTION TO INTERVENE OF
THE ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES OF OHIO**

The Association of Independent Colleges And Universities of Ohio ("AICUO") on behalf of itself and its member institutions hereby move the Public Utility Commission of Ohio ("Commission") for leave to file out of time this motion to intervene as a full party of record in the above captioned proceeding pursuant to Ohio Revised Code ("R.C.") Section 4903.221 and Ohio Administrative Code ("OAC") Rule 4901-1-11. As set forth in the attached Memorandum in Support, the AICUO and its members have real and substantial interests in this proceeding which cannot be adequately represented by parties currently intervening in this proceeding. Additionally, the AICUO submits that the disposition of this proceeding will impair or impede the ability of the AICUO and its members to protect those interests. The AICUO further submits that the legal positions and issues that it will advance are relevant to the merits of this proceeding and, although it will accept the record in the proceeding as it stands, it intends to contribute in a unique manner to the full development and equitable resolution of the proceeding. The AICUO also submits that granting this Motion will not unduly delay the proceeding or unjustly prejudice any existing party.

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For these reasons, as explained more fully herein, the AICUO respectfully requests that the Commission grant its motion for leave to file out of time and its motion to intervene in the above captioned proceeding.

Respectfully Submitted,



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**MEMORANDUM IN SUPPORT OF THE ASSOCIATION OF INDEPENDENT
COLLEGES AND UNIVERSITIES OF OHIO MOTION FOR LEAVE TO FILE OUT OF
TIME AND MOTION TO INTERVENE**

I. PROCEDURAL BACKGROUND

On July 31, 2008, the above captioned proceeding was initiated by The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively "First Energy"). First Energy initiated this proceeding in order to obtain Commission review and approval of its Standard Service Offer ("SSO") to be completed via a proposed Electric Security Plan ("ESP") (08-935-EL-SSO).

By Entry dated August 5, 2008, the Commission established a procedural schedule for its consideration of the ESP requiring that adversely impacted parties file motions to intervene by September 4, 2008. By Entry dated September 5, 2008, the Commission set the evidentiary hearing in this proceeding to be held at its Columbus, Ohio, office beginning October 16, 2008. Additionally, by Entry dated September 9, 2008, the Commission ordered that local public hearings be held at locations around the state of Ohio. The Commission ordered that the local public hearings be held so that customers of First Energy would have the opportunity to provide testimony in the ESP proceeding.

On September 8, 2008, four (4) days after the Commission's established deadline for intervention motions, the Morgan Stanley Capital Group filed a motion to intervene in this proceeding. Additionally, on September 9, 2008, the Commercial Group, representing Walmart, BJ's Wholesale Club, and Macy's filed a motion for leave to file out of time and motion to intervene in the above captioned proceeding.

By Entry dated October 2, 2008, the Commission found that “in light of the fact that this is the first time electric utilities have filed applications for standard service offers under Am. Sub.Senate Bill 221, these motions to intervene should be granted, notwithstanding the failure to file the motions by the deadline for intervention.” The Commission ordered that “the motions to intervene filed after the deadline for intervention be granted.” Morgan Stanley Capital Group and the Commercial Group, including Walmart, BJ’s Wholesale Club, and Macy’s have now been admitted as full parties of record to this proceeding.

The AICUO only became aware of First Energy’s proposed ESP and the Commission’s aggressive proceeding schedule as of the first week of October 2008. Had the AICUO known of the proposed ESP and the procedural schedule, a motion to intervene would have been filed by the stated deadline. First Energy’s proposed SSO presents novel concepts for the AICUO and its members and this is the first and only time that these entities will have the opportunity to ensure that those interests are addressed. Consequently, the AICUO and its members should have the same opportunity as other intervenors having file after the stated deadline to participate in this proceeding.

II. BASIS FOR INTERVENTION

a. Standard of Review

R.C. section 4903.221 and OAC Rule 4901-1-11 set forth the standards pursuant to which the AICUO may intervene in the above-captioned Commission proceeding. R.C. section 4903.221 confers the statutory right to intervene in a Commission proceeding to any party “who may be adversely affected by a proceeding.” Additionally, OAC Rule 4901-1-11 provides that:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that: . . . [t]he person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical

matter, impair or impede his or her ability to protect that interest, unless the person's interest is adequately represented by existing parties.

Upon filing a timely motion demonstrating a real and substantial interest and upon demonstrating that the proceeding will impair or impede the ability to protect the interest, a party is entitled to an Order granting its intervention request. In determining whether a party is entitled to intervene, the Commission shall consider:

(1) the nature and 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 proceeding; (4) whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues; and (5) the extent to which the person's interest is represented by existing parties.

(See *R.C. 4903.221(B)* and *OAC 4901-1-11(B)*). The AICUO is aware that the Commission established September 4, 2008, as the deadline to file motions to intervene in this proceeding. Accepting that this motion to intervene is out of time, the AICUO requests that the Commission follow its precedent in this proceeding regarding late filed intervention requests and consider the foregoing stated rules and facts in order to grant this motion to intervene:

b. The ESP Will Have An Adverse Impact On AICUO Member Institutions

The AICUO is comprised of fifty-one (51) independent colleges and universities. AICUO member institutions with campuses in the territory of First Energy include Mercy College of Northwest Ohio, Ashland University, MedCentral College of Nursing, Mount Union College, Hiram College, Lake Erie College, Case Western Reserve University, John Carroll University, Notre Dame College, Ohio College of Podiatric Medicine, Ursuline College, Defiance University, Baldwin Wallace College, Lourdes College, Mercy College of Northwest

Ohio, and Notre Dame College. Combined, these colleges and universities are home to an approximately 25,000 tuition paying students. In addition, these independent colleges and universities employ thousands of individuals within the territory of First Energy.

Unlike Ohio's public universities and colleges, AICUO members do not have line-items in the state budget providing funding for operations. AICUO members are almost exclusively tuition dependent, with very few having any substantial endowment. After personnel costs for faculty and staff, utility costs are among the largest of costs for all independent colleges. AICUO members make difficult decisions each year regarding tuition increases and constantly strive to keep the increases to a minimum but must raise tuition sufficiently to meet rising operating expenses. First Energy's proposed ESP and corresponding increase in electric utility rates is yet another rising expense that may result in higher tuition fees if the interests of private independent colleges and universities are not represented in this proceeding.

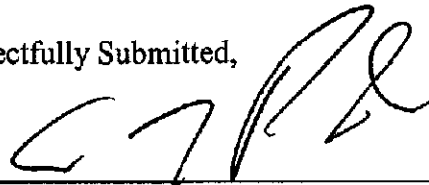
The AICUO member institutions cited herein are extremely large users of First Energy electric utility service. Additionally, the load characteristic of the AICUO membership is likely as diverse as the membership of the organization. The AICUO membership includes research universities, traditional liberal arts colleges, comprehensive universities, single-purpose institutions, and religiously affiliated colleges. Early morning and afternoon usage may be high at certain institutions while late evening and night usage may be high at others. These factors, we believe, should be considered in setting electric utility rates.

The AICUO members served by First Energy will undoubtedly be adversely impacted by the proposed ESP. This proceeding will impact the rates, terms and conditions under which each member institution receives its electric utility service. For that reason, the AICUO and its member institutions have a real and substantial interest in this proceeding.

III. CONCLUSION

For the reasons set forth above, the AICUO on behalf of its self and its member institutions respectfully requests that the Commission grant its motion for leave to file out of time and its motion to intervene in the above-captioned proceeding. The AICUO's intervention will not unduly prolong or delay the proceeding. In contrast, the AICUO's intervention will contribute to the full development the factual issues to be resolved in the proceeding. Finally, no other party to the proceeding is capable of representing the interests of the AICUO and its member institutions.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Motion for Leave to File Out of Time and Motion to Intervene of the Association of Independent Colleges and Universities Of Ohio was served via electronic mail to the parties listed on the attached Exhibit A and by regular mail service to the parties listed on the attached Exhibit B on the 15th day of October, 2008.

A handwritten signature in black ink, appearing to read 'ATP', is written above a horizontal line.

Andre T. Porter

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